

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 2.2-3703, 37.1-70.1 through 37.1-70.6, 37.1-70.9 through 37.1-70.16, 37.1-103, 37.1-104, and 37.1-104.1 of the Code of Virginia, relating to sexually violent predators.

[H 2445]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3703, 37.1-70.1 through 37.1-70.6, 37.1-70.9 through 37.1-70.16, 37.1-103, 37.1-104, and 37.1-104.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records.

A. The provisions of this chapter shall not apply to:

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § 2.2-5207; and

4. The Virginia State Crime Commission; and

5. The Commitment Review Committee and any documents, evaluations, assessments and proceedings involving the commitment of sexually violent predators under Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of Title 37.1.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

§ 37.1-70.1. Definitions.

The following words and phrases when used in this article shall have the following meanings, unless the context clearly indicates otherwise:

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

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

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

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

"Sexually violent offense" means an instant violation of (i) a felony conviction under former § 18-54, former § 18.1-44, §§ 18.2-61, 18.2-67.1, or § 18.2-67.2 or subdivision A 1 of § 18.2-67.3 or (ii) a felony conviction under the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior on which the conviction is based is set forth in § 18.2-67.1 or § 18.2-67.2 or subdivision A 1 of § 18.2-67.3.

"Sexually violent predator" means any person who (i) has been convicted of a sexually violent offense or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial pursuant to § 19.2-169.3 and, (ii) suffers from because of a mental abnormality or personality disorder, finds it difficult to control his predatory behavior and (iii) receives a score of 28 or above on the Virginia Criminal Sentencing Commission Sex Offender Risk Assessment Instrument that is in effect on the date of assessment.

§ 37.1-70.2. Rights of prisoners and defendants.

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

1. To receive adequate notice of the proceeding.
2. To be represented by counsel.

- 57 3. To remain silent or to testify.
 58 4. To be present during the hearing or trial.
 59 5. To present evidence and to cross-examine witnesses.
 60 6. To view and copy all petitions and reports in the court file.

61 *In no event shall a prisoner or defendant be permitted, as a part of any proceedings under this*
 62 *article, to raise challenges to the validity of his prior criminal sentences or institutional convictions.*

63 *In the event the prisoner or defendant refuses to cooperate with the mental health examination*
 64 *required under § 37.1-70.5, the court may admit evidence of such refusal and may bar the prisoner or*
 65 *defendant from introducing his own expert psychiatric or psychological evidence.*

66 § 37.1-70.3. Commitment Review Committee; membership.

67 A. The Director of the Department of Corrections shall establish a Commitment Review Committee
 68 (CRC) to screen, evaluate, and make recommendations regarding prisoners in the custody of the
 69 Department of Corrections for the purposes of this article. The CRC shall be under the supervision of
 70 the Department of Corrections. *Members of the CRC and any licensed psychiatrists or licensed clinical*
 71 *psychologists providing examinations under subsection B of § 37.1-70.5 shall be immune from personal*
 72 *liability while acting within the scope of their duties except for gross negligence or intentional*
 73 *misconduct.*

74 B. The CRC shall consist of seven members to be appointed as follows: (i) three full-time employees
 75 of the Department of Corrections, appointed by the Director of the Department of Corrections; (ii) three
 76 full-time employees of the Department of Mental Health, Mental Retardation and Substance Abuse
 77 Services, appointed by the Commissioner, at least one of whom shall be a psychiatrist or psychologist
 78 licensed to practice in the Commonwealth of Virginia who is skilled in the diagnosis of mental
 79 abnormalities and personality disorders associated with violent sex offenders; and (iii) one assistant or
 80 deputy attorney general, appointed by the Attorney General. Initial appointments by the Director and the
 81 Commissioner shall be for terms as follows: one member each for two years, one member each for three
 82 years, and one member each for four years. The initial appointment by the Attorney General shall be for
 83 a term of four years. Thereafter, all appointments to the CRC shall be for terms of four years, and
 84 vacancies shall be filled for the unexpired terms. Five members shall constitute a quorum.

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

87 § 37.1-70.4. Treatment plans; database of prisoners convicted of sexually violent offenses; maintained
 88 by Department of Corrections; notice of pending release to CRC.

89 A. The Director shall establish and maintain a treatment program for prisoners convicted pursuant to
 90 Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 and committed to the custody of the Department
 91 of Corrections. Such program shall include a clinical assessment of all such prisoners upon receipt into
 92 the custody of the Department of Corrections and the development of appropriate treatment plans if
 93 indicated. This program shall be operated under the direction of a licensed clinical psychiatrist or
 94 licensed clinical psychologist who is experienced in the diagnosis and treatment of mental abnormalities
 95 and disorders associated with criminal sexual offenders.

96 B. The Director of the Department of Corrections shall establish and maintain a database of prisoners
 97 in his custody who are incarcerated for sexually violent offenses. The database shall include the
 98 following information regarding each prisoner: (i) the prisoner's criminal record, (ii) the prisoner's
 99 sentences and scheduled date of release, and (iii) the appropriate locality for a commitment petition.

100 C. Each month, the Director shall review the database of prisoners incarcerated for sexually violent
 101 offenses and identify all such prisoners who are scheduled for release from prison ~~no earlier than ten~~
 102 ~~within 10 months, but no later than eight months~~ from the date of such review. Upon the identification
 103 of such prisoners, the Director shall forward their name, their scheduled date of release, and a copy of
 104 their file to the CRC for assessment.

105 § 37.1-70.5. CRC assessment of prisoners eligible for commitment as sexually violent predators;
 106 mental health examination; recommendation.

107 A. Within ~~forty-five~~ 90 days of receiving notice from the Director pursuant to § 37.1-70.4 regarding
 108 a prisoner who is incarcerated for a sexually violent offense, the CRC shall (i) complete its assessment
 109 of such prisoner for possible commitment pursuant to subsection B and (ii) forward its recommendation
 110 regarding the prisoner, in written form, to the Attorney General pursuant to subsection C.

111 B. CRC assessments of prisoners incarcerated for sexually violent offenses shall include a mental
 112 health examination, including a personal interview, of the prisoner by a licensed psychiatrist or a
 113 licensed clinical psychologist, designated by the Commissioner of the Department of Mental Health,
 114 Mental Retardation and Substance Abuse Services, who is skilled in the diagnosis and treatment of
 115 mental abnormalities and disorders associated with violent sex offenders, and who is not a member of
 116 the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner
 117 is a sexually violent predator as defined in § 37.1-70.1 and forward the results of this evaluation and any

118 supporting documents to the CRC for its review. The CRC assessment shall also include *consideration*
 119 *of the prisoner's score on the Virginia Criminal Sentencing Commission's Sex Offender Risk Assessment*
 120 *Instrument* and a review of (i) the prisoner's institutional history and treatment record, if any; (ii) the
 121 prisoner's criminal background; and (iii) any other factor which is relevant to the determination of
 122 whether such prisoner is a sexually violent predator.

123 C. Following the examination and review of a prisoner conducted pursuant to subsection B, the CRC
 124 shall recommend that such prisoner (i) be committed as a sexually violent predator pursuant to this
 125 article; (ii) not be committed, but be placed in a conditional release program as a less restrictive
 126 alternative; or (iii) not be committed because he does not meet the definition of a sexually violent
 127 predator. To assist the Attorney General in his review, the Department of Corrections, the CRC, and the
 128 psychiatrist or psychologist who conducts the mental health examination pursuant to this section shall
 129 provide the Attorney General with all evaluation reports, prisoner records, criminal records, medical
 130 files, and any other documentation relevant to determining whether a prisoner is a sexually violent
 131 predator.

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

139 § 37.1-70.6. Review of prisoners incarcerated for sexually violent offenses; unrestorably incompetent
 140 defendants charged with sexually violent offenses; petition for commitment; notice to Department of
 141 Corrections or referring court regarding disposition of review.

142 A. Upon receipt of a recommendation by the CRC regarding a prisoner incarcerated for a sexually
 143 violent offense or upon receipt of a court order referring an unrestorably incompetent defendant for
 144 review pursuant to § 19.2-169.3, the Attorney General shall have ~~forty-five~~ 90 days to conduct a review
 145 of such prisoner or defendant and (i) file a petition for the civil commitment of such prisoner or
 146 defendant as a sexually violent predator and stating sufficient facts to support such allegation or (ii)
 147 notify the Director and Commissioner in the case of a prisoner, or the referring court and the
 148 Commissioner in the case of an unrestorably incompetent defendant, that he will not file a petition for
 149 commitment. Petitions for commitment shall be filed in the circuit court wherein the prisoner was last
 150 convicted of a sexually violent offense or wherein the defendant was deemed unrestorably incompetent
 151 and referred for commitment review pursuant to § 19.2-169.3.

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

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

165 § 37.1-70.9. Trial; right to trial by jury; standard of proof.

166 A. Within ~~forty-five~~ 90 days after the completion of the probable cause hearing held pursuant to
 167 § 37.1-70.7, the court shall conduct a trial to determine whether the person who is the subject of the
 168 petition is a sexually violent predator.

169 B. The Attorney General or the person who is the subject of the petition shall have the right to a
 170 trial by jury. Seven persons from a panel of ~~thirteen~~ 13 shall constitute a jury in such cases. If a jury
 171 determines a person to be a violent sexual predator, a unanimous verdict shall be required. If no demand
 172 is made by either party for a trial by jury, the trial shall be before the court.

173 C. The court or jury shall determine whether, ~~beyond a reasonable doubt~~ *by clear and convincing*
 174 *evidence*, the person who is the subject of the petition is a sexually violent predator. If the court or jury
 175 ~~is not satisfied beyond a reasonable doubt~~ *does not find clear and convincing evidence* that the person is
 176 a sexually violent predator, the court shall, in the case of a prisoner, direct that he be returned to the
 177 custody of the Department of Corrections until his scheduled date of release, or that the prisoner be
 178 unconditionally released if his scheduled date of release has passed. In the case of a defendant, if the

179 court or jury is ~~not satisfied beyond a reasonable doubt~~ *does not find by clear and convincing evidence*
180 that the defendant is a sexually violent predator, the court shall order that the defendant be released,
181 committed pursuant to § 37.1-67.3, or certified pursuant to § 37.1-65.1.

182 If the court or jury finds the person to be a sexually violent predator, the court shall then determine
183 the nature of treatment the person is to receive. If the court finds, in its determination of treatment
184 needs, that alternatives to involuntary confinement and treatment have been investigated and deemed
185 unsuitable and there is no less restrictive alternative to institutional confinement and treatment, the judge
186 shall by written order and specific findings so certify and order that the person be committed to the
187 custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services for
188 appropriate treatment and confinement in a secure facility designated by the Commissioner. Persons
189 committed pursuant to this article are subject to the provisions of §§ 19.2-174.1 and 37.1-134.21.

190 However, if the court finds, in determining the treatment needs of a person found to be a sexually
191 violent predator, that less restrictive alternatives to institutional confinement and treatment have been
192 investigated and are deemed suitable, and if the judge finds specifically that the person meets the criteria
193 for conditional release set forth in § 37.1-70.13, the judge shall order outpatient treatment, day treatment
194 in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic
195 medication pursuant to § 37.1-134.21, or such other appropriate course of treatment as may be necessary
196 to meet the needs of the individual. ~~The community services board which serves the political subdivision~~
197 ~~in which the person resides~~ *Department of Mental Health, Mental Retardation and Substance Abuse*
198 *Services shall recommend a specific course of treatment and programs for provision of such treatment.*
199 ~~The community services board~~ *and shall monitor the person's compliance with such treatment as may be*
200 *ordered by the court under this section unless the person is on parole or probation, in which case the*
201 *parole or probation officer shall monitor the person's compliance, and the person's failure to comply*
202 *with involuntary outpatient treatment as ordered by the court may be admitted into evidence in*
203 *subsequent hearings held pursuant to the provisions of this article. Upon failure of the person to adhere*
204 *to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to the person*
205 *undergoing outpatient treatment and after a hearing, order the person committed as a sexually violent*
206 *predator for treatment at a hospital.*

207 In the event of a mistrial, the court shall direct that the prisoner remain in the secure custody of the
208 Department of Corrections or the defendant remain in the secure custody of the Department of Mental
209 Health, Mental Retardation and Substance Abuse Services until another trial is conducted. Any
210 subsequent trial following a mistrial shall be held within ~~forty-five~~ 90 days of the previous trial.

211 *All proceedings conducted hereunder are civil proceedings. However, no discovery other than that*
212 *provided in § 37.1-70.2 shall be allowed without prior leave of court, which may deny or limit discovery*
213 *in any such proceeding. Under no circumstances shall the prisoner or defendant be entitled to receive a*
214 *copy of the Victim Impact Statement or the presentence investigation report, provided that counsel for*
215 *the prisoner or defendant may, upon motion to the court and for good cause shown, review the Victim*
216 *Impact Statement or presentence investigation report outside the presence of his client.*

217 § 37.1-70.10. Placement of committed persons.

218 Any person committed pursuant to this article shall be placed in the custody of the Department of
219 Mental Health, Mental Retardation and Substance Abuse Services for control, care and treatment until
220 such time as the person's mental abnormality or personality disorder has so changed that the person will
221 not present an undue risk to public safety. ~~Such control, care and treatment shall be provided at a~~
222 ~~facility operated by~~ The Department of Mental Health, Mental Retardation and Substance Abuse
223 Services ~~and located inside the secure perimeter of a Department of Corrections' facility shall provide~~
224 ~~such control, care and treatment at a facility operated by it, or may contract with private or public~~
225 ~~entities, within or without the Commonwealth, and with other states to provide comparable control, care~~
226 ~~or treatment.~~ At all times, persons committed for control, care and treatment by the Department of
227 Mental Health, Mental Retardation and Substance Abuse Services pursuant to this article shall be kept in
228 a secure facility ~~and such~~. Persons committed under this article shall be segregated by sight and sound
229 at all times from prisoners in the custody of ~~the Director~~ a correctional facility. The Commissioner may
230 make treatment and management decisions regarding committed persons in his custody without obtaining
231 prior approval of or review by the committing court.

232 § 37.1-70.11. Review of continuation of confinement hearing; procedure and reports; disposition.

233 A. The committing court shall conduct a hearing ~~twelve~~ 12 months after the date of commitment to
234 assess each committed person's need for inpatient hospitalization. A hearing for assessment shall be
235 conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule
236 the matter for hearing as soon as possible after it becomes due, giving the matter priority over all
237 pending matters before the court.

238 B. Prior to the hearing, the Commissioner shall provide to the court a report reevaluating the
239 committed person's condition and recommending treatment, to be prepared by a licensed psychiatrist or a

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

248 C. The burden of proof at the hearing shall be upon the Commonwealth to prove to the court ~~beyond~~
 249 ~~a reasonable doubt~~ *by clear and convincing evidence* that the committed person remains a sexually
 250 violent predator.

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

263 § 37.1-70.12. Petition for release; hearing; procedures.

264 A. The Commissioner may petition the committing court for conditional or unconditional release of
 265 the committed person at any time he believes the committed person's condition has so changed that he is
 266 no longer a sexually violent predator in need of treatment and secure confinement. The petition shall be
 267 accompanied by a report of clinical findings supporting the petition and by a conditional release or
 268 discharge plan, as applicable, prepared ~~jointly by the hospital and the appropriate community services~~
 269 ~~board~~ *Department of Mental Health, Mental Retardation and Substance Abuse Services*. The committed
 270 person may petition the committing court for release only once in each year in which no annual judicial
 271 review is required pursuant to § 37.1-70.11. The party petitioning for release shall transmit a copy of the
 272 petition to the Attorney General and to the Commissioner.

273 B. Upon the submission of a petition pursuant to this section, the committing court shall conduct the
 274 proceedings according to the procedures set forth in § 37.1-70.11.

275 § 37.1-70.13. Conditional release; criteria; conditions; reports.

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

286 The ~~community services board serving the locality in which the committed person will reside upon~~
 287 ~~release~~ *Department of Mental Health, Mental Retardation and Substance Abuse Services*, or if the
 288 person is on parole or probation, the person's parole or probation officer, shall implement the court's
 289 conditional release orders and shall submit written reports to the court on the committed person's
 290 progress and adjustment in the community no less frequently than every six months. The ~~community~~
 291 ~~services board~~ *Department of Mental Health, Mental Retardation and Substance Abuse Services* or, if
 292 the person is on parole or probation, the person's parole or probation officer, shall send a copy of each
 293 written report submitted to the court and copies of all correspondence with the court pursuant to this
 294 section, to the Attorney General and to the Commissioner.

295 § 37.1-70.14. Emergency custody of conditionally released person; revocation of conditional release.

296 A judicial officer may issue an emergency custody order, upon the sworn petition of any responsible
 297 person, or upon his own motion, based upon probable cause to believe that a person on conditional
 298 release within his judicial district has violated the conditions of his release and is no longer a proper
 299 subject for conditional release. The emergency custody order shall require a law-enforcement officer take
 300 the person into custody immediately and transport him to a convenient location specified in the order

301 where a person designated by the ~~community services board~~ *Department of Mental Health, Mental*
302 *Retardation and Substance Abuse Services* who is skilled in the diagnosis and treatment of mental
303 abnormalities and personality disorders shall, as soon as practicable, evaluate him for the purpose of
304 determining the nature and degree of violation of the conditions of his release. *A copy of the petition*
305 *shall be sent to the Attorney General and the Commissioner.*

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

316 § 37.1-70.15. Modification or removal of conditions; notice; objections; review.

317 A. The committing court may modify conditions of release or remove conditions placed on release
318 pursuant to § 37.1-70.13, upon petition of the ~~supervising community services board~~ *Department of*
319 *Mental Health, Mental Retardation and Substance Abuse Services*, the supervising parole or probation
320 officer, the Attorney General, or the person on conditional release, or upon its own motion based on
321 reports of the ~~supervising community services board~~ *Department of Mental Health, Mental Retardation*
322 *and Substance Abuse Services* or the supervising parole or probation officer. However, the person on
323 conditional release may petition only annually commencing six months after the conditional release
324 order is issued. Upon petition, the court shall require the ~~supervising community services board~~
325 *Department*, or, if the person is on parole or probation, the person's parole or probation officer, to
326 provide a report on the person's progress while on conditional release. The party petitioning for release
327 shall transmit a copy of the petition to the Attorney General and to the Commissioner.

328 B. As it deems appropriate based on the ~~community services board's~~ *Department's* or parole or
329 probation officer's report and any other evidence provided to it, the court may issue a proposed order for
330 modification or removal of conditions. The court shall provide notice of the order, and their right to
331 object to it within ~~ten~~ 21 days of its issuance, to the person, the ~~supervising community services board~~
332 *Department* or parole or probation officer, and the Attorney General. The proposed order shall become
333 final if no objection is filed within ~~ten~~ 21 days of its issuance. If an objection is so filed, the court shall
334 conduct a hearing at which the person on conditional release, the Attorney General, and the ~~supervising~~
335 ~~community services board~~ *Department* or the parole or probation officer, have an opportunity to present
336 evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order
337 specifying conditions of release or removing existing conditions of release.

338 § 37.1-70.16. Representation of Commonwealth and person subject to commitment; nature of
339 proceedings.

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

344 The court shall appoint counsel for the person subject to commitment or conditional release pursuant
345 to subsection B of § 37.1-70.7 unless such person waives his right to counsel. The court shall consider
346 appointment of the person who represented the person in previous proceedings.

347 All proceedings held under this article shall be civil proceedings.

348 § 37.1-103. Habeas corpus as means.

349 Any person held in custody as mentally ill may by petition for a writ of habeas corpus have the
350 question of the legality of his detention determined by a court of competent jurisdiction. Upon the
351 petition, after notice to the authorities of the hospital or other institution in which such person is
352 confined, the court shall in some courtroom of such county or city, or in some other convenient public
353 place in such county or city determine whether such person is mentally ill and whether he should be
354 detained. *Any proceeding to challenge the continued confinement of a person held in custody under*
355 *Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of this title shall be conducted in accordance with*
356 *§ 37.1-70.11.*

357 § 37.1-104. Procedure when person confined in hospital or other institution.

358 If the person mentioned in § 37.1-103 is held in custody and actually confined in any hospital or
359 other institution, he may file his petition in the circuit court of the county or the city in which such
360 hospital or other institution is located or in the circuit court of the county or the city adjoining the
361 county or city in which such hospital or other institution is located. *Any proceeding to challenge the*

362 *continued confinement of any person held in custody under Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2*
363 *of this title shall be conducted in the circuit court wherein the person was last convicted of a sexually*
364 *violent offense or wherein the defendant was deemed unrestorably incompetent and referred for*
365 *commitment pursuant to § 19.2-169.3.*

366 § 37.1-104.1. Procedure when person not confined in hospital or other institution.

367 In all cases, other than those provided for in § 37.1-104, the person may file his petition in the
368 circuit court of the county or the city in which he resides, or in which he was certified to be mentally
369 ill, or in which an order was entered authorizing his retention for continued hospitalization, pursuant to
370 Chapter 2, Article 1 (§ 37.1-63 et seq.) of this title. *Any proceeding to challenge the continued*
371 *confinement of any person held in custody under Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of this*
372 *title shall be conducted in the circuit court wherein the person was last convicted of a sexually violent*
373 *offense or wherein the defendant was deemed unrestorably incompetent and referred for commitment*
374 *pursuant to § 19.2-169.3.*

375 **2. That, in the event the Department contracts with a public or private entity to provide care and**
376 **treatment for sexually violent predators, the Department shall give weight to selection of an entity**
377 **that has demonstrated ability to provide treatment to sexually violent predators and has**
378 **demonstrated ability to protect the public.**

379 **3. That an emergency exists and this act is in force from its passage, notwithstanding the**
380 **provisions of Items 49 C and 331 C1 of Chapter 899 of the Acts of Assembly of 2002.**

381 **4. That, notwithstanding the provisions of Items 49 C and 331 C1 of Chapter 899 of the Acts of**
382 **Assembly of 2002, the provisions of Chapters 946 and 985, as they may be amended, of the Acts of**
383 **Assembly of 1999 shall become effective on the effective date of this act.**

384 **5. That the third enactments of Chapter 946 and Chapter 985, as amended, of the Acts of**
385 **Assembly of 1999 are amended and reenacted as follows:**

386 **3. That the effective date of this act is ~~January 1, 2003~~ the date of enactment of House Bill**
387 **1400, House Bill 2445 or Senate Bill 1149 of the 2003 General Assembly Session, whichever is the**
388 **first to be enacted.**

389 **3. That the effective date of this act is ~~January 1, 2003~~ the date of enactment of House Bill**
390 **1400, House Bill 2445 or Senate Bill 1149 of the 2003 General Assembly Session, whichever is the**
391 **first to be enacted.**

ENROLLED

HB2445ER