

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act to amend and reenact §§ 16.1-337, 19.2-169.6, 19.2-176, 19.2-177.1, 32.1-127.1:03, 37.2-800, 37.2-808, 37.2-809, 37.2-813 through 37.2-818, 37.2-821, and 53.1-40.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 37.2-817.1 through 37.2-817.4 and by adding in Article 1 of Chapter 8 of Title 37.2 a section numbered 37.2-804.2, relating to involuntary commitment.

[H 499]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-337, 19.2-169.6, 19.2-176, 19.2-177.1, 32.1-127.1:03, 37.2-800, 37.2-808, 37.2-809, 37.2-813 through 37.2-818, 37.2-821, and 53.1-40.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 37.2-817.1 through 37.2-817.4 and by adding in Article 1 of Chapter 8 of Title 37.2 a section numbered 37.2-804.2 as follows:

§ 16.1-337. Inpatient treatment of minors; general applicability.

A. A minor may be admitted to a mental health facility for inpatient treatment only pursuant to §§ 16.1-338, 16.1-339, or § 16.1-340 or in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345. The provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title relating to the confidentiality of files, papers, and records shall apply to proceedings under §§ 16.1-339 through 16.1-345.

B. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a minor who is the subject of proceedings under this article, upon request, shall disclose to a magistrate, the juvenile intake officer, the court, the minor's attorney as required in § 16.1-343, the minor's guardian ad litem, the evaluator as required under §§ 16.1-338, 16.1-339, and 16.1-342, the community services board or behavioral health authority performing the evaluation, preadmission screening, or monitoring duties under this article, or a law-enforcement officer any and all information that is necessary and appropriate to enable each of them to perform his duties under this article. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the person and to monitor that care and treatment. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the minor, or the public from physical injury or to address the health care needs of the minor. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

C. Any order entered where a minor is the subject of proceedings under this article shall provide for the disclosure of health records pursuant to subsection B. This subsection shall not preclude any other disclosures as required or permitted by law.

§ 19.2-169.6. Emergency treatment prior to trial.

A. Any defendant who is not subject to the provisions of § 19.2-169.2 may be hospitalized for psychiatric treatment prior to trial if:

1. The court with jurisdiction over the defendant's case, only after a face-to-face evaluation by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809 finds clear and convincing evidence that the defendant (i) is being properly detained in jail prior to trial; (ii) has mental illness and is imminently dangerous to himself or others that there exists a substantial likelihood that, as a result of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, in the opinion of a qualified mental health professional; and (iii) requires treatment in a hospital rather than the jail in the opinion of a qualified mental health professional; or

2. The person having custody over a defendant who is awaiting trial has reasonable cause to believe that (i) the defendant (i) has mental illness and is imminently dangerous to himself or others that there exists a substantial likelihood that, as a result of mental illness, the defendant will, in the near future,

57 *cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting,*
 58 *or threatening harm and other relevant information, if any, and (ii) requires treatment in a hospital*
 59 *rather than jail and the person having such custody arranges for an evaluation of the defendant by a*
 60 *person skilled in the diagnosis and treatment of mental illness a face-to-face evaluation by an employee*
 61 *or designee of the local community services board or behavioral health authority who is skilled in the*
 62 *assessment and treatment of mental illness and who has completed a certification program approved by*
 63 *the Department as provided in § 37.2-809 provided a district court judge or a special justice, as defined*
 64 *in § 37.2-100 or, if a judge or special justice is not available, a magistrate, upon the advice of a person*
 65 *skilled in the diagnosis and treatment of mental illness, subsequently issues a temporary detention order*
 66 *for treatment in accordance with the procedures specified in §§ 37.2-809 through 37.2-813. In no event*
 67 *shall the defendant have the right to make application for voluntary admission and treatment as may be*
 68 *otherwise provided in § 37.2-805 or 37.2-814.*

69 If the defendant is committed pursuant to subdivision 1 of this subsection, the attorney for the
 70 defendant shall be notified that the court is considering hospitalizing the defendant for psychiatric
 71 treatment and shall have the opportunity to challenge the findings of the qualified mental health
 72 professional. If the defendant is detained pursuant to subdivision 2 of this subsection, the court having
 73 jurisdiction over the defendant's case and the attorney for the defendant shall be given notice prior to the
 74 detention pursuant to a temporary detention order or as soon thereafter as is reasonable. Upon detention
 75 pursuant to subdivision 2 of this subsection, a hearing shall be held, upon notice to the attorney for the
 76 defendant, either (i) before the court having jurisdiction over the defendant's case or (ii) before a district
 77 court judge or a special justice, as defined in § 37.2-100, in accordance with the provisions of
 78 § 37.2-820, in which case the defendant shall be represented by counsel as specified in § 37.2-814; the
 79 hearing shall be held within 48 hours of execution of the temporary order to allow the court that hears
 80 the case to make the findings, based upon clear and convincing evidence, that are specified in
 81 subdivision 1 of this subsection. If the 48-hour period herein specified terminates on a Saturday, Sunday,
 82 or legal holiday, the person may be detained for the same period allowed for detention pursuant to a
 83 temporary detention order issued pursuant to §§ 37.2-809 through 37.2-813.

84 In any case in which the defendant is hospitalized pursuant to this section, the court having
 85 jurisdiction over the defendant's case may provide by order that the admitting hospital evaluate the
 86 defendant's competency to stand trial and his mental state at the time of the offense pursuant to
 87 §§ 19.2-169.1 and 19.2-169.5.

88 B. A defendant subject to this section shall be treated at a hospital designated by the Commissioner
 89 as appropriate for treatment and evaluation of persons under criminal charge. The director of the hospital
 90 shall, within 30 days of the defendant's admission, send a report to the court with jurisdiction over the
 91 defendant addressing the defendant's continued need for treatment for a mental illness and ~~being~~
 92 ~~imminently dangerous~~ *the continued substantial likelihood that, as a result of mental illness, the*
 93 *defendant will, in the near future, cause serious physical harm to himself or others as evidenced by*
 94 *recent behavior causing, attempting, or threatening such harm and other relevant information, if any,*
 95 *and, if so ordered by the court, the defendant's competency to stand trial, pursuant to subsection D of*
 96 *§ 19.2-169.1, and his mental state at the time of the offense, pursuant to subsection D of § 19.2-169.5.*
 97 Based on this report, the court shall (i) find the defendant incompetent to stand trial pursuant to
 98 subsection E of § 19.2-169.1 and proceed accordingly, (ii) order that the defendant be discharged from
 99 custody pending trial, (iii) order that the defendant be returned to jail pending trial, or (iv) make other
 100 appropriate disposition, including dismissal of charges and release of the defendant.

101 C. A defendant may not be hospitalized longer than 30 days under this section unless the court
 102 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
 103 § 37.2-100, holds a hearing at which the defendant shall be represented by an attorney and finds clear
 104 and convincing evidence that the defendant continues to (i) have a mental illness; ~~(ii) be imminently~~
 105 ~~dangerous to himself or others, and that there continues to exist a substantial likelihood that, as a result~~
 106 ~~of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others~~
 107 ~~as evidenced by recent behavior causing, attempting, or threatening harm and other relevant~~
 108 ~~information, if any, and (iii) (ii) be in need of psychiatric treatment in a hospital. Hospitalization may be~~
 109 ~~extended in this manner for periods of 60 days, but in no event may such hospitalization be continued~~
 110 ~~beyond trial, nor shall such hospitalization act to delay trial, so long as the defendant remains competent~~
 111 ~~to stand trial.~~

112 D. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a
 113 defendant who is the subject of a proceeding under this section, § 19.2-176, or 19.2-177.1, upon request,
 114 shall disclose to a magistrate, the court, the defendant's attorney, the defendant's guardian ad litem, the
 115 qualified mental health professional, the community service board or behavioral health authority
 116 performing the evaluation, preadmission screening, or monitoring duties under these sections, or the
 117 sheriff or administrator of the jail any and all information that is necessary and appropriate to enable

118 *each of them to perform his duties under these sections. These health care providers and other service*
 119 *providers shall disclose to one another health records and information where necessary to provide care*
 120 *and treatment to the defendant and to monitor that care and treatment. Health records disclosed to a*
 121 *sheriff or administrator of the jail shall be limited to information necessary to protect the sheriff or*
 122 *administrator of the jail and his employees, the defendant, or the public from physical injury or to*
 123 *address the health care needs of the defendant. Information disclosed to a law-enforcement officer shall*
 124 *not be used for any other purpose, disclosed to others, or retained.*

125 *Any health care provider disclosing records pursuant to this section shall be immune from civil*
 126 *liability for any harm resulting from the disclosure, including any liability under the federal Health*
 127 *Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person*
 128 *or provider disclosing such records intended the harm or acted in bad faith.*

129 *E. Any order entered where a defendant is the subject of proceedings under this section, § 19.2-176,*
 130 *or § 19.2-177.1 shall provide for the disclosure of medical records pursuant to subsection D. This*
 131 *subsection shall not preclude any other disclosures as required or permitted by law.*

132 § 19.2-176. Determination of insanity after conviction but before sentence; hearing.

133 A. If, after conviction and before sentence of any person, the judge presiding at the trial finds
 134 reasonable ground to question such person's mental state, he may order an evaluation of such person's
 135 mental state by at least one psychiatrist or clinical psychologist who is qualified by training and
 136 experience to perform such evaluations by an employee or designee of the local community services
 137 board or behavioral health authority who is skilled in the assessment and treatment of mental illness
 138 and who has completed a certification program approved by the Department as provided in § 37.2-809.
 139 If the judge, based on the evaluation, and after hearing representations of the defendant's counsel, finds
 140 clear and convincing evidence that the defendant (i) is mentally ill, and (ii) requires treatment in a
 141 mental hospital rather than the jail, he may order the defendant hospitalized in a facility designated by
 142 the Commissioner as appropriate for treatment of persons convicted of crime. The time such person is
 143 confined to such hospital shall be deducted from any term for which he may be sentenced to any penal
 144 institution, reformatory or elsewhere.

145 B. If it appears from all evidence readily available that the defendant is mentally ill and poses an
 146 imminent danger to himself or others if not immediately hospitalized that there exists a substantial
 147 likelihood that, as a result of mental illness, the defendant will, in the near future, cause serious
 148 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening
 149 harm and other relevant information, if any, a temporary order of detention may be issued in accordance
 150 with subdivision A 2 of § 19.2-169.6 and a hearing shall be conducted in accordance with subsections A
 151 and C within forty-eight hours of execution of the temporary order of detention, or if the
 152 forty-eight-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such person
 153 may be detained for the same period allowed for detention pursuant to an order for temporary detention
 154 issued pursuant to §§ 37.2-809 to 37.2-813.

155 C. A defendant may not be hospitalized longer than thirty days under this section unless the court
 156 which has criminal jurisdiction over him, or a court designated by such court, holds a hearing, at which
 157 the defendant shall be represented by an attorney, and finds clear and convincing evidence that the
 158 defendant continues to be (i) mentally ill, (ii) imminently dangerous to self or others, and that there
 159 continues to exist a substantial likelihood that, as a result of mental illness, the defendant will, in the
 160 near future, cause serious physical harm to himself or others as evidenced by recent behavior causing,
 161 attempting, or threatening harm and other relevant information, if any, and (iii) (ii) in need of
 162 psychiatric treatment in a hospital. Hospitalization may be extended in this manner for periods of 180
 163 days, but in no event may such hospitalization be continued beyond the date upon which his sentence
 164 would have expired had he received the maximum sentence for the crime charged.

165 § 19.2-177.1. Determination of mental illness after sentencing; hearing.

166 A person convicted of a crime who is in the custody of a local correctional facility after sentencing
 167 may be the subject of a commitment hearing for involuntary admission in accordance with the
 168 procedures provided in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Such hearing shall be commenced
 169 upon petition of the person having custody over the prisoner. If the person having custody over the
 170 prisoner has reasonable cause to believe that (i) the prisoner (i) has mental illness and is imminently
 171 dangerous to himself or others that there exists a substantial likelihood that, as a result of mental
 172 illness, the prisoner will, in the near future, cause serious physical harm to himself or others as
 173 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if
 174 any, and (ii) requires treatment in a hospital rather than a local correctional facility and the person
 175 having such custody arranges for an evaluation of the prisoner by a person skilled in the diagnosis and
 176 treatment of mental illness by an employee or designee of the local community services board or
 177 behavioral health authority who is skilled in the assessment and treatment of mental illness and who has
 178 completed a certification program approved by the Department as provided in § 37.2-809, then a district

179 court judge or a special justice, as defined in § 37.2-100 or, if a judge is not available, a magistrate,
180 upon the advice of a person skilled in the diagnosis and treatment of mental illness, may issue a
181 temporary detention order for treatment in accordance with the procedures specified in subdivision A 2
182 of § 19.2-169.6.

183 In all other respects, the involuntary admission procedures specified in Chapter 8 of Title 37.2 shall
184 be applicable, except:

185 1. Any involuntary admission shall be only to a facility designated for this purpose by the
186 Commissioner;

187 2. In no event shall the prisoner have the right to make application for voluntary admission and
188 treatment as may be otherwise provided in § 37.2-805 or 37.2-814;

189 3. The time that such prisoner is confined to a hospital shall be deducted from any term for which
190 he may be sentenced, but in no event may such hospitalization be continued beyond the date upon
191 which his sentence would have expired;

192 4. Any prisoner hospitalized pursuant to this section who has not completed service of his sentence
193 upon discharge from the hospital shall serve the remainder of his sentence.

194 § 32.1-127.1:03. Health records privacy.

195 A. There is hereby recognized an individual's right of privacy in the content of his health records.
196 Health records are the property of the health care entity maintaining them, and, except when permitted
197 or required by this section or by other provisions of state law, no health care entity, or other person
198 working in a health care setting, may disclose an individual's health records.

199 Pursuant to this subsection:

200 1. Health care entities shall disclose health records to the individual who is the subject of the health
201 record, except as provided in subsections E and F of this section and subsection B of § 8.01-413.

202 2. Health records shall not be removed from the premises where they are maintained without the
203 approval of the health care entity that maintains such health records, except in accordance with a court
204 order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with
205 the regulations relating to change of ownership of health records promulgated by a health regulatory
206 board established in Title 54.1.

207 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health
208 records of an individual, beyond the purpose for which such disclosure was made, without first
209 obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall
210 not, however, prevent (i) any health care entity that receives health records from another health care
211 entity from making subsequent disclosures as permitted under this section and the federal Department of
212 Health and Human Services regulations relating to privacy of the electronic transmission of data and
213 protected health information promulgated by the United States Department of Health and Human
214 Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C.
215 § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data,
216 from which individually identifying prescription information has been removed, encoded or encrypted, to
217 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or
218 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health
219 services research.

220 B. As used in this section:

221 "Agent" means a person who has been appointed as an individual's agent under a power of attorney
222 for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

223 "Certification" means a written representation that is delivered by hand, by first-class mail, by
224 overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated
225 confirmation reflecting that all facsimile pages were successfully transmitted.

226 "Guardian" means a court-appointed guardian of the person.

227 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a
228 public or private entity, such as a billing service, repricing company, community health management
229 information system or community health information system, and "value-added" networks and switches,
230 that performs either of the following functions: (i) processes or facilitates the processing of health
231 information received from another entity in a nonstandard format or containing nonstandard data content
232 into standard data elements or a standard transaction; or (ii) receives a standard transaction from another
233 entity and processes or facilitates the processing of health information into nonstandard format or
234 nonstandard data content for the receiving entity.

235 "Health care entity" means any health care provider, health plan or health care clearinghouse.

236 "Health care provider" means those entities listed in the definition of "health care provider" in
237 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
238 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
239 registered or permitted or who hold a multistate licensure privilege issued by any of the health

240 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
241 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

242 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.
243 "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

244 "Health record" means any written, printed or electronically recorded material maintained by a health
245 care entity in the course of providing health services to an individual concerning the individual and the
246 services provided. "Health record" also includes the substance of any communication made by an
247 individual to a health care entity in confidence during or in connection with the provision of health
248 services or information otherwise acquired by the health care entity about an individual in confidence
249 and in connection with the provision of health services to the individual.

250 "Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,
251 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as
252 payment or reimbursement for any such services.

253 "Individual" means a patient who is receiving or has received health services from a health care
254 entity.

255 "Individually identifying prescription information" means all prescriptions, drug orders or any other
256 prescription information that specifically identifies an individual.

257 "Parent" means a biological, adoptive or foster parent.

258 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a
259 mental health professional, documenting or analyzing the contents of conversation during a private
260 counseling session with an individual or a group, joint, or family counseling session that are separated
261 from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations
262 relating to medication and prescription monitoring, counseling session start and stop times, treatment
263 modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis,
264 functional status, treatment plan, or the individual's progress to date.

265 C. The provisions of this section shall not apply to any of the following:

266 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia
267 Workers' Compensation Act;

268 2. Except where specifically provided herein, the health records of minors; or

269 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
270 § 16.1-248.3.

271 D. Health care entities may, and, when required by other provisions of state law, shall, disclose
272 health records:

273 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the
274 case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of
275 minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment
276 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an
277 individual's written authorization, pursuant to the individual's oral authorization for a health care
278 provider or health plan to discuss the individual's health records with a third party specified by the
279 individual;

280 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant
281 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a
282 subpoena issued pursuant to subsection C of § 8.01-413;

283 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure
284 is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care
285 entity's employees or staff against any accusation of wrongful conduct; also as required in the course of
286 an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly
287 authorized law-enforcement, licensure, accreditation, or professional review entity;

288 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

289 5. In compliance with the provisions of § 8.01-413;

290 6. As required or authorized by law relating to public health activities, health oversight activities,
291 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
292 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
293 those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283,
294 32.1-283.1, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506,
295 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1509, and 63.2-1606;

296 7. Where necessary in connection with the care of the individual;

297 8. In connection with the health care entity's own health care operations or the health care operations
298 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
299 accordance with accepted standards of practice within the health services setting; however, the
300 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a

301 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
 302 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

303 9. When the individual has waived his right to the privacy of the health records;

304 10. When examination and evaluation of an individual are undertaken pursuant to judicial or
 305 administrative law order, but only to the extent as required by such order;

306 11. To the guardian ad litem and any attorney representing the respondent in the course of a
 307 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10
 308 (§ 37.2-1000 et seq.) of Title 37.2;

309 12. To the *guardian ad litem and any attorney* appointed by the court to represent an individual who
 310 is or has been a patient who is the subject of a ~~civil~~ commitment proceeding under § 19.2-169.6,
 311 19.2-176, or 19.2-177.1, Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, ~~or Article 16~~
 312 (~~§ 16.1-335 et seq.~~) of Chapter 11 of Title 16.1, or a judicial authorization for treatment proceeding
 313 pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

314 13. *To a magistrate, the court, the evaluator or examiner required under § 16.1-338, 16.1-339,*
 315 *16.1-342, or 37.2-815, a community services board or behavioral health authority or a designee of a*
 316 *community services board or behavioral health authority, or a law-enforcement officer participating in*
 317 *any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6, 19.2-176,*
 318 *or 19.2-177.1, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding,*
 319 *and to any health care provider evaluating or providing services to the person who is the subject of the*
 320 *proceeding or monitoring the person's adherence to a treatment plan ordered under those provisions.*
 321 *Health records disclosed to a law-enforcement officer shall be limited to information necessary to*
 322 *protect the officer, the person, or the public from physical injury or to address the health care needs of*
 323 *the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose,*
 324 *disclosed to others, or retained;*

325 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or
 326 administrative proceeding, if the court or administrative hearing officer has entered an order granting the
 327 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the
 328 health care entity of such order;

329 ~~14.~~ 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health
 330 records in accord with § 9.1-156;

331 ~~15.~~ 16. To an agent appointed under an individual's power of attorney or to an agent or decision
 332 maker designated in an individual's advance directive for health care or for decisions on anatomical gifts
 333 and organ, tissue or eye donation or to any other person consistent with the provisions of the Health
 334 Care Decisions Act (§ 54.1-2981 et seq.);

335 ~~16.~~ 17. To third-party payors and their agents for purposes of reimbursement;

336 ~~17.~~ 18. As is necessary to support an application for receipt of health care benefits from a
 337 governmental agency or as required by an authorized governmental agency reviewing such application or
 338 reviewing benefits already provided or as necessary to the coordination of prevention and control of
 339 disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

340 ~~18.~~ 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of
 341 ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

342 ~~19.~~ 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and
 343 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

344 ~~20.~~ 21. Where necessary in connection with the implementation of a hospital's routine contact process
 345 for organ donation pursuant to subdivision B 4 of § 32.1-127;

346 ~~21.~~ 22. In the case of substance abuse records, when permitted by and in conformity with
 347 requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

348 ~~22.~~ 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate
 349 the adequacy or quality of professional services or the competency and qualifications for professional
 350 staff privileges;

351 ~~23.~~ 24. If the health records are those of a deceased or mentally incapacitated individual to the
 352 personal representative or executor of the deceased individual or the legal guardian or committee of the
 353 incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian
 354 or committee appointed, to the following persons in the following order of priority: a spouse, an adult
 355 son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual
 356 in order of blood relationship;

357 ~~24.~~ 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote
 358 identification of all potential organ, eye, and tissue donors in conformance with the requirements of
 359 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's
 360 designated organ procurement organization certified by the United States Health Care Financing
 361 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association

362 of America or the American Association of Tissue Banks;

363 ~~25.~~ 26. To the Office of the Inspector General for Mental Health, Mental Retardation and Substance
364 Abuse Services pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2;

365 ~~26.~~ 27. To an entity participating in the activities of a local health partnership authority established
366 pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4 of this title, pursuant to subdivision 1 of
367 this subsection;

368 ~~27.~~ 28. To law-enforcement officials by each licensed emergency medical services agency, (i) when
369 the individual is the victim of a crime or (ii) when the individual has been arrested and has received
370 emergency medical services or has refused emergency medical services and the health records consist of
371 the prehospital patient care report required by § 32.1-116.1;

372 ~~28.~~ 29. To law-enforcement officials, in response to their request, for the purpose of identifying or
373 locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and
374 Crimes Against Minors Registry Act, material witness, or missing person, provided that only the
375 following information may be disclosed: (i) name and address of the person, (ii) date and place of birth
376 of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time
377 of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii)
378 description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by
379 the person.

380 ~~29.~~ 30. To law-enforcement officials regarding the death of an individual for the purpose of alerting
381 law enforcement of the death if the health care entity has a suspicion that such death may have resulted
382 from criminal conduct;

383 ~~30.~~ 31. To law-enforcement officials if the health care entity believes in good faith that the
384 information disclosed constitutes evidence of a crime that occurred on its premises;

385 ~~31.~~ 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of
386 a person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
387 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title; and

388 ~~32.~~ 33. To the Commissioner of the Department of Labor and Industry or his designee by each
389 licensed emergency medical services agency when the records consist of the prehospital patient care
390 report required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while
391 performing duties or tasks that are within the scope of his employment.

392 Notwithstanding the provisions of subdivisions 1 through ~~32~~ 33 of this subsection, a health care
393 entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except
394 when disclosure by the health care entity is (i) for its own training programs in which students, trainees,
395 or practitioners in mental health are being taught under supervision to practice or to improve their skills
396 in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any
397 accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of
398 § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm;
399 (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care
400 entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review
401 entity; or (v) otherwise required by law.

402 E. Requests for copies of health records shall (i) be in writing, dated and signed by the requester; (ii)
403 identify the nature of the information requested; and (iii) include evidence of the authority of the
404 requester to receive such copies and identification of the person to whom the information is to be
405 disclosed. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed
406 by the requestor as if it were an original. Within 15 days of receipt of a request for copies of health
407 records, the health care entity shall do one of the following: (i) furnish such copies to any requester
408 authorized to receive them; (ii) inform the requester if the information does not exist or cannot be
409 found; (iii) if the health care entity does not maintain a record of the information, so inform the
410 requester and provide the name and address, if known, of the health care entity who maintains the
411 record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not
412 established his authority to receive such health records or proof of his identity, or (c) as otherwise
413 provided by law. Procedures set forth in this section shall apply only to requests for health records not
414 specifically governed by other provisions of state law.

415 F. Except as provided in subsection B of § 8.01-413, copies of an individual's health records shall
416 not be furnished to such individual or anyone authorized to act on the individual's behalf when the
417 individual's treating physician or the individual's treating clinical psychologist has made a part of the
418 individual's record a written statement that, in the exercise of his professional judgment, the furnishing
419 to or review by the individual of such health records would be reasonably likely to endanger the life or
420 physical safety of the individual or another person, or that such health record makes reference to a
421 person other than a health care provider and the access requested would be reasonably likely to cause
422 substantial harm to such referenced person. If any health care entity denies a request for copies of health

423 records based on such statement, the health care entity shall inform the individual of the individual's
424 right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist,
425 whose licensure, training and experience relative to the individual's condition are at least equivalent to
426 that of the physician or clinical psychologist upon whose opinion the denial is based. The designated
427 reviewing physician or clinical psychologist shall make a judgment as to whether to make the health
428 record available to the individual.

429 The health care entity denying the request shall also inform the individual of the individual's right to
430 request in writing that such health care entity designate, at its own expense, a physician or clinical
431 psychologist, whose licensure, training, and experience relative to the individual's condition are at least
432 equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial
433 is based and who did not participate in the original decision to deny the health records, who shall make
434 a judgment as to whether to make the health record available to the individual. The health care entity
435 shall comply with the judgment of the reviewing physician or clinical psychologist. The health care
436 entity shall permit copying and examination of the health record by such other physician or clinical
437 psychologist designated by either the individual at his own expense or by the health care entity at its
438 expense.

439 Any health record copied for review by any such designated physician or clinical psychologist shall
440 be accompanied by a statement from the custodian of the health record that the individual's treating
441 physician or clinical psychologist determined that the individual's review of his health record would be
442 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely
443 to cause substantial harm to a person referenced in the health record who is not a health care provider.

444 Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive
445 copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized
446 to act on his behalf.

447 G. A written authorization to allow release of an individual's health records shall substantially include
448 the following information:

449 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

450 Individual's Name
451 Health Care Entity's Name
452 Person, Agency, or Health Care Entity to whom disclosure is to
453 be made
454 Information or Health Records to be disclosed
455 Purpose of Disclosure or at the Request of the Individual
456 As the person signing this authorization, I understand that I am giving
457 my permission to the above-named health care entity for disclosure of
458 confidential health records. I understand that the health care entity
459 may not condition treatment or payment on my willingness to sign this
460 authorization unless the specific circumstances under which such
461 conditioning is permitted by law are applicable and are set forth in
462 this authorization. I also understand that I have the right to revoke
463 this authorization at any time, but that my revocation is not effective
464 until delivered in writing to the person who is in possession of my
465 health records and is not effective as to health records already
466 disclosed under this authorization. A copy of this authorization and
467 a notation concerning the persons or agencies to whom disclosure was
468 made shall be included with my original health records. I understand
469 that health information disclosed under this authorization might be
470 redisclosed by a recipient and may, as a result of such disclosure,
471 no longer be protected to the same extent as such health information
472 was protected by law while solely in the possession of the health
473 care entity.
474 This authorization expires on (date) or (event)
475 Signature of Individual or Individual's Legal Representative if
476 Individual is Unable to Sign
477 Relationship or Authority of Legal Representative
478 Date of Signature

479 H. Pursuant to this subsection:

480 1. Unless excepted from these provisions in subdivision 9 of this subsection, no party to a civil,
481 criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for

482 another party's health records or cause a subpoena duces tecum to be issued by an attorney unless a
 483 copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other
 484 party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
 485 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
 486 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a
 487 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the
 488 request or issuance of the attorney-issued subpoena.

489 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date
 490 of the subpoena except by order of a court or administrative agency for good cause shown. When a
 491 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces
 492 tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the
 493 subpoena.

494 Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena
 495 duces tecum is being issued shall have the duty to determine whether the individual whose health
 496 records are being sought is pro se or a nonparty.

497 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,
 498 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness
 499 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an
 500 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall
 501 include the following language and the heading shall be in boldface capital letters:

502 **NOTICE TO INDIVIDUAL**

503 The attached document means that (insert name of party requesting or causing issuance of the
 504 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has
 505 been issued by the other party's attorney to your doctor, other health care providers (names of health
 506 care providers inserted here) or other health care entity (name of health care entity to be inserted here)
 507 requiring them to produce your health records. Your doctor, other health care provider or other health
 508 care entity is required to respond by providing a copy of your health records. If you believe your health
 509 records should not be disclosed and object to their disclosure, you have the right to file a motion with
 510 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion
 511 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued
 512 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements
 513 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to
 514 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health
 515 care provider(s), or other health care entity, that you are filing the motion so that the health care
 516 provider or health care entity knows to send the health records to the clerk of court or administrative
 517 agency in a sealed envelope or package for safekeeping while your motion is decided.

518 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued
 519 for an individual's health records shall include a Notice in the same part of the request in which the
 520 recipient of the subpoena duces tecum is directed where and when to return the health records. Such
 521 notice shall be in boldface capital letters and shall include the following language:

522 **NOTICE TO HEALTH CARE ENTITIES**

523 **A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL**
 524 **WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT**
 525 **INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED**
 526 **SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION**
 527 **WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.**

528 **YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN**
 529 **CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED**
 530 **THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:**

531 **NO MOTION TO QUASH WAS FILED; OR**

532 **ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE**
 533 **ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH**
 534 **SUCH RESOLUTION.**

535 **IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE**
 536 **BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A**
 537 **MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO**
 538 **THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA**
 539 **OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE**
 540 **FOLLOWING PROCEDURE:**

541 **PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED**
 542 **ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY**

543 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE
544 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA.
545 THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER
546 ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE
547 AGENCY.

548 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the
549 duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8 of
550 this subsection.

551 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a
552 sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such
553 health records until they have received a certification as set forth in subdivision 5 or 8 of this subsection
554 from the party on whose behalf the subpoena duces tecum was issued.

555 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been
556 filed or if the health care entity files a motion to quash the subpoena for health records, then the health
557 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or
558 administrative agency issuing the subpoena or in whose court or administrative agency the action is
559 pending. The court or administrative agency shall place the health records under seal until a
560 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened
561 on order of the judge or administrative agency. In the event the court or administrative agency grants
562 the motion to quash, the health records shall be returned to the health care entity in the same sealed
563 envelope in which they were delivered to the court or administrative agency. In the event that a judge or
564 administrative agency orders the sealed envelope to be opened to review the health records in camera, a
565 copy of the order shall accompany any health records returned to the health care entity. The health
566 records returned to the health care entity shall be in a securely sealed envelope.

567 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
568 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the
569 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion
570 to quash was filed. Any health care entity receiving such certification shall have the duty to comply
571 with the subpoena duces tecum by returning the specified health records by either the return date on the
572 subpoena or five days after receipt of the certification, whichever is later.

573 6. In the event that the individual whose health records are being sought files a motion to quash the
574 subpoena, the court or administrative agency shall decide whether good cause has been shown by the
575 discovering party to compel disclosure of the individual's health records over the individual's objections.
576 In determining whether good cause has been shown, the court or administrative agency shall consider (i)
577 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of
578 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the
579 disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or
580 proceeding; and (v) any other relevant factor.

581 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
582 subpoenaed health records have been submitted by a health care entity to the court or administrative
583 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no
584 submitted health records should be disclosed, return all submitted health records to the health care entity
585 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide
586 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon
587 determining that only a portion of the submitted health records should be disclosed, provide such portion
588 to the party on whose behalf the subpoena was issued and return the remaining health records to the
589 health care entity in a sealed envelope.

590 8. Following the court or administrative agency's resolution of a motion to quash, the party on whose
591 behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed
592 health care entity a statement of one of the following:

593 a. All filed motions to quash have been resolved by the court or administrative agency and the
594 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the
595 health records previously delivered in a sealed envelope to the clerk of the court or administrative
596 agency will not be returned to the health care entity;

597 b. All filed motions to quash have been resolved by the court or administrative agency and the
598 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no
599 health records have previously been delivered to the court or administrative agency by the health care
600 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records
601 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,
602 whichever is later;

603 c. All filed motions to quash have been resolved by the court or administrative agency and the

604 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no
 605 health records shall be disclosed and all health records previously delivered in a sealed envelope to the
 606 clerk of the court or administrative agency will be returned to the health care entity;

607 d. All filed motions to quash have been resolved by the court or administrative agency and the
 608 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only
 609 limited disclosure has been authorized. The certification shall state that only the portion of the health
 610 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall
 611 be disclosed. The certification shall also state that health records that were previously delivered to the
 612 court or administrative agency for which disclosure has been authorized will not be returned to the
 613 health care entity; however, all health records for which disclosure has not been authorized will be
 614 returned to the health care entity; or

615 e. All filed motions to quash have been resolved by the court or administrative agency and the
 616 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no
 617 health records have previously been delivered to the court or administrative agency by the health care
 618 entity, the health care entity shall return only those health records specified in the certification,
 619 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five
 620 days after receipt of the certification, whichever is later.

621 A copy of the court or administrative agency's ruling shall accompany any certification made
 622 pursuant to this subdivision.

623 9. The provisions of this subsection have no application to subpoenas for health records requested
 624 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,
 625 audit, review or proceedings regarding a health care entity's conduct.

626 The provisions of this subsection shall apply to subpoenas for the health records of both minors and
 627 adults.

628 Nothing in this subsection shall have any effect on the existing authority of a court or administrative
 629 agency to issue a protective order regarding health records, including, but not limited to, ordering the
 630 return of health records to a health care entity, after the period for filing a motion to quash has passed.

631 A subpoena for substance abuse records must conform to the requirements of federal law found in 42
 632 C.F.R. Part 2, Subpart E.

633 I. Health care entities may testify about the health records of an individual in compliance with
 634 §§ 8.01-399 and 8.01-400.2.

635 J. If an individual requests a copy of his health record from a health care entity, the health care
 636 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and
 637 labor of copying the requested information, postage when the individual requests that such information
 638 be mailed, and preparation of an explanation or summary of such information as agreed to by the
 639 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on
 640 behalf of the individual who is the subject of the health record in making decisions related to his health
 641 care.

642 § 37.2-800. Applicability of chapter.

643 For the purposes of this chapter, whenever the term mental illness appears, it shall include substance
 644 abuse. *Whenever the term responsible person appears, it shall include a family member as that term is*
 645 *defined in § 37.2-100, a community services board or behavioral health authority, any treating physician*
 646 *of the person, or a law-enforcement officer. Whenever the term community services board or board*
 647 *appears, it shall include behavioral health authority.*

648 § 37.2-804.2. Disclosure of records.

649 *Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is*
 650 *currently providing services to a person who is the subject of proceedings pursuant to this chapter shall,*
 651 *upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem,*
 652 *the examiner identified to perform an examination pursuant to § 37.2-815, the community services board*
 653 *or its designee performing any evaluation, preadmission screening, or monitoring duties pursuant to this*
 654 *chapter, or a law-enforcement officer any information that is necessary and appropriate for the*
 655 *performance of his duties pursuant to this chapter. Any health care provider, as defined in*
 656 *§ 32.1-127.1:03, or other provider who has provided or is currently evaluating or providing services to*
 657 *a person who is the subject of proceedings pursuant to this chapter shall disclose information that may*
 658 *be necessary for the treatment of such person to any other health care provider or other provider*
 659 *evaluating or providing services to or monitoring the treatment of the person. Health records disclosed*
 660 *to a law-enforcement officer shall be limited to information necessary to protect the officer, the person,*
 661 *or the public from physical injury or to address the health care needs of the person. Information*
 662 *disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or*
 663 *retained.*

664 *Any health care provider disclosing records pursuant to this section shall be immune from civil*

665 liability for any harm resulting from the disclosure, including any liability under the federal Health
 666 Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person
 667 or provider disclosing such records intended the harm or acted in bad faith.

668 § 37.2-808. Emergency custody; issuance and execution of order.

669 A. Any magistrate ~~may~~ shall issue, upon the sworn petition of any responsible person, *treating*
 670 *physician*, or upon his own motion, an emergency custody order when he has probable cause to believe
 671 that any person within his judicial district (i) has a mental illness; ~~(ii) presents an imminent danger to~~
 672 ~~himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable~~
 673 ~~to care for himself and that there exists a substantial likelihood that, as a result of mental illness, the~~
 674 ~~person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by~~
 675 ~~recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b)~~
 676 ~~suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic~~
 677 ~~human needs, ~~(iii) (ii) is in need of hospitalization or treatment, and ~~(iv) (iii) is unwilling to volunteer or~~~~
 678 ~~incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant~~
 679 ~~to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This~~
 680 ~~subsection shall not preclude any other disclosures as required or permitted by law.~~~~

681 *When considering whether there is probable cause to issue an emergency custody order, the*
 682 *magistrate may, in addition to the petition, consider (1) the recommendations of any treating or*
 683 *examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person,*
 684 *(3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical*
 685 *records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the*
 686 *affidavit, and (7) any other information available that the magistrate considers relevant to the*
 687 *determination of whether probable cause exists to issue an emergency custody order.*

688 B. Any person for whom an emergency custody order is issued shall be taken into custody and
 689 transported to a convenient location to be evaluated to *determine whether the person meets the criteria*
 690 *for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment.*
 691 The evaluation shall be made by a person designated by the community services board ~~or behavioral~~
 692 ~~health authority~~ who is skilled in the diagnosis and treatment of mental illness and who has completed a
 693 certification program approved by the Department.

694 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement
 695 agency and jurisdiction to execute the emergency custody order and provide transportation.
 696 Transportation under this section shall include transportation to a medical facility as may be necessary to
 697 obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance
 698 with state and federal law. Transportation under this section shall include transportation to a medical
 699 facility for a medical evaluation if a physician at the hospital in which the person subject to the
 700 emergency custody order may be detained requires a medical evaluation prior to admission.

701 D. The magistrate shall order the primary law-enforcement agency from the jurisdiction served by the
 702 community services board ~~or behavioral health authority~~ that designated the person to perform the
 703 evaluation required in subsection B to execute the order and provide transportation. If the community
 704 services board ~~or behavioral health authority~~ serves more than one jurisdiction, the magistrate shall
 705 designate the primary law-enforcement agency from the particular jurisdiction within the community
 706 services board's ~~or behavioral health authority's~~ service area where the person who is the subject of the
 707 emergency custody order was taken into custody or, if the person has not yet been taken into custody,
 708 the primary law-enforcement agency from the jurisdiction where the person is presently located to
 709 execute the order and provide transportation.

710 E. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the
 711 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing
 712 an emergency custody order pursuant to this section.

713 F. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
 714 probable cause to believe that a person meets the criteria for emergency custody as stated in this section
 715 may take that person into custody and transport that person to an appropriate location to assess the need
 716 for hospitalization or treatment without prior authorization. Such evaluation shall be conducted
 717 immediately.

718 G. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical
 719 treatment or further medical evaluation at any time for a person in his custody as provided in this
 720 section.

721 H. The person shall remain in custody until a temporary detention order is issued, ~~or~~ until the person
 722 is released, ~~but in no event shall the period of custody exceed four hours or until the emergency custody~~
 723 ~~order expires. An emergency custody order shall be valid for a period not to exceed four hours from the~~
 724 ~~time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension,~~
 725 ~~an emergency custody order may be renewed one time for a second period not to exceed two hours.~~

726 *Good cause for an extension includes the need for additional time to allow (i) the community services*
 727 *board to identify a suitable facility in which the person can be temporarily detained pursuant to*
 728 *§ 37.2-809 or (ii) a medical evaluation of the person to be completed if necessary. Any family member,*
 729 *as defined in § 37.2-100, employee or designee of the local community services board as defined in*
 730 *§ 37.2-809, treating physician, or law-enforcement officer may request the two-hour extension.*

731 I. If an emergency custody order is not executed within four hours of its issuance, the order shall be
 732 void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is
 733 not open, to any magistrate thereof.

734 *J. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical*
 735 *screening and assessment services provided to persons with mental illnesses while in emergency custody.*
 736 *§ 37.2-809. Involuntary temporary detention; issuance and execution of order.*

737 A. For the purposes of this section:

738 "Designee of the local community services board" means an examiner designated by the local
 739 community services board ~~or behavioral health authority~~ who (i) is skilled in the assessment and
 740 treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii)
 741 is able to provide an independent examination of the person, (iv) is not related by blood or marriage to
 742 the person being evaluated, (v) has no financial interest in the admission or treatment of the person
 743 being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under
 744 this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans
 745 Affairs, is not employed by the facility.

746 "Employee" means an employee of the local community services board ~~or behavioral health authority~~
 747 who is skilled in the assessment and treatment of mental illness and has completed a certification
 748 program approved by the Department.

749 "Investment interest" means the ownership or holding of an equity or debt security, including shares
 750 of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or
 751 debt instruments.

752 B. A magistrate ~~may~~ *shall* issue, upon the sworn petition of any responsible person, *treating*
 753 *physician*, or upon his own motion and only after an ~~in-person~~ *evaluation conducted in-person or by*
 754 *means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by*
 755 *an employee or a designee of the local community services board to determine whether the person meets*
 756 *the criteria for temporary detention*, a temporary detention order if it appears from all evidence readily
 757 available, including any recommendation from a physician or clinical psychologist treating the person,
 758 that the person (i) has a mental illness; (ii) ~~presents an imminent danger to himself or others as a result~~
 759 ~~of mental illness or is so seriously mentally ill as to be substantially unable to care for himself and that~~
 760 ~~there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future,~~
 761 ~~(a) cause serious physical harm to himself or others as evidenced by recent behavior causing,~~
 762 ~~attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to~~
 763 ~~his lack of capacity to protect himself from harm or to provide for his basic human needs, (iii) (ii) is in~~
 764 ~~need of hospitalization or treatment, and (iv) (iii) is unwilling to volunteer or incapable of volunteering~~
 765 ~~for hospitalization or treatment. The magistrate shall also consider the recommendations of any treating~~
 766 ~~or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a~~
 767 ~~decision. Any temporary detention order entered pursuant to this section shall provide for the disclosure~~
 768 ~~of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as~~
 769 ~~required or permitted by law.~~

770 C. When considering whether there is probable cause to issue a temporary detention order, the
 771 magistrate may, in addition to the petition, consider (i) the recommendations of any treating or
 772 examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person,
 773 (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical
 774 records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the
 775 affidavit, and (vii) any other information available that the magistrate considers relevant to the
 776 determination of whether probable cause exists to issue a temporary detention order.

777 ~~€~~ D. A magistrate may issue a temporary detention order without an emergency custody order
 778 proceeding. A magistrate may issue a temporary detention order without a prior ~~in-person~~ evaluation
 779 pursuant to subsection B if (i) the person has been personally examined within the previous 72 hours by
 780 an employee or a designee of the local community services board or (ii) there is a significant physical,
 781 psychological, or medical risk to the person or to others associated with conducting such evaluation.

782 ~~Ð~~ E. An employee or a designee of the local community services board shall determine the facility
 783 of temporary detention for all individuals detained pursuant to this section. The facility of temporary
 784 detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be
 785 identified on the preadmission screening report and indicated on the temporary detention order. Except
 786 as provided in § 37.2-811 for defendants requiring hospitalization in accordance with subdivision A 2 of

787 § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged
788 with criminal offenses.

789 *E F.* Any facility caring for a person placed with it pursuant to a temporary detention order is
790 authorized to provide emergency medical and psychiatric services within its capabilities when the facility
791 determines that the services are in the best interests of the person within its care. The costs incurred as a
792 result of the hearings and by the facility in providing services during the period of temporary detention
793 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the
794 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance
795 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by
796 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

797 *F G.* The employee or the designee of the local community services board who is conducting the
798 evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention
799 order, the insurance status of the person. Where coverage by a third party payor exists, the facility
800 seeking reimbursement under this section shall first seek reimbursement from the third party payor. The
801 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances
802 covered by the third party payor have been received.

803 *G H.* The duration of temporary detention shall *be sufficient to allow for completion of the*
804 *examination required by § 37.2-815, preparation of the preadmission screening report required by*
805 *§ 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to*
806 *avoid involuntary commitment where possible, but shall not exceed 48 hours prior to a hearing. If the*
807 *48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be*
808 *detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday,*
809 *or legal holiday. The person may be released, pursuant to § 37.2-813, before the 48-hour period herein*
810 *specified has run.*

811 *H I.* If a temporary detention order is not executed within 24 hours of its issuance, or within a
812 shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to
813 the office of the clerk of the issuing court or, if the office is not open, to any magistrate thereof.
814 Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed.
815 However, a magistrate must again obtain the advice of an employee or a designee of the local
816 community services board prior to issuing a subsequent order upon the original petition. Any petition for
817 which no temporary detention order or other process in connection therewith is served on the subject of
818 the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of
819 the clerk of the issuing court.

820 *I J.* The chief judge of each general district court shall establish and require that a magistrate, as
821 provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing
822 the duties established by this section. Each community services board ~~or behavioral health authority~~
823 shall provide to each general district court and magistrate's office within its service area a list of its
824 employees and designees who are available to perform the evaluations required herein.

825 *K.* *The employee or designee of the community services board who is conducting the evaluation*
826 *pursuant to this section shall, if he recommends that the person should not be subject to a temporary*
827 *detention order, inform the petitioner and an on-site treating physician of his recommendation.*

828 § 37.2-813. Release of person prior to commitment hearing for involuntary admission.

829 Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341, the district court
830 judge or special justice may release the person on his personal recognizance or bond set by the district
831 court judge or special justice if it appears from all evidence readily available that the person ~~will not~~
832 ~~pose an imminent danger to himself or others~~ *does not meet the commitment criteria specified in*
833 *subsection C of § 37.2-817. In the case of a minor, the juvenile and domestic relations district court*
834 *judge may release the minor to his parent. The director of any facility in which the person is detained*
835 *may release the person prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341 if*
836 *it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the*
837 *person, that the person would not present an imminent danger to himself or others meet the commitment*
838 *criteria specified in subsection C of § 37.2-817 or § 16.1-345 if released.*

839 § 37.2-814. Commitment hearing for involuntary admission; written explanation; right to counsel;
840 rights of petitioner.

841 *A.* The commitment hearing for involuntary admission shall be held *after a sufficient period of time*
842 *has passed to allow for completion of the examination required by § 37.2-815, preparation of the*
843 *preadmission screening report required by § 37.2-816, and initiation of mental health treatment to*
844 *stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be*
845 *held within 48 hours of the execution of the temporary detention order as provided for in § 37.2-809;*
846 *however, if the 48-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day*
847 *on which the court is lawfully closed, the person may be detained, as herein provided, until the close of*

848 *business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is*
849 *lawfully closed.*

850 B. At the commencement of the commitment hearing, the district court judge or special justice shall
851 inform the person whose involuntary admission is being sought of his right to apply for voluntary
852 admission ~~and for inpatient~~ treatment as provided for in § 37.2-805 and shall afford the person an
853 opportunity for voluntary admission. The judge or special justice shall ascertain if the person is then
854 willing and capable of seeking voluntary admission ~~and for inpatient~~ treatment. If the judge or special
855 justice finds that the person is capable and willingly accepts voluntary admission ~~and for inpatient~~
856 treatment, the judge or special justice shall require him to accept voluntary admission for a minimum
857 period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall
858 give the ~~hospital facility~~ 48 hours' notice prior to leaving the ~~hospital facility~~. During this notice period,
859 the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person
860 shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for
861 preadmission screening by a community services board ~~or behavioral health authority~~ as provided in
862 § 37.2-805.

863 C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the
864 judge or special justice shall inform the person of his right to a commitment hearing and right to
865 counsel. The judge or special justice shall ascertain if the person whose admission is sought is
866 represented by counsel, and, if he is not represented by counsel, the judge or special justice shall
867 appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel,
868 the judge or special justice shall give him a reasonable opportunity to employ counsel at his own
869 expense.

870 D. A written explanation of the involuntary admission process and the statutory protections
871 associated with the process shall be given to the person, and its contents shall be explained by an
872 attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the
873 person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present
874 any defenses including independent evaluation and expert testimony or the testimony of other witnesses,
875 (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the
876 circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the
877 person whose involuntary admission is sought has been given the written explanation required herein.

878 E. To the extent possible, during or before the commitment hearing, the attorney for the person
879 whose involuntary admission is sought shall interview his client, the petitioner, the examiner described
880 in § 37.2-815, the community services board ~~or behavioral health authority~~ staff, and any other material
881 witnesses. He also shall examine all relevant diagnostic and other reports, present evidence and
882 witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. A
883 health care provider shall disclose or make available all such reports, treatment information, and records
884 concerning his client to the attorney, upon request. The role of the attorney shall be to represent the
885 wishes of his client, to the extent possible.

886 F. The petitioner shall be given adequate notice of the place, date, and time of the commitment
887 hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the
888 hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required
889 to testify at the hearing, and the person whose involuntary admission is sought shall not be released
890 solely on the basis of the petitioner's failure to attend or testify during the hearing.

891 § 37.2-815. Commitment hearing for involuntary admission; examination required.

892 A. Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination
893 of the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in
894 Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of
895 mental illness or, if such a psychiatrist or psychologist is not available, ~~any~~ a mental health professional
896 who ~~is~~ (i) is licensed in Virginia through the Department of Health Professions ~~and as a clinical social~~
897 ~~worker, professional counselor, psychiatric nurse practitioner, or clinical nurse specialist~~, (ii) is
898 qualified in the ~~diagnosis assessment~~ of mental illness. ~~The examiner chosen shall be, and (iii) has~~
899 ~~completed a certification program approved by the Department. The examiner chosen shall be able to~~
900 ~~provide an independent examination clinical evaluation of the person and recommendations for his~~
901 ~~placement, care, and treatment.~~ The examiner shall (a) not be related by blood or marriage to the
902 person, (b) not be responsible for treating the person, (c) have no financial interest in the admission or
903 treatment of the person, (d) have no investment interest in the facility detaining or admitting the person
904 under this chapter, and (e) except for employees of state hospitals, the U.S. Department of Veterans
905 Affairs, ~~and community service boards, and behavioral health authorities~~, not be employed by the
906 facility. For purposes of this section, the term "investment interest" shall be as defined in § 37.2-809.

907 B. *The examination conducted pursuant to this section shall be a comprehensive evaluation of the*
908 *person conducted in-person or, if that is not practicable, by two-way electronic video and audio*

909 communication system as authorized in § 37.2-804.1. Translation or interpreter services shall be
 910 provided during the evaluation where necessary. The examination shall consist of (i) a clinical
 911 assessment that includes a mental status examination; determination of current use of psychotropic and
 912 other medications; a medical and psychiatric history; a substance use, abuse, or dependency
 913 determination; and a determination of the likelihood that, as a result of mental illness, the person will,
 914 in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to
 915 provide for his basic human needs; (ii) a substance abuse screening, when indicated; (iii) a risk
 916 assessment that includes an evaluation of the likelihood that, as a result of mental illness, the person
 917 will, in the near future, cause serious physical harm to himself or others as evidenced by recent
 918 behavior causing, attempting, or threatening harm and other relevant information, if any; (iv) an
 919 assessment of the person's capacity to consent to treatment, including his ability to maintain and
 920 communicate choice, understand relevant information, and comprehend the situation and its
 921 consequences; (v) a review of the temporary detention facility's records for the person, including the
 922 treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests
 923 conducted, and all admission forms and nurses' notes; (vi) a discussion of treatment preferences
 924 expressed by the person or contained in a document provided by the person in support of recovery; (vii)
 925 an assessment of alternatives to involuntary inpatient treatment; and (viii) recommendations for the
 926 placement, care, and treatment of the person.

927 C. All such examinations shall be conducted in private. The judge or special justice shall summons
 928 the examiner who shall certify that he has personally examined the person and *state whether he has*
 929 *probable cause to believe that the person (i) does or does not present an imminent danger to himself or*
 930 *others as a result of mental illness or is or is not so seriously mentally ill as to be substantially unable*
 931 *to care for himself has a mental illness and there is a substantial likelihood that, as a result of mental*
 932 *illness, the person will, in the near future, (a) cause serious physical harm to himself or others as*
 933 *evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if*
 934 *any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide*
 935 *for his basic human needs, and (ii) requires or does not require involuntary inpatient treatment.*
 936 *Alternatively, the judge or special justice may accept written certification of the examiner's findings if*
 937 *the examination has been personally made within the preceding five days and if there is no objection*
 938 *sustained to the acceptance of the written certification by the person or his attorney. The judge or*
 939 *special justice shall not render any decision on the petition until the examiner has presented his report*
 940 *orally or in writing. The examiner may report orally at the hearing, but he shall provide a written*
 941 *report of his examination prior to the hearing. The examiner's written certification may be accepted into*
 942 *evidence unless objected to by the person or his attorney, in which case the examiner shall attend in*
 943 *person or by electronic communication.*

944 § 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

945 The district court judge or special justice shall require a preadmission screening report from the
 946 community services board or behavioral health authority that serves the county or city where the person
 947 resides or, if impractical, where the person is located. The report shall be admissible as evidence of the
 948 facts stated therein and shall state (i) whether the person presents an imminent danger to himself or
 949 others as a result of mental illness or is so seriously mentally ill that he is substantially unable to care
 950 for himself has a mental illness and whether there exists a substantial likelihood that, as a result of
 951 mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others
 952 as evidenced by recent behavior causing, attempting, or threatening harm and other relevant
 953 information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm
 954 or to provide for his basic human needs, (ii) whether the person is in need of involuntary inpatient
 955 treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the
 956 recommendations for that person's placement, care, and treatment *including, where appropriate,*
 957 *recommendations for mandatory outpatient treatment.* The board or authority shall provide the
 958 preadmission screening report within 48 hours or if the 48-hour period terminates on a Saturday,
 959 Sunday, legal holiday, or day on which the court is lawfully closed, the next day that is not a Saturday,
 960 Sunday, legal holiday, or day on which the court is lawfully closed to the court prior to the hearing. In
 961 the case of a person who has been sentenced and committed to the Department of Corrections and who
 962 has been examined by a psychiatrist or clinical psychologist, the judge or special justice may proceed to
 963 adjudicate whether the person has mental illness and should be involuntarily admitted without requesting
 964 a preadmission screening report from the community services board or behavioral health authority.

965 § 37.2-817. Involuntary admission and mandatory outpatient treatment orders.

966 A. The district court judge or special justice shall render a decision on the petition for involuntary
 967 admission after the appointed examiner has presented his *the* report, orally or in writing, pursuant to
 968 *required by* § 37.2-815, and after the community services board or behavioral health authority that
 969 serves the county or city where the person resides or, if impractical, where the person is located has

970 presented a preadmission screening report, orally or in writing, with recommendations for that person's
 971 placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute
 972 sufficient evidence upon which the district court judge or special justice may base his decision. *The*
 973 *examiner, if not physically present at the hearing, and the treating physician at the facility of temporary*
 974 *detention shall be available whenever possible for questioning during the hearing through a two-way*
 975 *electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.*

976 *B. An employee or a designee of the local community services board, as defined in § 37.2-809, that*
 977 *prepared the preadmission screening report shall attend the hearing in person or, if physical attendance*
 978 *is not practicable, shall participate in the hearing through a two-way electronic video and audio or*
 979 *telephonic communication system as authorized in § 37.2-804.1. Where a hearing is held outside of the*
 980 *service area of the community services board that prepared the preadmission screening report, and it is*
 981 *not practicable for a representative of the board to attend or participate in the hearing, arrangements*
 982 *shall be made by the board for an employee or designee of the board serving the area in which the*
 983 *hearing is held to attend or participate on behalf of the board that prepared the preadmission screening*
 984 *report. The community services board that prepared the preadmission screening report shall remain*
 985 *responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission*
 986 *screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or*
 987 *other electronic means to the community services board attending the hearing. Where a community*
 988 *services board attends the hearing on behalf of the community services board that prepared the*
 989 *preadmission screening report, the attending community services board shall inform the community*
 990 *services board that prepared the preadmission screening report of the disposition of the matter upon the*
 991 *conclusion of the hearing. In addition, the attending community services board shall transmit the*
 992 *disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or*
 993 *other electronic means.*

994 *At least 12 hours prior to the hearing, the court shall provide to the community services board that*
 995 *prepared the preadmission screening report the time and location of the hearing. If the representative of*
 996 *the community services board will be present by telephonic means, the court shall provide the telephone*
 997 *number to the board.*

998 *B C. After observing the person and obtaining the necessary positive certification and considering (i)*
 999 *the recommendations of any treating physician or psychologist licensed in Virginia, if available, (ii) any*
 1000 *past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's*
 1001 *certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other*
 1002 *relevant evidence that may have been offered admitted, if the judge or special justice finds by clear and*
 1003 *convincing evidence that (i) (a) the person presents an imminent danger to himself or others as a result*
 1004 *of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care*
 1005 *for himself has a mental illness and there is a substantial likelihood that, as a result of mental illness,*
 1006 *the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by*
 1007 *recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)*
 1008 *suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic*
 1009 *human needs, and (ii) (b) all available less restrictive treatment alternatives to involuntary inpatient*
 1010 *treatment, pursuant to subsection D, that would offer an opportunity for the improvement of the person's*
 1011 *condition have been investigated and deemed unsuitable and there is no less restrictive alternative to*
 1012 *involuntary inpatient treatment determined to be inappropriate, the judge or special justice shall by*
 1013 *written order and specific findings so certify and order that the person be admitted involuntarily to a*
 1014 *facility for a period of treatment not to exceed 180 30 days from the date of the court order. Such*
 1015 *involuntary admission shall be to a facility designated by the community services board or behavioral*
 1016 *health authority that serves the city or county in which the person was examined as provided in*
 1017 *§ 37.2-816. If the community services board or behavioral health authority does not designate a facility*
 1018 *at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the*
 1019 *Commissioner. The Upon the expiration of an order for involuntary admission, the person shall be*
 1020 *released at the expiration of 180 days unless he is involuntarily admitted by further petition and order of*
 1021 *a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order,*
 1022 *or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805 or is*
 1023 *ordered to mandatory outpatient treatment pursuant to subsection D.*

1024 *€ D. After observing the person and obtaining the necessary positive certification and considering (i)*
 1025 *the recommendations of any treating physician or psychologist licensed in Virginia, if available, (ii) any*
 1026 *past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's*
 1027 *certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other*
 1028 *relevant evidence that may have been offered admitted, if the judge or special justice finds by clear and*
 1029 *convincing evidence that (i) (a) the person presents an imminent danger to himself or others as a result*
 1030 *of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care*

1031 ~~for himself~~ has a mental illness and that there exists a substantial likelihood that, as a result of mental
 1032 illness, the person will, in the near future, (1) cause serious physical harm to himself or others as
 1033 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if
 1034 any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide
 1035 for his basic human needs, ~~(ii)~~ (b) less restrictive alternatives to involuntary inpatient treatment that
 1036 would offer an opportunity for improvement of his condition have been investigated and are deemed
 1037 suitable, ~~(iii)~~ are determined to be appropriate, and (c) the person ~~(a)~~ (A) has the degree of competency
 1038 necessary sufficient capacity to understand the stipulations of his treatment, ~~(b)~~ (B) expresses has
 1039 expressed an interest in living in the community and agrees has agreed to abide by his treatment plan,
 1040 and ~~(e)~~ (C) is deemed to have the capacity to comply with the treatment plan and understand and
 1041 adhere to conditions and requirements of the treatment and services, and ~~(iv)~~ (d) the ordered treatment
 1042 can be delivered on an outpatient basis and be monitored by the community services board, behavioral
 1043 health authority or designated provider, the judge or special justice shall by written order and specific
 1044 findings so certify and order that the person be admitted involuntarily to mandatory outpatient
 1045 treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are
 1046 actually available in the community and providers of the services have actually agreed to deliver the
 1047 services.

1048 E. Mandatory outpatient treatment, which may include day treatment in a hospital, night treatment in
 1049 a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11
 1050 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of
 1051 the person. The community services board or behavioral health authority that serves the city or county
 1052 in which the person resides shall recommend a specific course of treatment and programs for the
 1053 provision of involuntary mandatory outpatient treatment. The community services board, behavioral
 1054 health authority, or designated provider shall monitor the person's compliance with the treatment ordered
 1055 by the court under this section, and the person's failure to comply with involuntary outpatient treatment
 1056 as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the
 1057 provisions of this section. Upon failure of the person to adhere to the terms of the outpatient treatment
 1058 order, the judge or special justice may revoke it and, upon notice to the person and after a commitment
 1059 hearing, order involuntary admission to a facility. The duration of mandatory outpatient treatment shall
 1060 be determined by the court based on recommendations of the community services board, but shall not
 1061 exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be
 1062 released from the requirements of the order unless the order is continued in accordance with
 1063 § 37.2-817.4.

1064 F. Any order for mandatory outpatient treatment shall include an initial mandatory outpatient
 1065 treatment plan developed by the community services board that completed the preadmission screening
 1066 report. The plan shall, at a minimum, (i) identify the specific services to be provided, (ii) identify the
 1067 provider who has agreed to provide each service, (iii) describe the arrangements made for the initial
 1068 in-person appointment or contact with each service provider, and (iv) include any other relevant
 1069 information that may be available regarding the mandatory outpatient treatment ordered. The order
 1070 shall require the community services board to monitor the implementation of the mandatory outpatient
 1071 treatment plan and report any material noncompliance to the court.

1072 G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for
 1073 mandatory outpatient treatment has been entered pursuant to this section, the community services board
 1074 where the person resides that is responsible for monitoring compliance with the order shall file a
 1075 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment
 1076 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided
 1077 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)
 1078 certify that the services are the most appropriate and least restrictive treatment available for the person,
 1079 (iv) certify that each provider has complied and continues to comply with applicable provisions of the
 1080 Department's licensing regulations, (v) be developed with the fullest possible involvement and
 1081 participation of the person and reflect his preferences to the greatest extent possible to support his
 1082 recovery and self-determination, (vi) specify the particular conditions with which the person shall be
 1083 required to comply, and (vii) describe how the community services board shall monitor the person's
 1084 compliance with the plan and report any material noncompliance with the plan. The community services
 1085 board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval.
 1086 Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with
 1087 the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive
 1088 modifications to the plan shall be filed with the court for review and attached to any order for
 1089 mandatory outpatient treatment.

1090 H. If the community services board responsible for developing the comprehensive mandatory
 1091 outpatient treatment plan determines that the services necessary for the treatment of the person's mental

1092 illness are not available or cannot be provided to the person in accordance with the order for
 1093 mandatory outpatient treatment, it shall notify the court within five days of the entry of the order for
 1094 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special
 1095 justice, after notice to the person, the person's attorney, and the community services board responsible
 1096 for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to
 1097 § 37.2-817.2.

1098 I. Upon entry of any order for mandatory outpatient treatment, the clerk of the court shall provide a
 1099 copy of the order to the person who is the subject of the order, to his attorney, and to the community
 1100 services board required to monitor compliance with the plan. The community services board shall
 1101 acknowledge receipt of the order to the clerk of the court on a form established by the Office of the
 1102 Executive Secretary of the Supreme Court and provided by the court for this purpose.

1103 J. The court may transfer jurisdiction of the case to the general district court where the person
 1104 resides at any time after the entry of the mandatory outpatient treatment order. The community services
 1105 board responsible for monitoring compliance with the mandatory outpatient treatment plan shall remain
 1106 responsible for monitoring the person's compliance with the plan until the community services board
 1107 serving the locality to which jurisdiction of the case has been transferred acknowledges the transfer and
 1108 receipt of the order to the clerk of the court on a form established by the Office of the Executive
 1109 Secretary of the Supreme Court and provided by the court for this purpose.

1110 K. Any order entered pursuant to this section shall provide for the disclosure of medical records
 1111 pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or
 1112 permitted by law.

1113 § 37.2-817.1. Monitoring mandatory outpatient treatment; petition for hearing.

1114 A. The community services board where the person resides shall monitor the person's compliance
 1115 with the mandatory outpatient treatment plan ordered by the court pursuant to § 37.2-817. Monitoring
 1116 compliance shall include (i) contacting the service providers to determine if the person is complying
 1117 with the mandatory outpatient treatment order and (ii) notifying the court of the person's material
 1118 noncompliance with the mandatory treatment order. Providers of services identified in the plan shall
 1119 report any material noncompliance to the community services board.

1120 B. If the community services board determines that the person materially failed to comply with the
 1121 order, it shall petition the court for a review of the mandatory outpatient treatment order as provided in
 1122 § 37.2-817.2. The community services board shall petition the court for a review of the mandatory
 1123 outpatient treatment order within three days of making that determination, or within 24 hours if the
 1124 person is being detained under a temporary detention order, and shall recommend an appropriate
 1125 disposition. Copies of the petition shall be sent to the person and the person's attorney.

1126 C. If the community services board determines that the person is not materially complying with the
 1127 mandatory outpatient treatment order or for any other reason, and there is a substantial likelihood that,
 1128 as a result of the person's mental illness that the person will, in the near future, (i) cause serious
 1129 physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening
 1130 harm and other relevant information, if any, or (ii) suffer serious harm due to his lack of capacity to
 1131 protect himself from harm or to provide for his basic human needs, it shall immediately request that the
 1132 magistrate issue an emergency custody order pursuant to § 37.2-808 or a temporary detention order
 1133 pursuant to § 37.2-809.

1134 § 37.2-817.2. Court review of mandatory outpatient treatment plan.

1135 A. The district court judge or special justice shall hold a hearing within five days after receiving the
 1136 petition for review of the mandatory outpatient treatment plan; however if the fifth day is a Saturday,
 1137 Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a
 1138 Saturday, Sunday, or legal holiday. If the person is being detained under a temporary detention order,
 1139 the hearing shall be scheduled within the same time frame provided for a commitment hearing under
 1140 § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board,
 1141 all treatment providers listed in the comprehensive mandatory outpatient treatment order, and the
 1142 original petitioner for the person's involuntary treatment. If the person is not represented by counsel, the
 1143 court shall appoint an attorney to represent the person in this hearing and any subsequent hearings
 1144 under §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the attorney who represented the
 1145 person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order. The
 1146 same judge or special justice that presided over the hearing resulting in the mandatory outpatient
 1147 treatment order need not preside at the noncompliance hearing or any subsequent hearings. The
 1148 community services board shall offer to arrange the person's transportation to the hearing if the person
 1149 is not detained and has no other source of transportation.

1150 B. If requested by the person, the community services board, a treatment provider listed in the
 1151 comprehensive mandatory outpatient treatment plan, or the original petitioner for the person's
 1152 involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who shall

1153 personally examine the person and certify to the court whether or not he has probable cause to believe
1154 that the person meets the criteria for involuntary inpatient admission or mandatory outpatient treatment
1155 as specified in subsections C and D of § 37.2-817. The examination shall include all applicable
1156 requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the
1157 appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person
1158 is not detained in an inpatient facility, the community services board shall arrange for the person to be
1159 examined at a convenient location and time. The community services board shall offer to arrange for the
1160 person's transportation to the examination, if the person has no other source of transportation and
1161 resides within the service area or an adjacent service area of the community services board. If the
1162 person refuses or fails to appear, the community services board shall notify the court, or a magistrate if
1163 the court is not available, and the court or magistrate shall issue a mandatory examination order and
1164 *capias* directing the primary law-enforcement agency in the jurisdiction where the person resides to
1165 transport the person to the examination. The person shall remain in custody until a temporary detention
1166 order is issued or until the person is released, but in no event shall the period exceed four hours.

1167 C. If the person fails to appear for the hearing the court shall, after consideration of any evidence
1168 from the person, from the community services board, or from any treatment provider identified in the
1169 mandatory outpatient treatment plan regarding why the person failed to appear at the hearing, either (i)
1170 reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to
1171 § 37.2-808 or (iii) issue a temporary detention order pursuant to § 37.2-809.

1172 D. After hearing the evidence regarding the person's material noncompliance with the mandatory
1173 outpatient treatment order and the person's current condition, and any other relevant information
1174 referenced in subsection C of § 37.2-817, the judge or special justice shall make one of the following
1175 dispositions:

1176 1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary
1177 admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order
1178 the person's involuntary admission to a facility designated by the community services board for a period
1179 of treatment not to exceed 30 days;

1180 2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment
1181 specified in subsection D of § 37.2-817, and that a continued period of mandatory outpatient treatment
1182 appears warranted, the judge or special justice shall renew the order for mandatory outpatient
1183 treatment, making any necessary modifications that are acceptable to the community services board or
1184 treatment provider responsible for the person's treatment. In determining the appropriateness of
1185 outpatient treatment, the court may consider the person's material noncompliance with the previous
1186 mandatory treatment order; or

1187 3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice
1188 shall rescind the order for mandatory outpatient treatment.

1189 Upon entry of an order for involuntary inpatient admission, transportation shall be provided in
1190 accordance with § 37.2-829 or 37.2-830.

1191 § 37.2-817.3. Rescission of mandatory outpatient treatment order.

1192 A. If the community services board determines at any time prior to the expiration of the mandatory
1193 outpatient treatment order that the person has complied with the order and no longer meets the criteria
1194 for involuntary treatment, or that continued mandatory outpatient treatment is no longer necessary for
1195 any other reason, it shall file a petition to rescind the order with the court that entered the order or to
1196 which venue has been transferred. If the court agrees with the community services board's
1197 determination, the court shall rescind the order. Otherwise, the court shall schedule a hearing and
1198 provide notice of the hearing in accordance with subsection A of § 37.2-817.2.

1199 B. At any time after 30 days from entry of the mandatory outpatient treatment order, the person may
1200 petition the court to rescind the order on the grounds that he no longer meets the criteria for mandatory
1201 outpatient treatment as specified in subsection D of § 37.2-817. The court shall schedule a hearing and
1202 provide notice of the hearing in accordance with subsection A § 37.2-817.2. The community services
1203 board required to monitor the person's compliance with the mandatory outpatient treatment order shall
1204 provide a preadmission screening report as required in § 37.2-816. After observing the person, and
1205 considering the person's current condition, any material noncompliance with the mandatory outpatient
1206 treatment order on the part of the person, and any other relevant evidence referred to in subsection C
1207 of § 37.2-817, shall make one of the dispositions specified in subsection D of § 37.2-817.2. The person
1208 may not file a petition to rescind the order more than once during a 90-day period.

1209 § 37.2-817.4. Continuation of mandatory outpatient treatment order.

1210 A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order, the
1211 community services board that is required to monitor the person's compliance with the order, the
1212 treating physician, or other responsible person may petition the court to continue the order for a period
1213 not to exceed 180 days.

1214 *B. If the person who is the subject of the order and the monitoring community services board, if it*
 1215 *did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate*
 1216 *order without further hearing. If either the person or the monitoring community services board does not*
 1217 *join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance*
 1218 *with subsection A of § 37.2-817.2.*

1219 *C. Upon receipt of the petition, the court shall appoint an examiner who shall personally examine*
 1220 *the person pursuant to subsection B of § 37.2-817. The community services board required to monitor*
 1221 *the person's compliance with the mandatory outpatient treatment order shall provide a preadmission*
 1222 *screening report as required in § 37.2-816.*

1223 *D. If, after observing the person, reviewing the preadmission screening report and considering the*
 1224 *appointed examiner's certification and any other relevant evidence, including any relevant evidence*
 1225 *referenced in subsection D of § 37.2-817, the court shall make one of the dispositions specified in*
 1226 *subsection D of § 37.2-817.2. If the court finds that a continued period of mandatory outpatient*
 1227 *treatment is warranted, it may continue the order for a period not to exceed 180 days. Any order of*
 1228 *mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is*
 1229 *filed shall remain in effect until the disposition of the hearing.*

1230 § 37.2-818. Commitment hearing for involuntary admission; recordings and records.

1231 *A. The district court judge or special justice shall make or cause to be made a tape or other audio*
 1232 *recording of the commitment hearing any hearings held under this chapter and shall submit the*
 1233 *recording to the appropriate district court clerk of the general district court in the locality in which the*
 1234 *hearing is held to be retained in a confidential file. Recordings shall be used only to document and to*
 1235 *answer questions concerning the judge's or special justice's conduct of the hearing. The person who was*
 1236 *the subject of the hearing shall be entitled, upon request, to obtain a copy of the tape or other audio*
 1237 *recording of such hearing. These recordings shall be retained for at least three years from the date of*
 1238 *the commitment hearing.*

1239 *B. Except as provided in this section and § 37.2-819, the court shall keep its copies of recordings*
 1240 *made pursuant to this section, relevant medical records, reports, and court documents pertaining to the*
 1241 *hearing hearings provided for in this section chapter confidential if so requested by the person who was*
 1242 *the subject of the hearing or his counsel, with. The person who is the subject of the hearing may, in*
 1243 *writing, waive the confidentiality provided herein. In the absence of such waiver, access to the*
 1244 *dispositional order only may be provided only upon court order for good cause shown. Any person*
 1245 *seeking access to the dispositional order may file a written motion setting forth why such access is*
 1246 *needed. The court may issue an order to disclose the dispositional order if it finds that such disclosure*
 1247 *is in the best interest of the person who is the subject of the hearing or of the public. The Executive*
 1248 *Secretary of the Supreme Court and anyone acting on his behalf shall be provided access to the court's*
 1249 *records upon request. Such recordings, records, reports, and documents shall not be subject to the*
 1250 *Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

1251 *C. The After entering an order for involuntary admission or mandatory outpatient treatment, the*
 1252 *judge or special justice shall order that copies of the relevant medical records of the person be released*
 1253 *to (i) the facility in which he is placed upon the request of the treating physician or director of the*
 1254 *facility, (ii) the community services board of the jurisdiction where the person resides, (iii) any*
 1255 *treatment providers identified in a treatment plan incorporated into any mandatory outpatient treatment*
 1256 *order, and (iv) any other treatment providers or entities.*

1257 § 37.2-821. Appeal of involuntary admission or certification order.

1258 *A. Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient*
 1259 *treatment pursuant to §§ 37.2-814 through 37.2-819 or certified as eligible for admission pursuant to*
 1260 *§ 37.2-806 shall have the right to appeal the order to the circuit court in the jurisdiction where he was*
 1261 *involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to*
 1262 *which he was admitted is located. Choice of venue shall rest with the party noting the appeal. The court*
 1263 *may transfer the case upon a finding that the other forum is more convenient. An appeal shall be filed*
 1264 *within 30 days from the date of the order and shall be given priority over all other pending matters*
 1265 *before the court and heard as soon as possible, notwithstanding § 19.2-241 regarding the time within*
 1266 *which the court shall set criminal cases for trial. The clerk of the court from which an appeal is taken*
 1267 *shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court*
 1268 *shall provide written notification of the appeal to the petitioner in the case in accordance with*
 1269 *procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required, and the appeal shall*
 1270 *proceed without the payment of costs or other fees. Costs may be recovered as provided for in*
 1271 *§ 37.2-804.*

1272 *B. The appeal shall be heard de novo in accordance with the provisions set forth in § 37.2-806 or*
 1273 *this article. The circuit court may require an independent evaluation of the person pursuant to*
 1274 *§ 37.2-815, or may rely upon the evaluation report in the commitment hearing from which the appeal is*

1275 taken. An order continuing the involuntary admission shall be entered only if the criteria in § 37.2-817
 1276 are met at the time the appeal is heard. The person so admitted or certified shall be entitled to trial by
 1277 jury. Seven persons from a panel of 13 shall constitute a jury.

1278 C. If the person is not represented by counsel, the judge shall appoint an attorney to represent him.
 1279 Counsel so appointed shall be paid a fee of \$75 and his necessary expenses. The order of the court from
 1280 which the appeal is taken shall be defended by the attorney for the Commonwealth.

1281 § 53.1-40.2. Involuntary admission of prisoners with mental illness.

1282 A. Upon the petition of the Director or his designee, any district court judge or any special justice,
 1283 as defined by § 37.2-100, of the county or city where the prisoner is located may issue an order
 1284 authorizing involuntary admission of a prisoner who is sentenced and committed to the Department of
 1285 Corrections and who is alleged or reliably reported to have a mental illness to a degree that warrants
 1286 hospitalization.

1287 B. Such prisoner may be involuntarily admitted to a hospital or facility for the care and treatment of
 1288 persons with mental illness by complying with the following admission procedures:

1289 1. A hearing on the petition shall be scheduled as soon as possible, allowing the prisoner an
 1290 opportunity to prepare any defenses which he may have, obtain independent evaluation and expert
 1291 opinion at his own expense, and summons other witnesses.

1292 2. Prior to such hearing, the judge or special justice shall fully inform the prisoner of the allegations
 1293 of the petition, the standard upon which he may be admitted involuntarily, the right of appeal from such
 1294 hearing to the circuit court, and the right to jury trial on appeal. The judge or special justice shall
 1295 ascertain if the prisoner is represented by counsel, and, if he is not represented by counsel, the judge or
 1296 special justice shall appoint an attorney to represent the prisoner.

1297 3. The judge or special justice shall require an examination of such prisoner by a psychiatrist who is
 1298 licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such psychiatrist or
 1299 clinical psychologist is not available, a physician or psychologist who is licensed in Virginia and who is
 1300 qualified in the diagnosis of mental illness. The judge or special justice shall summons the examiner,
 1301 who shall certify that he has personally examined the individual and has probable cause to believe that
 1302 the prisoner does or does not have mental illness, ~~does or does not present an imminent danger to~~
 1303 ~~himself or others that there does or does not exist a substantial likelihood that, as a result of mental~~
 1304 ~~illness, the prisoner will, in the near future, cause serious physical harm to himself or others as~~
 1305 ~~evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if~~
 1306 ~~any, and that the prisoner does or does not require involuntary hospitalization.~~ The judge or special
 1307 justice may accept written certification of the examiner's findings if the examination has been personally
 1308 made within the preceding five days and if there is no objection to the acceptance of such written
 1309 certification by the prisoner or his attorney.

1310 4. If the judge or special justice, after observing the prisoner and obtaining the necessary positive
 1311 certification and other relevant evidence, finds specifically that (i) ~~the prisoner presents an imminent~~
 1312 ~~danger to himself or others as a result of mental illness or has been proven to be so seriously mentally~~
 1313 ~~ill as to be substantially unable to care for himself the prisoner has a mental illness and that there exists~~
 1314 ~~a substantial likelihood that, as a result of mental illness, the prisoner will, in the near future, (a) cause~~
 1315 ~~serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or~~
 1316 ~~threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of~~
 1317 ~~capacity to protect himself from harm or to provide for his basic human needs~~, and (ii) alternatives to
 1318 involuntary admission have been investigated and deemed unsuitable and there is no less restrictive
 1319 alternative to such admission, the judge or special justice shall by written order and specific findings so
 1320 certify and order that the prisoner be placed in a hospital or other facility designated by the Director for
 1321 a period not to exceed 180 days from the date of the court order. Such placement shall be in a hospital
 1322 or other facility for the care and treatment of persons with mental illness that is licensed or operated by
 1323 the Department of Mental Health, Mental Retardation and Substance Abuse Services.

1324 5. The judge or special justice shall also order that the relevant medical records of such prisoner be
 1325 released to the hospital, facility, or program in which he is placed upon request of the treating physician
 1326 or director of the hospital, facility, or program.

1327 6. The Department shall prepare the forms required in procedures for admission as approved by the
 1328 Attorney General. These forms, which shall be the legal forms used in such admissions, shall be
 1329 distributed by the Department to the clerks of the general district courts of the various counties and
 1330 cities of the Commonwealth and to the directors of the respective state hospitals.