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HOUSE BILL NO. 1793

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 2, 2007)

(Patron Prior to Substitute—Delegate Griffith)

A BILL to amend and reenact § 19.2-301 of the Code of Virginia, relating to the mental examination of a person convicted of a sexually abnormal offense.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-301 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-301. Judge shall require examination under § 19.2-300; by whom made; report; expenses of psychiatrist.

The judge shall order the defendant examined by at least one psychiatrist or clinical psychologist who is qualified by specialized training and experience to perform such evaluations. *Upon a finding by the court that a psychiatrist or clinical psychologist is not reasonably available for the instant case, the court may appoint a state licensed clinical social worker who has been certified by the Commonwealth as a sex offender treatment provider.* The examination shall be performed on an outpatient basis at a mental health facility or in jail. However, if the court specifically finds that outpatient examination services are unavailable or if the results of outpatient examination indicate that hospitalization of the defendant for further examination is necessary, the court may order the defendant sent to a hospital designated by the Commissioner of Mental Health, Mental Retardation, and Substance Abuse Services as appropriate for examination of persons convicted of crimes. The defendant shall then be hospitalized for such time as the director of the hospital deems necessary to perform an adequate examination, but not to exceed 30 days from the date of admission to the hospital. Upon completion of the examination, the examiners shall prepare a written report of their findings and conclusions and shall furnish copies of such report to the defendant, counsel for the defendant, and the attorney for the Commonwealth at least five days prior to sentencing and shall furnish a copy of the report to the judge in advance of the sentencing hearing. The report of the examiners shall at all times be kept confidential by each recipient, except to the extent necessary for the prosecution or defense of any offense, and shall be filed as part of the record in the case and the defendant's copy shall be returned to the court at the conclusion of sentencing. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such report or copies thereof shall be available at any time to the office of the Attorney General for assessment for civil commitment as provided in Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; 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 who is the subject of the report. Any such report 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.