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SENATE BILL NO. 694

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 25, 2006)

(Patron Prior to Substitute—Senator Cuccinelli)

A *BILL to amend and reenact §§ 19.2-169.3, 19.2-299, 37.2-900, 37.2-903, 37.2-904, 37.2-905, 37.2-906, 37.2-908, 37.2-910, and 37.2-912 of the Code of Virginia, relating to civil commitment of sexually violent predators.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.3, 19.2-299, 37.2-900, 37.2-903, 37.2-904, 37.2-905, 37.2-906, 37.2-908, 37.2-910, and 37.2-912 of the Code of Virginia are amended and reenacted 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 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

60 the capital murder case may order that the defendant receive continued treatment under subsection A of
61 § 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to
62 subsection E of § 19.2-169.1 is held at the completion of each such period, (ii) the defendant remains
63 incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant
64 presents a danger to himself or others.

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

67 § 19.2-299. Investigations and reports by probation officers in certain cases.

68 A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a
69 person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or
70 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted
71 sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is
72 adjudged guilty of such charge, the court may, on motion of the defendant shall; or (ii) upon a felony
73 charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between
74 the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea
75 agreement or is found guilty by the court after a plea of not guilty; or (iii) the court shall when a person
76 is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a
77 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,
78 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,
79 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
80 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
81 such court to thoroughly investigate and report upon the history of the accused, including a report of the
82 accused's criminal record as an adult and available juvenile court records, any information regarding the
83 accused's participation or membership in a criminal street gang as defined in § 18.2-46.1, and all other
84 relevant facts, to fully advise the court so the court may determine the appropriate sentence to be
85 imposed. The probation officer, after having furnished a copy of this report at least five days prior to
86 sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use,
87 shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep
88 such report confidential. Counsel for the accused may provide the accused with a copy of the
89 presentence report. The probation officer shall be available to testify from this report in open court in
90 the presence of the accused, who shall have been provided with a copy of the presentence report by his
91 counsel or advised of its contents and be given the right to cross-examine the investigating officer as to
92 any matter contained therein and to present any additional facts bearing upon the matter. The report of
93 the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a
94 part of the record in the case. Any report so filed shall be made available only by court order and shall
95 be sealed upon final order by the court, except that such reports or copies thereof shall be available at
96 any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the
97 United States; to any agency where the accused is referred for treatment by the court or by probation
98 and parole services; and to counsel for any person who has been indicted jointly for the same felony as
99 the person subject to the report. Any report prepared pursuant to the provisions hereof shall without
100 court order be made available to counsel for the person who is the subject of the report if that person is
101 charged with a felony subsequent to the time of the preparation of the report. The presentence report
102 shall be in a form prescribed by the Department of Corrections. In all cases where such report is not
103 ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.
104 For the purposes of this subsection, information regarding the accused's participation or membership in a
105 criminal street gang may include the characteristics, specific rivalries, common practices, social customs
106 and behavior, terminology, and types of crimes that are likely to be committed by that criminal street
107 gang.

108 B. As a part of any presentence investigation conducted pursuant to subsection A when the offense
109 for which the defendant was convicted was a felony, the court probation officer shall advise any victim
110 of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be
111 given the opportunity to submit to the Board a written statement in advance of any parole hearing
112 describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii)
113 to receive copies of such other notifications pertaining to the defendant as the Board may provide
114 pursuant to subsection B of § 53.1-155.

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

119 D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense
120 for which the defendant was convicted was a felony, not a capital offense, committed on or after
121 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, or 18.2-67.3 where the complaining witness is less than 13 years of age; 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; or~~ (iv) a felony conviction for conspiracy to commit or attempt to commit any of the above offenses.

"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.

§ 37.2-903. 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 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: (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. *If the Director and the Commissioner agree that no specific scientifically validated instrument exists to measure the risk assessment of a prisoner, the prisoner may instead be evaluated by a licensed psychiatrist or licensed clinical psychologist for an initial determination of whether or not the prisoner may meet the definition of a sexually violent predator.* 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. *If the prisoner's or defendant's name was forwarded to the CRC based upon an evaluation by a licensed psychiatrist or licensed clinical psychologist, a different licensed psychiatrist*

183 *or licensed clinical psychologist shall perform the examination for the CRC.* The licensed psychiatrist or
184 licensed clinical psychologist shall determine whether the prisoner *or incompetent defendant* is a
185 sexually violent predator, as defined in § 37.2-900, and forward the results of this evaluation and any
186 supporting documents to the CRC for its review. The CRC assessment shall also include consideration
187 of the prisoner's *or incompetent defendant's* score on the ~~Rapid Risk Assessment for Sexual Offender~~
188 ~~Recidivism Static-99~~ or a comparable, scientifically validated instrument designated by the
189 Commissioner and a review of (i) the prisoner's *or incompetent defendant's* (i) institutional history and
190 treatment record, if any; (ii) ~~the prisoner's~~ *his* criminal background; and (iii) any other factor that is
191 relevant to the determination of whether ~~the prisoner~~ *he* is a sexually violent predator. Notwithstanding
192 § 19.2-299.1 or any other provision of law, the CRC is authorized to possess, copy, and use presentence
193 reports, postsentence reports, and victim impact statements for all lawful purposes.

194 C. Following the examination and review of a prisoner conducted pursuant to subsection B, the CRC
195 shall recommend that the prisoner *or incompetent defendant* (i) be committed as a sexually violent
196 predator pursuant to this chapter; (ii) not be committed, but be placed in a conditional release program
197 as a less restrictive alternative; or (iii) not be committed because he does not meet the definition of a
198 sexually violent predator. To assist the Attorney General in his review, the Department of Corrections,
199 the CRC, and the psychiatrist or psychologist who conducts the mental health examination pursuant to
200 this section shall provide the Attorney General with all evaluation reports, prisoner records, criminal
201 records, medical files, and any other documentation relevant to determining whether a prisoner *or*
202 *incompetent defendant* is a sexually violent predator.

203 D. Pursuant to clause (ii) of subsection C, the CRC shall recommend that a prisoner *or incompetent*
204 *defendant* enter a conditional release program if it finds that (i) ~~the prisoner~~ *he* does not need inpatient
205 treatment, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a
206 degree that he would need inpatient treatment; (ii) appropriate outpatient supervision and treatment are
207 reasonably available; (iii) there is significant reason to believe that ~~the prisoner~~, if conditionally released,
208 *he* would comply with the conditions specified; and (iv) conditional release will not present an undue
209 risk to public safety.

210 E. Notwithstanding any other provision of law, all state and local courts, clerks, departments,
211 agencies, boards, and commissions shall provide to the CRC all requested records, documents, notes,
212 recordings, or other information of any kind, including presentence or postsentence reports, victim
213 impact statements, and child abuse registry records, within 20 days of receiving such request.

214 F. Notwithstanding any other provision of law, any mental health professional employed or appointed
215 pursuant to subsection B or § 37.2-907 shall be permitted to copy and possess any presentence or
216 postsentence reports and victim impact statements for use in examinations, creating reports, and
217 testifying in any proceedings pursuant to this article. However, at the conclusion of the examiner's
218 testimony or service in such proceedings, the examiner shall return all presentence reports, postsentence
219 reports and victim impact statements to the Office of the Attorney General.

220 G. Any mental health professional appointed or employed pursuant to subsection B or § 37.2-907
221 shall be permitted to testify at the probable cause hearing and at the trial as to his diagnosis, his opinion
222 as to whether the prisoner *or incompetent defendant* meets the definition of a sexually violent predator,
223 his recommendation as to treatment and his reasoning therefor. Such opinion shall not be dispositive of
224 whether the person is a sexually violent predator.

225 § 37.2-905. Review of prisoners convicted of a sexually violent offense; review of unrestorably
226 incompetent defendants charged with sexually violent offenses; petition for commitment; notice to
227 Department of Corrections or referring court regarding disposition of review.

228 A. Upon receipt of a recommendation by the CRC regarding an eligible prisoner or ~~upon receipt of a~~
229 ~~court order referring~~ an unrestorably incompetent defendant for review pursuant to § 19.2-169.3, the
230 Attorney General shall have 90 days to conduct a review of the prisoner or defendant and (i) file a
231 petition for the civil commitment of the prisoner or defendant as a sexually violent predator and stating
232 sufficient facts to support such allegation or (ii) notify the Director and Commissioner, in the case of a
233 prisoner, or the referring court and the Commissioner, in the case of an unrestorably incompetent
234 defendant, that he will not file a petition for commitment. Petitions for commitment shall be filed in the
235 circuit court in which the prisoner was last convicted of a sexually violent offense or in which the
236 defendant was deemed unrestorably incompetent and referred for commitment review pursuant to
237 § 19.2-169.3.

238 B. In determining whether to file a petition to civilly commit a prisoner under this chapter, the
239 Attorney General shall review (i) the CRC recommendation and its reasoning; (ii) the results of the
240 mental health examination conducted pursuant to § 37.2-904; (iii) the prisoner's institutional history and
241 treatment record, if any; (iv) the prisoner's criminal offense history; and (v) any other factor relevant to
242 the determination of whether the prisoner should be civilly committed. Although the Attorney General
243 shall consider the CRC recommendation as part of the review, the CRC recommendation is not binding
244 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.~~

§ 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 continuance extending the case beyond the 60 days may be granted to either the Attorney General or the person who is the subject of the petition only upon good cause shown.* 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 superintendent shall cause the petition to be delivered to the person and shall certify the delivery to the clerk. In addition, a written explanation of the sexually violent predator involuntary commitment process and the statutory protections associated with the process shall be given to the person at the time the petition is delivered.

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

C. At the probable cause hearing, the judge shall (i) verify the person's identity and (ii) determine whether probable cause exists to believe that the person is a sexually violent predator. In the case of a prisoner in the custody of the Department of Corrections, if the judge finds that there is not probable cause to believe that the person is a sexually violent predator, the judge shall dismiss the petition, and the person shall remain in the custody of the Department of Corrections until his scheduled date of release from prison. In the case of a defendant, if the judge finds that there is not probable cause to believe the defendant is a sexually violent predator, the judge shall dismiss the petition and 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.

§ 37.2-908. 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. *A continuance extending the case beyond the 90 days may be granted to either the Attorney General or the person who is the subject of the petition only upon good cause shown.*

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

306 defendant be discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified
307 for admission pursuant to § 37.2-806.

308 If the court or jury finds the person to be a sexually violent predator, the court shall then determine
309 whether the person shall be fully committed or placed on conditional release. If the court finds, in its
310 determination of treatment needs, that alternatives to involuntary secure inpatient treatment have been
311 investigated and deemed unsuitable and there is no less restrictive alternative to involuntary secure
312 inpatient treatment, the judge shall by written order and specific findings so certify and order that the
313 person be committed to the custody of the Department for appropriate inpatient treatment in a secure
314 facility designated by the Commissioner. Persons committed pursuant to this chapter are subject to the
315 provisions of § 19.2-174.1 and Chapter 11 (§ 37.2-1100 et seq.).

316 If the court determines not to order full commitment, the court shall continue the case for not less
317 than 30 days and shall require the Commissioner to submit a report to the court, the Attorney General,
318 and counsel for the person suggesting possible alternatives to full commitment. The court shall then
319 reconvene the hearing and receive testimony on the possible alternatives to full commitment. At the
320 conclusion of the hearing, if the court finds, in determining the treatment needs of a person found to be
321 a sexually violent predator, that less restrictive alternatives to involuntary secure inpatient treatment have
322 been investigated and are deemed suitable, and if the judge finds specifically that the person meets the
323 criteria for conditional release set forth in § 37.2-912, the judge shall order outpatient treatment, day
324 treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic
325 medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or such other appropriate course of treatment as
326 may be necessary to meet the needs of the individual. *The judge shall also order the person to be*
327 *subject to electronic monitoring of his location by means of a GPS (Global Positioning System) tracking*
328 *device, or other similar device, at all times while he is on conditional release.*

329 The Department shall recommend a specific course of treatment and programs for provision of such
330 treatment and shall monitor the person's compliance with such treatment as may be ordered by the court
331 under this section, unless the person is on parole or probation, in which case the parole or probation
332 officer shall monitor the person's compliance. The person's failure to comply with involuntary outpatient
333 treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to
334 the provisions of this chapter. Upon failure of the person to adhere to the terms of the involuntary
335 outpatient treatment, the judge may revoke the same and, upon notice to the person undergoing
336 involuntary outpatient treatment and after a hearing, order the person committed as a sexually violent
337 predator for inpatient treatment at a secure facility designated by the Commissioner.

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

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

355 § 37.2-910. Review of continuation of secure inpatient treatment hearing; procedure and reports;
356 disposition.

357 A. The committing court shall conduct a hearing 12 months after the date of commitment to assess
358 each committed person's need for secure inpatient treatment. A hearing for assessment shall be
359 conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule
360 the matter for hearing as soon as possible after it becomes due, giving the matter priority over all
361 pending matters before the court.

362 B. Prior to the hearing, the Commissioner shall provide to the court a report reevaluating the
363 committed person's condition and recommending treatment. The report shall be prepared by a licensed
364 psychiatrist or a licensed clinical psychologist skilled in the diagnosis and treatment of mental
365 abnormalities and personality disorders associated with violent sex offenders and qualified by training
366 and experience to perform forensic evaluations. If the Commissioner's report recommends discharge or
367 the committed person requests discharge, the committed person's condition and need for secure inpatient

368 treatment shall be evaluated by a second person with such credentials who is not currently treating the
 369 committed person. Any professional person who conducts a second evaluation of a committed person
 370 shall submit a report of his findings to the court and the Commissioner. A copy of any report submitted
 371 pursuant to this subsection shall be sent to the Attorney General.

372 C. The burden of proof at the hearing shall be upon the Commonwealth to prove to the court by
 373 clear and convincing evidence that the committed person remains a sexually violent predator.

374 D. If the court finds, based upon the report and other evidence provided at the hearing, that the
 375 committed person's condition has so changed that he is no longer a sexually violent predator, the court
 376 shall (i) release the committed person from secure inpatient treatment if he does not need it and does
 377 not meet the criteria for conditional release set forth in § 37.2-912, provided the court has approved a
 378 discharge plan prepared by the Department or (ii) place the committed person on conditional release if
 379 he meets the criteria for conditional release and the court has approved a conditional release plan
 380 prepared by the Department. *If the judge places the person on conditional release, he shall order the*
 381 *person to be subject to electronic monitoring of his location by means of a GPS (Global Positioning*
 382 *System) tracking device, or other similar device, at all times while he is on conditional release.*

383 However, if the court finds that the committed person remains a sexually violent predator, it shall order
 384 that he remain in the custody of the Commissioner for secure inpatient treatment.

385 § 37.2-912. Conditional release; criteria; conditions; reports.

386 A. At any time the court considers the committed person's need for secure inpatient treatment
 387 pursuant to this chapter, it shall place the committed person on conditional release if it finds that (i)
 388 based on consideration of the factors that the court must consider in its commitment decision, he does
 389 not need secure inpatient treatment but needs outpatient treatment or monitoring to prevent his condition
 390 from deteriorating to a degree that he would need secure inpatient treatment; (ii) appropriate outpatient
 391 supervision and treatment are reasonably available; (iii) there is significant reason to believe that the
 392 committed person, if conditionally released, would comply with the conditions specified; and (iv)
 393 conditional release will not present an undue risk to public safety. The court shall subject a conditionally
 394 released committed person to the orders and conditions it deems will best meet the committed person's
 395 need for treatment and supervision and best serve the interests of justice and society. *In all cases of*
 396 *conditional release, the court shall order the person to be subject to electronic monitoring of his*
 397 *location by means of a GPS (Global Positioning System) tracking device, or other similar device, at all*
 398 *times while he is on conditional release.*

399 The Department or, if the person is on parole or probation, the person's parole or probation officer
 400 shall implement the court's conditional release orders and shall submit written reports to the court on the
 401 committed person's progress and adjustment in the community no less frequently than every six months.
 402 The Department or, if the person is on parole or probation, the person's parole or probation officer shall
 403 send a copy of each written report submitted to the court and copies of all correspondence with the
 404 court pursuant to this section to the Attorney General and the Commissioner.

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