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HOUSE BILL NO. 1101

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 19.2-169.3, 19.2-299, 37.2-900, 37.2-901, 37.2-903 through 37.2-908, 37.2-910, 37.2-912, 37.2-913, 37.2-919, 53.1-145, and 63.2-105 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9 of Title 37.2 sections numbered 37.2-920 and 37.2-921, relating to civil commitment of sexually violent predators.

Patrons—Griffith, Albo, Athey, Byron, Callahan, Cosgrove, Fralin, Gilbert, Kilgore, Landes, Lingamfelter, Marshall, D.W., May, McQuigg, Nixon, O'Bannon, Rapp, Saxman, Scott, E.T., Sherwood, Suit, Waddell, Welch and Wright

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.3, 19.2-299, 37.2-900, 37.2-901, 37.2-903 through 37.2-908, 37.2-910, 37.2-912, 37.2-913, 37.2-919, 53.1-145 and 63.2-105 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 37.2 sections numbered 37.2-920 and 37.2-921 as follows:

§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; capital murder charge; referral to Commitment Review Committee.

A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of § 19.2-169.2, the director of the treating facility concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the director's opinion, the defendant should be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, committed pursuant to ~~§ 37.2-908~~ Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection E of § 19.2-169.1. If the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, (iii) reviewed for commitment pursuant to ~~§ 37.2-905~~ Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or (iv) certified pursuant to § 37.2-806. If the court finds the defendant incompetent but restorable to competency in the foreseeable future, it may order treatment continued until six months have elapsed from the date of the defendant's initial admission under subsection A of § 19.2-169.2.

B. At the end of six months from the date of the defendant's initial admission under subsection A of § 19.2-169.2 if the defendant remains incompetent in the opinion of the director, the director shall so notify the court and make recommendations concerning disposition of the defendant as described above. The court shall hold a hearing according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the defendant unrestorably incompetent, shall order one of the dispositions described above. If the court finds the defendant incompetent but restorable to competency, it may order continued treatment under subsection A of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but restorable to competency in the foreseeable future.

C. Unless an incompetent defendant is charged with capital murder or the charges against an incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner.

D. If the court orders an unrestorably incompetent defendant to be reviewed for commitment pursuant to ~~§ 37.2-905~~ § 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction wherein the defendant was charged and the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide the ~~Attorney General~~ *Commitment Review Committee established pursuant to § 37.2-902* with any information relevant to the review, including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the defendant's criminal record, (iii) information about the alleged crime, (iv) a copy of the competency report completed pursuant to § 19.2-169.1, and (v) a copy of the report prepared by the director of the defendant's treating facility pursuant to this section. The court shall further order that the defendant be held in the custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services for secure confinement

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and treatment until the *Commitment Review Committee's* and Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice that the Attorney General has declined to file a petition for the commitment of an unrestorably incompetent defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or certified pursuant to § 37.2-806.

E. In any case when an incompetent defendant is charged with capital murder, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the capital murder case may order that the defendant receive continued treatment under subsection A of § 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period, (ii) the defendant remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant presents a danger to himself or others.

F. The attorney for the Commonwealth may bring charges that have been dismissed against the defendant when he is restored to competency.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall; or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty; or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.1, or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5, 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, any information regarding the accused's participation or membership in a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with a copy of the presentence report. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been provided with a copy of the presentence report by his counsel or advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections. For the purposes of this subsection, information regarding the accused's participation or membership in a criminal street gang may include the characteristics, specific rivalries, common practices, social customs and behavior, terminology, and types of crimes that are likely to be committed by that criminal street gang.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide

pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

§ 37.2-900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Defendant" means any person charged with a sexually violent offense who is deemed to be an unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred for commitment review pursuant to ~~§ 37.2-905~~ *this chapter*.

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

"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, 18.2-67.2; (ii) a conviction under ~~§ 18.2-48 (ii), 18.2-48 (iii), 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.3~~ *where the complaining witness is less than 13 years of age, 18.2-361, 18.2-370, 18.2-370.1; or* (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 is set forth in § 18.2-67.3 ~~where the complaining witness is less than 13 years of age; and (iv) attempts to commit any of the foregoing crimes pursuant to §§ 18.2-26 and 18.2-67.5.~~

"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.

§ 37.2-901. Rights of prisoners and defendants.

~~It~~ *Except as otherwise provided in this chapter*, hearings and trials held pursuant to this chapter, 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 chapter, to raise challenges to the validity of his prior criminal or institutional convictions or sentences.

In the event the prisoner or defendant refuses to cooperate with the mental health examination required under § 37.2-904, the court may admit evidence of such refusal and may bar the prisoner or defendant from introducing his own expert psychiatric or psychological evidence.

§ 37.2-903. 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. This 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 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 shall establish and maintain a database of ~~prisoners~~ *each prisoner* 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 has been convicted and sentenced to a term of imprisonment for a sexually violent offense without regard to whether the prisoner is currently incarcerated for a sexually violent offense.~~ The database shall include the following information regarding each prisoner: (a) the prisoner's criminal record and (b) the prisoner's sentences and scheduled date of release. 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. *Prior to the initial assessment of a prisoner under subsection C, the Director shall order a national criminal history records check to be conducted on the prisoner.*

C. Each month, the Director shall review the database 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 Static-99~~ or a like score on a comparable, scientifically validated instrument designated by the Commissioner. Upon the identification of such prisoners, the Director shall forward their names, their scheduled dates of release, and copies of their files to the CRC for assessment.

§ 37.2-904. CRC assessment of prisoners or incompetent defendants eligible for commitment as sexually violent predators; mental health examination; recommendation.

A. Within 90 days of receiving notice from the Director pursuant to § 37.2-903 regarding a prisoner who is in the database, *or from a court referring an incompetent defendant pursuant to § 19.2-169.3*, the CRC shall (i) complete its assessment of the prisoner *or defendant* for possible commitment pursuant to subsection B and (ii) forward its written recommendation regarding the prisoner to the Attorney General pursuant to subsection C.

B. CRC assessments of eligible prisoners *or incompetent defendants* shall include a mental health examination, including a personal interview, of the prisoner *or incompetent defendant* by a licensed psychiatrist or a licensed clinical psychologist who is designated by the Commissioner, skilled in the diagnosis and treatment of mental abnormalities and disorders associated with ~~violent~~ sex offenders, and not a member of the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner *or incompetent defendant* is a sexually violent predator, as defined in § 37.2-900, 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 *or incompetent defendant's* score on the ~~Rapid Risk Assessment for Sexual Offender Recidivism Static-99~~ or a comparable, scientifically validated instrument designated by the Commissioner and a review of (i) the prisoner's *or incompetent defendant's* institutional history and treatment record, if any; (ii) ~~the prisoner's~~ *his* criminal background; and (iii) any other factor that is relevant to the determination of whether ~~the prisoner~~ *he* 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 the prisoner *or incompetent defendant* (i) be committed as a sexually violent predator pursuant to this chapter; (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 *or incompetent defendant* is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC shall recommend that a prisoner *or incompetent defendant* enter a conditional release program if it finds that (i) ~~the prisoner~~ *he* does not need inpatient treatment, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he would need inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that ~~the prisoner~~ *he*, 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, recordings, or other information of any kind, including 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 § 37.2-907 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 § 37.2-907 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 incompetent 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.

H. If the CRC deems it necessary to complete its review of the prisoner, the Commissioner shall appoint qualified experts to complete any additional evaluations requested by the CRC.

§ 37.2-905. Review of prisoners convicted of a sexually violent offense; review of 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 an eligible prisoner 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 the prisoner or defendant and (i) file a petition for the civil commitment of the 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 in which the prisoner was last convicted of a sexually violent offense or in which 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 chapter, the Attorney General shall review (i) the CRC recommendation and its reasoning; (ii) the results of the mental health examination conducted pursuant to § 37.2-904; (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 chapter, the Attorney General shall review (i) *the CRC recommendation and its reasoning*, (ii) the defendant's warrant or indictment, ~~(ii)~~ (iii) the competency report completed pursuant to § 19.2-169.1, ~~(iii)~~ (iv) the report and recommendations prepared by the director of the defendant's treating facility pursuant to § 19.2-169.3, ~~(iv)~~ (v) *the mental health evaluation completed pursuant to § 37.2-904*, (vi) the defendant's criminal offense history, ~~(v)~~ (vii) information about the alleged crime, ~~(vi)~~ and (viii) 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 § 37.2-904 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 § 37.2-900 and shall forward the results of this evaluation and any supporting documents to the Attorney General within 45 days of his appointment.~~

Notwithstanding any other provision of law, all state and local courts, clerks, departments, agencies, boards, and commissions, and state and private medical and mental health providers shall provide to the Attorney General all requested records, documents, notes, recordings or other information of any kind, including presentence or postsentence reports, victim impact statements, and child abuse registry records, within 20 days of receiving such request.

F. If the Attorney General deems it necessary to complete his review of the prisoner or incompetent defendant, the Commissioner shall appoint qualified experts to complete any additional evaluations requested by the Attorney General.

G. If the Attorney General decides not to file a petition for the civil commitment of a prisoner or incompetent defendant, or if a petition is filed but is dismissed for any reason, and the prisoner or incompetent defendant has outstanding probation or parole time to serve, the Attorney General and the Director may share any relevant information with the probation and parole officer.

§ 37.2-906. Probable cause hearing.

A. Upon the filing of a petition alleging that a person is a sexually violent predator, the circuit court shall (i) forthwith order that until a final order is entered in the proceeding, in the case of a prisoner, he remain in the secure custody of the Department of Corrections or, in the case of a defendant, he remain in the secure custody of the Department and (ii) 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. A copy of the petition shall be mailed by the clerk to the attorney appointed or retained for the person named in the petition and, in those cases in which the person named in the petition is a prisoner, to the warden or superintendent of the correctional facility in which the person is then confined. The warden or

303 superintendent shall cause the petition to be delivered to the person and shall certify the delivery to the
304 clerk. In addition, a written explanation of the sexually violent predator involuntary commitment process
305 and the statutory protections associated with the process shall be given to the person at the time the
306 petition is delivered.

307 B. Prior to any hearing under this section, the judge shall ascertain if the person whose commitment
308 is sought is represented by counsel and, if he is not represented by counsel, the judge shall appoint an
309 attorney to represent him. However, if the person requests an opportunity to employ counsel, the court
310 shall give him a reasonable opportunity to employ counsel at his own expense.

311 C. At the probable cause hearing, the judge shall (i) verify the person's identity and (ii) determine
312 whether probable cause exists to believe that the person is a sexually violent predator. *The judge shall*
313 *accept as prima facie evidence affidavits or properly authenticated documents from the Department of*
314 *Corrections detailing the prisoner's score on the relevant scientific instrument pursuant to subsection C*
315 *of § 37.2-903 and his sentence summary. Upon acceptance of these documents by the court, they shall*
316 *become part of the record in the case.* In the case of a prisoner in the custody of the Department of
317 Corrections, if the judge finds that there is not probable cause to believe that the person is a sexually
318 violent predator, the judge shall dismiss the petition, and the person shall remain in the custody of the
319 Department of Corrections until his scheduled date of release from prison. In the case of a defendant, if
320 the judge finds that there is not probable cause to believe the defendant is a sexually violent predator,
321 the judge shall dismiss the petition and order that the defendant be discharged, involuntarily admitted
322 pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to § 37.2-806.

323 § 37.2-907 Right to assistance of experts; compensation.

324 A. Any person who is the subject of a petition under this chapter shall have, prior to trial, the right
325 to employ experts at his own expense to perform examinations and testify on his behalf. However, if a
326 person has not employed an expert and requests expert assistance, the judge shall appoint such experts
327 as he deems necessary to perform examinations and participate in the trial on the person's behalf. Any
328 expert appointed to assist the person on matters relating to the person's mental health, including
329 examination, evaluation, diagnosis, and treatment, shall have the qualifications required by subsection B
330 of § 37.2-904. Any expert employed to assist the person on matters relating to the person's mental health
331 shall be a licensed psychiatrist or licensed clinical psychologist who is skilled in the diagnosis and
332 treatment of mental abnormalities and disorders associated with ~~violent~~ sex offenders and who is not a
333 member of the CRC. Any expert employed or appointed pursuant to this section shall have reasonable
334 access to all relevant medical and psychological records and reports pertaining to the person he has been
335 employed or appointed to assist.

336 B. Each psychiatrist, psychologist, or other expert appointed by the court to render professional
337 service pursuant to this chapter who is not regularly employed by the Commonwealth, except by the
338 University of Virginia School of Medicine and the Virginia Commonwealth University School of
339 Medicine, shall receive a reasonable fee for such service. The fee shall be determined in each instance
340 by the court that appointed the expert, in accordance with guidelines established by the Supreme Court
341 after consultation with the Department. The fee shall not exceed \$5,000. However, in addition, if any
342 such expert is required to appear as a witness in any hearing held pursuant to this chapter, he shall
343 receive mileage and a fee of \$750 for each day during which he is required to serve. An itemized
344 account of expenses, duly sworn to, must be presented to the court, and, when allowed, shall be certified
345 to the Supreme Court for payment out of the state treasury, and shall be charged against the
346 appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized
347 shall also be made by order of the court, duly certified to the Supreme Court, for payment out of the
348 appropriation to pay criminal charges.

349 § 37.2-908. Trial; right to trial by jury; standard of proof; discovery.

350 A. Within 90 days after the completion of the probable cause hearing held pursuant to § 37.2-906,
351 the court shall conduct a trial to determine whether the person who is the subject of the petition is a
352 sexually violent predator.

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

357 C. The court or jury shall determine whether, by clear and convincing evidence, the person who is
358 the subject of the petition is a sexually violent predator. If the court or jury does not find clear and
359 convincing evidence that the person is a sexually violent predator, the court shall, in the case of a
360 prisoner, direct that he be returned to the custody of the Department of Corrections. The Department of
361 Corrections shall immediately release him if his scheduled release date has passed, or hold him until his
362 scheduled release date. In the case of a defendant, if the court or jury does not find by clear and
363 convincing evidence that the defendant is a sexually violent predator, the court shall order that the
364 defendant be discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified

for admission pursuant to § 37.2-806.

D. If the court or jury finds the person to be a sexually violent predator, the court shall then determine 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 secure inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to involuntary secure inpatient 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 for appropriate inpatient treatment in a secure facility designated by the Commissioner. Persons committed pursuant to this chapter are subject to the provisions of § 19.2-174.1 and Chapter 11 (§ 37.2-1100 et seq.).

E. If the court determines not to order full commitment, the court shall continue the case for not less than 30 days *nor more than 90 days* and shall require the Commissioner 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 involuntary secure inpatient 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 § 37.2-912, 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 Chapter 11 (§ 37.2-1100 et seq.), or such other appropriate course of treatment as may be necessary to meet the needs of the individual.

F. The Department 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. 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 chapter. Upon failure of the person to adhere to the terms of the involuntary outpatient treatment, the judge may revoke the same and, upon notice to the person undergoing involuntary outpatient treatment and after a hearing, order the person committed as a sexually violent predator for inpatient treatment at a secure facility designated by the Commissioner.

G. 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 until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial.

H. All proceedings conducted hereunder are civil proceedings. However, no discovery other than that provided in § 37.2-901 shall be allowed without prior leave of the 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 § 37.2-907 shall prepare a written report detailing his findings and conclusions *including an opinion as to whether the person is a sexually violent predator as defined in § 37.2-900*, 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 § 37.2-907 ~~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 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 the counsel for the prisoner or defendant pursuant to this section may possess and copy the victim impact statement or presentence or postsentence reports for use at the trial. Within 30 days after the case is finally disposed of, the counsel for the prisoner or defendant and any expert employed or appointed pursuant to § 37.2-907 shall return all copies of the victim impact statements and presentence and postsentence reports to the Attorney General.~~

§ 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 person 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. However, if If the court finds that the committed person remains a sexually violent predator, it shall order (i) that he remain in the custody of the Commissioner for secure inpatient hospitalization and treatment or (ii) that he be conditionally released. To determine if the committed person shall be conditionally released, the court shall determine if the person meets the criteria for conditional release set forth in § 37.2-912. If the court orders that the person be conditionally released, the court shall allow the Department no less than 30 days nor more than 90 days to prepare and approve a conditional release plan.

§ 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.

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 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.).

C. Notwithstanding any other provision of law, the Department may contract with the Department of Corrections to permit probation and parole officers to provide intensive supervision services to persons placed on conditional release, regardless of whether the person has fully served all criminal sentences including probation and parole.

§ 37.2-913. 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 to take the person into custody immediately and transport him to a convenient location specified in the order where a person designated by the Department 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. Petitions and orders for emergency custody

of conditionally released persons pursuant to this section may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.

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. The 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 secure inpatient treatment. The person may petition the original committing court for re-release pursuant to the conditions set forth in § 37.2-911 no sooner than ~~six months~~ *one year* from his return to custody. The party petitioning for re-release shall transmit a copy of the petition to the Attorney General and the Commissioner.

§ 37.2-919. Commission of new criminal offense by person committed to Department.

If a person committed to the Department of Mental Health, Mental Retardation and Substance Abuse Services is arrested for a felony or Class 1 or 2 misdemeanor offense, he shall be transported to a judicial officer forthwith for a bond determination in accordance with the provisions of § 19.2-80. If the judicial officer admits the accused to bail, he shall, upon his admission to bail, be immediately transported back into the custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services. If, after trial for this offense, no active period of incarceration is imposed, or if the person is acquitted or the charges are withdrawn or dismissed, he shall be returned to the Department of Mental Health, Mental Retardation and Substance Abuse Services pursuant to his commitment. *If a period of active incarceration is imposed or any suspended sentence is revoked resulting in the person being returned to the Department of Corrections, the person shall not be entitled to an annual or biennial review hearing pursuant to § 37.2-910 until 12 months after he has been returned to the custody of the Commission; such reincarceration shall toll the provisions of § 37.2-910.*

§ 37.2-920. Time limits.

The time limits set forth in this chapter are not jurisdictional.

§ 37.2-921. Appeal by Attorney General; emergency custody order.

In any case in which the Attorney General successfully appeals the trial court's denial of probable cause, denial of civil commitment or conditional release, or discharge or placement on conditional release after an annual review hearing, upon the issuance of the mandate by the Supreme Court of Virginia, the trial court shall immediately issue an emergency custody order to any local law-enforcement official to have the person taken into custody and held in the local correctional facility, pending further appropriate proceedings.

§ 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. *Pursuant to any contract entered into between the Department of Corrections and the Department of Mental Health, Mental Retardation and Substance Abuse Services, probation and parole officers shall have the power to provide intensive supervision services to persons placed on conditional release pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 37.2, regardless of whether or not the person has any time remaining to serve on any criminal sentence.*

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.

§ 63.2-105. Confidential records and information concerning social services; child-protective services and child-placing agencies.

A. The local department may disclose the contents of records and information learned during the course of a child-protective services investigation or during the provision of child-protective services to a family, without a court order and without the consent of the family, to a person having a legitimate interest when in the judgment of the local department such disclosure is in the best interest of the child who is the subject of the records. Persons having a legitimate interest in child-protective services records of local departments include, but are not limited to, (i) any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family that is the subject of a report, including multidisciplinary teams and family assessment and planning teams referenced in subsections J and K of § 63.2-1503, law-enforcement agencies and attorneys for the Commonwealth; (ii) child welfare or human services agencies of the Commonwealth or its political subdivisions when those agencies request information to determine the compliance of any person with a child-protective services plan or an order of any court; (iii) personnel of the school or child day program as defined in § 63.2-100 attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian; ~~and~~ (iv) a parent, grandparent, or any other person when such parent, grandparent or other person would be considered by the local department as a potential caretaker of the child in the event the local department has to remove the child from his custodian; *and* (v) *the Commitment Review Committee and the Office of the Attorney General for the purposes of sexually violent predator civil commitments pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.*

Whenever a local department exercises its discretion to release otherwise confidential information to any person who meets one or more of these descriptions, the local department shall be presumed to have exercised its discretion in a reasonable and lawful manner.

B. Any person who has not been legally adopted in accordance with the provisions of this title and who was a child for whom all parental rights and responsibilities have been terminated, shall not have access to any information from a child-placing agency with respect to the identity of the biological family, except (i) upon application of the child who is 18 or more years of age, (ii) upon order of a circuit court entered upon good cause shown, and (iii) after notice to and opportunity for hearing by the applicant for such order and the child-placing agency or local board that had custody of the child.

An eligible person who is a resident of Virginia may apply for the court order provided for herein to (a) the circuit court of the county or city where the person resides or (b) the circuit court of the county or city where the principal office of the child-placing agency or local board that controls the information sought by the person is located. An eligible person who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the principal office of the child-placing agency or local board that controls the information sought by the person is located.

If the identity and whereabouts of the biological family are known to the agency or local board, the court may require the agency or local board to advise the biological parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the applicant for such order and upon the biological parents.