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HOUSE BILL NO. 1843**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Joint Conference Committee
on February 28, 2009)

(Patron Prior to Substitute—Delegate Griffith)

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, relating to civil commitment of sexually violent predators; penalties.

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

4. *In all cases involving sexually violent offenses, as defined in § 37.2-900, and in all 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,*

60 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
61 for 50 years;

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

64 §6. All dockets in juvenile cases shall be governed by the provisions of § 16.1-306 F.

65 § 16.1-300. Confidentiality of Department records.

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

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

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

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

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

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

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

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

93 8. Any attorney for the Commonwealth, any pretrial services officer, local community-based
94 probation officer and adult probation and parole officer for the purpose of preparing pretrial
95 investigation, including risk assessment instruments, presentence reports, including those provided in
96 § 19.2-299, discretionary sentencing guidelines worksheets, including related risk assessment instruments,
97 as directed by the court pursuant to subsection C of § 19.2-298.01 or any court-ordered post-sentence
98 investigation report;

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

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

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

115 12. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for
116 purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

117 A designated individual treating or responsible for the treatment of a person may inspect such reports
118 and records as are kept by the Department on such person or receive copies thereof, when the person
119 who is the subject of the reports and records or his parent, guardian, legal custodian or other person
120 standing in loco parentis if the person is under the age of 18, provides written authorization to the
121 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 purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.*

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

B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that

183 adjudication and any subsequent adjudication of delinquency, other than those records specified in
184 subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that
185 certain records or portions thereof remain confidential to the extent necessary to protect any juvenile
186 victim or juvenile witness.

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

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

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

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

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

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

219 § 37.2-900. Definitions.

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

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

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

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

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

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

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

233 "Sexually violent offense" means a felony under (i) former § 18-54, former § 18.1-44, subdivision 5
234 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
235 18.2-67.3; (iii) subdivision 1 of § 18.2-31 where the abduction was committed with intent to defile the
236 victim; (iv) § 18.2-32 when the killing was in the commission of, or attempt to commit rape, forcible
237 sodomy, or inanimate or animate object sexual penetration; (v) the laws of the Commonwealth for a
238 forcible sexual offense committed prior to July 1, 1981, where the criminal behavior is set forth in
239 § 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
240 commit any of the above offenses.

241 "Sexually violent predator" means any person who (i) has been convicted of a sexually violent
242 offense, or has been charged with a sexually violent offense and is unrestorably incompetent to stand
243 trial pursuant to § 19.2-169.3; and (ii) because of a mental abnormality or personality disorder, finds it
244 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. 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. In no event shall the respondent be permitted to retain 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 indicated. This 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.~~

B. 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

306 the prisoner.

307 ~~EB.~~ Each month, the Director shall review the database and identify all such prisoners who are
308 scheduled for release from prison within 10 months from the date of such review who receive a score of
309 five or more on the Static-99 or a similar score on a comparable, scientifically validated instrument
310 designated by the Commissioner, or a score of four on the Static-99 or a similar score on a comparable,
311 scientifically validated instrument if the sexually violent offense mandating the prisoner's evaluation
312 under this section was a violation of § 18.2-67.3 where the victim was under the age of 13 and suffered
313 physical bodily injury and any of the following where the victim was under the age of 13: § 18.2-61,
314 18.2-67.1, or 18.2-67.2.

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

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

321 § 37.2-904. CRC assessment of prisoners or defendants eligible for commitment as sexually violent
322 predators; mental health examination; recommendation.

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

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

337 The CRC assessment may be based on:

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

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

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

357 E. Notwithstanding any other provision of law, any mental health professional employed or appointed
358 pursuant to subsection B or § 37.2-907 shall be permitted to copy and possess any presentence or
359 postsentence reports and victim impact statements. The mental health professional shall not disseminate
360 the contents of the reports or the actual reports to any person or entity and shall only utilize the reports
361 for use in examinations, creating reports, and testifying in any proceedings pursuant to this article.

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

365 § 37.2-905. Review of prisoners convicted of a sexually violent offense; review of unrestorably
366 incompetent defendants charged with sexually violent offenses; petition for commitment; notice to
367 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.

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

C. At the probable cause hearing, the judge shall (i) verify the respondent's identity and (ii) determine whether probable cause exists to believe that he is a sexually violent predator. The existence of any prior convictions or charges may be shown with affidavits or documentary evidence. The details underlying the commission of an offense or behavior that led to a prior conviction or charge may be shown by affidavits or documentary evidence, including but not limited to, hearing and/or trial transcripts, probation and parole and sentencing reports, police and sheriffs' reports, and mental health evaluations. If he meets the qualifications set forth in subsection B of § 37.2-904, the expert witness

429 may be permitted to testify at the probable cause hearing as to his diagnosis, his opinion as to whether
430 the respondent meets the definition of a sexually violent predator, his recommendations as to treatment,
431 and the basis for his opinions. Such opinions shall not be dispositive of whether the respondent is a
432 sexually violent predator.

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

440 § 37.2-907. Right to assistance of experts; compensation.

441 A. Upon a finding of probable cause the judge shall ascertain if the respondent is requesting expert
442 assistance. If the respondent requests expert assistance and has not employed an expert at his own
443 expense, the judge shall appoint such experts as he deems necessary; however, if the respondent refused
444 to cooperate pursuant to § 37.2-901 any expert appointed to assist the respondent shall not be permitted
445 to testify at trial *nor shall any report of any such expert be admissible*. Any expert employed or
446 appointed pursuant to this section shall be a licensed psychiatrist or licensed clinical psychologist who is
447 skilled in the diagnosis, treatment, and risk assessment of sex offenders and who is not a member of the
448 CRC. Any expert employed or appointed pursuant to this section shall have reasonable access to all
449 relevant medical and psychological records and reports pertaining to the respondent. *No such expert*
450 *shall be permitted to testify as a witness on behalf of the respondent unless that expert has prepared a*
451 *written report detailing his findings and conclusions and has submitted his report, along with all*
452 *supporting data, to the court, the Attorney General, and counsel for the respondent. Such report shall be*
453 *submitted no less than 45 days prior to the trial of the matter unless a different time period is agreed to*
454 *by the parties.*

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

468 § 37.2-908. Trial; right to trial by jury; standard of proof; discovery.

469 A. Within ~~90~~ 120 days after the completion of the probable cause hearing held pursuant to
470 § 37.2-906, the court shall conduct a trial to determine whether the respondent is a sexually violent
471 predator. A continuance extending the case beyond the ~~90~~ 120 days may be granted to either the
472 Attorney General or the respondent upon good cause shown or by agreement of the parties.

473 B. The Attorney General or the respondent shall have the right to a trial by jury. Seven persons from
474 a panel of 13 shall constitute a jury in such cases. If a jury determines that the respondent is a sexually
475 violent predator, a unanimous verdict shall be required. If no demand is made by either party for a trial
476 by jury, the trial shall be before the court.

477 C. The court or jury shall determine whether, by clear and convincing evidence, the respondent is a
478 sexually violent predator. If the court or jury does not find clear and convincing evidence that the
479 respondent is a sexually violent predator, the court shall, in the case of a prisoner, direct that he be
480 returned to the custody of the Department of Corrections. The Department of Corrections shall
481 immediately release him if his scheduled release date has passed, or hold him until his scheduled release
482 date. In the case of a defendant, if the court or jury does not find by clear and convincing evidence that
483 he is a sexually violent predator, the court shall order that he be discharged, involuntarily admitted
484 pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to § 37.2-806.

485 If he meets the qualifications set forth in subsection B of § 37.2-904 or 37.2-907, any expert witness
486 may be permitted to testify at the trial as to his diagnosis, his opinion as to whether the respondent
487 meets the definition of a sexually violent predator, his recommendation as to treatment, and the basis for
488 his opinions. Such opinions shall not be dispositive of whether the respondent is a sexually violent
489 predator.

490 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. At the conclusion of testimony on the possible alternatives to commitment, the court shall consider: (i) the treatment needs of the respondent; (ii) whether less restrictive alternatives to commitment have been investigated and deemed suitable; (iii) whether any such alternatives will 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, and location of proposed residence; and (iv) whether any such alternatives will accommodate needed and appropriate regular psychological or physiological testing, including but not limited to, penile plethysmograph testing or sexual interest testing. If the court finds these criteria are adequately addressed and the court finds that the respondent meets the criteria for conditional release set forth in § 37.2-912, the court 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 and is no longer a proper subject for conditional release. *The judicial officer shall forward a copy of the petition and the emergency custody order to the circuit court that conditionally released the respondent, the Attorney General, and the Department. Petitions and orders for emergency custody of conditionally released respondents pursuant to this section may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.*

B. The emergency custody order shall require a law-enforcement officer to take the ~~person~~ *respondent* into custody immediately ~~and transport him~~. *A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section. The respondent shall be transported to a convenient location secure facility specified in the order by the Department where a person designated by the Department who is skilled in the diagnosis and, treatment of mental abnormalities and personality disorders, and risk assessment of sex offenders shall, as soon as practicable, evaluate him for the purpose of determining the nature and degree of violation of the*

conditions of his release. A copy of the petition shall be sent to the Attorney General and the Commissioner. Petitions and orders for emergency custody of conditionally released persons pursuant to this section may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures perform a mental health examination of the respondent, including a personal interview. The mental health evaluator shall consider the criteria in § 37.2-912 and shall opine whether the respondent remains suitable for conditional release. The evaluator shall report his findings and conclusions in writing to the Department, the Office of the Attorney General, counsel for the respondent, and the court in which the petition was filed. The evaluator's report shall become part of the record in the case.

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

D. The respondent's failure to comply with the conditions of release, including outpatient treatment, may be admitted into evidence. The evaluator designated in subsection B may be permitted to testify at the hearing as to his diagnosis, his opinion as to whether the respondent remains suitable for conditional release, his recommendation as to treatment and supervision, and the basis for his opinions. If upon hearing the evidence, the court finds that the ~~person~~ respondent 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 secure inpatient treatment. The ~~person~~ respondent may petition the original committing court for re-release pursuant to the conditions set forth in § 37.2-911 no sooner than six months from his return to custody. The party respondent petitioning for re-release shall transmit a copy of the petition to the Attorney General and the Commissioner.

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

A. The ~~committing~~ court that placed the person on conditional release may modify conditions of release or remove conditions placed on release pursuant to § 37.2-912, upon petition of the Department, the supervising parole or probation officer, the Attorney General, or the person on conditional release or upon its own motion based on reports of the Department or the supervising parole or probation officer. 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 Department or, if the person is on parole or probation, the person's parole or probation officer to provide a report on the person's progress while on conditional release. The party petitioning for release shall transmit a copy of the petition to the Attorney General and the Commissioner.

B. As it deems appropriate based on the Department's or parole or probation officer'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 21 days of its issuance to the person, the Department or parole or probation officer, and the Attorney General. The proposed order shall become final if no objection is filed within 21 days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the person on conditional release, the Attorney General, and the Department or the parole or probation officer have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release.

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

Any person placed on conditional release pursuant to this chapter who leaves the Commonwealth 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

737 *licensed clinical psychologist who is experienced in the diagnosis, treatment, and risk assessment of sex*
738 *offenders.*

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

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

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