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SENATE BILL NO. 345

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend and reenact §§ 19.2-182.7, 19.2-182.8, and 19.2-182.9 of the Code of Virginia, relating to conditional release and voluntary admission to a state hospital.*

Patrons—Blevins, Martin and Puller; Delegates: Hamilton and Melvin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-182.7, 19.2-182.8, and 19.2-182.9 of the Code of Virginia are amended and reenacted as follows:

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

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.

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.

§ 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. The hearing shall be scheduled on an expedited basis and shall be given priority over other civil matters before the court. 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

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59 the community services board or behavioral health authority who is skilled in the diagnosis and
60 treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization.
61 A law-enforcement officer who, based on his observation or the reliable reports of others, has probable
62 cause to believe that any acquittee on conditional release has violated the conditions of his release and is
63 no longer a proper subject for conditional release and requires emergency evaluation to assess the need
64 for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate
65 location to assess the need for hospitalization without prior judicial authorization. The evaluation shall
66 be conducted immediately. The acquittee shall remain in custody until a temporary detention order is
67 issued or until he is released, but in no event shall the period of custody exceed four hours. If it appears
68 from all evidence readily available (i) that the acquittee has violated the conditions of his release or is
69 no longer a proper subject for conditional release and (ii) that he requires emergency evaluation to
70 assess the need for inpatient hospitalization, the district court judge or a special justice, as defined in
71 § 37.2-100, or magistrate, upon the advice of such person skilled in the diagnosis and treatment of
72 mental illness, may issue a temporary detention order authorizing the executing officer to place the
73 acquittee in an appropriate institution for a period not to exceed 48 hours prior to a hearing. If the
74 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully
75 closed, the acquittee may be detained until the next day which is not a Saturday, Sunday, legal holiday,
76 or day on which the court is lawfully closed.

77 The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall
78 have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a
79 psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled
80 in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At
81 the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present
82 at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the
83 right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the
84 court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee
85 (i) has violated the conditions of his release or is no longer a proper subject for conditional release and
86 (ii) has mental illness or mental retardation and is in need of inpatient hospitalization, the court shall
87 revoke the acquittee's conditional release and place him in the custody of the Commissioner. ~~An~~
88 ~~acquittee's conditional release shall not be revoked solely because of his voluntary hospital admission.~~

89 When an acquittee on conditional release pursuant to this chapter is taken into emergency custody,
90 detained, or hospitalized, such action shall be considered to have been taken pursuant to this section,
91 notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody,
92 detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law
93 other than those applicable to insanity acquittees pursuant to this chapter shall not render the detention
94 or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not
95 recognized at the time of emergency custody or detention, at the time his status as such is verified, the
96 provisions applicable to such persons shall be applied and the court hearing the matter shall notify the
97 committing court of the proceedings.