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**HOUSE BILL NO. 1843**

Offered January 14, 2009

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*A BILL to amend and reenact §§ 16.1-69.55, 16.1-300, 16.1-305, 37.2-900, 37.2-901 through 37.2-909, 37.2-911 through 37.2-914, 37.2-918, and 53.1-32 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 37.2-906.1 and 37.2-906.2, relating to civil commitment of sexually violent predators; penalties.*

Patrons—Griffith, Athey, Lingamfelter, Miller, J.H., Pollard and Sherwood

Referred to Committee for Courts of Justice

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

**1. That §§ 16.1-69.55, 16.1-300, 16.1-305, 37.2-900, 37.2-901 through 37.2-909, 37.2-911 through 37.2-914, 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 sections numbered 37.2-906.1 and 37.2-906.2 as follows:**

§ 16.1-69.55. Retention of case records; limitations on enforcement of judgments; extensions.

A. Criminal and traffic infraction proceedings:

1. In misdemeanor and traffic infraction cases, except misdemeanor cases under § 16.1-253.2 or 18.2-57.2, all documents shall be retained for 10 years, including cases sealed in expungement proceedings under § 19.2-392.2. In misdemeanor cases under § 16.1-253.2 or 18.2-57.2, all documents shall be retained for 20 years. *In misdemeanor cases under § 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-370, 18.2-370.01, 18.2-370.1, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, all documents shall be retained for 100 years.* Documents in misdemeanor and traffic infraction cases for which an appeal has been made shall be returned to and filed with the clerk of the appropriate circuit court pursuant to § 16.1-135;

2. In felony cases which are certified to the grand jury, all documents shall be certified to the clerk of the appropriate circuit court pursuant to §§ 19.2-186 and 19.2-190. All other felony case documents shall be handled as provided in subdivision A 1 of this section;

3. Dockets and indices shall be retained for 10 years.

B. Civil proceedings:

1. All documents in civil proceedings in district court which are dismissed, including dismissal under § 8.01-335, shall be retained until completion of the Commonwealth's audit of the court records. Notwithstanding § 8.01-275.1, the clerks of the district courts may destroy documents in civil proceedings in which no service of process is had 24 months after the last return date;

2. In civil actions which result in a judgment all documents in the possession of the general district court shall be retained for 10 years and, unless sooner satisfied, the judgment shall remain in force for a period of 10 years;

3. In civil cases that are appealed to the circuit court pursuant to § 16.1-112, all documents pertaining thereto shall be transferred to the circuit court in accordance with those sections;

4. The limitations on enforcement of general district court judgments provided in § 16.1-94.1 shall not apply if the plaintiff, prior to the expiration of that period for enforcement, pays the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and docket the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. However, a judgment debtor wishing to discharge a judgment pursuant to the provisions of § 8.01-456, when the judgment creditor cannot be located, may, prior to the expiration of that period for enforcement, pay the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and docket the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. After the expiration of the period provided in § 16.1-94.1, executions on such docketed civil judgments may issue from the general district court wherein the judgment was obtained upon the filing in the general district court of an abstract from the circuit court. In all other respects, the docketing of a general district court judgment in a circuit court confers upon such judgment the same status as if the judgment were a circuit court judgment;

5. Dockets for civil cases shall be retained for 10 years;

6. Indices in civil cases shall be retained for 10 years.

C. Juvenile and domestic relations district court proceedings:

1. In adult criminal cases, all records shall be retained as provided in subdivision A 1 of this section;

2. In juvenile cases, all documents and indices shall be governed by the provisions of § 16.1-306;

3. In all cases involving support arising under Titles 16.1, 20 or 63.2, all documents and indices shall

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59 be retained until the last juvenile involved, if any, has reached 19 years of age and 10 years have  
60 elapsed from either dismissal or termination of the case by court order or by operation of law. Financial  
61 records in connection with such cases shall be subject to the provisions of § 16.1-69.56;

62 4. *In all cases involving sexually violent offenses, as defined in § 37.2-900, and in all misdemeanor*  
63 *cases under § 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-370,*  
64 *18.2-370.01, 18.2-370.1, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, all documents shall be retained*  
65 *for 100 years.*

66 5. In cases transferred to circuit court for trial as an adult or appealed to circuit court, all documents  
67 pertaining thereto shall be transferred to circuit court;

68 56. All dockets in juvenile cases shall be governed by the provisions of § 16.1-306 F.  
69 § 16.1-300. Confidentiality of Department records.

70 A. The social, medical, psychiatric and psychological reports and records of children who are or have  
71 been (i) before the court, (ii) under supervision, or (iii) receiving services from a court service unit or  
72 who are committed to the Department of Juvenile Justice shall be confidential and shall be open for  
73 inspection only to the following:

74 1. The judge, prosecuting attorney, probation officers and professional staff assigned to serve a court  
75 having the child currently before it in any proceeding;

76 2. Any public agency, child welfare agency, private organization, facility or person who is treating or  
77 providing services to the child pursuant to a contract with the Department or pursuant to the Virginia  
78 Juvenile Community Crime Control Act as set out in Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of  
79 this title;

80 3. The child's parent, guardian, legal custodian or other person standing in loco parentis and the  
81 child's attorney;

82 4. Any person who has reached the age of majority and requests access to his own records or  
83 reports;

84 5. Any state agency providing funds to the Department of Juvenile Justice and required by the  
85 federal government to monitor or audit the effectiveness of programs for the benefit of juveniles which  
86 are financed in whole or in part by federal funds;

87 6. Any other person, agency or institution, including any law-enforcement agency, school  
88 administration, or probation office by order of the court, having a legitimate interest in the case, the  
89 juvenile, or in the work of the court;

90 7. Any person, agency or institution having a legitimate interest when release of the confidential  
91 information is (i) for the provision of treatment or rehabilitation services for the juvenile who is the  
92 subject of the information, (ii) when the requesting party has custody or is providing supervision for a  
93 juvenile and the release of the confidential information is in the interest of maintaining security in a  
94 secure facility as defined by § 16.1-228, or (iii) for consideration of admission to any group home,  
95 residential facility, or postdispositional facility, and copies of the records in the custody of such home or  
96 facility shall be destroyed if the child is not admitted to the home or facility;

97 8. Any attorney for the Commonwealth, any pretrial services officer, local community-based  
98 probation officer and adult probation and parole officer for the purpose of preparing pretrial  
99 investigation, including risk assessment instruments, presentence reports, including those provided in  
100 § 19.2-299, discretionary sentencing guidelines worksheets, including related risk assessment instruments,  
101 as directed by the court pursuant to subsection C of § 19.2-298.01 or any court-ordered post-sentence  
102 investigation report;

103 9. Any person, agency, organization or institution outside the Department that, at the Department's  
104 request, is conducting research or evaluation on the work of the Department or any of its divisions; or  
105 any state criminal justice agency that is conducting research, provided that the agency agrees that all  
106 information received shall be kept confidential, or released or published only in aggregate form;

107 10. With the exception of medical, psychiatric, and psychological records and reports, any full-time  
108 or part-time employee of the Department of State Police or of a police department or sheriff's office that  
109 is a part of or administrated by the Commonwealth or any political subdivision thereof, and who is  
110 responsible for the enforcement of the penal, traffic, or motor vehicle laws of the Commonwealth, for  
111 purposes of a criminal investigation of an allegation of criminal gang activity involving a predicate  
112 criminal act as defined in § 18.2-46.1 or information that a person is a member of a criminal street gang  
113 as defined in § 18.2-46.1. No person who obtains information pursuant to this subdivision shall divulge  
114 such information except in connection with a criminal investigation regarding a criminal street gang as  
115 defined in § 18.2-46.1 that is authorized by the Attorney General or by the attorney for the  
116 Commonwealth or in connection with a prosecution or proceeding in court; ~~and~~

117 11. The Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth, as  
118 permitted under subsection B of § 66-3.2; *and*

119 12. *The Office of the Attorney General, for all criminal justice activities otherwise permitted and for*  
120 *purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act*

(§ 37.2-900 et seq.).

A designated individual treating or responsible for the treatment of a person may inspect such reports and records as are kept by the Department on such person or receive copies thereof, when the person who is the subject of the reports and records or his parent, guardian, legal custodian or other person standing in loco parentis if the person is under the age of 18, provides written authorization to the Department prior to the release of such reports and records for inspection or copying to the designated individual.

B. The Department may withhold from inspection by a child's parent, guardian, legal custodian or other person standing in loco parentis that portion of the records referred to in subsection A hereof, when the staff of the Department determines, in its discretion, that disclosure of such information would be detrimental to the child or to a third party, provided that the juvenile and domestic relations district court (i) having jurisdiction over the facility where the child is currently placed or (ii) that last had jurisdiction over the child if such child is no longer in the custody or under the supervision of the Department shall concur in such determination.

If any person authorized under subsection A to inspect Department records requests to inspect the reports and records and if the Department withholds from inspection any portion of such record or report pursuant to the preceding provisions, the Department shall (i) inform the individual making the request of the action taken to withhold any information and the reasons for such action; (ii) provide such individual with as much information as is deemed appropriate under the circumstances; and (iii) notify the individual in writing at the time of the request of his right to request judicial review of the Department's decision. The circuit court (a) having jurisdiction over the facility where the child is currently placed or (b) that had jurisdiction over the original proceeding or over an appeal of the juvenile and domestic relations district court final order of disposition concerning the child if such child is no longer in the custody or under the supervision of the Department shall have jurisdiction over petitions filed for review of the Department's decision to withhold reports or records as provided herein.

§ 16.1-305. Confidentiality of court records.

A. Social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records, of neglected and abused children, children in need of services, children in need of supervision and delinquent children shall be filed with the other papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and records of the court and shall be open for inspection only to the following:

1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic relations district courts;

2. Representatives of a public or private agency or department providing supervision or having legal custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

3. The attorney for any party, including the attorney for the Commonwealth;

4. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court. However, for the purposes of an investigation conducted by a local community-based probation services agency, preparation of a pretrial investigation report, or of a presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a local community-based probation services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial services or probation officer shall have access to the defendant's records in juvenile court without a court order;

5. Any attorney for the Commonwealth and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

A copy of the court order of disposition in a delinquency case shall be provided to a probation officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing guidelines. The copies shall remain confidential, but reports may be prepared using the information contained therein as provided in §§ 19.2-298.01 and 19.2-299.

6. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for

182 *purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act*  
183 *(§ 37.2-900 et seq.).*

184 B. All or any part of the records enumerated in subsection A, or information secured from such  
185 records, which is presented to the judge in court or otherwise in a proceeding under this law shall also  
186 be made available to the parties to the proceedings and their attorneys.

187 B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the  
188 basis of an act which would be a felony if committed by an adult, all court records regarding that  
189 adjudication and any subsequent adjudication of delinquency, other than those records specified in  
190 subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that  
191 certain records or portions thereof remain confidential to the extent necessary to protect any juvenile  
192 victim or juvenile witness.

193 C. All other juvenile records, including the docket, petitions, motions and other papers filed with a  
194 case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by  
195 those persons and agencies designated in subsections A and B of this section. However, a licensed bail  
196 bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a  
197 juvenile under § 16.1-258. This shall not authorize a bail bondsman to have access to or inspect any  
198 other portion of his principal's juvenile court records.

199 D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for  
200 which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles,  
201 which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney  
202 shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney  
203 that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding  
204 and that such papers will be only used for such evidentiary purpose.

205 D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act  
206 that would be a felony if committed by an adult, which show the charge, finding, disposition, name of  
207 the attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for  
208 the Commonwealth upon his certification that such papers are needed as evidence in a pending criminal  
209 prosecution for a violation of § 18.2-308.2 and that such papers will be only used for such evidentiary  
210 purpose.

211 E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to  
212 the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an  
213 award to the victim of a crime, and such information shall not be disseminated or used by the  
214 Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

215 F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the  
216 disposition in a case involving a juvenile who is committed to state care after being adjudicated for a  
217 criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the  
218 victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a  
219 written request, the Department of Juvenile Justice shall provide advance notice of such juvenile  
220 offender's anticipated date of release from commitment.

221 G. Any record in a juvenile case file which is open for inspection by the professional staff of the  
222 Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the  
223 court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted  
224 shall be subject to the provisions of § 16.1-300.

225 § 37.2-900. Definitions.

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

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

229 "Defendant" means any person charged with a sexually violent offense who is deemed to be an  
230 unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred for commitment review  
231 pursuant to this chapter.

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

234 "Director" means the Director of the Department of Corrections.

235 "Mental abnormality" or "personality disorder" means a congenital or acquired condition that affects  
236 a person's emotional or volitional capacity and renders the person so likely to commit sexually violent  
237 offenses that he constitutes a menace to the health and safety of others.

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

239 "Sexually violent offense" means a felony under (i) former § 18-54, former § 18.1-44, subdivision 5  
240 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  
241 18.2-67.3; (iii) subdivision 1 of § 18.2-31 where the abduction was committed with intent to defile the  
242 victim; (iv) § 18.2-32 when the killing was in the commission of, or attempt to commit rape, forcible  
243 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 proceeding; 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 no event shall a respondent be permitted to raise defenses or objections based on defects in the institution of proceedings under this chapter unless such defenses or objections have been raised in a written motion to dismiss, stating the legal and factual grounds therefor, filed with the court at least 14 days before the hearing or trial.*

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 ~~prisoner or defendant~~ *respondent* from introducing his own expert psychiatric or psychological evidence.

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

§ 37.2-902. Commitment Review Committee; membership.

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

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

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

§ 37.2-903. 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~~

305 indicated. This program shall be operated under the direction of a licensed psychiatrist or licensed  
306 clinical psychologist who is experienced in the diagnosis, treatment and risk assessment of sex offenders.

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

317 CB. Each month, the Director shall review the database and identify all such prisoners who are  
318 scheduled for release from prison within 10 months from the date of such review who receive a score of  
319 five or more on the Static-99 or a similar score on a comparable, scientifically validated instrument  
320 designated by the Commissioner, or a score of four on the Static-99 or a similar score on a comparable,  
321 scientifically validated instrument if the sexually violent offense mandating the prisoner's evaluation  
322 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  
323 was under the age of 13 and suffered physical bodily injury and any of the following where the victim  
324 was under the age of 13: ~~§ 18.2-61, 18.2-67.1, or 18.2-67.2.~~

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

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

331 § 37.2-904. CRC assessment of prisoners or defendants eligible for commitment as sexually violent  
332 predators; mental health examination; recommendation.

333 A. Within 120 days of receiving notice from the Director pursuant to § 37.2-903 regarding a prisoner  
334 who is in the database, or from a court referring a defendant pursuant to § 19.2-169.3, the CRC shall (i)  
335 complete its assessment of the prisoner or defendant for possible commitment pursuant to subsection B  
336 and (ii) forward its written recommendation regarding the prisoner or defendant to the Attorney General  
337 pursuant to subsection C.

338 B. CRC assessments of eligible prisoners or defendants shall include a mental health examination,  
339 including a personal interview, of the prisoner or defendant by a licensed psychiatrist or a licensed  
340 clinical psychologist who is designated by the Commissioner, skilled in the diagnosis, treatment, and  
341 risk assessment of sex offenders, and not a member of the CRC. If the prisoner's or defendant's name  
342 was forwarded to the CRC based upon an evaluation by a licensed psychiatrist or licensed clinical  
343 psychologist, a different licensed psychiatrist or licensed clinical psychologist shall perform the  
344 examination for the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine  
345 whether the prisoner or defendant is a sexually violent predator, as defined in § 37.2-900, and forward  
346 the results of this evaluation and any supporting documents to the CRC for its review.

347 The CRC assessment may be based on:

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

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

361 D. Pursuant to clause (ii) of subsection C, the CRC may recommend that a prisoner or defendant  
362 enter a conditional release program if it finds that (i) he does not need inpatient treatment, but needs  
363 outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he  
364 would need inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably  
365 available; (iii) there is significant reason to believe that, if conditionally released, he would comply with  
366 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. Review of prisoners convicted of a sexually violent offense; review of unrestorably incompetent defendants charged with sexually violent offenses; petition for commitment; notice to Department of Corrections or referring court regarding disposition of review.

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

B. If the Attorney General decides not to file a petition for the civil commitment of a prisoner or defendant, or if a petition is filed but is dismissed for any reason, ~~and the prisoner or defendant has outstanding probation or parole time to serve,~~ the Attorney General and the Director may share any relevant information with the probation and parole officer *who is to supervise the prisoner and with the Department* to the extent allowed by state and federal law.

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

§ 37.2-906. Probable cause hearing.

A. Upon the filing of a petition alleging that the respondent 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~~ 90 days to determine whether probable cause exists to believe that the respondent is a sexually violent predator. *The respondent may waive his right to a hearing under this section.* A continuance extending the case beyond the ~~60~~ 90 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties. The clerk shall mail a copy of the petition to the attorney appointed or retained for the respondent and to the person in charge of the facility in which the respondent is then confined. The person in charge of the facility shall cause the petition to be delivered to the respondent 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 respondent at the time the petition is delivered.

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

432 C. At the probable cause hearing, the judge shall (i) verify the respondent's identity and (ii)  
433 determine whether probable cause exists to believe that he is a sexually violent predator. ~~The existence~~  
434 ~~of any prior convictions or charges may be shown with affidavits or documentary evidence. The details~~  
435 ~~underlying the commission of an offense or behavior that led to a prior conviction or charge may be~~  
436 ~~shown by affidavits or documentary evidence, including but not limited to, hearing and/or trial~~  
437 ~~transcripts, probation and parole and sentencing reports, police and sheriffs' reports, and mental health~~  
438 ~~evaluations. Unless the Commonwealth's evidence presented at the probable cause hearing is plainly~~  
439 ~~wrong, without evidence to support it, or inherently incredible as a matter of law, the court shall find~~  
440 ~~probable cause.~~ If he meets the qualifications set forth in subsection B of § 37.2-904, the expert witness  
441 may be permitted to testify at the probable cause hearing as to his diagnosis, his opinion as to whether  
442 the respondent meets the definition of a sexually violent predator, his recommendations as to treatment,  
443 and the basis for his opinions. Such opinions shall not be dispositive of whether the respondent is a  
444 sexually violent predator.

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

452 § 37.2-906.1. *Use of electronic communication.*

453 *Any judge may conduct any pre-trial hearings or proceedings pursuant to this chapter and any*  
454 *hearings under § 37.2-910 using any two-way electronic video and audio communication system to*  
455 *provide for the appearance of any parties and witnesses. Any two-way electronic video and audio*  
456 *communication system used to conduct a proceeding shall meet the standards set forth in subsection B*  
457 *of § 19.2-3.1. When a witness whose testimony would be helpful to the conduct of the proceeding is not*  
458 *able to be physically present, his testimony may be received using a telephonic communication system.*

459 § 37.2-906.2. *Evidence.*

460 *At any hearing or trial held pursuant to this chapter, the existence of any prior convictions or*  
461 *charges may be shown with affidavits or documentary evidence. The details underlying the commission*  
462 *of an offense or behavior that led to a prior conviction or charge may be shown by affidavits or*  
463 *documentary evidence, including but not limited to, hearing and trial transcripts, probation and parole*  
464 *and sentencing reports, police and sheriff's reports, and mental health evaluations. Any Department of*  
465 *Corrections' time computation affidavit and Static-99 scoring sheet prepared pursuant to this chapter*  
466 *and offered at the hearing shall be admitted as evidence in this case.*

467 § 37.2-907. *Right to assistance of experts; compensation.*

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

480 B. Each psychiatrist, psychologist, or other expert appointed by the court to render professional  
481 service pursuant to this chapter who is not regularly employed by the Commonwealth, except by the  
482 University of Virginia School of Medicine and the Virginia Commonwealth University School of  
483 Medicine, shall receive a reasonable fee for such service. The fee shall be determined in each instance  
484 by the court that appointed the expert, in accordance with guidelines established by the Supreme Court  
485 after consultation with the Department. The fee shall not exceed \$5,000. However, in addition, if any  
486 such expert is required to appear as a witness in any hearing held pursuant to this chapter, he shall  
487 receive mileage and a fee of \$750 for each day during which he is required to serve. An itemized  
488 account of expenses, duly sworn to, shall be presented to the court, and, when allowed, shall be certified  
489 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; discovery.

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.

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 45 days nor more than 60 days pursuant to subsection E. *A continuance extending the case beyond the 60 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties.* 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 be able to accommodate needed and appropriate supervision and treatment plans for the respondent, including but not limited to, therapy or counseling, access to medications, availability of travel, location of residence, and regular psychological monitoring of the respondent if appropriate, including polygraph examinations, penile plethysmograph testing, or sexual interest testing, if necessary. Access to anti-androgen medications or other medication prescribed to lower blood serum testosterone shall not be used as a primary reason for determining that less restrictive alternatives are appropriate pursuant to this chapter.~~ If the judge finds that the respondent meets the criteria for conditional release set forth in § 37.2-912, the judge shall order that the respondent be returned to the custody of the Department of

Corrections to be processed for conditional release as a sexually violent predator, pursuant to his conditional release plan. The court shall also 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. *Access to anti-androgen medications or other medication prescribed to lower blood serum testosterone shall not be used as a primary reason for determining that less restrictive alternatives are appropriate pursuant to this chapter.*

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

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

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

§ 37.2-909. Placement of committed respondents.

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

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

The Commissioner also shall establish an advisory committee relating to any facility for which notice is required by this subsection or any facility being operated for the purpose of the control, care, and 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 Commissioner may petition the committing court for unconditional release of the committed respondent at any time he believes the committed respondent's condition has so changed that he is no longer a sexually violent predator.* 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 under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

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

A. A judicial officer may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion, based upon probable cause to believe that a ~~person~~ *respondent* on conditional release within his judicial district has violated the conditions of his release

674 and is no longer a proper subject for conditional release. *The judicial officer shall forward a copy of the*  
675 *petition and the emergency custody order to the circuit court that conditionally released the respondent,*  
676 *the Attorney General, and the Department. Petitions and orders for emergency custody of conditionally*  
677 *released respondents pursuant to this section may be filed, issued, served, or executed by electronic*  
678 *means, with or without the use of two-way electronic video and audio communication, and returned in*  
679 *the same manner with the same force, effect, and authority as an original document. All signatures*  
680 *thereon shall be treated as original signatures.*

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

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

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

714 § 37.2-914. Modification or removal of conditions; notice; objections; review.

715 A. The ~~committing~~ court that placed the person on conditional release may modify conditions of  
716 release or remove conditions placed on release pursuant to § 37.2-912, upon petition of the Department,  
717 the supervising parole or probation officer, the Attorney General, or the person on conditional release or  
718 upon its own motion based on reports of the Department or the supervising parole or probation officer.  
719 However, the person on conditional release may petition only annually commencing six months after the  
720 conditional release order is issued. Upon petition, the court shall require the Department or, if the person  
721 is on parole or probation, the person's parole or probation officer to provide a report on the person's  
722 progress while on conditional release. The party petitioning for release shall transmit a copy of the  
723 petition to the Attorney General and the Commissioner.

724 B. As it deems appropriate based on the Department's or parole or probation officer's report and any  
725 other evidence provided to it, the court may issue a proposed order for modification or removal of  
726 conditions. The court shall provide notice of the order and their right to object to it within 21 days of  
727 its issuance to the person, the Department or parole or probation officer, and the Attorney General. The  
728 proposed order shall become final if no objection is filed within 21 days of its issuance. If an objection  
729 is so filed, the court shall conduct a hearing at which the person on conditional release, the Attorney  
730 General, and the Department or the parole or probation officer have an opportunity to present evidence  
731 challenging the proposed order. At the conclusion of the hearing, the court shall issue an order  
732 specifying conditions of release or removing existing conditions of release.

733 § 37.2-918. Persons on conditional release leaving Commonwealth; penalty.

734 Any person placed on conditional release pursuant to this chapter who leaves the Commonwealth  
735 without permission from the court that conditionally released the person or 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.

ED. 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.**