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## SENATE BILL NO. 973

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary  
on January 23, 2023)

(Patron Prior to Substitute—Senator Peake)

A *BILL to amend and reenact § 37.2-912 of the Code of Virginia, relating to civil commitment of sexually violent predators; penalty.*

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

**1. That § 37.2-912 of the Code of Virginia is amended and reenacted as follows:**

**§ 37.2-912. Conditional release; criteria; conditions; reports; penalty.**

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)~~ (a) 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)~~ (b) the results of any actuarial test, including the likelihood of recidivism; ~~(iii)~~ (c) the results of any diagnostic tests previously administered to the respondent under this chapter; ~~(iv)~~ (d) 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)~~ (e) the respondent's present mental condition; ~~(vi)~~ (f) the respondent's response to treatment while in secure inpatient treatment or on conditional release, including his disciplinary record and any infractions; ~~(vii)~~ (g) the respondent's living arrangements and potential employment if he were to be placed on conditional release; ~~(viii)~~ (h) the availability of transportation and appropriate supervision to ensure participation by the respondent in necessary treatment; and ~~(ix)~~ (i) 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.

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 Behavioral Health and Developmental 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.).

C. Any person placed on conditional release pursuant to this chapter who tampers with or in any way attempts to circumvent the operation of his GPS equipment is guilty of a Class 6 felony.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department**

