

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 9.1-101, 19.2-389, 19.2-389.1, 37.1-70.1, 37.1-70.2, 37.1-70.4 through 37.1-70.6, 37.1-70.9, 37.1-70.10, and 37.1-70.13 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1.1 of Chapter 2 of Title 37.1 a section numbered 37.1-70.20, relating to civil commitment of sexually violent predators.

[H 1997]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-101, 19.2-389, 19.2-389.1, 37.1-70.1, 37.1-70.2, 37.1-70.4 through 37.1-70.6, 37.1-70.9, 37.1-70.10, and 37.1-70.13 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1.1 of Chapter 2 of Title 37.1 a section numbered 37.1-70.20 as follows:

§ 9.1-101. Definitions.

As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so and; (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities employs officers appointed under § 15.2-1737, or special conservators of the peace or special policemen appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers, special conservators or special policemen to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.) of this chapter, but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.1-70.1 et seq.).

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

ENROLLED

HB1997ER

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Department of Alcoholic Beverage Control; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) game warden who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the State Lottery Department; or (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department or sheriff's office. Full-time sworn members of the enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice Services qualifications shall be deemed to be "law-enforcement officers" when fulfilling their duties pursuant to § 46.2-217.

"School resource officer" means a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.

"School security officer" means an individual who is employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual with whom the agency is considering placing a child on an emergency, temporary or permanent basis pursuant to § 63.2-901.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

9. To the extent permitted by federal law or regulation, public service companies as defined in

§ 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) a volunteer fire company or volunteer rescue squad, (iii) the Volunteer Emergency Families for Children, (iv) any affiliate of Prevent Child Abuse, Virginia, or (v) any Virginia affiliate of Compeer;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719 to 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.);

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under §§ 18.2-51.4, 18.2-266 or § 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or parochial elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment

pursuant to § 37.1-197.2;

26. Executive directors of behavioral health authorities as defined in § 37.1-243 for the purpose of determining an individual's fitness for employment pursuant to § 37.1-197.2;

27. The Commissioner of the Department of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

28. Authorized officers or directors of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining if any applicant who accepts employment in any direct consumer care position has been convicted of a crime that affects their fitness to have responsibility for the safety and well-being of persons with mental illness, mental retardation and substance abuse pursuant to §§ 37.1-183.3 and 37.1-197.2;

29. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

30. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

31. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures; and

32. *The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.1-70.1 et seq.); and*

33. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision 15 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02 and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or §

63.2-1720.

§ 19.2-389.1. Dissemination of juvenile record information.

Record information maintained in the Central Criminal Records Exchange pursuant to the provisions of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of this title, a presentence or post-sentence investigation report pursuant to § 19.2-264.5 or § 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation programs established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, for purposes of the administration of criminal justice as defined in § 9.1-101; ~~and~~ (vii) to the Division of Forensic Science to verify its authority to maintain the juvenile's sample in the DNA data bank pursuant to § 16.1-299.1; ~~and (viii) to the Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.1-70.1 et seq.).~~

§ 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 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 (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 4 of~~ (ii) a conviction under § 18.2-67.3 where the complaining witness is less than 13 years of age; or ~~(iii)~~ (iii) 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 4 of~~ is set forth in § 18.2-67.3 where the complaining witness is less than 13 years of age.

"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) 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 or sentences.

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.

§ 37.1-70.4. 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 (i) incarcerated for sexually violent offenses or (ii) *serving or will serve concurrent or consecutive time for other offenses in addition to time for a sexually violent offense*. The database shall include the following information regarding each prisoner: (i) the prisoner's criminal record; and (ii) the prisoner's sentences and scheduled date of release; and (iii) ~~the appropriate locality for a commitment petition~~. *A prisoner who is serving or will serve concurrent or consecutive time for other offenses in addition to his time for a sexually violent offense, shall remain in the database until such time as he is released from the custody or supervision of the Department of Corrections or Virginia Parole Board for all of his charges.*

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 within 10 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 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 in the database~~, 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 *eligible* 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. Notwithstanding § 19.2-299.1 or any other provision of law, the CRC is authorized to possess, copy and use presentence reports, postsentence reports and victim impact statements for all lawful purposes.

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.

E. Notwithstanding any other provision of law, all state and local courts, clerks, departments, agencies, boards, and commissions shall provide to the CRC, all requested records, documents, notes, recording or other information of any kind, including, but not limited to, presentence or postsentence reports, victim impact statements, and child abuse registry records, within 20 days of receiving such request.

F. Notwithstanding any other provision of law, any mental health professional employed or appointed pursuant to subsection B or § 37.1-70.8 shall be permitted to copy and possess any presentence or postsentence reports and victim impact statements for use in examinations, creating reports, and testifying in any proceedings pursuant to this article. However, at the conclusion of the examiner's testimony or service in such proceedings, the examiner shall return all presentence reports, postsentence reports and victim impact statements to the Office of the Attorney General.

G. Any mental health professional appointed or employed pursuant to subsection B or § 37.1-70.8 shall be permitted to testify at the probable cause hearing and at the trial as to his diagnosis, his opinion as to whether the prisoner or defendant meets the definition of a sexually violent predator, his recommendation as to treatment and his reasoning therefor. Such opinion shall not be dispositive of whether the person is a sexually violent predator.

§ 37.1-70.6. Review of prisoners convicted of a sexually violent offense; 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 ~~an eligible~~ 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 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, and (vii) the mental health evaluation performed pursuant to subsection E.

D. Notwithstanding § 19.2-299.1 or any other provision of law, the Attorney General is authorized to possess, copy and use presentence reports, postsentence reports and victim impact statements for all lawful purposes.

E. Whenever a court refers an incompetent defendant to the Attorney General for review, the court shall also appoint a licensed psychiatrist or licensed clinical psychologist from the list maintained by the Commissioner pursuant to subsection B of § 37.1-70.5 to conduct a mental health evaluation, including a personal interview, of the incompetent defendant. The licensed psychiatrist or licensed clinical psychologist shall determine whether the incompetent defendant is a sexually violent predator as defined in § 37.1-70.1 and shall forward the results of this evaluation and any supporting documents to the Attorney General within 45 days of his appointment.

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

A. Within 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 13 shall constitute a jury in such cases. If a jury determines a person to be a 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, by clear and convincing evidence, the person who is the subject of the petition is a sexually violent predator. If the court or jury 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.~~ *The Department of Corrections shall immediately release him if his scheduled release date has passed, or hold him until his scheduled release date.* In the case of a defendant, if the court or jury 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~~ *whether the person shall be fully committed or placed on conditional release.* 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.

If the court determines not to order full commitment, the court shall continue the case for not less than 30 days and shall require the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services to submit a report to the court, the Attorney General, and counsel for the person suggesting possible alternatives to full commitment. The court shall then reconvene the hearing and receive testimony on the possible alternatives to full commitment. At the conclusion of the hearing, 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 Department of Mental Health, Mental Retardation and Substance Abuse Services shall recommend a specific course of treatment and programs for provision of such treatment 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 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. No less than 30 days prior to the trial of the matter, any expert employed or appointed pursuant to § 37.1-70.8 shall prepare a written report detailing his findings and conclusions and shall submit the report, along with all supporting data, to the court, the Attorney General and counsel for the person. Under no circumstances shall the prisoner or defendant be entitled to receive a copy of the Victim Impact Statement or the presentence investigation report, however counsel for the prisoner or defendant and any expert employed or appointed pursuant to § 37.1-70.8 may review the Victim Impact Statement or presentence investigation report outside the presence of the prisoner or defendant. The Attorney General shall file with the clerk ~~redacted~~ copies of any relevant presentence reports, postsentence reports and victim impact statements in his possession, withholding identifying information about victims. Such filings shall be held by the court in confidence and reviewable only by the court, the Attorney General and counsel for the prisoner or defendant pursuant to this section.

§ 37.1-70.10. Placement of committed persons; notice to certain elected officials of proposed facility

for such commitment; advisory committee to be established.

A. 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. The Department of Mental Health, Mental Retardation and Substance Abuse Services 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. Persons committed under this article shall be segregated by sight and sound at all times from prisoners in the custody of 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.

B. Prior to the siting of a new facility or the designation of an existing facility to be operated by the Department for the control, care and treatment of persons convicted of a sexually violent offense who have been referred for civil commitment, the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services shall notify the state elected officials for and the local governing body of the jurisdiction of the proposed location, designation, or expansion of the facility. Upon receiving such notice, the local governing body of the jurisdiction of the proposed site or where the existing facility is located may publish a descriptive notice concerning the proposed site in a newspaper of general circulation in the jurisdiction.

The Commissioner shall also establish an advisory committee relating to any facility for which notice is required by this subsection or any facility being operated for the purpose of the control, care and treatment of persons convicted of a sexually violent offense who have been referred for civil commitment that shall consist of state and local elected officials and community organizations serving the jurisdiction in which the facility is proposed to be or is located. Upon request, the members of the appropriate advisory committee shall be notified whenever the Department increases the number of beds in the relevant facility.

C. Notwithstanding any other provision of law, when any person is committed under this article, the Department of Corrections and the Office of the Attorney General shall provide to the Department of Mental Health, Mental Retardation and Substance Abuse Services, a copy of all relevant criminal history information, medical and mental health records, presentence or postsentence reports and victim impact statements, and the mental health evaluations performed pursuant to subsection B of § 37.1-70.5 and § 37.1-70.8, for use in the treatment and evaluation of the committed person.

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

A. 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 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 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.

B. Notwithstanding any other provision of law, when any person is placed on conditional release under this article, the Department of Corrections shall provide to the 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, all relevant criminal history information, medical and mental health records, presentence and postsentence reports and victim impact statements, and the mental health evaluations performed pursuant to subsection B of § 37.1-70.5 and § 37.1-70.8, for use in the management and treatment of the person placed on conditional release. Any information or document provided pursuant to this subsection shall not be subject to disclosure under the Virginia Freedom of

546 Information Act (§ 2.2-3700 et seq.)

547 § 37.1-70.20. Commission of new criminal offense by person committed to Department.

548 If a person committed to the Department of Mental Health, Mental Retardation and Substance Abuse
549 Services is arrested for a felony or Class 1 or 2 misdemeanor offense, he shall be transported to a
550 judicial officer forthwith for a bond determination in accordance with the provisions of § 19.2-80. If the
551 judicial officer admits the accused to bail, he shall, upon his admission to bail, be immediately
552 transported back into the custody of the Department of Mental Health, Mental Retardation and
553 Substance Abuse Services. If, after trial for this offense, no active period of incarceration is imposed, or
554 if the person is acquitted or the charges are withdrawn or dismissed, he shall be returned to the
555 Department of Mental Health, Mental Retardation and Substance Abuse Services pursuant to his
556 commitment.