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HOUSE BILL NO. 1359

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 37.2-910 and 37.2-912 of the Code of Virginia, relating to civil commitment of sexually violent predators; emergency.

Patrons—Bell, Albo, Athey, Callahan, Cosgrove, Gilbert, Griffith, Hamilton, Hurt, Jones, S.C., Kilgore, Landes, Lingamfelter, Marshall, D.W., Melvin, Moran, Morgan, O'Bannon, Peace, Sherwood, Suit, Welch and Wright; Senators: Howell, Norment and Stolle

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:**1. That §§ 37.2-910 and 37.2-912 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

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57 shall implement the court's conditional release orders and shall submit written reports to the court on the
58 committed person's progress and adjustment in the community no less frequently than every six months.
59 *The Department of Mental Health, Mental Retardation and Substance Abuse Services is authorized to*
60 *contract with the Department of Corrections to provide services for the monitoring and supervision of*
61 *persons committed as sexually violent predators who are on conditional release.*

62 The Department or, if the person is on parole or probation, the person's parole or probation officer
63 shall send a copy of each written report submitted to the court and copies of all correspondence with the
64 court pursuant to this section to the Attorney General and the Commissioner.

65 B. Notwithstanding any other provision of law, when any person is placed on conditional release
66 under this article, the Department of Corrections shall provide to the Department of Mental Health,
67 Mental Retardation and Substance Abuse Services, or if the person is on parole or probation, the
68 person's parole or probation officer, all relevant criminal history information, medical and mental health
69 records, presentence and postsentence reports and victim impact statements, and the mental health
70 evaluations performed pursuant to subsection B of § 37.2-904 and § 37.2-907, for use in the
71 management and treatment of the person placed on conditional release. Any information or document
72 provided pursuant to this subsection shall not be subject to disclosure under the Virginia Freedom of
73 Information Act (§ 2.2-3700 et seq.).

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