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HOUSE BILL NO. 499

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 25, 2008)

(Patrons Prior to Substitute—Delegates Hamilton and Nutter [HB 1491])

A BILL 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, 37.2-814, 37.2-815, 37.2-816, 37.2-817, 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.

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, 37.2-814, 37.2-815, 37.2-816, 37.2-817, 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 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.

§ 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 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 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, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and (ii) requires treatment in a hospital rather than jail and the person having such custody arranges for an evaluation of the defendant by a person skilled in the diagnosis and treatment of mental illness provided a district court judge or a special justice, as defined in § 37.2-100 or, if a judge or special justice is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, subsequently issues a temporary detention order for treatment in accordance with the procedures specified in §§ 37.2-809 through 37.2-813. In no event shall the defendant have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.2-805 or 37.2-814.

If the defendant is committed pursuant to subdivision 1 of this subsection, the attorney for the defendant shall be notified that the court is considering hospitalizing the defendant for psychiatric treatment and shall have the opportunity to challenge the findings of the qualified mental health professional. If the defendant is detained pursuant to subdivision 2 of this subsection, the court having

60 jurisdiction over the defendant's case and the attorney for the defendant shall be given notice prior to the
61 detention pursuant to a temporary detention order or as soon thereafter as is reasonable. Upon detention
62 pursuant to subdivision 2 of this subsection, a hearing shall be held, upon notice to the attorney for the
63 defendant, either (i) before the court having jurisdiction over the defendant's case or (ii) before a district
64 court judge or a special justice, as defined in § 37.2-100, in accordance with the provisions of
65 § 37.2-820, in which case the defendant shall be represented by counsel as specified in § 37.2-814; the
66 hearing shall be held within 48 hours of execution of the temporary order to allow the court that hears
67 the case to make the findings, based upon clear and convincing evidence, that are specified in
68 subdivision 1 of this subsection. If the 48-hour period herein specified terminates on a Saturday, Sunday,
69 or legal holiday, the person may be detained for the same period allowed for detention pursuant to a
70 temporary detention order issued pursuant to §§ 37.2-809 through 37.2-813.

71 In any case in which the defendant is hospitalized pursuant to this section, the court having
72 jurisdiction over the defendant's case may provide by order that the admitting hospital evaluate the
73 defendant's competency to stand trial and his mental state at the time of the offense pursuant to
74 §§ 19.2-169.1 and 19.2-169.5.

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

88 C. A defendant may not be hospitalized longer than 30 days under this section unless the court
89 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
90 § 37.2-100, holds a hearing at which the defendant shall be represented by an attorney and finds clear
91 and convincing evidence that the defendant continues to (i) have a mental illness; ~~(ii) be imminently~~
92 ~~dangerous to himself or others, and that there continues to exist a substantial likelihood that, as a result~~
93 ~~of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others~~
94 ~~as evidenced by recent behavior causing, attempting, or threatening harm and (iii)(ii) be in need of~~
95 ~~psychiatric treatment in a hospital. Hospitalization may be extended in this manner for periods of 60~~
96 ~~days, but in no event may such hospitalization be continued beyond trial, nor shall such hospitalization~~
97 ~~act to delay trial, so long as the defendant remains competent to stand trial.~~

98 D. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a
99 defendant who is the subject of a proceeding under this section, § 19.2-176, or § 19.2-177.1 shall
100 disclose to a magistrate, the court, the defendant's attorney, the defendant's guardian ad litem, the
101 qualified mental health professional, the community service board or behavioral health authority
102 performing the evaluation, preadmission screening, or monitoring duties under these sections, or the
103 sheriff or administrator of the jail any and all information that is necessary and appropriate to enable
104 each of them to perform his duties under these sections. These health care providers and other service
105 providers shall disclose to one another health records and information where necessary to provide care
106 and treatment to the defendant and to monitor that care and treatment. Health records disclosed to a
107 sheriff or administrator of the jail shall be limited to information necessary to protect the sheriff or
108 administrator of the jail and his employees, the defendant, or the public from physical injury or to
109 address the health care needs of the defendant.

110 § 19.2-176. Determination of insanity after conviction but before sentence; hearing.

111 A. If, after conviction and before sentence of any person, the judge presiding at the trial finds
112 reasonable ground to question such person's mental state, he may order an evaluation of such person's
113 mental state by at least one psychiatrist or clinical psychologist who is qualified by training and
114 experience to perform such evaluations. If the judge, based on the evaluation, and after hearing
115 representations of the defendant's counsel, finds clear and convincing evidence that the defendant (i) is
116 mentally ill, and (ii) requires treatment in a mental hospital rather than the jail, he may order the
117 defendant hospitalized in a facility designated by the Commissioner as appropriate for treatment of
118 persons convicted of crime. The time such person is confined to such hospital shall be deducted from
119 any term for which he may be sentenced to any penal institution, reformatory or elsewhere.

120 B. If it appears from all evidence readily available that the defendant is mentally ill and ~~poses an~~
121 ~~imminent danger to himself or others if not immediately hospitalized 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, a temporary order of detention may be issued in accordance with subdivision A 2 of § 19.2-169.6 and a hearing shall be conducted in accordance with subsections A and C within forty-eight hours of execution of the temporary order of detention, or if the forty-eight-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such person may be detained for the same period allowed for detention pursuant to an order for temporary detention issued pursuant to §§ 37.2-809 to 37.2-813.

C. A defendant may not be hospitalized longer than thirty days under this section unless the court which has criminal jurisdiction over him, or a court designated by such court, holds a hearing, at which the defendant shall be represented by an attorney, and finds clear and convincing evidence that the defendant continues to be (i) mentally ill; ~~(ii) imminently dangerous to self or others~~; and that there continues to exist 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 ~~(iii)~~(ii) in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for periods of 180 days, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired had he received the maximum sentence for the crime charged.

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

A person convicted of a crime who is in the custody of a local correctional facility after sentencing may be the subject of a commitment hearing for involuntary admission in accordance with the procedures provided in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Such hearing shall be commenced upon petition of the person having custody over the prisoner. If the person having custody over the prisoner has reasonable cause to believe that ~~(i) the prisoner (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 prisoner will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and (ii) requires treatment in a hospital rather than a local correctional facility and the person having such custody arranges for an evaluation of the prisoner by a person skilled in the diagnosis and treatment of mental illness, then a district court judge or a special justice, as defined in § 37.2-100 or, if a judge is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, may issue a temporary detention order for treatment in accordance with the procedures specified in subdivision A 2 of § 19.2-169.6.

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

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

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

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

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

§ 32.1-127.1:03. Health records privacy.

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

Pursuant to this subsection:

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

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

3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records of an individual, beyond the purpose for which such disclosure was made, without first obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any health care entity that receives health records from another health care entity from making subsequent disclosures as permitted under this section and the federal Department of

183 Health and Human Services regulations relating to privacy of the electronic transmission of data and
184 protected health information promulgated by the United States Department of Health and Human
185 Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C.
186 § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data,
187 from which individually identifying prescription information has been removed, encoded or encrypted, to
188 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or
189 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health
190 services research.

191 B. As used in this section:

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

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

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

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

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

207 "Health care provider" means those entities listed in the definition of "health care provider" in
208 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
209 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
210 registered or permitted or who hold a multistate licensure privilege issued by any of the health
211 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
212 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

213 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.

214 "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

215 "Health record" means any written, printed or electronically recorded material maintained by a health
216 care entity in the course of providing health services to an individual concerning the individual and the
217 services provided. "Health record" also includes the substance of any communication made by an
218 individual to a health care entity in confidence during or in connection with the provision of health
219 services or information otherwise acquired by the health care entity about an individual in confidence
220 and in connection with the provision of health services to the individual.

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

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

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

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

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

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

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

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

240 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
241 § 16.1-248.3.

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

244 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the

case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an individual's written authorization, pursuant to the individual's oral authorization for a health care provider or health plan to discuss the individual's health records with a third party specified by the individual;

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

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

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

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

6. As required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, 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, 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, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1509, and 63.2-1606;

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

8. In connection with the health care entity's own health care operations or the health care operations of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411, and 54.1-3412;

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

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

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

12. To the *guardian ad litem* and any attorney appointed by the court to represent an individual who is or has been a patient who is the subject of a civil commitment proceeding under Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

13. *To a magistrate, the court, the evaluator or examiner required under § 16.1-338, 16.1-339, 16.1-342, or 37.2-815, a community services board or behavioral health authority or a designee of a community services board or behavioral health authority, or a law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6, 19.2-176, or 19.2-177.1, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to any health care provider evaluating or providing services to the person who is the subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those provisions. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person;*

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

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

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

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

17-18. As is necessary to support an application for receipt of health care benefits from a

306 governmental agency or as required by an authorized governmental agency reviewing such application or
307 reviewing benefits already provided or as necessary to the coordination of prevention and control of
308 disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

309 18-19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of
310 ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

311 19-20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and
312 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

313 20-21. Where necessary in connection with the implementation of a hospital's routine contact process
314 for organ donation pursuant to subdivision B 4 of § 32.1-127;

315 21-22. In the case of substance abuse records, when permitted by and in conformity with
316 requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

317 22-23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate
318 the adequacy or quality of professional services or the competency and qualifications for professional
319 staff privileges;

320 23-24. If the health records are those of a deceased or mentally incapacitated individual to the
321 personal representative or executor of the deceased individual or the legal guardian or committee of the
322 incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian
323 or committee appointed, to the following persons in the following order of priority: a spouse, an adult
324 son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual
325 in order of blood relationship;

326 24-25. For the purpose of conducting record reviews of inpatient hospital deaths to promote
327 identification of all potential organ, eye, and tissue donors in conformance with the requirements of
328 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's
329 designated organ procurement organization certified by the United States Health Care Financing
330 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association
331 of America or the American Association of Tissue Banks;

332 25-26. To the Office of the Inspector General for Mental Health, Mental Retardation and Substance
333 Abuse Services pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2;

334 26-27. To an entity participating in the activities of a local health partnership authority established
335 pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4 of this title, pursuant to subdivision 1 of
336 this subsection;

337 27-28. To law-enforcement officials by each licensed emergency medical services agency, (i) when
338 the individual is the victim of a crime or (ii) when the individual has been arrested and has received
339 emergency medical services or has refused emergency medical services and the health records consist of
340 the prehospital patient care report required by § 32.1-116.1;

341 28-29. To law-enforcement officials, in response to their request, for the purpose of identifying or
342 locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and
343 Crimes Against Minors Registry Act, material witness, or missing person, provided that only the
344 following information may be disclosed: (i) name and address of the person, (ii) date and place of birth
345 of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time
346 of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii)
347 description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by
348 the person.

349 29-30. To law-enforcement officials regarding the death of an individual for the purpose of alerting
350 law enforcement of the death if the health care entity has a suspicion that such death may have resulted
351 from criminal conduct;

352 30-31. To law-enforcement officials if the health care entity believes in good faith that the
353 information disclosed constitutes evidence of a crime that occurred on its premises;

354 31-32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
355 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
356 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title; and

357 32-33. To the Commissioner of the Department of Labor and Industry or his designee by each
358 licensed emergency medical services agency when the records consist of the prehospital patient care
359 report required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while
360 performing duties or tasks that are within the scope of his employment.

361 Notwithstanding the provisions of subdivisions 1 through 32-33 of this subsection, a health care
362 entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except
363 when disclosure by the health care entity is (i) for its own training programs in which students, trainees,
364 or practitioners in mental health are being taught under supervision to practice or to improve their skills
365 in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any
366 accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of
367 § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm;

(iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

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

F. Except as provided in subsection B of § 8.01-413, copies of an individual's health records shall not be furnished to such individual or anyone authorized to act on the individual's behalf when the individual's treating physician or the individual's treating clinical psychologist has made a part of the individual's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the individual of such health records would be reasonably likely to endanger the life or physical safety of the individual or another person, or that such health record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to such referenced person. If any health care entity denies a request for copies of health records based on such statement, the health care entity shall inform the individual of the individual's right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist, whose licensure, training and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The designated reviewing physician or clinical psychologist shall make a judgment as to whether to make the health record available to the individual.

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

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

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

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

AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

Individual's Name

Health Care Entity's Name

Person, Agency, or Health Care Entity to whom disclosure is to be made

Information or Health Records to be disclosed

Purpose of Disclosure or at the Request of the Individual

As the person signing this authorization, I understand that I am giving my permission to the above-named health care entity for disclosure of confidential health records. I understand that the health care entity may

not condition treatment or payment on my willingness to sign this authorization unless the specific circumstances under which such conditioning is permitted by law are applicable and are set forth in this authorization. I also understand that I have the right to revoke this authorization at any time, but that my revocation is not effective until delivered in writing to the person who is in possession of my health records and is not effective as to health records already disclosed under this authorization. A copy of this authorization and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original health records. I understand that health information disclosed under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no longer be protected to the same extent as such health information was protected by law while solely in the possession of the health care entity.

This authorization expires on (date) or (event)

Signature of Individual or Individual's Legal Representative if Individual is Unable to Sign

Relationship or Authority of Legal Representative

Date of Signature

H. Pursuant to this subsection:

1. Unless excepted from these provisions in subdivision 9 of this subsection, no party to a civil, criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for another party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the request or issuance of the attorney-issued subpoena.

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

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

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

NOTICE TO INDIVIDUAL

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

2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued

for an individual's health records shall include a Notice in the same part of the request in which the recipient of the subpoena duces tecum is directed where and when to return the health records. Such notice shall be in boldface capital letters and shall include the following language:

NOTICE TO HEALTH CARE ENTITIES

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

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

NO MOTION TO QUASH WAS FILED; OR

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

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

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

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

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

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

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

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

549 proceeding; and (v) any other relevant factor.

550 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
551 subpoenaed health records have been submitted by a health care entity to the court or administrative
552 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no
553 submitted health records should be disclosed, return all submitted health records to the health care entity
554 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide
555 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon
556 determining that only a portion of the submitted health records should be disclosed, provide such portion
557 to the party on whose behalf the subpoena was issued and return the remaining health records to the
558 health care entity in a sealed envelope.

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

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

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

572 c. All filed motions to quash have been resolved by the court or administrative agency and the
573 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no
574 health records shall be disclosed and all health records previously delivered in a sealed envelope to the
575 clerk of the court or administrative agency will be returned to the health care entity;

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

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

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

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

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

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

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

602 I. Health care entities may testify about the health records of an individual in compliance with
603 §§ 8.01-399 and 8.01-400.2.

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

§ 37.2-800. Applicability of chapter.

For the purposes of this chapter, whenever the term mental illness appears, it shall include substance abuse. *Whenever 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, any treating physician of the person, or a law-enforcement officer. Whenever the term community services board or board appears, it includes behavioral health authority or authority.*

§ 37.2-804.2. Disclosure of records.

Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to this chapter shall disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to § 37.2-815, the community services board or its designee performing any evaluation, preadmission screening, or monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant to this chapter. Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently evaluating or providing services to a person who is the subject of proceedings pursuant to this chapter shall disclose information that may be necessary for the treatment of such person to any other health care provider or other provider evaluating or providing services to or monitoring the treatment of the person. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person.

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

A. Any magistrate ~~may~~ shall issue, upon the sworn petition of any responsible person, *treating physician*, 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 a 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 and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm, or (b) suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs as evidenced by current circumstances, (iii)(ii) is in need of hospitalization or treatment, and (iv)(iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.~~

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

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

672 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing
673 an emergency custody order pursuant to this section.

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

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

682 H. The person shall remain in custody until a temporary detention order is issued, ~~or until the person~~
683 ~~is released, but in no event shall the period of custody exceed four hours or until the emergency custody~~
684 ~~order expires. An emergency custody order shall be valid for a period not to exceed four hours from the~~
685 ~~time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension,~~
686 ~~an emergency custody order may be renewed one time for a second period not to exceed two hours.~~
687 ~~Good cause for an extension includes the need for additional time to allow (i) the community services~~
688 ~~board to identify a suitable facility in which the person can be temporarily detained pursuant to~~
689 ~~§ 37.2-809 or (ii) a medical evaluation of the person to be completed if necessary. Any family member,~~
690 ~~as defined in § 37.2-100, employee or designee of the local community services board as defined in~~
691 ~~§ 37.2-809, treating physician, or law-enforcement officer may request the two-hour extension.~~

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

695 J. *Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical*
696 *screening and assessment services provided to persons with mental illnesses while in emergency custody.*

697 § 37.2-809. Involuntary temporary detention; issuance and execution of order.

698 A. For the purposes of this section:

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

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

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

713 B. A magistrate ~~may~~ *shall* issue, upon the sworn petition of any responsible person, *treating*
714 *physician*, or upon his own motion and only after an ~~in-person~~ *evaluation conducted in-person or by*
715 *means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by*
716 *an employee or a designee of the local community services board to determine whether the person meets*
717 *the criteria for temporary detention*, a temporary detention order if it appears from all evidence readily
718 available, including any recommendation from a physician or clinical psychologist treating the person,
719 that the person (i) has a mental illness; ~~(ii) presents an imminent danger to himself or others as a result~~
720 ~~of mental illness or is so seriously mentally ill as to be substantially unable to care for himself and that~~
721 ~~there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future,~~
722 ~~(a) cause serious physical harm to himself or others as evidenced by recent behavior causing,~~
723 ~~attempting, or threatening harm, or (b) suffer serious harm due to a substantial deterioration of his~~
724 ~~capacity to protect himself from harm or to provide for his basic human needs as evidenced by current~~
725 ~~circumstances, (iii)(ii) is in need of hospitalization or treatment, and (iv)(iii) is unwilling to volunteer or~~
726 ~~incapable of volunteering for hospitalization or treatment. The magistrate shall also consider the~~
727 ~~recommendations of any treating or examining physician licensed in Virginia if available either verbally~~
728 ~~or in writing prior to rendering a decision.~~

729 C. *When considering whether there is probable cause to issue a temporary detention order, the*
730 *magistrate may, in addition to the petition, consider (i) the recommendations of any treating or*
731 *examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person,*
732 *(iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical*
733 *records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the*

affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

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

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

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

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

GH. The duration of temporary detention shall *be sufficient 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 not exceed 48 hours prior to a hearing.* If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as herein provided, until the *close of business on the next day that is not a Saturday, Sunday, or legal holiday. The person may be released before the 48-hour period herein specified has run, pursuant to § 37.2-813, upon a finding that the person does not meet the criteria specified in subsection B.* -

HI. 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.

IJ. 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.

K. *The employee or designee of the community services board 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, inform the petitioner and the on-site physician of his recommendation.*

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

Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341, the district court judge or special justice may release the person on his personal recognizance or bond set by the district court judge or special justice if it appears from all evidence readily available that the person ~~will not pose an imminent danger to himself or others~~ *does not meet the commitment criteria specified in subsection C of § 37.2-817.* In the case of a minor, the juvenile and domestic relations district court judge may release the minor to his parent. The director of any facility in which the person is detained

795 may release the person prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341 if
796 it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the
797 person, that the person would not ~~present an imminent danger to himself or others~~ *meet the commitment*
798 *criteria specified in subsection C of § 37.2-817 or § 16.1-345* if released.

799 § 37.2-814. Commitment hearing for involuntary admission; written explanation; right to counsel;
800 rights of petitioner.

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

810 B. At the commencement of the commitment hearing, the district court judge or special justice shall
811 inform the person whose involuntary admission is being sought of his right to apply for voluntary
812 admission ~~and for inpatient~~ treatment as provided for in § 37.2-805 and shall afford the person an
813 opportunity for voluntary admission. The judge or special justice shall ascertain if the person is then
814 willing and capable of seeking voluntary admission ~~and for inpatient~~ treatment. If the judge or special
815 justice finds that the person is capable and willingly accepts voluntary admission ~~and for inpatient~~
816 treatment, the judge or special justice shall require him to accept voluntary admission for a minimum
817 period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall
818 give the ~~hospital/facility~~ 48 hours' notice prior to leaving the ~~hospital/facility~~. During this notice period,
819 the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person
820 shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for
821 preadmission screening by a community services board ~~or behavioral health authority~~ as provided in
822 § 37.2-805.

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

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

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

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

851 § 37.2-815. Commitment hearing for involuntary admission; examination required.

852 A. Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination
853 of the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in
854 Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of
855 mental illness or, if such a psychiatrist or psychologist is not available, ~~any~~ a mental health professional
856 who is (i) *is* licensed in Virginia through the Department of Health Professions ~~and as a clinical social~~

worker, professional counselor, psychiatric nurse practitioner, or clinical nurse specialist, (ii) is qualified in the diagnosis assessment of mental illness. The examiner chosen shall be, and (iii) has completed a certification program approved by the Department. The examiner chosen shall be able to provide an independent examination/clinical evaluation of the person and recommendations for his placement, care, and treatment. The examiner shall (a) not be related by blood or marriage to the person, (b) not be responsible for treating the person, (c) have no financial interest in the admission or treatment of the person, (d) have no investment interest in the facility detaining or admitting the person under this chapter, and (e) except for employees of state hospitals, the U.S. Department of Veterans Affairs, and community service boards, and behavioral health authorities, not be employed by the facility. For purposes of this section, the term "investment interest" shall be as defined in § 37.2-809.

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

C. All such examinations shall be conducted in private. The judge or special justice shall summons the examiner who shall certify that he has personally examined the person and state whether he has probable cause to believe that the person (i) does or does not present an imminent danger to himself or others as a result of mental illness or is or is not so seriously mentally ill as to be substantially unable to care for himself has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm, or (b) suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs as evidenced by current circumstances, and (ii) requires or does not require involuntary inpatient treatment. Alternatively, the judge or special justice may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection sustained to the acceptance of the written certification by the person or his attorney. The judge or special justice shall not render any decision on the petition until the examiner has presented his report orally or in writing. The examiner may report orally at the hearing, but he shall provide a written report of his examination prior to the hearing. If the examiner has determined that the person does not meet the commitment criteria and that opinion is objected to by the treating physician, the examiner shall attend the hearing in person or by means of a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1 to determine whether his opinion would change based upon the evidence presented at the hearing. In all other circumstances, the examiner's written certification may be accepted into evidence unless objected to by the person or his attorney, in which case the examiner shall attend in person or by electronic communication.

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

The district court judge or special justice shall require a preadmission screening report from 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. The report shall be admissible as evidence of the facts stated therein and shall state (i) whether the person presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill that he is substantially unable to care for himself has a mental illness and whether there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm, or (b) suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs as evidenced by current circumstances, (ii) whether the person is in need of involuntary inpatient treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the

918 recommendations for that person's placement, care, and treatment *including, where appropriate,*
919 *recommendations for mandatory outpatient treatment.* The board ~~or authority~~ shall provide the
920 preadmission screening report ~~within 48 hours or if the 48-hour period terminates on a Saturday,~~
921 ~~Sunday, legal holiday, or day on which the court is lawfully closed, the next day that is not a Saturday,~~
922 ~~Sunday, legal holiday, or day on which the court is lawfully closed~~ *to the court prior to the hearing.* In
923 the case of a person who has been sentenced and committed to the Department of Corrections and who
924 has been examined by a psychiatrist or clinical psychologist, the judge or special justice may proceed to
925 adjudicate whether the person has mental illness and should be involuntarily admitted without requesting
926 a preadmission screening report from the community services board ~~or behavioral health authority.~~

927 § 37.2-817. Involuntary admission and mandatory outpatient treatment orders.

928 A. The district court judge or special justice shall render a decision on the petition for involuntary
929 admission after the appointed examiner has presented ~~his the report, orally or in writing,~~ pursuant to
930 *required by § 37.2-815,* and after the community services board ~~or behavioral health authority~~ that
931 serves the county or city where the person resides or, if impractical, where the person is located has
932 presented a preadmission screening report, ~~orally or in writing,~~ with recommendations for that person's
933 placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute
934 sufficient evidence upon which the district court judge or special justice may base his decision. *The*
935 *examiner, if not physically present at the hearing, and the treating physician at the facility of temporary*
936 *detention shall be available whenever possible for questioning during the hearing through a two-way*
937 *electronic video and audio or telephonic communication system as authorized by § 37.2-804.1.*

938 B. *An employee or a designee of the local community services board, as defined in § 37.2-809, that*
939 *prepared the preadmission screening report shall attend the hearing in person or, if physical attendance*
940 *is not practicable, shall participate in the hearing through a two-way electronic video and audio or*
941 *telephonic communication system as authorized in § 37.2-804.1. Where a hearing is held outside of the*
942 *service area of the community services board that prepared the preadmission screening report, and it is*
943 *not practicable for a representative of the board to attend or participate in the hearing, arrangements*
944 *shall be made by the board for an employee or designee of the board serving the area in which the*
945 *hearing is held to attend or participate on behalf of the board that prepared the preadmission screening*
946 *report. The community services board that prepared the preadmission screening report shall remain*
947 *responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission*
948 *screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or*
949 *other electronic means to the community services board attending the hearing. At least 12 hours prior to*
950 *the hearing, the court shall provide to the community services board that prepared the preadmission*
951 *screening report the time and location of the hearing. If the representative of the community services*
952 *board will be present by telephonic means, the court shall provide the telephone number to the board.*

953 BC. After observing the person and ~~obtaining the necessary positive certification~~ and considering (i)
954 *the recommendations of any treating physician or psychologist licensed in Virginia, if available, (ii) any*
955 *past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's*
956 *certification, (v) any health records available, (vi) any affidavits submitted, if the witness is unavailable*
957 *and it so states in the affidavit, (vii) the preadmission screening report, and (viii) any other relevant*
958 *evidence that may have been offered, if the judge or special justice finds by clear and convincing*
959 *evidence that (i) (a) the person presents an imminent danger to himself or others as a result of mental*
960 *illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself*
961 *has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person*
962 *will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent*
963 *behavior causing, attempting, or threatening harm, or (2) suffer serious harm due to substantial*
964 *deterioration of his capacity to protect himself from harm or to provide for his basic human needs as*
965 *evidenced by current circumstances, and (ii) (b) all available less restrictive treatment alternatives to*
966 *involuntary inpatient treatment that would offer an opportunity for the improvement of the person's*
967 *condition have been investigated and deemed unsuitable and there is no less restrictive alternative to*
968 *involuntary inpatient treatment determined to be inappropriate, the judge or special justice shall by*
969 *written order and specific findings so certify and order that the person be admitted involuntarily to a*
970 *facility for a period of treatment not to exceed 180 30 days from the date of the court order. Such*
971 *involuntary admission shall be to a facility designated by the community services board or behavioral*
972 *health authority that serves the city or county in which the person was examined as provided in*
973 *§ 37.2-816. If the community services board or behavioral health authority does not designate a facility*
974 *at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the*
975 *Commissioner. The* *Upon the expiration of an order for involuntary admission, the person shall be*
976 *released at the expiration of 180 days unless he is involuntarily admitted by further petition and order of*
977 *a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order,*
978 *or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805 or is*
979 *ordered to mandatory outpatient treatment pursuant to subsection D.*

980 ~~CD. After observing the person and obtaining the necessary positive certification and considering (i)~~
 981 ~~the recommendations of any treating physician or psychologist licensed in Virginia, if available, (ii) any~~
 982 ~~past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's~~
 983 ~~certification, (v) any health records available, (vi) any affidavits submitted, if the witness is unavailable~~
 984 ~~and it so states in the affidavit, (vii) the preadmission screening report, and (viii) any other relevant~~
 985 ~~evidence that may have been offered, if the judge or special justice finds by clear and convincing~~
 986 ~~evidence that (i) (a) the person presents an imminent danger to himself or others as a result of mental~~
 987 ~~illness or has been proven to be so seriously mentally ill as to be substantially unable to care for~~
 988 ~~himself has a mental illness and that there exists a substantial likelihood that, as a result of mental~~
 989 ~~illness, the person will, in the near future, (1) cause serious physical harm to himself or others as~~
 990 ~~evidenced by recent behavior causing, attempting, or threatening harm, or (2) suffer serious harm due~~
 991 ~~to substantial deterioration of his capacity to protect himself from harm or to provide for his basic~~
 992 ~~human needs as evidenced by current circumstances, (ii) (b) less restrictive alternatives to involuntary~~
 993 ~~inpatient treatment that would offer an opportunity for improvement of his condition have been~~
 994 ~~investigated and are deemed suitable, (iii) are determined to be appropriate, and (c) the person (a) (A)~~
 995 ~~has the degree of competency necessary sufficient capacity to understand the stipulations of his treatment,~~
 996 ~~(b) (B) expresses has expressed an interest in living in the community and agrees has agreed to abide by~~
 997 ~~his treatment plan, and (c) (C) is deemed to have the capacity to comply with the treatment plan and~~
 998 ~~understand and adhere to conditions and requirements of the treatment and services, and (iv) (d) the~~
 999 ~~ordered treatment can be delivered on an outpatient basis and be monitored by the community services~~
 1000 ~~board, behavioral health authority or designated provider, the judge or special justice shall by written~~
 1001 ~~order and specific findings so certify and order that the person be admitted involuntarily to mandatory~~
 1002 ~~outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the~~
 1003 ~~services are actually available in the community and providers of the services have actually agreed to~~
 1004 ~~deliver the services.~~

1005 ~~E. Mandatory outpatient treatment, which may include day treatment in a hospital, night treatment in~~
 1006 ~~a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11~~
 1007 ~~(§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of~~
 1008 ~~the person. The community services board or behavioral health authority that serves the city or county~~
 1009 ~~in which the person resides shall recommend a specific course of treatment and programs for the~~
 1010 ~~provision of involuntary mandatory outpatient treatment. The community services board, behavioral~~
 1011 ~~health authority, or designated provider shall monitor the person's compliance with the treatment ordered~~
 1012 ~~by the court under this section, and the person's failure to comply with involuntary outpatient treatment~~
 1013 ~~as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the~~
 1014 ~~provisions of this section. Upon failure of the person to adhere to the terms of the outpatient treatment~~
 1015 ~~order, the judge or special justice may revoke it and, upon notice to the person and after a commitment~~
 1016 ~~hearing, order involuntary admission to a facility. The duration of mandatory outpatient treatment shall~~
 1017 ~~be determined by the court based on recommendations of the community services board, but shall not~~
 1018 ~~exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be~~
 1019 ~~released from the requirements of the order unless the order is extended in accordance with~~
 1020 ~~§ 37.2-817.4.~~

1021 ~~F. Any order for mandatory outpatient treatment shall include an initial mandatory outpatient~~
 1022 ~~treatment plan developed by the community services board that completed the preadmission screening~~
 1023 ~~report. The plan shall, at a minimum, (i) identify the specific services to be provided, (ii) identify the~~
 1024 ~~provider who has agreed to provide each service, (iii) describe the arrangements made for the initial~~
 1025 ~~in-person appointment or contact with each service provider, and (iv) include any other relevant~~
 1026 ~~information that may be available regarding the mandatory outpatient treatment ordered. The order~~
 1027 ~~shall require the community services board to monitor the implementation of the mandatory outpatient~~
 1028 ~~treatment plan and report any material noncompliance to the court.~~

1029 ~~G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for~~
 1030 ~~mandatory outpatient treatment has been entered pursuant to this section, the community services board~~
 1031 ~~where the person resides that is responsible for monitoring compliance with the order shall file a~~
 1032 ~~comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment~~
 1033 ~~plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided~~
 1034 ~~to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)~~
 1035 ~~certify that the services are the most appropriate and least restrictive treatment available for the person,~~
 1036 ~~(iv) certify that each provider has complied and continues to comply with applicable provisions of the~~
 1037 ~~Department's licensing regulations, (v) be developed with the fullest possible involvement and~~
 1038 ~~participation of the person and reflect his preferences to the greatest extent possible to support his~~
 1039 ~~recovery and self-determination, (vi) specify the particular conditions with which the person shall be~~
 1040 ~~required to comply, and (vii) describe how the community services board shall monitor the person's~~

1041 compliance with the plan and report any material noncompliance with the plan. The community services
1042 board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval.
1043 Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with
1044 the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive
1045 modifications to the plan shall be filed with the court and attached to any order for mandatory
1046 outpatient treatment.

1047 H. If the community services board responsible for developing the comprehensive mandatory
1048 outpatient treatment plan determines that the services necessary for the treatment of the person's mental
1049 illness are not available or cannot be provided to the person in accordance with the order for
1050 mandatory outpatient treatment, it shall notify the court within five days of the entry of the order for
1051 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special
1052 justice, after notice to the person, the person's attorney, and the community services board responsible
1053 for developing the comprehensive mandatory outpatient treatment plan, shall hold a hearing to
1054 determine whether the person continues to meet the criteria for involuntary inpatient treatment. Where
1055 the judge or special justice determines that the person continues to meet the criteria for involuntary
1056 inpatient treatment, the judge or special justice shall by written order so certify and order that the
1057 person be admitted involuntarily to a facility for a period of involuntary inpatient treatment in
1058 accordance with subsection C. The period of involuntary inpatient treatment shall be determined by the
1059 court based on recommendations of the community services board.

1060 I. Upon entry of any order for mandatory outpatient treatment, the clerk of the court shall provide a
1061 copy of the order to the person who is the subject of the order, to his attorney, and to the community
1062 services board required to monitor compliance with the plan. The community services board shall
1063 acknowledge receipt of the order to the clerk of the court on a form established by the Office of the
1064 Executive Secretary of the Supreme Court and provided by the court for this purpose.

1065 J. The court may transfer jurisdiction of the case to the general district court where the person
1066 resides at any time after the entry of the mandatory outpatient treatment order. The community services
1067 board responsible for monitoring compliance with the mandatory outpatient treatment plan shall remain
1068 responsible for monitoring the person's compliance with the plan until the community services board
1069 serving the locality to which jurisdiction of the case has been transferred acknowledges the transfer and
1070 receipt of the order to the clerk of the court on a form established by the Office of the Executive
1071 Secretary of the Supreme Court and provided by the court for this purpose.

1072 § 37.2-817.1. Monitoring mandatory outpatient treatment.

1073 A. The community services board where the person resides shall monitor the person's compliance
1074 with the mandatory outpatient treatment plan ordered by the court pursuant to § 37.2-817. Monitoring
1075 compliance shall consist of (i) contacting the service providers to determine if the person is complying
1076 with the mandatory outpatient treatment order and (ii) notifying the court of the person's material
1077 noncompliance with the mandatory treatment order. Providers of services identified in the plan shall
1078 report any material noncompliance to the community services board. The community services board
1079 shall take and document all reasonable steps to identify the reasons for and address noncompliance,
1080 including efforts to resolve issues and encourage compliance, before reporting any material
1081 noncompliance to the court.

1082 B. When a person materially fails to comply with a mandatory outpatient treatment order despite all
1083 reasonable steps taken to bring the person into compliance with the order, and the community services
1084 board charged with monitoring the person's compliance with the order does not know whether the
1085 person currently meets the criteria for involuntary inpatient admission or mandatory outpatient
1086 treatment in subsection C or D of § 37.2-817, it shall attempt to arrange a meeting with the person to
1087 determine whether the person continues to meet the criteria. If the person does not respond to or refuses
1088 to meet with an employee or designee of the community services board, the community services board
1089 shall petition the court for and the court shall issue a mandatory examination order and *capias*
1090 directing the primary law-enforcement agency from the jurisdiction in which the community services
1091 board is located to take the person into custody and transport him to a convenient location to be
1092 evaluated by an employee or designee of the community services board as defined in § 37.2-809. The
1093 person shall remain in custody until a temporary detention order is issued or until the person is
1094 released, but in no event shall the period of custody exceed four hours.

1095 C. If, based upon its monitoring of the person's compliance with the mandatory outpatient treatment
1096 order, or following the evaluation referenced in subsection B, the community services board has
1097 probable cause to believe that the person has materially failed to comply with the order without good
1098 cause and continues to meet the criteria for involuntary outpatient treatment in subsection C of
1099 § 37.2-817, it shall petition the court for a review of the mandatory outpatient treatment order as
1100 provided in § 37.2-817.2 and may obtain a temporary detention order pursuant to § 37.2-809, if
1101 necessary. The community services board shall petition the court for a review of the mandatory
1102 outpatient treatment order within three days of making that determination, or within 24 hours if the

person is being detained under a temporary detention order, and shall recommend an appropriate disposition. Copies of the petition shall be sent to the person and the person's attorney.

§ 37.2-817.2. Court review of mandatory outpatient treatment order.

A. The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the mandatory outpatient treatment order; however if the fifth day is a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday. If the person is being detained under a temporary detention order, the noncompliance hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. If the person is not detained, the person shall be provided notice at least 48 hours before the hearing. If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearings under §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order need not preside at the noncompliance hearing.

B. If more than 10 days has passed since the issuance of the mandatory outpatient treatment order, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally examine the person and certify to the court whether or not he has probable cause to believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient treatment as specified in subsections C and D of § 37.2-817. The examination shall include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not detained in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination, if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board. If the person refuses or fails to appear, the community services board shall notify the clerk of the general district court or a magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and *capias* directing the primary law-enforcement agency in the jurisdiction where the person resides to transport the person to the examination. 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 exceed four hours.

C. The community services board shall offer to arrange the person's transportation to the hearing, if the person is not detained and has no other source of transportation. If the person fails or refuses to attend, the hearing may proceed in the person's absence. Nothing herein shall prevent the community services board from obtaining an emergency custody order as provided in § 37.2-808 or a temporary detention order as provided in § 37.2-809, if at any time the community services board has probable cause to believe the person meets the criteria specified in subsection C of § 37.2-817.

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

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

2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment specified in subsection D of § 37.2-817, and that a continued period of mandatory outpatient treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient treatment, making any necessary modifications that are acceptable to the community services board or treatment provider responsible for the person's treatment; or

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

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

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

A. If the community services board determines at any time prior to the expiration of the mandatory outpatient treatment order that the person has complied with the order and no longer meets the criteria for involuntary treatment, or that continued mandatory outpatient treatment is no longer necessary for any other reason, it shall notify the clerk of the court that entered the order or to which venue has been transferred, and the court shall rescind the order.

B. At any time after 30 days from entry of the mandatory outpatient treatment order, the person may

1164 petition the court to rescind the order on the grounds that he no longer meets the criteria for mandatory
1165 outpatient treatment as specified in subsection D of § 37.2-817. The court shall schedule a hearing to be
1166 held within 10 days of receiving the petition. Within five days, excluding Saturdays, Sundays or legal
1167 holidays, of receiving the petition, the court shall provide notice of the hearing to the person, the
1168 person's attorney, the community services board, and to any members of the person's family whom the
1169 person has authorized to receive information regarding his treatment. The community services board
1170 required to monitor the person's compliance with the mandatory outpatient treatment order shall provide
1171 a preadmission screening report as required in § 37.2-816. If, after observing the person, reviewing the
1172 preadmission screening report, and considering any other relevant evidence, including any relevant
1173 evidence referred in subsection C of § 37.2-817, the court finds that the person does not meet the
1174 criteria for mandatory outpatient treatment, the judge or special justice shall rescind the order. If the
1175 court finds that the person continues to meet the criteria for mandatory outpatient treatment, the order
1176 shall remain in effect. The person may not file a petition to rescind the order more than once during a
1177 90-day period.

1178 § 37.2-817.4. Extension of mandatory outpatient treatment order.

1179 A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order, the
1180 community services board that is required to monitor the person's compliance with the order, the
1181 treating physician, or other responsible person may petition the court to extend the order for a period
1182 not to exceed 180 days.

1183 B. If the person who is the subject of the order and the monitoring community services board, if it
1184 did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate
1185 order without further hearing. If the person and the monitoring community services board do not join
1186 the petition, the court shall schedule a hearing to be held within 10 days of receiving the petition.

1187 C. Within five days of receiving the petition, the court shall provide notice of the hearing to the
1188 person, the person's attorney, the community services board, and to any members of the person's family
1189 whom the person has authorized to receive information regarding his treatment.

1190 D. Upon receipt of the petition, the court shall appoint an examiner who shall personally examine
1191 the person pursuant to the applicable requirements in § 37.2-815 and certify whether he continues to
1192 meet the criteria for mandatory outpatient treatment pursuant to subsection D of § 37.2-817. The
1193 community services board required to monitor the person's compliance with the mandatory outpatient
1194 treatment order shall provide a preadmission screening report as required in § 37.2-816.

1195 E. If, after observing the person, reviewing the preadmission screening report and considering the
1196 appointed examiner's certification and any other relevant evidence, including any relevant evidence
1197 referenced in subsection D of § 37.2-817, the court finds that the person meets the criteria for
1198 mandatory outpatient treatment, the judge or special justice shall extend the order for a period not to
1199 exceed 180 days. Where the court finds that the person does not meet the criteria for mandatory
1200 outpatient treatment, the court shall rescind the order. Any order of mandatory outpatient treatment that
1201 is in effect at the time a petition for extension of the order is filed shall remain in effect until the
1202 disposition of the hearing to extend the period of mandatory outpatient treatment.

1203 § 37.2-818. Commitment hearing for involuntary admission; recordings and records.

1204 A. The district court judge or special justice shall make or cause to be made a tape or other audio
1205 recording of the commitment hearing any hearings held under this chapter and shall submit the recording
1206 to the appropriate district court clerk of the general district court in the locality in which the hearing is
1207 held to be retained in a confidential file. Recordings shall be used only to document and to answer
1208 questions concerning the judge's or special justice's conduct of the hearing. The person who was the
1209 subject of the hearing shall be entitled, upon request, to obtain a copy of the tape or other audio
1210 recording of such hearing. These recordings shall be retained for at least three years from the date of
1211 the commitment hearing.

1212 B. Except as provided in this section and § 37.2-819, the court shall keep its copies of recordings
1213 made pursuant to this section, relevant medical records, reports, and court documents pertaining to the
1214 hearinghearings provided for in this sectionchapter confidential if so requested by the person who was
1215 the subject of the hearing or his counsel, with. The person who is the subject of the hearing may, in
1216 writing, waive the confidentiality provided herein. In the absence of such waiver, access to the
1217 dispositional order only may be provided only upon court order for good cause shown. Any person
1218 seeking access to the dispositional order may file a written motion setting forth why such access is
1219 needed. The court may issue an order to disclose the dispositional order if it finds that such disclosure
1220 is in the best interest of the person who is the subject of the hearing or of the public. The Executive
1221 Secretary of the Supreme Court and anyone acting on his behalf shall be provided access to the court's
1222 records upon request. Such recordings, records, reports, and documents shall not be subject to the
1223 Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

1224 C. The After entering an order for involuntary admission or mandatory outpatient treatment, the
1225 judge or special justice shall order that copies of the relevant medical records of the person be released

to (i) the facility in which he is placed upon the request of the treating physician or director of the facility, (ii) the community services board of the jurisdiction where the person resides, (iii) any treatment providers identified in a treatment plan incorporated into any mandatory outpatient treatment order, and (iv) any other treatment providers or entities.

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

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

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

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

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

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

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

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

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

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

4. If the judge or special justice, after observing the prisoner and obtaining the necessary positive certification and other relevant evidence, finds specifically that (i) the prisoner 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, the prisoner has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the prisoner will, in the near future, (a) cause

1287 *serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or*
1288 *threatening harm or (b) suffer serious harm due to substantial deterioration of his capacity to protect*
1289 *himself from harm or to provide for his basic human needs as evidenced by current circumstances, and*
1290 (ii) alternatives to involuntary admission have been investigated and deemed unsuitable and there is no
1291 less restrictive alternative to such admission, the judge or special justice shall by written order and
1292 specific findings so certify and order that the prisoner be placed in a hospital or other facility designated
1293 by the Director for a period not to exceed 180 days from the date of the court order. Such placement
1294 shall be in a hospital or other facility for the care and treatment of persons with mental illness that is
1295 licensed or operated by the Department of Mental Health, Mental Retardation and Substance Abuse
1296 Services.

1297 5. The judge or special justice shall also order that the relevant medical records of such prisoner be
1298 released to the hospital, facility, or program in which he is placed upon request of the treating physician
1299 or director of the hospital, facility, or program.

1300 6. The Department shall prepare the forms required in procedures for admission as approved by the
1301 Attorney General. These forms, which shall be the legal forms used in such admissions, shall be
1302 distributed by the Department to the clerks of the general district courts of the various counties and
1303 cities of the Commonwealth and to the directors of the respective state hospitals.