

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 662

An Act to amend and reenact §§ 37.2-910, 37.2-911, 37.2-913, and 37.2-914 of the Code of Virginia, relating to sexually violent predators; notice of hearings; conditional release plan.

[H 2303]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-910, 37.2-911, 37.2-913, and 37.2-914 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-910. Review of continuation of secure inpatient treatment hearing; procedure and reports; disposition.

A. The committing court shall conduct a hearing 12 months after the date of commitment to assess each respondent's need for secure inpatient treatment. 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. 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. Whenever practicable, the hearing for assessment shall be conducted using a two-way electronic video and audio communication system that meets the standards set forth in subsection B of § 19.2-3.1.

B. Prior to the hearing, the Commissioner shall provide to the court a report reevaluating the respondent's condition and recommending treatment. The report shall be prepared by a licensed psychiatrist or a licensed clinical psychologist skilled in the diagnosis and risk assessment of sex offenders and knowledgeable about the treatment of sex offenders. If the Commissioner's report recommends discharge or the respondent requests discharge, the respondent's condition and need for secure inpatient treatment shall be evaluated by a second person with such credentials who is not currently treating the respondent. Any professional person who conducts a second evaluation of a respondent 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 and to any attorney appointed or retained for the respondent.

C. The burden of proof at the hearing shall be upon the Commonwealth to prove to the court by clear and convincing evidence that the respondent remains a sexually violent predator.

D. If the court finds, based upon the report and other evidence provided at the hearing, that the respondent is no longer a sexually violent predator, the court shall release the respondent from secure inpatient treatment. If the court finds that the respondent remains a sexually violent predator, it shall order that he remain in the custody of the Commissioner for secure inpatient hospitalization and treatment or that he be conditionally released. To determine if the respondent shall be conditionally released, the court shall determine if the respondent meets the criteria for conditional release set forth in § 37.2-912. If the court orders that the respondent be conditionally released, the court shall allow the Department no less than 30 days and no more than 60 days to prepare a conditional release plan. Any such plan must 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 called for, 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. *In preparing the conditional release plan, the Department shall notify the attorney for the Commonwealth, the chief law-enforcement officer, and the governing body for the locality that is the proposed location of the respondent's residence upon his conditional release.*

If the court places the respondent on 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.

§ 37.2-911. Petition for release; hearing; procedures.

A. The Commissioner may petition the committing court for conditional release of the committed respondent at any time he believes the committed respondent's condition has so changed that he is no longer 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 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, *and the attorney for the Commonwealth for the locality that is the proposed location of the respondent's residence upon his conditional release.*

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.

§ 37.2-913. 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 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, *and the attorney for the Commonwealth for the locality that is the location of the respondent's residence.* 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 respondent into custody immediately. 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 secure facility specified by the Department where a person designated by the Department who is skilled in the diagnosis and risk assessment of sex offenders and knowledgeable about the treatment of sex offenders shall, as soon as practicable, 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 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 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 respondent may petition the 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 respondent petitioning for re-release shall transmit a copy of the petition to the Attorney General ~~and~~, the Commissioner, *and the attorney for the Commonwealth for the locality that is the proposed location of the respondent's residence.*

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

A. The 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, *and the attorney for the Commonwealth for the locality that is the location of the respondent's residence.*

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, *and the attorney for the Commonwealth for the locality that is the location of the respondent's residence.* 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, *and the attorney for the Commonwealth for the locality that is the location of the respondent's residence shall* 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.