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SENATE BILL NO. 840

Offered January 8, 2020

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A *BILL to amend and reenact §§ 19.2-182.5, 19.2-182.6, and 19.2-182.7 of the Code of Virginia, relating to persons acquitted by reason of insanity.*

Patron—Ebbin

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-182.5, 19.2-182.6, and 19.2-182.7 of the Code of Virginia are 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~~ 12 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. *If an examiner recommends release of an acquittee who has been acquitted of a violent felony offense as listed in subsection C of § 17.1-805, or if such acquittee requests release, the court shall appoint a second psychiatrist or clinical psychologist who is not employed by the Commissioner and who is not currently treating the acquittee to evaluate whether the acquittee should be released. The evaluator shall assess the acquittee and report on his condition and need for hospitalization with respect to the factors set forth in § 19.2-182.3. The evaluator shall conduct his examination and report his findings within 45 days of issuance of the court's order for evaluation.*

D. *If an examiner recommends release of an acquittee who has been acquitted of any other offense other than a violent felony offense as listed in subsection C of § 17.1-805, or such acquittee requests release, the acquittee's condition and need for inpatient hospitalization shall be evaluated by a second psychiatrist or clinical psychologist skilled in the diagnosis of mental illness and qualified by training and experience to perform forensic examinations who is not currently treating the acquittee.*

E. *A copy of any report submitted pursuant to this section shall be sent to the attorney for the Commonwealth for the jurisdiction from which the acquittee was committed.*

F. 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.

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 § 19.2-182.7.

D. G. 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

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59 exceed one year from the date of acquittal. If, prior to or at the conclusion of one year, the
60 Commissioner determines that the acquittee meets the criteria for conditional release or release without
61 conditions pursuant to § 19.2-182.7, emergency custody pursuant to § 37.2-808, temporary detention
62 pursuant to §§ 37.2-809 to 37.2-813, or involuntary commitment pursuant to Article 5 (§ 37.2-814 et
63 seq.) of Chapter 8 of Title 37.2, he shall petition the committing court. Written notice of an acquittee's
64 scheduled release shall be provided by the Commissioner to the attorney for the Commonwealth for the
65 committing jurisdiction not less than ~~thirty~~ 30 days prior to the scheduled release. The Commissioner's
66 duty to file a petition upon such determination shall not preclude the ability of any other person meeting
67 the requirements of § 37.2-808 to file the petition.

68 **§ 19.2-182.6. Petition for release; conditional release hearing; notice; disposition.**

69 A. The Commissioner may petition the committing court for conditional or unconditional release of
70 the acquittee at any time he believes the acquittee no longer needs hospitalization. The petition shall be
71 accompanied by a report of clinical findings supporting the petition with respect to the factors set forth
72 in § 19.2-182.3 and by a conditional release or discharge plan, as applicable, prepared jointly by the
73 hospital and the appropriate community services board or behavioral health authority. The acquittee may
74 petition the committing court for release only once in each year in which no annual judicial review is
75 required pursuant to § 19.2-182.5. The party petitioning for release shall transmit a copy of the petition
76 to the attorney for the Commonwealth for the committing jurisdiction.

77 B. 1. When a petition for release is made by the acquittee, the court shall order the Commissioner to
78 appoint two persons in the same manner as set forth in § 19.2-182.2 to assess and report on the
79 acquittee's need for inpatient hospitalization by reviewing his condition with respect to the factors set
80 forth in § 19.2-182.3. The evaluators shall conduct their evaluations and report their finding in
81 accordance with the provisions of § 19.2-182.2, except that the evaluations shall be completed and
82 findings reported within 45 days of issuance of the court's order for evaluation.

83 2. When a petition for release is made by the Commissioner *for an acquittee who has been acquitted*
84 *of a violent felony offense as listed in subsection C of § 17.1-805, the court shall appoint a psychiatrist*
85 *or clinical psychologist who is not employed by the Commissioner and who is not currently treating the*
86 *acquittee to evaluate whether the acquittee should be released. The evaluator shall assess the acquittee*
87 *and report on his condition and need for hospitalization with respect to the factors set forth in*
88 *§ 19.2-182.3. The evaluator shall conduct his examination and report his findings within 45 days of*
89 *issuance of the court's order for evaluation.*

90 3. When a petition for release is made by the Commissioner *for an acquittee who has been acquitted*
91 *of any other offense other than a violent felony offense as listed in subsection C of § 17.1-805, no*
92 *further evaluations of the acquittee shall be required unless otherwise deemed necessary by the court. If*
93 *the court determines that further evaluation is necessary, the court shall order the Commissioner to*
94 *appoint two persons in the same manner as set forth in § 19.2-182.2 to assess and report on the*
95 *acquittee's need for inpatient hospitalization by reviewing his condition with respect to the factors set*
96 *forth in § 19.2-182.3. The evaluators shall conduct their evaluations and report their finding in*
97 *accordance with the provisions of § 19.2-182.2, except that the evaluations shall be completed and*
98 *findings reported within 45 days of issuance of the court's order for evaluation.*

99 The Commissioner shall give notice of the hearing to any victim of the act resulting in the charges
100 on which the acquittee was acquitted or the next of kin of the victim at the last known address,
101 provided the person submits a written request for such notification to the Commissioner.

102 C. Upon receipt of the reports of evaluation, the court shall conduct a hearing on the petition. The
103 hearing shall be scheduled on an expedited basis and given priority over other civil matters before the
104 court. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at
105 the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right
106 to introduce evidence and cross-examine witnesses. Written notice of the hearing shall be provided to
107 the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

108 At the conclusion of the hearing, based upon the report and other evidence provided at the hearing,
109 the court shall order the acquittee (i) released from confinement if he does not need inpatient
110 hospitalization and does not meet the criteria for conditional release set forth in § 19.2-182.3, provided
111 the court has approved a discharge plan prepared jointly by the hospital and the appropriate community
112 services board or behavioral health authority; (ii) placed on conditional release if he meets the criteria
113 for such release as set forth in § 19.2-182.7, and the court has approved a conditional release plan
114 prepared jointly by the hospital and the appropriate community services board or behavioral health
115 authority; or (iii) retained in the custody of the Commissioner if he continues to require inpatient
116 hospitalization based on consideration of the factors set forth in § 19.2-182.3.

117 D. Persons committed pursuant to this chapter shall be released only in accordance with the
118 procedures set forth governing release and conditional release.

119 **§ 19.2-182.7. Conditional release; criteria; conditions; reports.**

120 At any time the court considers the acquittee's need for inpatient hospitalization pursuant to this

chapter, it shall place the acquittee on conditional release if it finds that (i) based on consideration of the factors which the court must consider in its commitment decision, he does not need inpatient hospitalization but needs outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he would need inpatient hospitalization; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released acquittee to such orders and conditions it deems will best meet the acquittee's need for treatment and supervision and best serve the interests of justice and society. *But if an acquittee was acquitted of a violent felony offense as listed in subsection C of § 17.1-805, the court shall not place the acquittee on conditional release unless it finds by clear and convincing evidence that conditional release will not present an undue risk to public safety.*

The community services board or behavioral health authority as designated by the Commissioner shall implement the court's conditional release orders and shall submit written reports to the court on the acquittee's progress and adjustment in the community no less frequently than every six months. An acquittee's conditional release shall not be revoked solely because of his voluntary admission to a state hospital.

After a finding by the court that the acquittee has violated the conditions of his release but does not require inpatient hospitalization pursuant to § 19.2-182.8, the court may hold the acquittee in contempt of court for violation of the conditional release order.

If at any time the court finds that an acquittee who has been conditionally released presents an undue risk to public safety, it may issue a rule to show cause or a capias to bring the acquittee before the court for a hearing pursuant to § 19.2-182.8.