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**HOUSE BILL NO. 1041**

Offered January 9, 2008

Prefiled January 9, 2008

A *BILL to amend and reenact §§ 37.2-900, 37.2-901, 37.2-902, 37.2-903, 37.2-904, 37.2-905.1, 37.2-905.2, 37.2-906, 37.2-907, 37.2-908, 37.2-909, 37.2-911, 37.2-912, 37.2-913, 37.2-914, 37.2-917, 37.2-918, and 53.1-32 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 37.2-906.1, relating to civil commitment of sexually violent predators; penalties.*

Patrons—Griffith, Albo, Athey, Bell, Carrico, Cole, Cosgrove, Gilbert, Hugo, Kilgore, Lingamfelter, Massie, Merricks and Sherwood

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 37.2-900, 37.2-901, 37.2-902, 37.2-903, 37.2-904, 37.2-905.1, 37.2-905.2, 37.2-906, 37.2-907, 37.2-908, 37.2-909, 37.2-911, 37.2-912, 37.2-913, 37.2-914, 37.2-917, 37.2-918, and 53.1-32 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 37.2-906.1 as follows:**

§ 37.2-900. Definitions.

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

"Commissioner" means the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services.

"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 this chapter.

"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"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.

"Respondent" means the person who is subject of a petition filed under this chapter.

"Sexually violent offense" means a felony under (i) former § 18-54, former § 18.1-44, subdivision 5 of § 18.2-31, § 18.2-61, 18.2-67.1, or 18.2-67.2; (ii) § 18.2-48 (ii), 18.2-48 (iii), 18.2-63, 18.2-64.1, or 18.2-67.3; (iii) subdivision 1 of § 18.2-31 where the abduction was committed with intent to defile the victim; (iv) § 18.2-32 when the killing was in the commission of, or attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration; (v) the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior is set forth in § 18.2-67.1 or 18.2-67.2, or is set forth in § 18.2-67.3; or (vi) 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.

§ 37.2-901. Civil proceedings; rights of respondents; discovery.

In hearings and trials held pursuant to this chapter, ~~prisoners and defendants~~ *respondents* 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~~ *respondent* be permitted, as a part of any proceedings under this chapter, to raise challenges to the validity of his prior criminal or institutional convictions, charges, or sentences, or the computation of his term of confinement.

In the event the ~~prisoner or defendant~~ *respondent* 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

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58 prisoner or defendant from introducing his own expert psychiatric or psychological evidence.

59 *All proceedings conducted hereunder are civil proceedings. However, no discovery shall be allowed*  
60 *prior to the probable cause hearing. After the probable cause hearing, no discovery other than that*  
61 *provided in § 37.2-901 shall be allowed without prior leave of court, which may deny or limit discovery*  
62 *in any such proceeding. Counsel for the respondent and any expert employed or appointed pursuant to*  
63 *this chapter may possess and copy the victim impact statement or presentence or postsentence report;*  
64 *however, neither counsel for the respondent nor any expert shall disseminate the contents of the reports*  
65 *or the actual reports to any person or entity and shall only utilize the reports in examinations, creating*  
66 *reports, and testifying in proceedings pursuant to this chapter. In no event shall the respondent be*  
67 *permitted to possess or copy a victim impact statement or presentence or postsentence report.*

68 § 37.2-902. Commitment Review Committee; membership.

69 A. The Director shall establish a Commitment Review Committee (CRC) to screen, evaluate, and  
70 make recommendations regarding prisoners in the custody of the Department of Corrections and  
71 defendants for the purposes of this chapter. The CRC shall be under the supervision of the Department  
72 of Corrections. Members of the CRC and any licensed psychiatrists or licensed clinical psychologists  
73 providing examinations under subsection B of § 37.2-904 shall be immune from personal liability while  
74 acting within the scope of their duties except for gross negligence or intentional misconduct.

75 B. The CRC shall consist of seven members to be appointed as follows: (i) three full-time employees  
76 of the Department of Corrections, appointed by the Director; (ii) three full-time employees of the  
77 Department, appointed by the Commissioner, at least one of whom shall be a psychiatrist or  
78 psychologist licensed to practice in the Commonwealth who is skilled in the diagnosis, treatment and  
79 risk assessment of sex offenders; and (iii) one assistant or deputy attorney general, appointed by the  
80 Attorney General. Initial appointments by the Director and the Commissioner shall be for terms as  
81 follows: one member each for two years, one member each for three years, and one member each for  
82 four years. The initial appointment by the Attorney General shall be for a term of four years. Thereafter,  
83 all appointments to the CRC shall be for terms of four years, and vacancies shall be filled for the  
84 unexpired terms. Four members shall constitute a quorum.

85 C. The CRC shall meet at least monthly and at other times as it deems appropriate. The CRC shall  
86 elect a chairman from its membership to preside during meetings.

87 § 37.2-903. Database of prisoners convicted of sexually violent offenses; maintained by Department  
88 of Corrections; notice of pending release to CRC.

89 A. ~~The Director shall establish and maintain a treatment program for prisoners convicted pursuant to~~  
90 ~~Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 and committed to the custody of the Department~~  
91 ~~of Corrections. This program shall include a clinical assessment of all such prisoners upon receipt into~~  
92 ~~the custody of the Department of Corrections and the development of appropriate treatment plans, if~~  
93 ~~indicated. This program shall be operated under the direction of a licensed psychiatrist or licensed~~  
94 ~~clinical psychologist who is experienced in the diagnosis, treatment and risk assessment of sex offenders.~~

95 B. The Director shall establish and maintain a database of each prisoner in his custody who is (i)  
96 incarcerated for a sexually violent offense or (ii) serving or will serve concurrent or consecutive time for  
97 another offense in addition to time for a sexually violent offense. The database shall include the  
98 following information regarding each prisoner: (a) the prisoner's criminal record and (b) the prisoner's  
99 sentences and scheduled date of release. A prisoner who is serving or will serve concurrent or  
100 consecutive time for other offenses in addition to his time for a sexually violent offense, shall remain in  
101 the database until such time as he is released from the custody or supervision of the Department of  
102 Corrections or Virginia Parole Board for all of his charges. Prior to the initial assessment of a prisoner  
103 under subsection C, the Director shall order a national criminal history records check to be conducted on  
104 the prisoner.

105 ~~CB. Each month, the Director shall review the database and identify all such prisoners who are~~  
106 ~~scheduled for release from prison within 10 months from the date of such review who receive a score of~~  
107 ~~five or more on the Static-99 or a similar score on a comparable, scientifically validated instrument~~  
108 ~~designated by the Commissioner, or a score of four on the Static-99 or a similar score on a comparable,~~  
109 ~~scientifically validated instrument if the sexually violent offense mandating the prisoner's evaluation~~  
110 ~~under this section was a violation of § 18.2-61, 18.2-67.1, 18.2-67.2 or 18.2-67.3 where and the victim~~  
111 ~~was under the age of 13 and suffered physical bodily injury and any of the following where the victim~~  
112 ~~was under the age of 13: § 18.2-61, 18.2-67.1, or 18.2-67.2.~~

113 ~~DC. If the Director and the Commissioner agree that no specific scientifically validated instrument~~  
114 ~~exists to measure the risk assessment of a prisoner, the prisoner may instead be evaluated by a licensed~~  
115 ~~psychiatrist or licensed clinical psychologist for an initial determination of whether or not the prisoner~~  
116 ~~may meet the definition of a sexually violent predator.~~

117 ~~ED. Upon the identification of such prisoners, the Director shall forward their names, their scheduled~~  
118 ~~dates of release, and copies of their files to the CRC for assessment.~~

119 § 37.2-904. CRC assessment of prisoners or defendants eligible for commitment as sexually violent

predators; mental health examination; recommendation.

A. Within 120 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 a 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 *or defendant* to the Attorney General pursuant to subsection C.

B. CRC assessments of eligible prisoners or defendants shall include a mental health examination, including a personal interview, of the prisoner or defendant by a licensed psychiatrist or a licensed clinical psychologist who is designated by the Commissioner, skilled in the diagnosis, treatment, and risk assessment of 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 or licensed clinical psychologist shall perform the examination for the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner or 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 may be based on:

An actuarial evaluation, clinical evaluation, or any other information or evaluation determined by the CRC to be relevant, including but not limited to, a review of (i) the prisoner's or defendant's institutional history and treatment record, if any; (ii) his criminal background; and (iii) any other factor that is relevant to the determination of whether he is a sexually violent predator.

C. Following the examination and review conducted pursuant to subsection B, the CRC shall recommend that the prisoner or 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 defendant is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC may recommend that a prisoner or defendant enter a conditional release program if it finds that (i) 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, if conditionally released, he 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, 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. The mental health professional shall not disseminate the contents of the reports or the actual reports to any person or entity and shall only utilize the reports for use in examinations, creating reports, and testifying in any proceedings pursuant to this article.

F. If the CRC deems it necessary to have the services of additional experts in order to complete its review of the prisoner *or defendant*, the Commissioner shall appoint such qualified experts as are needed.

§ 37.2-905.1. Substantial compliance.

The provisions of §§ 37.2-903 ~~and~~, 37.2-904 *and* 37.2-905 are procedural and not substantive or jurisdictional. Absent a showing of failure to follow these provisions as a result of gross negligence or willful misconduct, it shall be presumed that there has been substantial compliance with these provisions.

§ 37.2-905.2. Access to records.

A. Notwithstanding any other provision of law and for the purpose of performing their duties and obligations under this chapter, the Department of Corrections, the Commitment Review Committee, the Department, and the Office of the Attorney General are authorized to ~~review and receive copies of~~ *possess, copy, and use* all records, *including records under seal*, from all state and local courts, clerks, departments, agencies, boards, and commissions, including but not limited to: offices of attorneys for the Commonwealth, Virginia State Police, local police and sheriffs' departments, local schools, colleges and universities, Department of Juvenile Justice, court services units, community services boards, Department, state and local departments of social services and probation and parole districts. Upon request, the records, documents, notes, recordings or other information of any kind shall be provided to the Department of Corrections, the Commitment Review Committee, the Department, or the Office of the Attorney General within 20 days of receiving such request.

B. Notwithstanding any other provision of law, the Department of Corrections, the Commitment

181 Review Committee, the Department, and the Office of the Attorney General may possess, copy and use  
182 presentence reports, postsentence reports, and victim impact statements, *including records under seal*, for  
183 all lawful purposes under this chapter.

184 § 37.2-906. Probable cause hearing.

185 A. Upon the filing of a petition alleging that the respondent is a sexually violent predator, the circuit  
186 court shall (i) forthwith order that until a final order is entered in the proceeding, in the case of a  
187 prisoner, he remain in the secure custody of the Department of Corrections or, in the case of a  
188 defendant, he remain in the secure custody of the Department and (ii) schedule a hearing within 60 days  
189 to determine whether probable cause exists to believe that the respondent is a sexually violent predator.  
190 A continuance extending the case beyond the 60 days may be granted to either the Attorney General or  
191 the respondent upon good cause shown or by agreement of the parties. The clerk shall mail a copy of  
192 the petition to the attorney appointed or retained for the respondent and to the person in charge of the  
193 facility in which the respondent is then confined. The person in charge of the facility shall cause the  
194 petition to be delivered to the respondent and shall certify the delivery to the clerk. In addition, a  
195 written explanation of the sexually violent predator involuntary commitment process and the statutory  
196 protections associated with the process shall be given to the respondent at the time the petition is  
197 delivered.

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

202 C. At the probable cause hearing, the judge shall (i) verify the respondent's identity and (ii)  
203 determine whether probable cause exists to believe that he is a sexually violent predator. The existence  
204 of any prior convictions or charges may be shown with affidavits or documentary evidence. The details  
205 underlying the commission of an offense or behavior that led to a prior conviction or charge may be  
206 shown by affidavits or documentary evidence, including but not limited to, hearing and/or trial  
207 transcripts, probation and parole and sentencing reports, police and sheriffs' reports, and mental health  
208 evaluations. *Any Department of Corrections' time computation affidavit and Static-99 scoring sheet*  
209 *prepared pursuant to this chapter and offered at the hearing shall be admitted as evidence in the case.*  
210 If he meets the qualifications set forth in subsection B of § 37.2-904, the expert witness may be  
211 permitted to testify at the probable cause hearing as to his diagnosis, his opinion as to whether the  
212 respondent meets the definition of a sexually violent predator, his recommendations as to treatment, and  
213 the basis for his opinions. Such opinions shall not be dispositive of whether the respondent is a sexually  
214 violent predator.

215 D. In the case of a prisoner in the custody of the Department of Corrections, if the judge finds that  
216 there is not probable cause to believe that the respondent is a sexually violent predator, the judge shall  
217 dismiss the petition, and the respondent shall remain in the custody of the Department of Corrections  
218 until his scheduled date of release from prison. In the case of a defendant, if the judge finds that there is  
219 not probable cause to believe the respondent is a sexually violent predator, the judge shall dismiss the  
220 petition and order that the respondent be discharged, involuntarily admitted pursuant to §§ 37.2-814  
221 through 37.2-819, or certified for admission pursuant to § 37.2-806.

222 § 37.2-906.1. *Use of electronic communication.*

223 *Any judge may conduct any pretrial hearings and proceedings pursuant to this chapter using any*  
224 *two-way electronic video and audio communication system to provide for the appearance of any parties*  
225 *and witnesses. Any two-way electronic video and audio communications system used to conduct a*  
226 *proceeding shall meet the standards set forth in subsection B of § 19.2-3.1. When a witness whose*  
227 *testimony would be helpful to the proceeding is not able to be physically present, his testimony may be*  
228 *received using a telephonic communication system.*

229 § 37.2-907. Right to assistance of experts; compensation.

230 A. Upon a finding of probable cause the judge shall ascertain if the respondent is requesting expert  
231 assistance. If the respondent requests expert assistance and has not employed an expert at his own  
232 expense, the judge shall appoint such experts as he deems necessary; however, if the respondent refused  
233 to cooperate pursuant to § 37.2-901 any expert appointed to assist the respondent shall not be permitted  
234 to testify at trial. Any expert employed or appointed pursuant to this section shall be a licensed  
235 psychiatrist or licensed clinical psychologist who is skilled in the diagnosis, treatment, and risk  
236 assessment of sex offenders and who is not a member of the CRC. Any expert employed or appointed  
237 pursuant to this section shall have reasonable access to all relevant medical and psychological records  
238 and reports pertaining to the respondent. *No less than 45 days prior to the trial of the matter, any expert*  
239 *employed or appointed pursuant to this chapter shall prepare a written report detailing his findings and*  
240 *conclusions and shall submit the report, along with all supporting data, to the court, the Attorney*  
241 *General, and counsel for the respondent.*

242 B. Each psychiatrist, psychologist, or other expert appointed by the court to render professional

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

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

A. Within 90 120 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 respondent is a sexually violent predator. A continuance extending the case beyond the 90 120 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties.

B. The Attorney General or the respondent 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 that the respondent is 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 respondent is a sexually violent predator. If the court or jury does not find clear and convincing evidence that the respondent 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 he is a sexually violent predator, the court shall order that he be discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to § 37.2-806.

If he meets the qualifications set forth in subsection B of § 37.2-904 or 37.2-907, any expert witness may be permitted to testify at the trial as to his diagnosis, his opinion as to whether the respondent meets the definition of a sexually violent predator, his recommendation as to treatment, and the basis for his opinions. Such opinions shall not be dispositive of whether the respondent is a sexually violent predator. *Any Department of Corrections' time computation affidavit and Static-99 scoring sheet prepared pursuant to this chapter and offered at trial shall be admitted as evidence in the case.*

D. If the court or jury finds the respondent to be a sexually violent predator, the court shall then determine that the respondent shall be fully committed or continue the trial for not less than 30 days nor more than 60 days pursuant to subsection E. In making its determination, the court may consider (i) the nature and circumstances of the sexually violent offense for which the respondent was charged or convicted, including the age and maturity of the victim; (ii) the results of any actuarial test, including the likelihood of recidivism; (iii) the results of any diagnostic tests previously administered to the respondent under this chapter; (iv) the respondent's mental history, including treatments for mental illness or mental disorders, participation in and response to therapy or treatment, and any history of previous hospitalizations; (v) the respondent's present mental condition; (vi) the respondent's disciplinary record and types of infractions he may have committed while incarcerated or hospitalized; (vii) the respondent's living arrangements and potential employment if he were to be placed on conditional release; (viii) the availability of transportation and appropriate supervision to ensure participation by the respondent in necessary treatment; and (ix) any other factors that the court deems relevant. If after considering the factors listed in § 37.2-912, the court finds that there is no suitable less restrictive alternative to involuntary secure inpatient treatment, the judge shall by written order and specific findings so certify and order that the respondent be committed to the custody of the Department for appropriate inpatient treatment in a secure facility designated by the Commissioner. Respondents 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 to continue the trial to receive additional evidence on possible alternatives to full commitment, the court shall require the Commissioner to submit a report to the court, the Attorney General, and counsel for the respondent suggesting possible alternatives to full commitment. The court shall then reconvene the trial and receive testimony on the possible alternatives to full commitment. At the conclusion of the trial, if the court finds, ~~in determining the treatment needs of a respondent found to be a sexually violent predator, that less restrictive alternatives to involuntary secure inpatient treatment have been investigated and are deemed suitable, and that any such alternatives will~~

304 be able to accommodate needed and appropriate supervision and treatment plans for the respondent,  
305 including but not limited to, therapy or counseling, access to medications, availability of travel, location  
306 of residence, and regular psychological monitoring of the respondent if appropriate, including polygraph  
307 examinations, penile plethysmograph testing, or sexual interest testing, if necessary. Access to  
308 anti-androgen medications or other medication prescribed to lower blood serum testosterone shall not be  
309 used as a primary reason for determining that less restrictive alternatives are appropriate pursuant to this  
310 chapter. If the judge finds that the respondent meets the criteria for conditional release set forth in  
311 § 37.2-912, the judge shall order that the respondent be returned to the custody of the Department of  
312 Corrections to be processed for conditional release as a sexually violent predator, pursuant to his  
313 conditional release plan. The court shall also order the respondent to be subject to electronic monitoring  
314 of his location by means of a GPS (Global Positioning System) tracking device, or other similar device,  
315 at all times while he is on conditional release. *Access to anti-androgen medications or other medication*  
316 *prescribed to lower blood serum testosterone shall not be used as a primary reason for determining that*  
317 *less-restrictive alternatives are appropriate pursuant to this chapter.*

318 F. The Department shall recommend a specific course of treatment and programs for provision of  
319 such treatment and shall monitor the respondent's compliance with such treatment as may be ordered by  
320 the court under this section, unless the respondent is on parole or probation, in which case the parole or  
321 probation officer shall monitor his compliance. The respondent's failure to comply with involuntary  
322 outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held  
323 pursuant to the provisions of this chapter. Upon failure of the respondent to adhere to the terms of the  
324 involuntary outpatient treatment, the judge may revoke the same and, upon notice to the respondent  
325 undergoing involuntary outpatient treatment and after a hearing, order the respondent committed as a  
326 sexually violent predator for inpatient treatment at a secure facility designated by the Commissioner.

327 G. In the event of a mistrial, the court shall direct that the prisoner remain in the secure custody of  
328 the Department of Corrections or the defendant remain in the secure custody of the Department until  
329 another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the  
330 previous trial.

331 H. All proceedings conducted hereunder are civil proceedings. However, no discovery shall be  
332 allowed prior to the probable cause hearing. After the probable cause hearing, no discovery other than  
333 that provided in § 37.2-901 shall be allowed without prior leave of the court, which may deny or limit  
334 discovery in any such proceeding. No less than 30 days prior to the trial of the matter, any expert  
335 employed or appointed pursuant to this chapter shall prepare a written report detailing his findings and  
336 conclusions and shall submit the report, along with all supporting data, to the court, the Attorney  
337 General, and counsel for the respondent. Counsel for the respondent and any expert employed or  
338 appointed pursuant to this chapter may possess and copy the victim impact statement or presentence or  
339 postsentence report; however, neither counsel for the respondent nor any expert shall disseminate the  
340 contents of the reports or the actual reports to any person or entity and shall only utilize the reports in  
341 examinations, creating reports, and testifying in any proceedings pursuant to this chapter. In no event  
342 shall the respondent be permitted to possess or copy a victim impact statement or presentence or  
343 postsentence report.

344 § 37.2-909. Placement of committed respondents.

345 A. Any ~~person~~ *respondent* committed pursuant to this chapter shall be placed in the custody of the  
346 Department for control, care, and treatment until such time as the ~~person's~~ *respondent's* mental  
347 abnormality or personality disorder has so changed that ~~the person~~ *he* will not present an undue risk to  
348 public safety. The Department shall provide such control, care, and treatment at a secure facility  
349 operated by it or may contract with private or public entities, in or outside of the Commonwealth, or  
350 with other states to provide comparable control, care, or treatment. At all times, ~~persons~~ *respondents*  
351 committed for control, care, and treatment by the Department pursuant to this chapter shall be kept in a  
352 secure facility. ~~Persons~~ *Respondents* committed under this chapter shall be segregated by sight and sound  
353 at all times from prisoners in the custody of a correctional facility. The Commissioner may make  
354 treatment and management decisions regarding committed ~~persons~~ *respondents* in his custody without  
355 obtaining prior approval of or review by the committing court.

356 B. Prior to the siting of a new facility or the designation of an existing facility to be operated by the  
357 Department for the control, care, and treatment of ~~persons convicted of a sexually violent offense who~~  
358 ~~have been referred for civil commitment~~ *committed respondents*, the Commissioner shall notify the state  
359 elected officials for and the local governing body of the jurisdiction of the proposed location,  
360 designation, or expansion of the facility. Upon receiving such notice, the local governing body of the  
361 jurisdiction of the proposed site or where the existing facility is located may publish a descriptive notice  
362 concerning the proposed site or existing facility in a newspaper of general circulation in the jurisdiction.

363 The Commissioner also shall establish an advisory committee relating to any facility for which notice  
364 is required by this subsection or any facility being operated for the purpose of the control, care, and  
365 treatment of ~~persons convicted of a sexually violent offense who have been referred for civil~~

~~commitment~~ committed respondents. The advisory committee shall consist of state and local elected officials and representatives of community organizations serving the jurisdiction in which the facility is proposed to be or is located. Upon request, the members of the appropriate advisory committee shall be notified whenever the Department increases the number of beds in the relevant facility.

C. Notwithstanding any other provision of law, when any ~~person~~ respondent is committed under this article, the Department of Corrections and the Office of the Attorney General shall provide to the Department of Mental Health, Mental Retardation and Substance Abuse Services, a copy of all relevant criminal history information, medical and mental health records, presentence or 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 treatment and evaluation of the committed ~~person~~ respondent.

§ 37.2-911. Petition for release; hearing; procedures.

A. The Commissioner may petition the committing court for conditional or unconditional release of the committed ~~person~~ respondent at any time he believes the committed ~~person's~~ respondent's condition has so changed that he is no longer a sexually violent predator in need of secure inpatient treatment. The petition shall be accompanied by a report of clinical findings supporting the petition and by a conditional release or discharge plan, as applicable, prepared by the Department. The committed ~~person~~ respondent may petition the committing court for release only once in each year in which no annual judicial review is required pursuant to § 37.2-910. The party petitioning for release shall transmit a copy of the petition to the Attorney General and the Commissioner.

B. Upon the submission of a petition pursuant to this section, the committing court shall conduct the proceedings according to the procedures set forth in § 37.2-910.

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

A. At any time the court considers the respondent's need for secure inpatient treatment pursuant to this chapter, it shall place the respondent on conditional release if it finds that (i) 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 respondent, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety. In making its determination, the court may consider (i) the nature and circumstances of the sexually violent offense for which the respondent was charged or convicted, including the age and maturity of the victim; (ii) the results of any actuarial test, including the likelihood of recidivism; (iii) the results of any diagnostic tests previously administered to the respondent under this chapter; (iv) the respondent's mental history, including treatments for mental illness or mental disorders, participation in and response to therapy or treatment, and any history of previous hospitalizations; (v) the respondent's present mental condition; (vi) the respondent's response to treatment while in secure inpatient treatment or on conditional release, including his disciplinary record and any infractions; (vii) the respondent's living arrangements and potential employment if he were to be placed on conditional release; (viii) the availability of transportation and appropriate supervision to ensure participation by the respondent in necessary treatment; and (ix) any other factors that the court deems relevant. The court shall subject the respondent to the orders and conditions it deems will best meet his 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 respondent 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. ~~A continuance extending the review may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties.~~

The Department or, if the respondent is on parole or probation, the respondent's parole or probation officer shall implement the court's conditional release orders and shall submit written reports to the court on the respondent's progress and adjustment in the community no less frequently than every six months. The Department of Mental Health, Mental Retardation and Substance Abuse Services is authorized to contract with the Department of Corrections to provide services for the monitoring and supervision of sexually violent predators who are on conditional release.

The Department or, if the respondent is on parole or probation, the respondent'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 respondent is placed on conditional release under this article, the Department of Corrections and the Office of the Attorney General shall provide to the Department, or if the respondent is on parole or probation, the respondent'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 this chapter, for use in the management and treatment of the respondent placed on conditional release. Any information or document provided pursuant to this subsection shall not be subject to disclosure

427 under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

428 § 37.2-913. Emergency custody of conditionally released respondents; revocation of conditional  
429 release.

430 A. A judicial officer may issue an emergency custody order, upon the sworn petition of any  
431 responsible person or upon his own motion, based upon probable cause to believe that a ~~person~~  
432 *respondent* on conditional release within his judicial district has violated the conditions of his release  
433 and is no longer a proper subject for conditional release. *The judicial officer shall forward a copy of the*  
434 *petition and the emergency custody order to the circuit court that conditionally released the respondent,*  
435 *the Attorney General, and the Department. Petitions and orders for emergency custody of conditionally*  
436 *released respondents pursuant to this section may be filed, issued, served, or executed by electronic*  
437 *means, with or without the use of two-way electronic video and audio communication, and returned in*  
438 *the same manner with the same force, effect, and authority as an original document. All signatures*  
439 *thereon shall be treated as original signatures.*

440 B. The emergency custody order shall require a law-enforcement officer to take the ~~person~~  
441 *respondent* into custody immediately and ~~transport him~~. *A law-enforcement officer may lawfully go to or*  
442 *be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the*  
443 *Commonwealth for the purpose of executing an emergency custody order pursuant to this section. The*  
444 *respondent shall be transported to a convenient location secure facility specified in the order by the*  
445 *Department where a person designated by the Department who is skilled in the diagnosis and, treatment,*  
446 *of mental abnormalities and personality disorders and risk assessment of sex offenders shall, as soon as*  
447 *practicable, evaluate him for the purpose of determining the nature and degree of violation of the*  
448 *conditions of his release. A copy of the petition shall be sent to the Attorney General and the*  
449 *Commissioner. Petitions and orders for emergency custody of conditionally released persons pursuant to*  
450 *this section may be filed, issued, served, or executed by electronic means, with or without the use of*  
451 *two-way electronic video and audio communication, and returned in the same manner with the same*  
452 *force, effect, and authority as an original document. All signatures thereon shall be treated as original*  
453 *signatures perform a mental health examination of the respondent, including a personal interview. The*  
454 *mental health evaluator shall consider the criteria in § 37.2-912 and shall opine whether the respondent*  
455 *remains suitable for conditional release. The evaluator shall report his findings and conclusions in*  
456 *writing to the Department, the Office of the Attorney General, counsel for the respondent, and the court*  
457 *in which the petition was filed. The evaluator's report shall become part of the record in the case.*

458 C. The ~~person~~ *respondent* on conditional release shall remain in custody until a hearing is held in the  
459 circuit court *that conditionally released the respondent* on the motion or petition to determine if he  
460 should be returned to the custody of the Commissioner. The hearing shall be given priority on the  
461 court's docket.

462 D. *The respondent's failure to comply with the conditions of release, including outpatient treatment,*  
463 *may be admitted into evidence. The evaluator designated in subsection B may be permitted to testify at*  
464 *the hearing as to his diagnosis, his opinion as to whether the respondent remains suitable for*  
465 *conditional release, his recommendation as to treatment and supervision, and the basis for his opinions.*  
466 If upon hearing the evidence, the court finds that the ~~person~~ *respondent* on conditional release has  
467 violated the conditions of his release and that the violation of conditions was sufficient to render him no  
468 longer suitable for conditional release, the court shall revoke his conditional release and order him  
469 returned to the custody of the Commissioner for secure inpatient treatment. The ~~person~~ *respondent* may  
470 petition the ~~original committing~~ court for re-release pursuant to the conditions set forth in § 37.2-911 no  
471 sooner than six months from his return to custody. The ~~party~~ *respondent* petitioning for re-release shall  
472 transmit a copy of the petition to the Attorney General and the Commissioner.

473 § 37.2-914. Modification or removal of conditions; notice; objections; review.

474 A. The ~~committing~~ court *that placed the respondent on conditional release* may modify conditions of  
475 release or remove conditions placed on release pursuant to § 37.2-912, upon petition of the Department,  
476 the supervising parole or probation officer, the Attorney General, or the ~~person~~ *respondent* on  
477 conditional release or upon its own motion based on reports of the Department or the supervising parole  
478 or probation officer. However, the ~~person~~ *respondent* on conditional release may petition only annually  
479 commencing six months after the conditional release order is issued. Upon petition, the court shall  
480 require the Department or, if the ~~person~~ *respondent* is on parole or probation, ~~the person's~~ *his* parole or  
481 probation officer to provide a report on the ~~person's~~ *respondent's* progress while on conditional release.  
482 The ~~party~~ *respondent* petitioning for release shall transmit a copy of the petition to the Attorney General  
483 and the Commissioner.

484 B. As it deems appropriate based on the Department's or parole or probation officer's report and any  
485 other evidence provided to it, the court may issue a proposed order for modification or removal of  
486 conditions. The court shall provide notice of the order and their right to object to it within 21 days of  
487 its issuance to the ~~person~~ *respondent*, the Department or parole or probation officer, and the Attorney  
488 General. The proposed order shall become final if no objection is filed within 21 days of its issuance. If



an objection is so filed, the court shall conduct a hearing at which the ~~person~~ *respondent* on conditional release, the Attorney General, and the Department or the parole or probation officer have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release.

§ 37.2-917. Escape of respondents committed; absconding respondents; penalties.

A. Any ~~person~~ *respondent* committed to the custody of the Commissioner pursuant to this chapter who escapes from custody shall be guilty of a Class 6 felony.

B. Any *respondent* who absconds from supervision or custody pursuant to this chapter shall be guilty of a Class 6 felony.

§ 37.2-918. Respondents on conditional release leaving Commonwealth; penalty.

Any ~~person~~ *respondent* placed on conditional release pursuant to this chapter who leaves the Commonwealth without permission from the court that conditionally released the ~~person~~ *respondent* or who fails to return to the Commonwealth in violation of a court order shall be guilty of a Class 6 felony.

§ 53.1-32. Treatment and control of prisoners; recreation; religious services.

A. It shall be the general purpose of the state correctional facilities to provide proper employment, training and education in accordance with Chapter 18 (§ 22.1-339 et seq.) of Title 22.1 and § 53.1-32.1, medical and mental health care and treatment, discipline and control of prisoners committed or transferred thereto. The health service program established to provide medical services to prisoners shall provide for appropriate means by which prisoners receiving nonemergency medical services may pay fees based upon a portion of the cost of such services. In no event shall any prisoner be denied medically necessary service due to his inability to pay. The Board shall promulgate regulations governing such a program.

B. *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. The 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. The program shall be operated under the direction of a licensed psychiatrist or licensed clinical psychologist who is experienced in the diagnosis, treatment, and risk assessment of sex offenders.*

C. The Director shall provide a program of recreation for prisoners. The Director may establish, with consultation from the Department of Mental Health, Mental Retardation and Substance Abuse Services, a comprehensive substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and may make such program available to any prisoner requiring the services provided by the program.

D. The Director or his designee who shall be a state employee is authorized to make arrangements for religious services for prisoners at times as he may deem appropriate. When such arrangements are made pursuant to a contract or memorandum of understanding, the final authority for such arrangements shall reside with the Director or his designee.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**