

# VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

## CHAPTER 121

*An Act to amend and reenact §§ 37.2-906 and 37.2-915 of the Code of Virginia, relating to commitment of sexually violent predators; probable cause hearing; use of video and audio communication system.*

[S 461]

Approved March 6, 2012

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

**1. That §§ 37.2-906 and 37.2-915 of the Code of Virginia are amended and reenacted as follows:**

§ 37.2-906. Probable cause hearing; procedures.

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 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 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. *Any hearing or proceeding under this section may be conducted using a two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses. Any two-way electronic video and audio communication system shall meet the standards set forth in subsection B of § 19.2-3.1.*

C. 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.

§ D. A respondent who has refused to cooperate with a mental health examination required pursuant to § 37.2-904 may, within 21 days of the retention of counsel or appointment of counsel, rescind his refusal and elect to cooperate with the mental health examination. Counsel for the respondent shall provide written notice of the respondent's election to cooperate with the mental health examination to the court and the attorney for the Commonwealth within 30 days of the retention or appointment of counsel, and the probable cause hearing shall be stayed until 30 days after receipt of the mental health examiner's report. The mental health examination shall be conducted in accordance with subsection B of § 37.2-904. Results of the evaluation shall be filed with the court and copies of the results shall be provided to counsel for the parties. The mental health examiner's itemized account of expenses, duly sworn to, shall be presented to the court and, when allowed, shall be certified to the Supreme Court for payment out of the state treasury and shall be charged against the appropriations made to pay criminal charges.

In the event that a respondent refuses to cooperate with the mental health examination required by § 37.2-904 or fails or refuses to cooperate with the mental health examination following rescission of his refusal pursuant to this subsection, the court shall admit evidence of such failure or refusal and shall bar the respondent from introducing his own expert psychiatric and psychological evidence.

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

§ F. In the case of a prisoner in the custody of the Department of Corrections, if the judge finds that there is not probable cause to believe that the respondent is a sexually violent predator, the judge shall

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

§ 37.2-915. 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 chapter. The Attorney General shall receive prior written notice of all proceedings held under this chapter 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~~ C of § 37.2-906 unless the person waives his right to counsel. The court shall consider appointment of the person who represented the person in previous proceedings.

All proceedings held under this chapter shall be civil proceedings.