

VIRGINIA ACTS OF ASSEMBLY -- 2003 RECONVENED SESSION

CHAPTER 1018

An Act to amend and reenact §§ 2.2-3703, 37.1-70.1 through 37.1-70.6, 37.1-70.9 through 37.1-70.16, 37.1-103, 37.1-104, and 37.1-104.1 of the Code of Virginia, relating to sexually violent predators.

[S 1149]

Approved April 2, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3703, 37.1-70.1 through 37.1-70.6, 37.1-70.9 through 37.1-70.16, 37.1-103, 37.1-104, and 37.1-104.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records.

A. The provisions of this chapter shall not apply to:

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § 2.2-5207; and

4. The Virginia State Crime Commission; and

5. *The Commitment Review Committee and any documents, evaluations, assessments and proceedings involving the commitment of sexually violent predators under Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of Title 37.1.*

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

§ 37.1-70.1. Definitions.

The following words and phrases when used in this article shall have the following meanings, unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Defendant" means any person charged with a sexually violent offense who is deemed an unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred to the Attorney General for commitment review pursuant to § 37.1-70.6.

"Director" means the Director of the Department of Corrections.

"Hospitalization" means appropriate treatment, as determined by the Commissioner of Mental Health, Mental Retardation, and Substance Abuse Services, for persons civilly committed in accordance with this act.

"Mental abnormality" or "personality disorder" means a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others.

"Sexually violent offense" means ~~an instant violation of~~ (i) a felony conviction under former § 18-54, former § 18.1-44, §§ 18.2-61, 18.2-67.1, or § 18.2-67.2 or subdivision A 1 of § 18.2-67.3 or (ii) a felony conviction under the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior on which the conviction is based is set forth in § 18.2-67.1 or § 18.2-67.2 or subdivision A 1 of § 18.2-67.3.

"Sexually violent predator" means any person who (i) has been convicted of a sexually violent offense or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial pursuant to § 19.2-169.3 and (ii) ~~suffers from~~ because of a mental abnormality or personality disorder, finds it difficult to control his predatory behavior which makes him likely to engage in sexually violent acts.

§ 37.1-70.2. Rights of prisoners and defendants.

In hearings and trials held pursuant to this article, prisoners and defendants shall have the following rights:

1. To receive adequate notice of the proceeding.
2. To be represented by counsel.

3. To remain silent or to testify.
4. To be present during the hearing or trial.
5. To present evidence and to cross-examine witnesses.
6. To view and copy all petitions and reports in the court file.

In no event shall a prisoner or defendant be permitted, as a part of any proceedings under this article, to raise challenges to the validity of his prior criminal sentences or institutional convictions.

In the event the prisoner or defendant refuses to cooperate with the mental health examination required under § 37.1-70.5, the court may admit evidence of such refusal and may bar the prisoner or defendant from introducing his own expert psychiatric or psychological evidence.

§ 37.1-70.3. Commitment Review Committee; membership.

A. The Director of the Department of Corrections shall establish a Commitment Review Committee (CRC) to screen, evaluate, and make recommendations regarding prisoners in the custody of the Department of Corrections for the purposes of this article. The CRC shall be under the supervision of the Department of Corrections. *Members of the CRC and any licensed psychiatrists or licensed clinical psychologists providing examinations under subsection B of § 37.1-70.5 shall be immune from personal liability while acting within the scope of their duties except for gross negligence or intentional misconduct.*

B. The CRC shall consist of seven members to be appointed as follows: (i) three full-time employees of the Department of Corrections, appointed by the Director of the Department of Corrections; (ii) three full-time employees of the Department of Mental Health, Mental Retardation and Substance Abuse Services, appointed by the Commissioner, at least one of whom shall be a psychiatrist or psychologist licensed to practice in the Commonwealth of Virginia who is skilled in the diagnosis of mental abnormalities and personality disorders associated with violent sex offenders; and (iii) one assistant or deputy attorney general, appointed by the Attorney General. Initial appointments by the Director and the Commissioner shall be for terms as follows: one member each for two years, one member each for three years, and one member each for four years. The initial appointment by the Attorney General shall be for a term of four years. Thereafter, all appointments to the CRC shall be for terms of four years, and vacancies shall be filled for the unexpired terms. Five members shall constitute a quorum.

C. The CRC shall meet at least monthly and at other times as it deems appropriate. The CRC shall elect a chairman from its membership to preside during meetings.

§ 37.1-70.4. Treatment plans; database of prisoners convicted of sexually violent offenses; maintained by Department of Corrections; notice of pending release to CRC.

A. The Director shall establish and maintain a treatment program for prisoners convicted pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 and committed to the custody of the Department of Corrections. Such program shall include a clinical assessment of all such prisoners upon receipt into the custody of the Department of Corrections and the development of appropriate treatment plans if indicated. This program shall be operated under the direction of a licensed clinical psychiatrist or licensed clinical psychologist who is experienced in the diagnosis and treatment of mental abnormalities and disorders associated with criminal sexual offenders.

B. The Director of the Department of Corrections shall establish and maintain a database of prisoners in his custody who are incarcerated for sexually violent offenses. The database shall include the following information regarding each prisoner: (i) the prisoner's criminal record, (ii) the prisoner's sentences and scheduled date of release, and (iii) the appropriate locality for a commitment petition.

C. Each month, the Director shall review the database of prisoners incarcerated for sexually violent offenses and identify all such prisoners who are scheduled for release from prison ~~no earlier than ten~~ *within 10 months; but no later than eight months* from the date of such review *who receive a score of four or more on the Rapid Risk Assessment for Sexual Offender Recidivism or a like score on a comparable, scientifically validated instrument as designated by the Commissioner.* Upon the identification of such prisoners, the Director shall forward their name, their scheduled date of release, and a copy of their file to the CRC for assessment.

§ 37.1-70.5. CRC assessment of prisoners eligible for commitment as sexually violent predators; mental health examination; recommendation.

A. Within ~~forty-five~~ 90 days of receiving notice from the Director pursuant to § 37.1-70.4 regarding a prisoner who is incarcerated for a sexually violent offense, the CRC shall (i) complete its assessment of such prisoner for possible commitment pursuant to subsection B and (ii) forward its recommendation regarding the prisoner, in written form, to the Attorney General pursuant to subsection C.

B. CRC assessments of prisoners incarcerated for sexually violent offenses shall include a mental health examination, including a personal interview, of the prisoner by a licensed psychiatrist or a licensed clinical psychologist, designated by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, who is skilled in the diagnosis and treatment of mental abnormalities and disorders associated with violent sex offenders, and who is not a member of the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner is a sexually violent predator as defined in § 37.1-70.1 and forward the results of this evaluation and any supporting documents to the CRC for its review. The CRC assessment shall also include *consideration*

of the prisoner's score on the *Rapid Risk Assessment for Sexual Offender Recidivism* or a comparable, scientifically validated instrument as designated by the Commissioner and a review of (i) the prisoner's institutional history and treatment record, if any; (ii) the prisoner's criminal background; and (iii) any other factor which is relevant to the determination of whether such prisoner is a sexually violent predator.

C. Following the examination and review of a prisoner conducted pursuant to subsection B, the CRC shall recommend that such prisoner (i) be committed as a sexually violent predator pursuant to this article; (ii) not be committed, but be placed in a conditional release program as a less restrictive alternative; or (iii) not be committed because he does not meet the definition of a sexually violent predator. To assist the Attorney General in his review, the Department of Corrections, the CRC, and the psychiatrist or psychologist who conducts the mental health examination pursuant to this section shall provide the Attorney General with all evaluation reports, prisoner records, criminal records, medical files, and any other documentation relevant to determining whether a prisoner is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC shall recommend that a prisoner enter a conditional release program if it finds that (i) such prisoner does not need inpatient hospitalization, but needs outpatient treatment and 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 prisoner, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety.

§ 37.1-70.6. Review of prisoners incarcerated for sexually violent offenses; unrestorably incompetent defendants charged with sexually violent offenses; petition for commitment; notice to Department of Corrections or referring court regarding disposition of review.

A. Upon receipt of a recommendation by the CRC regarding a prisoner incarcerated for a sexually violent offense or upon receipt of a court order referring an unrestorably incompetent defendant for review pursuant to § 19.2-169.3, the Attorney General shall have ~~forty-five~~ 90 days to conduct a review of such prisoner or defendant and (i) file a petition for the civil commitment of such prisoner or defendant as a sexually violent predator and stating sufficient facts to support such allegation or (ii) notify the Director and Commissioner in the case of a prisoner, or the referring court and the Commissioner in the case of an unrestorably incompetent defendant, that he will not file a petition for commitment. Petitions for commitment shall be filed in the circuit court wherein the prisoner was last convicted of a sexually violent offense or wherein the defendant was deemed unrestorably incompetent and referred for commitment review pursuant to § 19.2-169.3.

B. In determining whether to file a petition to civilly commit a prisoner under this article, the Attorney General shall review (i) the CRC recommendation and its reasoning; (ii) the results of the mental health examination conducted pursuant to § 37.1-70.5; (iii) the prisoner's institutional history and treatment record, if any; (iv) the prisoner's criminal offense history; and (v) any other factor relevant to the determination of whether the prisoner should be civilly committed. Although the Attorney General shall consider the CRC recommendation as part of the review, the CRC recommendation is not binding upon the Attorney General.

C. In determining whether to file a petition to civilly commit a defendant under this article, the Attorney General shall review (i) the defendant's warrant or indictment, (ii) the competency report completed pursuant to § 19.2-169.1, (iii) the report and recommendations prepared by the director of the defendant's treating facility pursuant to § 19.2-169.3, (iv) the defendant's criminal offense history, (v) information about the alleged crime, and (vi) any other factor relevant to the determination of whether the defendant should be civilly committed.

§ 37.1-70.9. Trial; right to trial by jury; standard of proof.

A. Within ~~forty-five~~ 90 days after the completion of the probable cause hearing held pursuant to § 37.1-70.7, the court shall conduct a trial to determine whether the person who is the subject of the petition is a sexually violent predator.

B. The Attorney General or the person who is the subject of the petition shall have the right to a trial by jury. Seven persons from a panel of ~~thirteen~~ 13 shall constitute a jury in such cases. If a jury determines a person to be a ~~violent sexual~~ sexually violent predator, a unanimous verdict shall be required. If no demand is made by either party for a trial by jury, the trial shall be before the court.

C. The court or jury shall determine whether, ~~beyond a reasonable doubt~~ by clear and convincing evidence, the person who is the subject of the petition is a sexually violent predator. If the court or jury is not satisfied ~~beyond a reasonable doubt~~ does not find clear and convincing evidence that the person is a sexually violent predator, the court shall, in the case of a prisoner, direct that he be returned to the custody of the Department of Corrections until his scheduled date of release, or that the prisoner be unconditionally released if his scheduled date of release has passed. In the case of a defendant, if the court or jury is not satisfied ~~beyond a reasonable doubt~~ does not find by clear and convincing evidence that the defendant is a sexually violent predator, the court shall order that the defendant be released, committed pursuant to § 37.1-67.3, or certified pursuant to § 37.1-65.1.

If the court or jury finds the person to be a sexually violent predator, the court shall then determine the nature of treatment the person is to receive. If the court finds, in its determination of treatment needs, that alternatives to involuntary confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to institutional confinement and treatment, the judge shall by written order and specific findings so certify and order that the person be committed to the custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services for appropriate treatment and confinement in a secure facility designated by the Commissioner. Persons committed pursuant to this article are subject to the provisions of §§ 19.2-174.1 and 37.1-134.21.

However, if the court finds, in determining the treatment needs of a person found to be a sexually violent predator, that less restrictive alternatives to institutional confinement and treatment have been investigated and are deemed suitable, and if the judge finds specifically that the person meets the criteria for conditional release set forth in § 37.1-70.13, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.21, or such other appropriate course of treatment as may be necessary to meet the needs of the individual. ~~The community services board which serves the political subdivision in which the person resides~~ Department of Mental Health, Mental Retardation and Substance Abuse Services shall recommend a specific course of treatment and programs for provision of such treatment. ~~The community services board~~ and shall monitor the person's compliance with such treatment as may be ordered by the court under this section unless the person is on parole or probation, in which case the parole or probation officer shall monitor the person's compliance, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this article. Upon failure of the person to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to the person undergoing outpatient treatment and after a hearing, order the person committed as a sexually violent predator for treatment at a hospital.

In the event of a mistrial, the court shall direct that the prisoner remain in the secure custody of the Department of Corrections or the defendant remain in the secure custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services until another trial is conducted. Any subsequent trial following a mistrial shall be held within ~~forty-five~~ 90 days of the previous trial.

All proceedings conducted hereunder are civil proceedings. However, no discovery other than that provided in § 37.1-70.2 shall be allowed without prior leave of court, which may deny or limit discovery in any such proceeding. Under no circumstances shall the prisoner or defendant be entitled to receive a copy of the Victim Impact Statement or the presentence investigation report, provided that counsel for the prisoner or defendant may, upon motion to the court and for good cause shown, review the Victim Impact Statement or presentence investigation report outside the presence of his client.

§ 37.1-70.10. Placement of committed persons.

Any person committed pursuant to this article shall be placed in the custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person will not present an undue risk to public safety. ~~Such control, care and treatment shall be provided at a facility operated by~~ The Department of Mental Health, Mental Retardation and Substance Abuse Services ~~and located inside the secure perimeter of a Department of Corrections' facility shall provide such control, care and treatment at a facility operated by it, or may contract with private or public entities, within or without the Commonwealth, and with other states to provide comparable control, care or treatment.~~ At all times, persons committed for control, care and treatment by the Department of Mental Health, Mental Retardation and Substance Abuse Services pursuant to this article shall be kept in a secure facility ~~and such persons.~~ *Persons committed under this article shall be segregated by sight and sound at all times from prisoners in the custody of the Director a correctional facility.* The Commissioner may make treatment and management decisions regarding committed persons in his custody without obtaining prior approval of or review by the committing court.

§ 37.1-70.11. 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 each committed person's need for inpatient hospitalization. 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 reevaluating the committed person's condition and recommending treatment, to be prepared by a licensed psychiatrist or a licensed clinical psychologist who shall be skilled in the diagnosis and treatment of mental abnormalities and personality disorders associated with violent sex offenders, and qualified by training and experience to perform forensic evaluations. If the Commissioner's report recommends release or the committed person requests release, the committed person's condition and need for inpatient hospitalization shall be evaluated by a second person with such credentials who is not currently treating the committed person. Any professional person who conducts a second evaluation of a committed person shall submit a report

of his findings to the court and the Commissioner. A copy of any report submitted pursuant to this subsection shall be sent to the Attorney General.

C. The burden of proof at the hearing shall be upon the Commonwealth to prove to the court ~~beyond a reasonable doubt~~ *by clear and convincing evidence* that the committed person remains a sexually violent predator.

D. If the court finds, based upon the report and other evidence provided at the hearing, that the committed person's condition has so changed that he is no longer a sexually violent predator, the court shall (i) release the committed person from confinement if he does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in § 37.1-70.13, provided the court has approved a discharge plan prepared ~~jointly by the hospital staff and the appropriate community services board~~ *by the Department of Mental Health, Mental Retardation and Substance Abuse Services* or (ii) place the committed person 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~~ *Department of Mental Health, Mental Retardation and Substance Abuse Services*. However, if the court finds that the committed person remains a sexually violent predator, it shall order that he remain in the custody of the Commissioner for secure inpatient hospitalization and treatment.

§ 37.1-70.12. Petition for release; hearing; procedures.

A. The Commissioner may petition the committing court for conditional or unconditional release of the committed person at any time he believes the committed person's condition has so changed that he is no longer a sexually violent predator in need of treatment and secure confinement. The petition shall be accompanied by a report of clinical findings supporting the petition and by a conditional release or discharge plan, as applicable, prepared ~~jointly by the hospital and the appropriate community services board~~ *Department of Mental Health, Mental Retardation and Substance Abuse Services*. The committed person may petition the committing court for release only once in each year in which no annual judicial review is required pursuant to § 37.1-70.11. The party petitioning for release shall transmit a copy of the petition to the Attorney General and to the Commissioner.

B. Upon the submission of a petition pursuant to this section, the committing court shall conduct the proceedings according to the procedures set forth in § 37.1-70.11.

§ 37.1-70.13. Conditional release; criteria; conditions; reports.

At any time the court considers the committed person's need for inpatient hospitalization pursuant to this article, it shall place the committed person 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 committed person, 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 committed person to such orders and conditions it deems will best meet the committed person's need for treatment and supervision and best serve the interests of justice and society.

The ~~community services board serving the locality in which the committed person will reside upon release~~ *Department of Mental Health, Mental Retardation and Substance Abuse Services*, or if the person is on parole or probation, the person's parole or probation officer, shall implement the court's conditional release orders and shall submit written reports to the court on the committed person's progress and adjustment in the community no less frequently than every six months. The ~~community services board~~ *Department of Mental Health, Mental Retardation and Substance Abuse Services* or, if the person is on parole or probation, the person's parole or probation officer, shall send a copy of each written report submitted to the court and copies of all correspondence with the court pursuant to this section, to the Attorney General and to the Commissioner.

§ 37.1-70.14. Emergency custody of conditionally released person; revocation of conditional release.

A judicial officer 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 a person on conditional release within his judicial district has violated the conditions of his release and is no longer a proper subject for conditional release. The emergency custody order shall require a law-enforcement officer take the person into custody immediately and transport him to a convenient location specified in the order where a person designated by the ~~community services board~~ *Department of Mental Health, Mental Retardation and Substance Abuse Services* who is skilled in the diagnosis and treatment of mental abnormalities and personality disorders shall, as soon as practicable, evaluate him for the purpose of determining the nature and degree of violation of the conditions of his release. *A copy of the petition shall be sent to the Attorney General and the Commissioner.*

The person on conditional release shall remain in custody until a hearing is held in the circuit court on the motion or petition to determine if he should be returned to the custody of the Commissioner. Such hearing shall be given priority on the court's docket. If upon hearing the evidence, the court finds that the person on conditional release has violated the conditions of his release and that the violation of

conditions was sufficient to render him no longer suitable for conditional release, the court shall revoke his conditional release and order him returned to the custody of the Commissioner for inpatient treatment. The person may petition the original committing court for re-release pursuant to the conditions set forth in § 37.1-70.12 no sooner than six months from his return to custody. The party petitioning for re-release shall transmit a copy of the petition to the Attorney General and to the Commissioner.

§ 37.1-70.15. Modification or removal of conditions; notice; objections; review.

A. The committing court may modify conditions of release or remove conditions placed on release pursuant to § 37.1-70.13, upon petition of the ~~supervising community services board~~ *Department of Mental Health, Mental Retardation and Substance Abuse Services*, the supervising parole or probation officer, the Attorney General, or the person on conditional release, or upon its own motion based on reports of the ~~supervising community services board~~ *Department of Mental Health, Mental Retardation and Substance Abuse Services* or the supervising parole or probation officer. However, the person on conditional release may petition only annually commencing six months after the conditional release order is issued. Upon petition, the court shall require the ~~supervising community services board~~ *Department*, or, if the person is on parole or probation, the person's parole or probation officer, to provide a report on the person's progress while on conditional release. The party petitioning for release shall transmit a copy of the petition to the Attorney General and to the Commissioner.

B. As it deems appropriate based on the ~~community services board's~~ *Department's* or parole or probation officer's report and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order, and their right to object to it within ~~ten~~ 21 days of its issuance, to the person, the ~~supervising community services board~~ *Department* or parole or probation officer, and the Attorney General. The proposed order shall become final if no objection is filed within ~~ten~~ 21 days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the person on conditional release, the Attorney General, and the ~~supervising community services board~~ *Department* or the parole or probation officer, have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release.

§ 37.1-70.16. Representation of Commonwealth and person subject to commitment; nature of proceedings.

The Attorney General shall represent the Commonwealth in all proceedings held pursuant to this article; ~~except in emergency commitment hearings held pursuant to § 37.1-70.14.~~ The Attorney General shall receive prior written notice of all proceedings held under this article in which he is to represent the Commonwealth.

The court shall appoint counsel for the person subject to commitment or conditional release pursuant to subsection B of § 37.1-70.7 unless such person waives his right to counsel. The court shall consider appointment of the person who represented the person in previous proceedings.

All proceedings held under this article shall be civil proceedings.

§ 37.1-103. Habeas corpus as means.

Any person held in custody as mentally ill may by petition for a writ of habeas corpus have the question of the legality of his detention determined by a court of competent jurisdiction. Upon the petition, after notice to the authorities of the hospital or other institution in which such person is confined, the court shall in some courtroom of such county or city, or in some other convenient public place in such county or city determine whether such person is mentally ill and whether he should be detained. *Any proceeding to challenge the continued confinement of a person held in custody under Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of this title shall be conducted in accordance with § 37.1-70.11.*

§ 37.1-104. Procedure when person confined in hospital or other institution.

If the person mentioned in § 37.1-103 is held in custody and actually confined in any hospital or other institution, he may file his petition in the circuit court of the county or the city in which such hospital or other institution is located or in the circuit court of the county or the city adjoining the county or city in which such hospital or other institution is located. *Any proceeding to challenge the continued confinement of any person held in custody under Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of this title shall be conducted in the circuit court wherein the person was last convicted of a sexually violent offense or wherein the defendant was deemed unrestorably incompetent and referred for commitment pursuant to § 19.2-169.3.*

§ 37.1-104.1. Procedure when person not confined in hospital or other institution.

In all cases, other than those provided for in § 37.1-104, the person may file his petition in the circuit court of the county or the city in which he resides, or in which he was certified to be mentally ill, or in which an order was entered authorizing his retention for continued hospitalization, pursuant to Chapter 2, Article 1 (§ 37.1-63 et seq.) of this title. *Any proceeding to challenge the continued confinement of any person held in custody under Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of this title shall be conducted in the circuit court wherein the person was last convicted of a sexually violent offense or wherein the defendant was deemed unrestorably incompetent and referred for commitment*

pursuant to § 19.2-169.3.

2. That, in the event the Department contracts with a public or private entity to provide care and treatment for sexually violent predators, the Department shall give weight to selection of an entity that has demonstrated ability to provide treatment to sexually violent predators and has demonstrated ability to protect the public.

3. That an emergency exists and this act is in force from its passage, notwithstanding the provisions of Items 49 C and 331 C1 of Chapter 899 of the Acts of Assembly of 2002.

4. That, notwithstanding the provisions of Items 49 C and 331 C1 of Chapter 899 of the Acts of Assembly of 2002, the provisions of Chapters 946 and 985, as they may be amended, of the Acts of Assembly of 1999 shall become effective on the effective date of this act.

5. That the third enactments of Chapter 946 and Chapter 985, as amended, of the Acts of Assembly of 1999 are amended and reenacted as follows:

3. That the effective date of this act is ~~January 1, 2003~~ *the date of enactment of House Bill 1400, House Bill 2445 or Senate Bill 1149 of the 2003 General Assembly Session, whichever is the first to be enacted.*

3. That the effective date of this act is ~~January 1, 2003~~ *the date of enactment of House Bill 1400, House Bill 2445 or Senate Bill 1149 of the 2003 General Assembly Session, whichever is the first to be enacted.*

6. That notwithstanding the provisions of § 37.1-70.7 of the Code of Virginia, from the effective date of this act until July 1, 2004, upon the filing of a petition alleging that a person is a sexually violent predator, the circuit court shall schedule a hearing within 60 days to determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator.