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SENATE BILL NO. 171

Offered January 14, 1998

A *BILL to amend and reenact § 19.2-169.3 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 2 of Title 37.1 an article numbered 1.1, consisting of sections numbered 37.1-70.1 through 37.1-70.16, relating to the civil commitment of sexually violent predators.*

Patron—Forbes

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-169.3 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 2 of Title 37.1 an article numbered 1.1, consisting of sections numbered 37.1-70.1 through 37.1-70.16, as follows:

§ 19.2-169.3. Disposition of the unrestorably incompetent defendant.

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 treating facility 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 director's opinion, the defendant should be released, committed pursuant to § 37.1-67.3, *committed as a sexually violent predator pursuant to § 37.1-70.9*, or certified pursuant to § 37.1-65.1 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 § 37.1-67.3, (iii) *reviewed for commitment as a sexually violent predator pursuant to § 37.1-70.6*, or ~~(iii)~~(iv) certified pursuant to § 37.1-65.1. 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 director, the director shall so notify the court and make recommendations concerning disposition of the defendant as described above. 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 above. 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 not dismissed without prejudice at an earlier time, charges against an ~~unrestorable~~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.

D. *If the court orders an unrestorably incompetent defendant to be reviewed for commitment as a sexually violent predator pursuant to this section, it shall order the attorney for the Commonwealth in the jurisdiction wherein the defendant was charged and the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide the Attorney General 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 treating facility pursuant to this section. The court shall further order that the defendant be held in the custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services for secure confinement and treatment until the Attorney General's review and any subsequent hearing or trial is 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 § 37.1-70.6, the court shall order that the defendant be released, committed pursuant to § 37.1-67.3, or certified pursuant to § 37.1-65.1.*

Article 1.1.**Civil Commitment of Sexually Violent Predators.****§ 37.1-70.1. Definitions.**

The following words and phrases when used in this article shall have the following meanings, unless

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60 *the context clearly indicates otherwise:*

61 *"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation*
62 *and Substance Abuse Services.*

63 *"Defendant" means any person charged with a sexually violent offense who is deemed an*
64 *unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred to the Attorney General for*
65 *commitment review pursuant to § 37.1-70.6.*

66 *"Director" means the Director of the Department of Corrections.*

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

70 *"Sexually violent offense" means a violation of §§ 18.2-61, 18.2-67.1, or 18.2-67.2 or subdivision A 1*
71 *of § 18.2-67.3.*

72 *"Sexually violent predator" means any person who (i) has been convicted of a sexually violent*
73 *offense or has been charged with a sexually violent offense and found to have committed such offense by*
74 *a judge or jury pursuant to this article, but is unrestorably incompetent to stand trial pursuant to*
75 *§ 19.2-169.3, and (ii) suffers from a mental abnormality or personality disorder which makes the person*
76 *likely to engage in the predatory acts of sexual violence.*

77 *§ 37.1-70.2. Rights of prisoners and defendants.*

78 *In hearings and trials held pursuant to this article, prisoners and defendants shall have the following*
79 *rights:*

80 *1. To receive adequate notice of the proceeding.*

81 *2. To be represented by counsel.*

82 *3. To remain silent or to testify.*

83 *4. To be present during the hearing or trial.*

84 *5. To present evidence and to cross-examine witnesses.*

85 *6. To view and copy all petitions and reports in the court file.*

86 *§ 37.1-70.3. Commitment Review Committee; membership.*

87 *A. The Director of the Department of Corrections shall establish a Commitment Review Committee*
88 *(CRC) to screen, evaluate, and make recommendations regarding prisoners for the purposes of this*
89 *article. The CRC shall be under the supervision of the Department of Corrections.*

90 *B. The CRC shall consist of seven members to be appointed as follows: (i) three full-time employees*
91 *of the Department of Corrections, appointed by the Director of the Department of Corrections, (ii) three*
92 *full-time employees of the Department of Mental Health, Mental Retardation and Substance Abuse*
93 *Services, appointed by the Commissioner, at least one of whom shall be a psychiatrist or psychologist*
94 *licensed to practice in the Commonwealth of Virginia who is skilled in the diagnosis of mental*
95 *abnormalities and personality disorders associated with violent sex offenders, and (iii) one assistant or*
96 *deputy attorney general, appointed by the Attorney General. Initial appointments by the Director and the*
97 *Commissioner shall be for terms as follows: one member each for two years, one member each for three*
98 *years, and one member each for four years. The initial appointment by the Attorney General shall be for*
99 *a term of four years. Thereafter, all appointments to the CRC shall be for terms of four years, and*
100 *vacancies shall be filled for the unexpired terms. Five members shall constitute a quorum.*

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

103 *§ 37.1-70.4. Database of prisoners convicted of sexually violent offenses; maintained by Department*
104 *of Corrections; notice of pending release to CRC.*

105 *A. The Director of the Department of Corrections shall establish and maintain a database of*
106 *prisoners in his custody who have been convicted of sexually violent offenses. The database shall*
107 *include the following information regarding each prisoner: (i) the prisoner's criminal record, (ii) the*
108 *prisoner's sentences and scheduled date of release, and (iii) the appropriate locality for a commitment*
109 *petition.*

110 *B. Each month, the Director shall review the database of prisoners convicted of sexually violent*
111 *offenses and identify all prisoners who are scheduled for release from prison no earlier than ten months,*
112 *but no later than eight months from the date of such review. Upon the identification of such prisoners,*
113 *the Director shall forward their name, their scheduled date of release, and a copy of their file to the*
114 *CRC for assessment.*

115 *§ 37.1-70.5. CRC assessment of prisoners eligible for commitment as sexually violent predators;*
116 *mental health examination; recommendation to Attorney General.*

117 *A. Within forty-five days of receiving notice from the Director pursuant to § 37.1-70.4 regarding a*
118 *prisoner who has been convicted of a sexually violent offense, the CRC shall (i) complete its assessment*
119 *of such prisoner for possible commitment as a sexually violent predator pursuant to subsection B and*
120 *(ii) forward its recommendation regarding the prisoner, in written form, to the Attorney General*
121 *pursuant to subsection C.*

B. CRC assessments of prisoners convicted of sexually violent offenses shall include a mental health examination, including a personal interview, of the prisoner by a licensed psychiatrist or a licensed clinical psychologist, designated by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, who is skilled in the diagnosis and treatment of mental abnormalities and disorders associated with violent sex offenders, and who is not a member of the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner is a sexually violent predator as defined by § 37.1-70.1 and forward the results of this evaluation and any supporting documents to the CRC for its review. The CRC assessment shall also include a review of (i) the prisoner's institutional history and treatment record, if any, (ii) the prisoner's criminal background, and (iii) any other factor which is relevant to the determination of whether such prisoner is a sexually violent predator.

C. Following the examination and review of a prisoner conducted pursuant to subsection B, the CRC shall recommend that such prisoner (i) be committed as a sexually violent predator pursuant to this article, (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 is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC shall recommend that a prisoner enter a conditional release program if it finds that (i) such prisoner does not need inpatient hospitalization, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he would need inpatient hospitalization, (ii) appropriate outpatient supervision and treatment are reasonably available, (iii) there is significant reason to believe that the prisoner, if conditionally released, would comply with the conditions specified, and (iv) conditional release will not present an undue risk to public safety.

§ 37.1-70.6. Attorney General review of prisoners convicted of sexually violent offenses; 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 a prisoner convicted of a sexually violent offense or upon receipt of a court order referring an unrestorably incompetent defendant for review pursuant to § 19.2-169.3, the Attorney General shall have forty-five days to conduct a review of such prisoner or defendant and (i) file a petition for the civil commitment of such 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 unrestorable incompetent defendant, that he will not file a petition for commitment. Petitions for commitment shall be filed in the circuit court wherein the prisoner was last convicted of a sexually violent offense or wherein the defendant was deemed an unrestorable incompetent and referred for sexual predator commitment review pursuant to § 19.2-169.3.

B. In determining whether to file a petition to civilly commit a prisoner as a sexually violent predator, the Attorney General shall review (i) the CRC recommendation and its reasoning, (ii) the results of the mental health examination conducted pursuant to § 37.1-70.5, (iii) the prisoner's institutional history and treatment record, if any, (iv) the prisoner's criminal offense history, and (v) any other factor relevant to the determination of whether the prisoner should be civilly committed as a sexually violent predator. Although the Attorney General shall consider the CRC recommendation as part of the review, the CRC recommendation is not binding upon the Attorney General.

C. In determining whether to file a petition to civilly commit a defendant as a sexually violent predator, the Attorney General shall review (i) the defendant's warrant or indictment, (ii) the competency report completed pursuant to § 19.2-169.1, (iii) the report and recommendations prepared by the director of the defendant's treating facility pursuant to § 19.2-169.3, (iv) the defendant's criminal offense history, (v) information about the alleged crime, and (vi) any other factor relevant to the determination of whether the defendant should be civilly committed as a sexually violent predator.

§ 37.1-70.7. Probable cause hearing.

A. Upon the filing of a petition alleging that a prisoner or defendant is a sexually violent predator, the circuit court shall schedule a hearing within thirty days to determine whether probable cause exists to believe that the prisoner or defendant named in the petition is a sexually violent predator. A copy of the petition shall be personally served on the prisoner or defendant named in the petition, his attorney, and his guardian or committee, if applicable. 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 prisoner or defendant at the time the petition is served.

183 B. Prior to any hearing under this section, the judge shall ascertain if the person whose commitment
184 is sought is represented by counsel, and if he is not represented by counsel, the judge shall appoint an
185 attorney-at-law to represent him. However, if such person requests an opportunity to employ counsel,
186 the court shall give him a reasonable opportunity to employ counsel at his own expense.

187 C. At the probable cause hearing, the judge shall (i) verify the prisoner's or defendant's identity and
188 (ii) determine whether probable cause exists to believe that the person is a sexually violent predator. In
189 the case of a prisoner, if the judge finds that there is not probable cause to believe that the prisoner is
190 a sexually violent predator, the judge shall dismiss the petition and the prisoner shall remain in the
191 custody of the Department of Corrections until his scheduled date of release from prison. In the case of
192 a defendant, if the judge finds that there is not probable cause to believe the defendant is a sexually
193 violent predator, the judge shall dismiss the petition and order that the defendant be released,
194 committed pursuant to § 37.1-67.3, or certified pursuant to § 37.1-65.1. If the judge finds that probable
195 cause exists to believe that the prisoner or defendant is a sexually violent predator, the judge shall
196 order that he remain in custody in a secure facility until a trial is conducted to determine whether he
197 should be involuntarily committed as a sexually violent predator.

198 § 37.1-70.8. Right to assistance of experts; compensation.

199 A. Any prisoner or defendant who is the subject of a petition under this article shall have, prior to
200 trial, the right to employ experts at his own expense to perform examinations and testify on his behalf.
201 However, if a prisoner or defendant has not employed an expert and requests expert assistance, the
202 judge shall appoint such experts as he deems necessary to perform examinations and participate in the
203 trial on the person's behalf. Any expert employed or appointed pursuant to this section shall have
204 reasonable access to all relevant medical and psychological records and reports pertaining to the
205 prisoner or defendant for which he has been employed or appointed to represent.

206 B. Each psychiatrist, psychologist or other expert appointed by the court to render professional
207 service pursuant to this article who is not regularly employed by the Commonwealth of Virginia, except
208 by the University of Virginia School of Medicine and the Medical College of Virginia, shall receive a
209 reasonable fee for such service. The fee shall be determined in each instance by the court that
210 appointed the expert, in accordance with guidelines established by the Supreme Court after consultation
211 with the Department of Mental Health, Mental Retardation and Substance Abuse Services. The fee shall
212 not exceed \$400; however, in addition, if any such expert is required to appear as a witness in any
213 hearing held pursuant to this article, he shall receive mileage and a fee of \$100 for each day during
214 which he is required to serve. An itemized account of expenses, duly sworn to, must be presented to the
215 court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury,
216 and be charged against the appropriations made to pay criminal charges. Allowance for the fee and for
217 the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court
218 for payment out of the appropriation to pay criminal charges.

219 § 37.1-70.9. Trial; right to trial by jury; standard of proof.

220 A. Within forty-five days after the completion of the probable cause hearing held pursuant to
221 § 37.1-70.7, the court shall conduct a trial to determine whether the person who is the subject of the
222 petition is a sexually violent predator.

223 B. The Attorney General and the person who is the subject of the petition shall have the right to a
224 trial by jury. If no demand is made by either party for a trial by jury, the trial shall be before the court.
225 If a jury determines a person to be a violent sexual predator, a unanimous verdict shall be required.

226 C. The court or jury shall determine whether, beyond a reasonable doubt, the person who is the
227 subject of the petition is a sexually violent predator. If the court or jury is not satisfied beyond a
228 reasonable doubt that the person is a sexually violent predator, the court shall, in the case of a
229 prisoner, direct that he be returned to the custody of the Department of Corrections until his scheduled
230 date of release, or that the prisoner be unconditionally released if his scheduled date of release has
231 passed. In the case of a defendant, if the court or jury is not satisfied beyond a reasonable doubt that
232 the defendant is a sexually violent predator, the court shall order that the defendant be released,
233 committed pursuant to § 37.1-67.3, or certified pursuant to § 37.1-65.1.

234 If the court or jury finds the prisoner or defendant to be a sexually violent predator, the court shall
235 then determine the nature of treatment the prisoner or defendant is to receive. If the court finds, in its
236 determination of treatment needs, that alternatives to involuntary confinement and treatment have been
237 investigated and deemed unsuitable and there is no less restrictive alternative to institutional
238 confinement and treatment, the judge shall by written order and specific findings so certify and order
239 that the prisoner or defendant be committed to the custody of the Department of Mental Health, Mental
240 Retardation and Substance Abuse Services for appropriate treatment and confinement in a secure facility
241 designated by the Commissioner.

242 However, if the court finds, in determining the treatment needs of a prisoner or defendant found to
243 be a sexually violent predator, that less restrictive alternatives to institutional confinement and treatment
244 have been investigated and are deemed suitable, and if the judge finds specifically that the prisoner or

defendant meets the criteria for conditional release set forth in § 37.1-70.13, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.21, or such other appropriate course of treatment as may be necessary to meet the needs of the individual. The community services board which serves the political subdivision in which the person resides shall recommend a specific course of treatment and programs for provision of such treatment. The community services board shall monitor the person's compliance with such treatment as may be ordered by the court under this section, and the person'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 article. Upon failure of the prisoner or defendant to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to the person undergoing outpatient treatment and after a hearing, order the person committed as a sexually violent predator for treatment at a hospital.

In the event of a mistrial, the court shall direct that the prisoner or defendant be held at an appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial shall be held within forty-five days of the previous trial.

§ 37.1-70.10. Placement of committed persons.

Any person committed pursuant to this article shall be placed in the custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. At all times, persons committed for control, care and treatment by the Department of Mental Health, Mental Retardation, and Substance Abuse Services pursuant to this article shall be kept in a secure facility and such persons shall be segregated at all times from other patients under the supervision of the Commissioner who have not been committed as sexually violent predators. The Commissioner may make interfacility transfers and treatment and management decisions regarding committed persons in his custody without obtaining prior approval of or review by the committing court.

§ 37.1-70.11. Review of continuation of confinement hearing; procedure and reports; disposition.

A. The committing court shall conduct a hearing twelve months after the date of commitment to assess each committed person's need for inpatient hospitalization. A hearing for assessment shall be conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court.

B. Prior to the hearing, the Commissioner shall provide to the court a report reevaluating the committed person's condition and recommending treatment, to be prepared by a licensed psychiatrist or a licensed clinical psychologist who shall be skilled in the diagnosis and treatment of mental abnormalities and personality disorders associated with violent sex offenders, and qualified by training and experience to perform forensic evaluations. If the Commissioner's report recommends release or the committed person requests release, the committed person's condition and need for inpatient hospitalization shall be evaluated by a second person with such credentials who is not currently treating the committed person. Any professional person who conducts a second evaluation of a committed person shall submit a report of his findings to the court and the Commissioner. A copy of any report submitted pursuant to this subsection shall be sent to the Attorney General.

C. The burden of proof at the hearing shall be upon the Commonwealth to prove to the court beyond a reasonable doubt that the committed person remains a sexually violent predator.

D. If the court finds, based upon the report and other evidence provided at the hearing, that the committed person's condition has so changed that he is no longer a sexually violent predator, the court shall (i) release the committed person from confinement if he does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in § 37.1-70.13, provided the court has approved a discharge plan prepared jointly by the hospital staff and the appropriate community services board or (ii) place the committed person on conditional release if he meets the criteria for conditional release, and the court has approved a conditional release plan prepared jointly by the hospital staff and the appropriate community services board. However, if the court finds that the committed person remains a sexually violent predator, it shall order that he remain in the custody of the Commissioner for secure inpatient hospitalization and treatment.

§ 37.1-70.12. Petition for release; hearing; procedures.

A. The Commissioner may petition the committing court for conditional or unconditional release of the committed person at any time he believes the committed person's condition has so changed that he is no longer a sexually violent predator in need of treatment and secure confinement. 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 jointly by the hospital and the appropriate community services

board. The committed person may petition the committing court for release only once in each year in which no annual judicial review is required pursuant to § 37.1-70.11. The party petitioning for release shall transmit a copy of the petition to the Attorney General.

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 § 37.1-70.11.

§ 37.1-70.13. Conditional release; criteria; conditions; reports.

At any time the court considers the committed person's need for inpatient hospitalization pursuant to this article, it shall place the committed person on conditional release if it finds that (i) based on consideration of the factors which the court must consider in its commitment decision, he does not need inpatient hospitalization but needs outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he would need inpatient hospitalization; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that the committed person, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released committed person to such orders and conditions it deems will best meet the committed person's need for treatment and supervision and best serve the interests of justice and society.

The community services board serving the locality in which the committed person will reside upon release shall implement the court's conditional release orders and shall submit written reports to the court on the committed person's progress and adjustment in the community no less frequently than every six months.

§ 37.1-70.14. Emergency custody of conditionally released person; revocation of conditional release.

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 on conditional release within his judicial district has violated the conditions of his release and is no longer a proper subject for conditional release. The emergency custody order shall require a law-enforcement officer take the person into custody immediately and transport him to a convenient location specified in the order where a person designated by the community services board who is skilled in the diagnosis and treatment of mental abnormalities and personality disorders shall, as soon as practicable, evaluate him for the purpose of determining the nature and degree of violation of the conditions of his release.

The person on conditional release shall remain in custody until a hearing is held in the circuit court on the motion or petition to determine if he should be returned to the custody of the Commissioner. Such hearing shall be given priority on the court's docket. If upon hearing the evidence, the court finds that the person on conditional release has violated the conditions of his release and that the violation of conditions was sufficient to render him no longer suitable for conditional release, the court shall revoke his conditional release and order him returned to the custody of the Commissioner for inpatient treatment. The person may petition the original committing court for re-release pursuant to the conditions set forth in § 37.1-70.12 no sooner than six months from his return to custody.

§ 37.1-70.15. Modification or removal of conditions; notice; objections; review.

A. The committing court may modify conditions of release or remove conditions placed on release pursuant to § 37.1-70.13, upon petition of the supervising community services board, the Attorney General, or the person on conditional release, or upon its own motion based on reports of the supervising community services board. However, the person on conditional release may petition only annually commencing six months after the conditional release order is issued. Upon petition, the court shall require the supervising community services board to provide a report on the person's progress while on conditional release.

B. As it deems appropriate based on the community services board's report and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order, and their right to object to it within ten days of its issuance, to the person, the supervising community services board and the Attorney General. The proposed order shall become final if no objection is filed within ten days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the person on conditional release, the Attorney General, and the supervising community services board have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release.

§ 37.1-70.16. Representation of Commonwealth and person subject to commitment; nature of proceedings.

The Attorney General shall represent the Commonwealth in all proceedings held pursuant to this article, except in emergency commitment hearings held pursuant to § 37.1-70.14. The Attorney General shall receive prior written notice of all proceedings held under this article in which he is to represent the Commonwealth.

The court shall appoint counsel for the person subject to commitment or conditional release pursuant to subsection B of § 37.1-70.7 unless such person waives his right to counsel. The court shall consider

368 *appointment of the person who represented the person in previous proceedings.*
369 *All proceedings held under this article shall be civil proceedings.*

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