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SENATE BILL NO. 679

Offered January 20, 2006

A *BILL to amend and reenact § 37.2-908 of the Code of Virginia, relating to physical castration as an alternative to indeterminate civil commitment of a violent sexual predator.*

Patron—Hanger

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That § 37.2-908 of the Code of Virginia is amended and reenacted as follows:**

§ 37.2-908. (Effective October 1, 2005) 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 § 37.2-906, 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. 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 discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to § 37.2-806.

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.). *However, if the court finds, in the case of a prisoner, that the only alternative is involuntary secure inpatient treatment, the court may, on petition of the prisoner, order, as an alternative to involuntary secure inpatient treatment, that the prisoner (i) undergo physical castration and (ii) be placed on conditional release, in a manner and in accordance with terms and conditions developed by the Commissioner and the Department of Corrections.*

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 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. 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

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59 hearing, order the person committed as a sexually violent predator for inpatient treatment at a secure
60 facility designated by the Commissioner.

61 In the event of a mistrial, the court shall direct that the prisoner remain in the secure custody of the
62 Department of Corrections or the defendant remain in the secure custody of the Department until another
63 trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous
64 trial.

65 All proceedings conducted hereunder are civil proceedings. However, no discovery other than that
66 provided in § 37.2-901 shall be allowed without prior leave of the court, which may deny or limit
67 discovery in any such proceeding. No less than 30 days prior to the trial of the matter, any expert
68 employed or appointed pursuant to § 37.2-907 shall prepare a written report detailing his findings and
69 conclusions and shall submit the report, along with all supporting data, to the court, the Attorney
70 General, and counsel for the person. Under no circumstances shall the prisoner or defendant be entitled
71 to receive a copy of the victim impact statement or the presentence investigation report. However,
72 counsel for the prisoner or defendant and any expert employed or appointed pursuant to § 37.2-907 may
73 review the victim impact statement or presentence investigation report outside the presence of the
74 prisoner or defendant. The Attorney General shall file with the clerk copies of any relevant presentence
75 reports, postsentence reports, and victim impact statements in his possession, withholding identifying
76 information about victims. Such filings shall be held by the court in confidence and reviewable only by
77 the court, the Attorney General, and the counsel for the prisoner or defendant pursuant to this section.

78 **2. That the Commissioner of the Department of Mental Health, Mental Retardation and Substance**
79 **Abuse Services and the Director of the Department of Corrections shall implement practices and**
80 **procedures to effect the provisions of this act on or before July 1, 2007.**

81 **3. That the provisions of this act shall become effective on July 1, 2007.**