

# VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

## CHAPTER 698

*An Act to amend and reenact §§ 37.2-910, 37.2-912, and 53.1-145 of the Code of Virginia, relating to civil commitment of sexually violent predators; emergency.*

[H 1359]

Approved April 5, 2006

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 37.2-910, 37.2-912, and 53.1-145 of the Code of Virginia are amended and reenacted as follows:**

§ 37.2-910. Review of continuation of secure inpatient treatment hearing; procedure and reports; disposition.

A. The committing court shall conduct a hearing 12 months after the date of commitment to assess each committed person's need for secure inpatient treatment. 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. The report shall be prepared by a licensed psychiatrist or a licensed clinical psychologist 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 discharge or the committed person requests discharge, the committed person's condition and need for secure inpatient treatment 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 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 secure inpatient treatment if he does not need it and does not meet the criteria for conditional release set forth in § 37.2-912, provided the court has approved a discharge plan prepared by the Department 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 by the Department. *If the judge places the person on conditional release, he shall order that the person be subject to electronic monitoring of his location by means of a GPS (Global Positioning System) tracking device, or other similar device, at all times while he is on conditional release.* 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 treatment.

§ 37.2-912. Conditional release; criteria; conditions; reports.

A. At any time the court considers the committed person's need for secure inpatient treatment pursuant to this chapter, it shall place the committed person on conditional release if it finds that (i) based on consideration of the factors that the court must consider in its commitment decision, he does not need secure inpatient treatment but needs outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he would need secure inpatient treatment; (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 the 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. *In all cases of conditional release, the court shall order the person to be subject to electronic monitoring of his location by means of a GPS (Global Positioning System) tracking device, or other similar device, at all times while he is on conditional release.*

The Department 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 is authorized to contract with the Department of Corrections to provide services for the monitoring and supervision of persons committed as sexually violent predators who are on conditional release.*

The Department 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 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 § 37.2-904 and § 37.2-907, 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 Information Act (§ 2.2-3700 et seq.).

§ 53.1-145. Powers and duties of probation and parole officers.

In addition to other powers and duties prescribed by this article, each probation and parole officer shall:

1. Investigate and report on any case pending in any court or before any judge in his jurisdiction referred to him by the court or judge;

2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the conditions of his probation and instruct him therein;

3. Supervise and assist all persons within his territory released on parole or postrelease supervision, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and, in his discretion, assist any person within his territory who has completed his parole, postrelease supervision, or has been mandatorily released from any correctional facility in the Commonwealth and requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community;

4. Arrest and recommit to the place of confinement from which he was released, or in which he would have been confined but for the suspension of his sentence or of its imposition, for violation of the terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer, person subject to post-release supervision or parolee under his supervision, or as directed by the Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;

5. Keep such records, make such reports, and perform other duties as may be required of him by the Director or by regulations prescribed by the Board of Corrections, and the court or judge by whom he was authorized;

6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana or the abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations governing the officer's exercise of this authority shall be promulgated by the Board; ~~and~~

7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the Board and upon the certification of appropriate training and specific authorization by a judge of a circuit court; *and*

8. *Provide services in accordance with any contract entered into between the Department of Corrections and the Department of Mental Health, Mental Retardation and Substance Abuse Services pursuant to § 37.2-912.*

Nothing in this article shall require probation and parole officers to investigate or supervise cases before general district or juvenile and domestic relations district courts.

**2. That an emergency exists and this act is in force from its passage.**