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HOUSE BILL NO. 499**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on January 28, 2008)

(Patrons Prior to Substitute—Delegates Hamilton, Albo [HB 816] and Toscano [HB 1322])

A *BILL to amend and reenact §§ 37.2-800, 37.2-808, 37.2-809, 37.2-814, 37.2-815, 37.2-816, 37.2-817, 37.2-818, and 37.2-821 of the Code of Virginia and to add to and to amend the Code of Virginia by adding a section numbered 37.2-817.1, relating to involuntary commitment.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-800, 37.2-808, 37.2-809, 37.2-814, 37.2-815, 37.2-816, 37.2-817, 37.2-818, and 37.2-821 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 37.2-817.1 as follows:

§ 37.2-800. Applicability of chapter.

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

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

A. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when he has probable cause to believe that any person within his judicial district (i) has mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

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

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

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

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

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

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

H. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours.

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

63 § 37.2-809. Involuntary temporary detention; issuance and execution of order.

64 A. For the purposes of this section:

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

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

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

79 B. A magistrate ~~may~~*shall* issue, upon the sworn petition of any responsible person or upon his own
80 motion and only after ~~an in-person~~*a face-to-face* evaluation of the person by an employee or a designee
81 of the local community services board *to determine whether the person meets the criteria for temporary*
82 *detention*, a temporary detention order if it appears from all evidence readily available, including any
83 recommendation from a physician or clinical psychologist treating the person, that the person (i) has
84 mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so
85 seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization
86 or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or
87 treatment. The magistrate shall also consider the recommendations of any treating or examining
88 physician licensed in Virginia if available either verbally or in writing prior to rendering a decision.

89 C. A magistrate may issue a temporary detention order without an emergency custody order
90 proceeding. A magistrate may issue a temporary detention order without a prior ~~in-person~~*face-to-face*
91 evaluation if (i) the person has been personally examined within the previous 72 hours by an employee
92 or a designee of the local community services board or (ii) there is a significant physical, psychological,
93 or medical risk to the person or to others associated with conducting such evaluation.

94 D. An employee or a designee of the local community services board shall determine the facility of
95 temporary detention for all individuals detained pursuant to this section. The facility of temporary
96 detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be
97 identified on the preadmission screening report and indicated on the temporary detention order. Except
98 as provided in § 37.2-811 for defendants requiring hospitalization in accordance with subdivision A 2 of
99 § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged
100 with criminal offenses.

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

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

115 G. The duration of temporary detention shall *be sufficient to allow for completion of the examination*
116 *required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and*
117 *initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary*
118 *commitment where possible, but shall not exceed 48 hours prior to a hearing. If the 48-hour period*
119 *herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as*
120 *herein provided, until the next day that is not a Saturday, Sunday, or legal holiday.*

121 H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter

period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate thereof. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

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

J. *The employee or the designee of the local community services board or behavioral health authority who is conducting the evaluation pursuant to this section shall, if he recommends that the person should not be subject to a temporary detention order or if he determines that he cannot locate an appropriate facility for the person pursuant to subsection D, notify the petitioner and any treating physician or clinical psychologist of his recommendations and provide those parties the contact information of the nearest magistrate.*

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

A. The commitment hearing for involuntary admission shall be held *after a sufficient period of time has passed to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held* within 48 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, if the 48-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

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

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

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

E. To the extent possible, during or before the commitment hearing, the attorney for the person whose involuntary admission is sought shall interview his client, the petitioner, the examiner described in § 37.2-815, the community services board or behavioral health authority staff, and any other material witnesses. He also shall examine all relevant diagnostic and other reports, present evidence and

183 witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. A
184 health care provider shall disclose or make available all such reports, treatment information, and records
185 concerning his client to the attorney, upon request. The role of the attorney shall be to represent the
186 wishes of his client, to the extent possible.

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

192 § 37.2-815. Commitment hearing for involuntary admission; examination required.

193 Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination of
194 the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in
195 Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of
196 mental illness or, if such a psychiatrist or psychologist is not available, ~~any~~ a mental health professional
197 who is (i) licensed in Virginia through the Department of Health Professions *as a clinical social worker*
198 *or professional counselor and who has completed a certification program approved by the Department*
199 and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be able to provide an
200 independent examination of the person *and recommendations for his placement, care, and treatment.*
201 The examiner shall (a) not be related by blood or marriage to the person, (b) not be responsible for
202 treating the person, (c) have no financial interest in the admission or treatment of the person, (d) have
203 no investment interest in the facility detaining or admitting the person under this chapter, and (e) except
204 for employees of state hospitals, the U.S. Department of Veterans Affairs, community service boards,
205 and behavioral health authorities, not be employed by the facility. For purposes of this section, the term
206 "investment interest" shall be as defined in § 37.2-809.

207 *The examination conducted pursuant to this section shall be a comprehensive, face-to-face evaluation*
208 *of the person. Translation or interpreter services shall be provided during the evaluation where*
209 *necessary. The examination shall include (1) a clinical assessment that includes a mental status*
210 *examination; determination of current use of psychotropic and other medications; a medical and*
211 *psychiatric history; a substance use, abuse, or dependency determination; and a determination of the*
212 *person's ability to protect himself from harm or to provide for his basic human needs; (2) a substance*
213 *abuse screening, when indicated; (3) a risk assessment that includes an evaluation of the likelihood that,*
214 *as a result of mental illness, the person will, in the near future, cause serious physical harm to himself*
215 *or others as evidenced by recent behavior or other relevant information or suffer serious harm due to*
216 *his lack of capacity to protect himself from harm or to provide for his basic human needs; (4) an*
217 *assessment of the person's capacity to consent to treatment, including his ability to maintain and*
218 *communicate choice of treatment options, understand relevant information, and comprehend the situation*
219 *and its consequences; (5) recommendations for the placement, care, and treatment of the person*
220 *including an assessment of the appropriateness of alternatives to involuntary inpatient treatment; (6) a*
221 *review of the temporary detention facility's records, including the treating physician's evaluation, any*
222 *collateral information, reports of any laboratory or toxicology tests conducted, and all admission forms*
223 *and nurses' notes; and (7) a consultation with the person regarding his preferences for treatment in*
224 *order to achieve recovery.*

225 All such examinations shall be conducted in private. The judge or special justice shall summons the
226 examiner who shall certify that he has personally examined the person and has probable cause to believe
227 that the person (i) does or does not present an imminent danger to himself or others as a result of
228 mental illness or is or is not so seriously mentally ill as to be substantially unable to care for himself
229 and (ii) requires or does not require involuntary inpatient treatment. Alternatively, the judge or special
230 justice may accept written certification of the examiner's findings if the examination has been personally
231 made within the preceding five days and if there is no objection sustained to the acceptance of the
232 written certification by the person or his attorney. The judge or special justice shall not render any
233 decision on the petition until the examiner has presented his report orally or in writing.

234 § 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

235 The district court judge or special justice shall require a preadmission screening report from the
236 community services board or behavioral health authority that serves the county or city where the person
237 resides or, if impractical, where the person is located. The report shall be admissible as evidence of the
238 facts stated therein and shall state (i) whether the person presents an imminent danger to himself or
239 others as a result of mental illness or is so seriously mentally ill that he is substantially unable to care
240 for himself, (ii) whether the person is in need of involuntary inpatient treatment, (iii) whether there is no
241 less restrictive alternative to inpatient treatment, and (iv) the recommendations for that person's
242 placement, care, and treatment *including, where appropriate, recommendations for mandatory outpatient*
243 *treatment.* The board or authority shall provide the preadmission screening report ~~within 48 hours or if~~
244 ~~the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is~~

lawfully closed, the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed to the court prior to the hearing. In the case of a person who has been sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person has mental illness and should be involuntarily admitted without requesting a preadmission screening report from the community services board or behavioral health authority.

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

A. The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented his report, orally or in writing, pursuant to § 37.2-815 and after the community services board or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report, orally or in writing, with recommendations for that person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient evidence upon which the district court judge or special justice may base his decision.

B. After observing the person and obtaining the necessary positive certification and considering any other relevant evidence that may have been offered, if the judge or special justice finds by clear and convincing evidence that (i) the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself and (ii) alternatives to involuntary inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to involuntary inpatient treatment, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 180 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board or behavioral health authority that serves the city or county in which the person was examined as provided in § 37.2-816. If the community services board or behavioral health authority does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. The person shall be released at the expiration of 180 days unless he is involuntarily admitted by further petition and order of a court or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805.

C. After observing the person and obtaining the necessary positive certification and considering any other relevant evidence that may have been offered, if the judge or special justice finds by clear and convincing evidence that (i) the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself, (ii) less restrictive alternatives to involuntary inpatient treatment have been investigated and are deemed suitable, (iii) the person (a) has the degree of competency necessary to understand the stipulations of his treatment, (b) expresses an interest in living in the community and agrees to abide by his treatment plan, and (c) is deemed to have the capacity to comply with the treatment plan, and (iv) the ordered treatment can be delivered on an outpatient basis and be monitored by the community services board, behavioral health authority or designated provider, the judge or special justice shall order mandatory outpatient treatment, which may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. The community services board or behavioral health authority that serves the city or county in which the person resides shall recommend a specific course of treatment and programs for the provision of involuntary mandatory outpatient treatment. The community services board, behavioral health authority, or designated provider shall monitor the person's compliance with the treatment ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this section. Upon failure of the person to adhere to the terms of the outpatient treatment order, the judge or special justice may revoke it and, upon notice to the person and after a commitment hearing, order involuntary admission to a facility. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board or behavioral health authority, but shall not exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is extended. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment the court may order a subsequent period of mandatory outpatient treatment not to exceed 180 days.

Any order for mandatory outpatient treatment shall include an initial mandatory outpatient treatment plan developed by the community services board or the behavioral health authority that completed the preadmission screening report. The plan shall, at minimum, (1) identify the specific services to be provided, (2) identify the provider who has agreed to provide each service, (3) identify the requirements including but not limited to, the time and place for the initial face-to-face appointment or contact with

each service provider, and (4) include any other relevant information that may be available regarding the mandatory outpatient treatment ordered. The order shall require the community services board or behavioral health authority to monitor the implementation of the mandatory outpatient treatment plan and report any material noncompliance to the court.

D. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered pursuant to this section, the community services board or behavioral health authority responsible for monitoring compliance with the order shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii) certify that the services are the most appropriate and least restrictive treatment available for the person, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department's licensing regulations, (v) be developed with the fullest possible involvement and participation of the person and reflect his preferences to the greatest extent possible to support his recovery and self-determination, (vi) specify the particular conditions with which the person shall be required to comply, and (vii) identify how the community services board or behavioral health authority shall monitor the person's compliance with the plan and report any material noncompliance with the plan. Where a comprehensive mandatory outpatient treatment plan is developed after receipt of the order, the community services board or behavioral health authority shall submit the plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. The community services board may petition the court anytime after approval for a modification of the treatment plan, and if the person joins the petition, the court may grant the petition without further hearing. If the person does not join the petition the court shall schedule a hearing pursuant to § 37.2-817.1. Any order granted pursuant to this subsection shall be filed with the order for mandatory outpatient treatment.

E. Upon entry of any order for mandatory outpatient treatment, the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, if the court is on notice that the person is being represented by counsel, and to the community services board or behavioral health authority that shall be required to monitor compliance with the plan. The community services board or behavioral health authority shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose. The court may transfer jurisdiction of the case to the general district court where the person resides at any time after the entry of the order. The community services board responsible for developing the outpatient treatment plan, however, shall remain responsible for the person subject to the treatment order. If the community services board or behavioral health authority responsible for the person seek to transfer such responsibility, it shall petition the court for the authority to transfer. If the person joins the petition the court may grant the motion without further hearing. If the person does not join the petition, the court shall schedule a hearing pursuant to § 37.2-817.1. The transfer shall not occur until the community services board or behavioral health authority to which the responsibility is being transferred acknowledges the transfer and acknowledges receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose.

F. The community services board or behavioral health authority shall be required to monitor the person's compliance. Such monitoring of compliance shall include the community services board or behavioral health authority (i) contacting the service providers to determine if the person is complying with the mandatory outpatient treatment order and (ii) notifying the court of the person's compliance or material noncompliance with the mandatory outpatient treatment order. Determination of compliance shall occur and notification to the court shall be provided within seven days of the entry of the mandatory outpatient treatment order and every 30 days thereafter. Providers of services identified in the plan shall report any material noncompliance of the mandatory outpatient treatment order to the community services board or behavioral health authority.

If, at any point after the entry of a mandatory outpatient treatment order, the community services board or behavioral authority determines that the person is not materially complying with the order, it shall petition the court within 72 hours of such determination for a hearing pursuant to § 37.2-817.1.

G. If the community services board or behavioral health authority responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, the community services board or behavioral health authority shall petition the court within 72 hours of such determination for a hearing pursuant to § 37.2-817.1.

H. At any time prior to the expiration of the mandatory outpatient treatment order, if the community

services board or behavioral health authority determines that the person has complied with the order and that the person no longer meets the criteria for involuntary commitment, or that continued mandatory outpatient treatment is no longer necessary for any other reason, and the treating physician is in agreement, the community services board or behavioral health authority shall petition the court within 72 hours of such determination for the court to vacate the order, and if the person joins the petition, the court may grant the petition and enter an appropriate order without further hearing. If the court fails to grant the petition to vacate the order, it shall schedule a hearing on the petition pursuant to § 37.2-817.1.

I. At any time after 30 days from entry of the mandatory outpatient treatment order, the person may petition the court for a hearing pursuant to § 37.2-817.1 for the purpose of having the mandatory outpatient treatment order vacated. The person may not file a petition for such a hearing more than once during a 90-day period.

J. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order, the community services board or behavioral health authority that is required to monitor the person's compliance with the order may petition the court to extend the order for a period not to exceed 180 days. If the person who is the subject of the order joins the petition, the court shall grant the petition and enter an appropriate order without further hearing. If the person who is the subject of the order does not join the petition, the court shall schedule a hearing pursuant to § 37.2-817.1.

K. If the community services board or behavioral health authority determine that, because the person is not materially complying with the order or for any other reason, there is a substantial likelihood that as a result of the person's mental illness that the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, it shall immediately petition the court for an emergency custody order or temporary detention order in lieu of or in preparation for a hearing pursuant to § 37.2-817.1.

§ 37.2-817.1. Mandatory outpatient treatment orders; oversight hearings.

A. Any petition filed with the court pursuant to § 37.2-817 shall be docketed and resolved according to the provisions of this section. When considering a petition filed with the court pursuant to § 37.2-817, a judge or special justice may, in addition to the petition, consider (i) the recommendations of any treating or examining physician licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any medical records available, (v) any affidavits submitted, if the witness is unavailable and so states in the affidavit and (vi) any testimony or evidence from the community services board or behavioral health authority regarding the person's compliance or noncompliance with the mandatory outpatient treatment order. In addition, the court shall request a new independent examination of the person and shall review the report of any such examiner prior to any determination under this section.

B. After receipt of the petition, the court shall schedule a hearing within five days, however, if the fifth day is not a business day, the hearing shall be held by the close of business on the next day that is a business day. If the person who is the subject of the hearing is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order need not preside over the noncompliance hearing.

C. After hearing the evidence the court shall make one of the following dispositions:

1. Upon finding that the person meets the criteria for involuntary admission and treatment specified in subsection B of § 37.2-817, the court shall order the person's involuntary admission to a facility designated by the community services board or behavioral health authority pursuant to that section;

2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment specified in subsection C of § 37.2-817, and that a continued period of mandatory outpatient treatment is warranted, the court shall renew the order for mandatory outpatient treatment. The court may modify the mandatory outpatient treatment order for good cause shown. However, if the person was not materially compliant with the mandatory outpatient treatment order and no good cause was shown for such material noncompliance, the court shall order the person's involuntary admission pursuant to subsection B of § 37.2-817. Good cause shall include a finding that the person no longer meets the commitment criteria pursuant to either subsection B of § 37.2-817 or subsection C of 27.2-817.

If a petition was filed pursuant to subsection J of § 37.2-817, the court may renew the order for mandatory outpatient treatment for a period not exceed 180 days.

3. If the court finds that the person no longer meets either the involuntary admission criteria pursuant to subsection B of § 37.2-817, or the mandatory outpatient treatment criteria pursuant to subsection C of § 37.2-817, the court shall vacate the mandatory outpatient treatment order and the person shall be released.

D. Whenever a petition is filed and considered by the court pursuant to subsection F of § 37.2-817,

429 *the court shall issue a show cause order regarding the person's failure to comply with the mandatory*
430 *outpatient treatment order and schedule a hearing. If a person fails to appear for a hearing pursuant to*
431 *this section, the court shall issue a temporary detention order of the person pursuant to § 37.2-809 and*
432 *schedule a hearing.*

433 *E. The community services board or behavioral health authority shall offer to arrange for the*
434 *person's transportation to any hearing held pursuant to this section if the person is not detained and*
435 *has no other source of transportation. If the person is detained, the primary law enforcement agency of*
436 *the locality shall be responsible for the transportation of the person to the hearing.*

437 *F. The court shall provide notice of the hearing to the original petitioner, the person, the person's*
438 *attorney if the court is on notice that the person is being represented by counsel, the community services*
439 *board or behavioral health authority, and to any member of the person's family whom the person has*
440 *authorized to receive information regarding his treatment. Except pursuant to subsection D, if the*
441 *person fails or refuses to attend the hearing, the hearing may proceed in the person's absence.*

442 § 37.2-818. Commitment hearing for involuntary admission; recordings and records.

443 A. The district court judge or special justice shall make or cause to be made a tape or other audio
444 recording of the commitment hearing any hearings held under this chapter and shall submit the recording
445 to the appropriate district court clerk of the district court in the locality in which the hearing is held to
446 be retained in a confidential file. Recordings shall be used only to document and to answer questions
447 concerning the judge's or special justice's conduct of the hearing. The person who was the subject of
448 the hearing shall be entitled, upon request, to obtain a copy of the tape or other audio recording of
449 such hearing. These recordings shall be retained for at least three years from the date of the
450 commitment hearing.

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

463 C. After entering an order for involuntary admission or mandatory outpatient treatment, The the
464 judge or special justice shall order that copies of the relevant medical records of the person be released
465 to (i) the facility in which he is placed upon the request of the treating physician or director of the
466 facility; (ii) the community services board or behavioral health authority of the jurisdiction where the
467 person resides; (iii) any treatment providers identified in a treatment plan incorporated into any
468 mandatory outpatient treatment order; and (iv) any other treatment providers or entities.

469 § 37.2-821. Appeal of involuntary admission or certification order.

470 A. Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient
471 treatment pursuant to §§ 37.2-814 through 37.2-819 or certified as eligible for admission pursuant to
472 § 37.2-806 shall have the right to appeal the order to the circuit court in the jurisdiction where he was
473 involuntarily admitted or certified or where the facility to which he was admitted is located. Choice of
474 venue shall rest with the party noting the appeal. The court may transfer the case upon a finding that the
475 other forum is more convenient. An appeal shall be filed within 30 days from the date of the order and
476 shall be given priority over all other pending matters before the court and heard as soon as possible,
477 notwithstanding § 19.2-241 regarding the time within which the court shall set criminal cases for trial.
478 The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk
479 of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to
480 the petitioner in the case in accordance with procedures set forth in § 16.1-112. No appeal bond or writ
481 tax shall be required, and the appeal shall proceed without the payment of costs or other fees. Costs
482 may be recovered as provided for in § 37.2-804.

483 B. The appeal shall be heard de novo in accordance with the provisions set forth in § 37.2-806 or
484 this article. The circuit court may require an independent evaluation of the person pursuant to
485 § 37.2-815, or may rely upon the evaluation report in the commitment hearing from which the appeal is
486 taken. An order continuing the involuntary admission shall be entered only if the criteria in § 37.2-817
487 are met at the time the appeal is heard. The person so admitted or certified shall be entitled to trial by
488 jury. Seven persons from a panel of 13 shall constitute a jury.

489 C. If the person is not represented by counsel, the judge shall appoint an attorney to represent him.
490 Counsel so appointed shall be paid a fee of \$75 and his necessary expenses. The order of the court from

491 which the appeal is taken shall be defended by the attorney for the Commonwealth.
492