

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 768

An Act to amend and reenact § 19.2-182.3 of the Code of Virginia, relating to persons acquitted by reason of insanity; commitment; sentencing.

[H 1193]

Approved April 4, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-182.3 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-182.3. Commitment; civil proceedings.

Upon receipt of the evaluation report and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing on an expedited basis, giving the matter priority over other civil matters before the court, to determine the appropriate disposition of the acquittee. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. 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 is a civil proceeding.

At the conclusion of the hearing, the court shall commit the acquittee if it finds that he has mental illness or intellectual disability and is in need of inpatient hospitalization. For the purposes of this chapter, mental illness includes any mental illness, as defined in § 37.2-100, in a state of remission when the illness may, with reasonable probability, become active. The decision of the court shall be based upon consideration of the following factors:

1. To what extent the acquittee has mental illness or intellectual disability, as those terms are defined in § 37.2-100;
2. The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;
3. The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and
4. Such other factors as the court deems relevant.

If the court determines that an acquittee does not need inpatient hospitalization solely because of treatment or habilitation he is currently receiving, but the court is not persuaded that the acquittee will continue to receive such treatment or habilitation, it may commit him for inpatient hospitalization. The court shall order the acquittee released with conditions pursuant to §§ 19.2-182.7, 19.2-182.8, and 19.2-182.9 if it finds that he is not in need of inpatient hospitalization but that he meets the criteria for conditional release set forth in § 19.2-182.7. If the court finds that the acquittee does not need inpatient hospitalization nor does he meet the criteria for conditional release, it shall release him without conditions, provided the court has approved a discharge plan prepared by the appropriate community services board or behavioral health authority in consultation with the appropriate hospital staff.

The court shall order that any person acquitted by reason of insanity and committed pursuant to this section who is sentenced to a term of incarceration for any other offense in the same proceeding or in any proceeding conducted prior to the proceeding in which the person is acquitted by reason of insanity complete any sentence imposed for such other offense prior to being placed in the custody of the Commissioner of Behavioral Health and Developmental Services until released from commitment pursuant to this chapter. The court shall order that any person acquitted by reason of insanity and committed pursuant to this section who is sentenced to a term of incarceration in any proceeding conducted during the period of commitment be transferred to the custody of the correctional facility where he is to serve his sentence, and, upon completion of his sentence, such person shall be placed in the custody of the Commissioner of Behavioral Health and Developmental Services until released from commitment pursuant to this chapter.