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HOUSE BILL NO. 1271

Offered January 20, 2012

A *BILL to amend and reenact §§ 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.5:3, 19.2-169.3, 19.2-303, 37.2-903, and 37.2-904 of the Code of Virginia, relating to punishment and assessment of certain sexually violent predators; penalty.*

Patron—Jones

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.5:3, 19.2-169.3, 19.2-303, 37.2-903, and 37.2-904 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-61. Rape.

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat, or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; the penalty for a violation of subdivision A clause (iii); where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii) § 18.2-51.2, of subsection A shall include a mandatory minimum term of confinement of 25 years life. If the term of confinement imposed for any violation of subdivision A (iii), where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 18.2-67.1. Forcible sodomy.

A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person, and

1. The complaining witness is less than 13 years of age, or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

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59 B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or
60 for any term not less than five years. The penalty for a violation of subdivision A 1, ~~where the offender~~
61 ~~is more than three years older than the victim, if done in the commission of, or as part of the same~~
62 ~~course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of~~
63 ~~§ 18.2-47 or 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii) § 18.2-51.2, shall include a mandatory~~
64 ~~minimum term of confinement of 25 years life. If the term of confinement imposed for any violation of~~
65 ~~subdivision A 1, where the offender is more than three years older than the victim, is for a term less~~
66 ~~than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence~~
67 ~~of no less than 40 years. This suspended sentence shall be suspended for the remainder of the~~
68 ~~defendant's life, subject to revocation by the court.~~

69 In any case deemed appropriate by the court, all or part of any sentence imposed for a violation
70 under this section against a spouse may be suspended upon the defendant's completion of counseling or
71 therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of
72 the views of the complaining witness and such other evidence as may be relevant, the court finds such
73 action will promote maintenance of the family unit and will be in the best interest of the complaining
74 witness.

75 C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case
76 tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the
77 defendant who has not previously had a proceeding against him for violation of this section dismissed
78 pursuant to this subsection and with the consent of the complaining witness and the attorney for the
79 Commonwealth, may defer further proceedings and place the defendant on probation pending completion
80 of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the
81 defendant fails to so complete such counseling or therapy, the court may make final disposition of the
82 case and proceed as otherwise provided. If such counseling is completed as prescribed under
83 § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after
84 consideration of the views of the complaining witness and such other evidence as may be relevant, the
85 court finds such action will promote maintenance of the family unit and be in the best interest of the
86 complaining witness.

87 § 18.2-67.2. Object sexual penetration; penalty.

88 A. An accused shall be guilty of inanimate or animate object sexual penetration if he or she
89 penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other
90 than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own
91 body with an object or causes a complaining witness, whether or not his or her spouse, to engage in
92 such acts with any other person or to penetrate, or to be penetrated by, an animal, and

93 1. The complaining witness is less than 13 years of age, or

94 2. The act is accomplished against the will of the complaining witness, by force, threat or
95 intimidation of or against the complaining witness or another person, or through the use of the
96 complaining witness's mental incapacity or physical helplessness.

97 B. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state
98 correctional facility for life or for any term not less than five years. The penalty for a violation of
99 subdivision A 1 ~~where the offender is more than three years older than the victim, if done in the~~
100 ~~commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as~~
101 ~~a violation of (i) subsection A of § 18.2-47 or 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii)~~
102 ~~§ 18.2-51.2, shall include a mandatory minimum term of confinement of 25 years life. If the term of~~
103 ~~confinement imposed for any violation of subdivision A 1, where the offender is more than three years~~
104 ~~older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to~~
105 ~~any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be~~
106 ~~suspended for the remainder of the defendant's life, subject to revocation by the court.~~

107 In any case deemed appropriate by the court, all or part of any sentence imposed for a violation
108 under this section against a spouse may be suspended upon the defendant's completion of counseling or
109 therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of
110 the views of the complaining witness and such other evidence as may be relevant, the court finds such
111 action will promote maintenance of the family unit and will be in the best interest of the complaining
112 witness.

113 C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case
114 tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the
115 defendant who has not previously had a proceeding against him for violation of this section dismissed
116 pursuant to this subsection and with the consent of the complaining witness and the attorney for the
117 Commonwealth, may defer further proceedings and place the defendant on probation pending completion
118 of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the
119 defendant fails to so complete such counseling or therapy, the court may make final disposition of the
120 case and proceed as otherwise provided. If such counseling is completed as prescribed under

§ 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 18.2-67.5:3. Punishment upon conviction of certain subsequent violent felony sexual assault.

A. Any person convicted of ~~more than one~~ *an* offense specified in subsection B1 *and convicted of an offense in subsection B*, when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the ~~second or subsequent such~~ *offense listed in subsection B1*, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of at least one of the ~~specified~~ *offenses listed in subsection B*.

B. ~~The provisions of offenses included in this subsection A shall apply to convictions for~~ *are as follows:*

1. Rape in violation of § 18.2-61;
2. Forcible sodomy in violation of § 18.2-67.1;
3. Object sexual penetration in violation of § 18.2-67.2;
4. Abduction with intent to defile in violation of § 18.2-48; or
5. Conspiracy to commit any offense listed in subdivisions 1 through 4 pursuant to § 18.2-22.

B1. The offenses included in this subsection are as follows:

1. *Rape in violation of clause (i) or (ii) of subsection A of § 18.2-61;*
2. *Forcible sodomy in violation of subdivision A 2 of §18.2-67.1;*
3. *Object sexual penetration in violation of subdivision A 2 of §18.2-67.2;*
4. *Abduction with intent to defile in violation of § 18.2-48; or*
5. *Conspiracy to commit any offense listed in subdivisions 1 through 4 of subsection B pursuant to § 18.2-22.*

C. For purposes of this section, ~~prior~~ *convictions listed in subsection B* shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if committed by an adult in the Commonwealth and the offense was committed less than ~~twenty~~ *20* years before the second offense.

The Commonwealth shall notify the defendant in the indictment, information, or warrant, at least ~~thirty~~ *30* days prior to trial, of its intention to seek punishment pursuant to this section.

§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; capital murder charge; referral to Commitment Review Committee.

A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of § 19.2-169.2, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection E of § 19.2-169.1. If the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or (iii) certified pursuant to § 37.2-806. However, if the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future and the defendant has been charged with a sexually violent offense, as defined in § 37.2-900, he shall be ~~reviewed for commitment screened~~ *pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 the procedures set forth in §§ 37.2-903 and 37.2-904*. If the court finds the defendant incompetent but restorable to competency in the foreseeable future, it may order treatment continued until six months have elapsed from the date of the defendant's initial admission under subsection A of § 19.2-169.2.

B. At the end of six months from the date of the defendant's initial admission under subsection A of § 19.2-169.2 if the defendant remains incompetent in the opinion of the board, authority, or inpatient facility director or his designee, the director or his designee shall so notify the court and make recommendations concerning disposition of the defendant as described in subsection A. The court shall hold a hearing according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the defendant unrestorably incompetent, shall order one of the dispositions described in subsection A. If the court finds the defendant incompetent but restorable to competency, it may order continued treatment

under subsection A of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but restorable to competency in the foreseeable future.

C. If any defendant has been charged with a misdemeanor in violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or Article 5 (§ 18.2-119 et seq.) of Chapter 5 of Title 18.2, other than a misdemeanor charge pursuant to § 18.2-130 or Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, and is being treated pursuant to subsection A of § 19.2-169.2, and after 45 days has not been restored to competency, the director of the community service board, behavioral health authority, or the director of the treating inpatient facility, or any of their designees, shall send a report indicating the defendant's status to the court. The report shall also indicate whether the defendant should be released or committed pursuant to § 37.2-817 or certified pursuant to § 37.2-806. Upon receipt of the report, if the court determines that the defendant is still incompetent, the court shall order that the defendant be released, committed, or certified, and may dismiss the charges against the defendant.

D. Unless an incompetent defendant is charged with capital murder or the charges against an incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner.

E. If the court orders an unrestorably incompetent defendant to be reviewed for commitment pursuant to § 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction wherein the defendant was charged and the Commissioner of Behavioral Health and Developmental Services to provide the Commitment Review Committee established pursuant to § 37.2-902 *Director of the Department of Corrections* with any information relevant to the review, including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the defendant's criminal record, (iii) information about the alleged crime, (iv) a copy of the competency report completed pursuant to § 19.2-169.1, and (v) a copy of the report prepared by the director of the defendant's community services board, behavioral health authority, or treating inpatient facility or his designee pursuant to this section. The court shall further order that the defendant be held in the custody of the Department of Behavioral Health and Developmental Services for secure confinement and treatment until the Commitment Review Committee's and Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice that the Attorney General has declined to file a petition for the commitment of an unrestorably incompetent defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or certified pursuant to § 37.2-806.

F. In any case when an incompetent defendant is charged with capital murder, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the capital murder case may order that the defendant receive continued treatment under subsection A of § 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period, (ii) the defendant remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant presents a danger to himself or others.

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

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of a felony, shall determine whether a copy of the defendant's fingerprints are is on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS

whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation for such time as the court shall determine.

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

B. Each month, the Director shall review the database and identify all such prisoners who are scheduled for release from prison within 10 months from the date of such review or who receive a score of five or more on the Static-99 or a similar score on a comparable, scientifically validated instrument designated by the Commissioner, or a score of four on the Static-99 or a similar score on a comparable, scientifically validated instrument if the sexually violent offense mandating the prisoner's evaluation under this section was a violation of § 18.2-67.3 where the victim was under the age of 13 and suffered physical bodily injury and any of the following where the victim was under the age of 13: § 18.2-61, 18.2-67.1, or 18.2-67.2 have been referred to the Director by the Virginia Parole Board. The Director, in coordination with the Office of the Attorney General and the Department, shall develop a protocol consistent with the evidence-based best practices to assess whether the individual meets the definition of a sexually violent predator. The Director, applying this assessment protocol, shall identify those prisoners who appear to meet the definition of a sexually violent predator and shall forward their

names, their scheduled dates of release, and copies of their files to the CRC for assessment.

C. If the Director and the The Commissioner agree that no specific scientifically validated instrument exists to measure the risk assessment of a prisoner, the prisoner may instead be screened by a licensed psychiatrist, licensed clinical psychologist, or a licensed mental health professional certified by the Board of Psychology as a sex offender treatment provider pursuant to § 54.1-3600 for an initial determination of whether or not the prisoner may shall forward to the Director the records of all defendants who have been charged with a sexually violent offense and found unrestorably incompetent to stand trial pursuant to § 19.2-169.3 that have been referred to the Commission by a court. The Director, applying the assessment protocol, shall identify those defendants who appear to meet the definition of a sexually violent predator.

D. Upon the identification of such prisoners, the Director and shall forward their names, their scheduled the dates of release court orders finding the defendants unrestorably incompetent, and copies of their files to the CRC for assessment.

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

A. Within 120 180 days of receiving notice from the Director the name of a prisoner or defendant who has been assessed by 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 as appearing to meet the definition of a sexually violent predator, 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 and risk assessment of sex offenders, knowledgeable about the treatment 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.

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 is \$1,711,348 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of

367 commitment to the custody of the Department of Juvenile Justice.

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