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HOUSE BILL NO. 791

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 19.2-182.8 and 19.2-182.9 of the Code of Virginia, relating to not guilty by reason of insanity; conditional release.

Patrons—Brink, Melvin and Morgan; Senators: Houck, Lambert and Puller

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-182.8 and 19.2-182.9 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-182.8. Revocation of conditional release.

If at any time the court that released an acquittee pursuant to § 19.2-182.7 finds reasonable ground to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (ii) requires inpatient hospitalization, it may order an evaluation of the acquittee by a psychiatrist or clinical psychologist, provided the psychiatrist or clinical psychologist is qualified by training and experience to perform forensic evaluations. If the court, based on the evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (ii) is mentally ill or mentally retarded and requires inpatient hospitalization, the court may revoke the acquittee's conditional release and order him returned to the custody of the Commissioner. *An acquittee's conditional release shall not be revoked solely because of his voluntary hospital admission.*

At any hearing pursuant to this section, 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.

§ 19.2-182.9. Emergency custody of conditionally released acquittee.

When exigent circumstances do not permit compliance with revocation procedures set forth in § 19.2-182.8, any district court judge or a special justice, as defined in § 37.2-100, or a magistrate may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) requires inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial district to be taken into custody and transported to a convenient location where a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization. A law-enforcement officer who, based on his observation or the reliable reports of others, has probable cause to believe that any acquittee on conditional release has violated the conditions of his release and is no longer a proper subject for conditional release and requires emergency evaluation to assess the need for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate location to assess the need for hospitalization without prior judicial authorization. The evaluation shall be conducted immediately. The acquittee shall remain in custody until a temporary detention order is issued or until he is released, but in no event shall the period of custody exceed four hours. If it appears from all evidence readily available (i) that the acquittee has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) that he requires emergency evaluation to assess the need for inpatient hospitalization, the district court judge or a special justice, as defined in § 37.2-100, or magistrate, upon the advice of such person skilled in the diagnosis and treatment of mental illness, may issue a temporary detention order authorizing the executing officer to place the acquittee in an appropriate institution for a period not to exceed 48 hours prior to a hearing. If the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the acquittee may be detained until the next day which is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a

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59 psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled
60 in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At
61 the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present
62 at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the
63 right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the
64 court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee
65 (i) has violated the conditions of his release or is no longer a proper subject for conditional release and
66 (ii) has mental illness or mental retardation and is in need of inpatient hospitalization, the court shall
67 revoke the acquittee's conditional release and place him in the custody of the Commissioner. *An*
68 *acquittee's conditional release shall not be revoked solely because of his voluntary hospital admission.*
69 When an acquittee on conditional release pursuant to this chapter is taken into emergency custody,
70 detained, or hospitalized, such action shall be considered to have been taken pursuant to this section,
71 notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody,
72 detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law
73 other than those applicable to insanity acquittees pursuant to this chapter shall not render the detention
74 or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not
75 recognized at the time of emergency custody or detention, at the time his status as such is verified, the
76 provisions applicable to such persons shall be applied and the court hearing the matter shall notify the
77 committing court of the proceedings.