

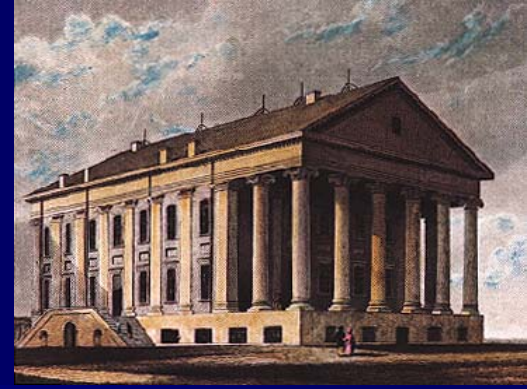


# Virginia State Crime Commission

House Bill 1843: Civil Commitment of  
Sexually Violent Predators

May 11, 2009

# Overview



- **Legislative History of HB 1843**
- **Provisions of the bill as enacted  
(Chapter 740 of the Virginia Acts of  
Assembly)**
- **Differences between the bill as enacted  
and the earlier House substitute**

# Legislative History



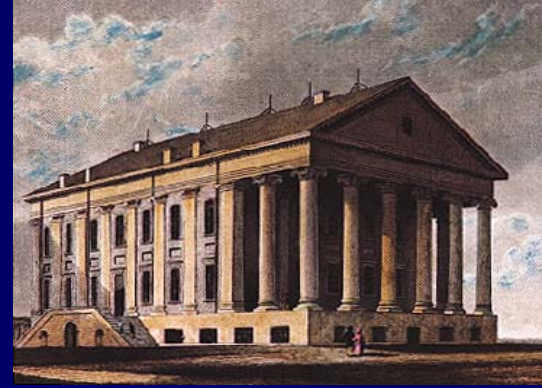
- House Bill 1843 was introduced by Delegate Morgan Griffith during the Regular Session of the 2009 General Assembly.
- A substitute was adopted in the House Courts of Justice Committee and was passed by the House.
- The engrossed bill was referred to the Senate Courts of Justice Committee.
- A substitute was adopted in the Senate Courts of Justice Committee and was passed by the Senate; the bill went to conference.
  - The subject matter of the bill was referred by letter to the Crime Commission.
- The conference report kept most of the proposals of the House substitute version, but eliminated a few provisions.
- The enrolled bill was enacted into law by the Governor on March 30, 2009.

# Chapter 740



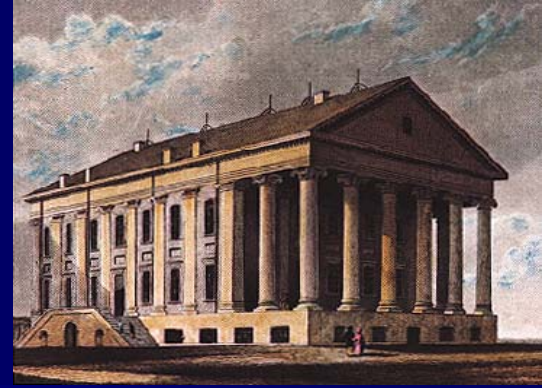
- Mandates that district court files for specified misdemeanor sex crimes be kept for 50 years.
  - Examples: sexual battery, sexual abuse of a minor between 13 and 15, prostitution, production of obscene items, indecent exposure.
- Mandates that JDR court files for sexually violent offenses and for specified misdemeanor sex crimes be kept for 50 years.
- The Attorney General's Office is permitted access to DJJ and JDR court records for purposes of handling sexually violent predator civil commitment cases.

# Chapter 740



- Throughout Chapter 9 of Title 37.2 (Civil Commitment of Sexually Violent Predators), the term “prisoners and defendants” is replaced with the word “respondents” when applicable.
- A respondent is not permitted to raise an objection based on defects in the institution of the proceedings, unless he files a written motion to dismiss, stating the legal and factual grounds therefor, at least 14 days prior to the hearing or trial.

# Chapter 740



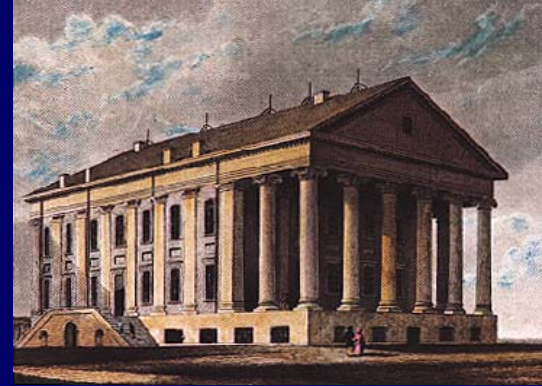
- The Commitment Review Committee (CRC) is authorized to evaluate and make recommendations on all potential respondents, not just those that are in the custody of the Department of Corrections.
- Clarifies that the petition shall be filed in the circuit court for the judicial circuit or district in which the prisoner was last convicted or deemed incompetent to stand trial for a sexually violent offense.

# Chapter 740



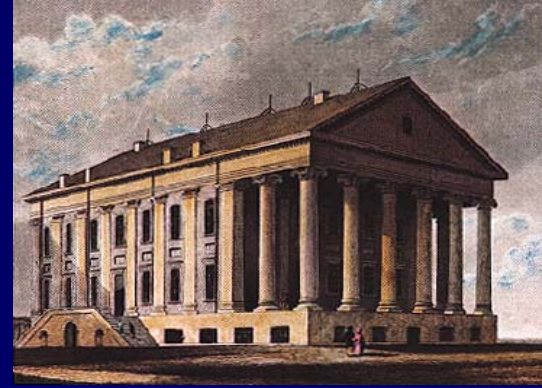
- The 90 day deadline for the Attorney General to decide, after receiving the CRC's report, whether to file a petition or not, is deemed procedural and not substantive or jurisdictional.
- The Department of Corrections, the CRC, and the Attorney General's Office are allowed to possess, copy and use all governmental entities' records, including records that are under seal.
- After the petition is filed, the probable cause hearing will be held within 90 days, not 60. The respondent may waive this hearing.

# Chapter 740



- Any expert witness for the respondent must provide, in writing, his findings and conclusions to the court and the Attorney General no less than 45 days prior to trial; otherwise, he shall not be permitted to testify.
  - A different time period can be agreed to by the parties.
  - Previously, the expert witness was required to give this written report no less than 30 days prior to trial. Now it is specified that the penalty for not doing so is that the expert cannot testify.
- If the judge finds that there is probable cause to believe the respondent is a sexually violent predator (SVP), the trial will be held within 120 days, not 90.

# Chapter 740



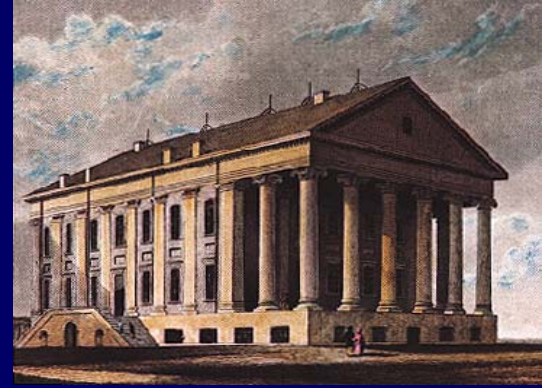
- If the judge or jury finds at trial that the respondent is a SVP, the trial may then be continued for not less than 45 to 60 days, instead of 30 to 60 days. Either side may request a continuance beyond the time deadline of 60 days.
- The factors which the court is to use in deciding whether the SVP can be placed on conditional release, instead of being committed, are rephrased more clearly as definite factors which the court shall consider.

# Chapter 740



- A law enforcement officer may lawfully go anywhere in the Commonwealth when executing an emergency custody order issued when there is probable cause to believe a SVP has violated the terms of his conditional release.
- The respondent shall then be taken to a “secure facility” designated by the Department of Mental Health, not to a “convenient location” specified in the judge’s order.
- When the respondent is then evaluated by a mental health professional, the expert must consider specific enumerated factors in making his opinion on whether the SVP should remain on conditional release or be committed.
  - The expert must interview the respondent in person.
- The expert may testify at the subsequent circuit court hearing.

# Chapter 740



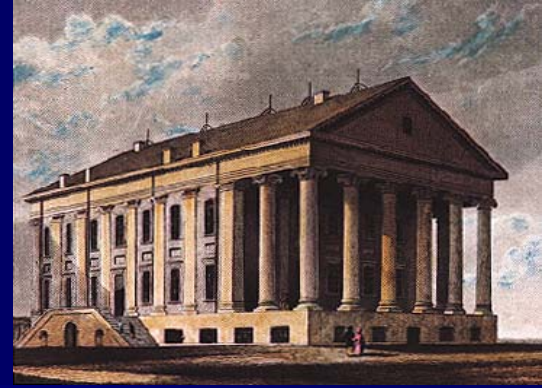
- If a respondent who is on conditional release is given permission to leave the state, and fails to return in violation of a court order, he shall be guilty of a Class 6 felony.
  - This is the same penalty for a respondent who flees the state.
  
- A number of existing provisions have been moved or shifted around, but with no substantive change in the law.

# Differences from the engrossed House bill



- The contents of victim impact statements and presentence reports possessed by counsel for the respondent or an expert witness may not be disseminated.
- If a prisoner or defendant receives a score of four on the Static-99 evaluation instrument, and the qualifying sexually violent offense is aggravated sexual battery of a minor under the age of 13, there is no requirement that the victim have suffered bodily injury; the case will be referred to the CRC for assessment.

# Differences from the engrossed House bill



- Pre-trial proceedings, including those that involve evidentiary and discovery issues, may be conducted using two-way electronic video and audio communication systems.
- The initial Static-99 evaluation shall be admitted as evidence. Also, any expert report prepared and offered into evidence shall be admitted.
  - No requirement that the person who prepared the report be present at trial.
- If any expert meets the requirements of either §§ 37.2-904(B) or 37.2-907(A), he may be permitted to testify to his opinions regarding the risk assessment and treatment of the respondent.
  - No requirement that he personally evaluated the respondent.

# Differences from the engrossed House bill



- In the House bill, both the experts for the Commonwealth and the experts for the respondent are required to submit written reports of their findings 45 days prior to trial.
  - In the enacted legislation, the requirement appears to only apply to the experts for the respondent.
- There is no explicit prohibition on an expert testifying if a written report is not filed.
- There is no provision for modifying the 45 day limit if both parties agree.

# Discussion