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HOUSE BILL NO. 639

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 22, 2020)

(Patron Prior to Substitute—Delegate Hurst)

A *BILL to amend and reenact § 19.2-182.5 of the Code of Virginia, relating to persons acquitted by reason of insanity; use of two-way electronic communications in proceedings.*

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-182.5 of the Code of Virginia is amended and reenacted as follows:****§ 19.2-182.5. Review of continuation of confinement hearing; procedure and reports; disposition.**

A. The committing court shall conduct a hearing twelve months after the date of commitment to assess the need for inpatient hospitalization of each acquittee who is acquitted of a felony by reason of insanity. A hearing for assessment shall be conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court.

B. Prior to the hearing, the Commissioner shall provide to the court a report evaluating the acquittee's condition and recommending treatment, to be prepared by a psychiatrist or a psychologist. The psychologist who prepares the report shall be a clinical psychologist and any evaluating psychiatrist or clinical psychologist shall be skilled in the diagnosis of mental illness and qualified by training and experience to perform forensic evaluations. If the examiner recommends release or the acquittee requests release, the acquittee's condition and need for inpatient hospitalization shall be evaluated by a second person with such credentials who is not currently treating the acquittee. A copy of any report submitted pursuant to this subsection shall be sent to the attorney for the Commonwealth for the jurisdiction from which the acquittee was committed.

C. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding *and may be conducted using a two-way electronic video and audio communication system that meets the standards set forth in subsection B of § 19.2-3.1, unless objected to by the acquittee, the acquittee's attorney, or the attorney for the Commonwealth.*

According to the determination of the court following the hearing, and based upon the report and other evidence provided at the hearing, the court shall (i) release the acquittee from confinement if he does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in § 19.2-182.7, provided the court has approved a discharge plan prepared jointly by the hospital staff and the appropriate community services board or behavioral health authority; (ii) place the acquittee on conditional release if he meets the criteria for conditional release, and the court has approved a conditional release plan prepared jointly by the hospital staff and the appropriate community services board or behavioral health authority; or (iii) order that he remain in the custody of the Commissioner if he continues to require inpatient hospitalization based on consideration of the factors set forth in § 19.2-182.3.

D. An acquittee who is found not guilty of a misdemeanor by reason of insanity on or after July 1, 2002, shall remain in the custody of the Commissioner pursuant to this chapter for a period not to exceed one year from the date of acquittal. If, prior to or at the conclusion of one year, the Commissioner determines that the acquittee meets the criteria for conditional release or release without conditions pursuant to § 19.2-182.7, emergency custody pursuant to § 37.2-808, temporary detention pursuant to §§ 37.2-809 to 37.2-813, or involuntary commitment pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, he shall petition the committing court. Written notice of an acquittee's scheduled release shall be provided by the Commissioner to the attorney for the Commonwealth for the committing jurisdiction not less than thirty days prior to the scheduled release. The Commissioner's duty to file a petition upon such determination shall not preclude the ability of any other person meeting the requirements of § 37.2-808 to file the petition.