

# VIRGINIA ACTS OF ASSEMBLY -- 2018 RECONVENED SESSION

## CHAPTER 841

An Act to amend and reenact § 37.2-903 of the Code of Virginia, relating to sexually violent predator; assessment protocol.

[S 267]

Approved April 18, 2018

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

**1. That § 37.2-903 of the Code of Virginia is amended and reenacted as follows:**

**§ 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~~ B, 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, *using an evidence-based assessment protocol approved by the Director and the Commissioner, shall* identify all such prisoners who are scheduled for release from prison within ~~40~~ 24 months from the date of such review or have been referred to the Director by the Virginia Parole Board under rules adopted by the Board ~~(i) 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, (ii) who receive 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 § 18.2-61, 18.2-67.1, 18.2-67.2, or 18.2-67.3 where the victim was under the age of 13, or (iii) whose records reflect such aggravating circumstances that the Director determines the offender appears~~ *who appear* to meet the definition of a sexually violent predator. The Director may exclude from referral prisoners who are so incapacitated by a permanent and debilitating medical condition or a terminal illness so as to represent no threat to public safety.

C. If the Director and the Commissioner agree that no specific scientifically validated instrument exists to measure the risk assessment of a prisoner, the prisoner may instead be 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 meet the definition of a sexually violent predator.

~~D.~~ The Commissioner 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, and ordered to be screened pursuant to § 19.2-169.3. The Director, applying the procedure identified in subsection B, shall identify those defendants who shall be referred to the CRC for assessment.

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

E. The Commissioner shall report annually by December 1 to the Chairmen of the House Committees on Appropriations and Courts of Justice, the Senate Committees on Courts of Justice and Finance, and the Crime Commission on (i) the assessment protocol approved by the Director and the Commissioner to identify prisoners and defendants who appear to meet the definition of a sexually violent predator pursuant to subsections B and C, including the specific screening instrument adopted and the criteria used to determine whether a prisoner or defendant meets the definition of a sexually violent predator and (ii) the number of prisoners screened pursuant to subsection B and the number of prisoners identified as meeting the definition of a sexually violent predator and referred to the CRC for assessment pursuant to subsection D. Such report shall also include a comparison of the number of defendants identified as appearing to meet the definition of a sexually violent predator and referred to the CRC pursuant to subsection C in the previous year and the five years immediately prior thereto.