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## HOUSE BILL NO. 499

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Howell  
on March 4, 2008)

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

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

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

§ 19.2-169.6. Emergency treatment prior to trial.

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

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

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

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

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

86 In any case in which the defendant is hospitalized pursuant to this section, the court having  
87 jurisdiction over the defendant's case may provide by order that the admitting hospital evaluate the  
88 defendant's competency to stand trial and his mental state at the time of the offense pursuant to  
89 §§ 19.2-169.1 and 19.2-169.5.

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

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

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

provide care and treatment to the defendant and to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the jail shall be limited to information necessary to protect the sheriff or administrator of the jail and his employees, the defendant, or the public from physical injury or to address the health care needs of the defendant. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

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

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

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

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

B. If it appears from all evidence readily available that the defendant is mentally ill and poses an 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 and other relevant information, if any, 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 other relevant information, if any, and (iii) 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 other relevant information, if any, 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 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809, 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

183 order for treatment in accordance with the procedures specified in subdivision A 2 of § 19.2-169.6.

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

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

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

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

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

195 § 32.1-127.1:03. Health records privacy.

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

200 Pursuant to this subsection:

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

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

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

221 B. As used in this section:

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

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

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

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

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

237 "Health care provider" means those entities listed in the definition of "health care provider" in  
238 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the  
239 purposes of this section. Health care provider shall also include all persons who are licensed, certified,  
240 registered or permitted or who hold a multistate licensure privilege issued by any of the health  
241 regulatory boards within the Department of Health Professions, except persons regulated by the Board of  
242 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

306 administrative law order, but only to the extent as required by such order;

307 11. To the guardian ad litem and any attorney representing the respondent in the course of a  
308 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10  
309 (§ 37.2-1000 et seq.) of Title 37.2;

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

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

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

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

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

336 16-17. To third-party payors and their agents for purposes of reimbursement;

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

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

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

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

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

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

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

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

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

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

this subsection;

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

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

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

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

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

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

Notwithstanding the provisions of subdivisions 1 through 32-33 of this subsection, a health care entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 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

429 record available to the individual.

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

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

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

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

450 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

451 Individual's Name .....

452 Health Care Entity's Name .....

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

455 Information or Health Records to be disclosed .....

456 Purpose of Disclosure or at the Request of the Individual .....

457 As the person signing this authorization, I understand that I am giving  
458 my permission to the above-named health care entity for disclosure of  
459 confidential health records. I understand that the health care entity  
460 may not condition treatment or payment on my willingness to sign this  
461 authorization unless the specific circumstances under which such  
462 conditioning is permitted by law are applicable and are set forth in  
463 this authorization. I also understand that I have the right to revoke  
464 this authorization at any time, but that my revocation is not effective  
465 until delivered in writing to the person who is in possession of my  
466 health records and is not effective as to health records already  
467 disclosed under this authorization. A copy of this authorization and  
468 a notation concerning the persons or agencies to whom disclosure was  
469 made shall be included with my original health records. I understand  
470 that health information disclosed under this authorization might be  
471 redisclosed by a recipient and may, as a result of such disclosure,  
472 no longer be protected to the same extent as such health information  
473 was protected by law while solely in the possession of the health  
474 care entity.

475 This authorization expires on (date) or (event) .....

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

478 Relationship or Authority of Legal Representative .....

479 Date of Signature .....

480 H. Pursuant to this subsection:

481 1. Unless excepted from these provisions in subdivision 9 of this subsection, no party to a civil,  
482 criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for  
483 another party's health records or cause a subpoena duces tecum to be issued by an attorney unless a  
484 copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other  
485 party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the  
486 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces  
487 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.

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

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

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

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

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

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

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

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

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

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

608 d. All filed motions to quash have been resolved by the court or administrative agency and the  
609 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only  
610 limited disclosure has been authorized. The certification shall state that only the portion of the health

records as set forth in the certification, consistent with the court or administrative agency's ruling, shall be disclosed. The certification shall also state that health records that were previously delivered to the court or administrative agency for which disclosure has been authorized will not be returned to the health care entity; however, all health records for which disclosure has not been authorized will be returned to the health care entity; or

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

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

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

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

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

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

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

J. If an individual requests a copy of his health record from a health care entity, the health care entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and labor of copying the requested information, postage when the individual requests that such information be mailed, and preparation of an explanation or summary of such information as agreed to by the individual. For the purposes of this section, "individual" shall subsume a person with authority to act on behalf of the individual who is the subject of the health record in making decisions related to his health 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 shall include behavioral health 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, upon request, 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. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.*

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

§ 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

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

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

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

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

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

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

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

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

722 H. The person shall remain in custody until a temporary detention order is issued, ~~or until the person~~  
723 ~~is released, but in no event shall the period of custody exceed four hours or until the emergency custody~~  
724 ~~order expires. An emergency custody order shall be valid for a period not to exceed four hours from the~~  
725 ~~time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension,~~  
726 ~~an emergency custody order may be renewed one time for a second period not to exceed two hours.~~  
727 *Good cause for an extension includes the need for additional time to allow (i) the community services*  
728 *board to identify a suitable facility in which the person can be temporarily detained pursuant to*  
729 *§ 37.2-809 or (ii) a medical evaluation of the person to be completed if necessary. Any family member,*  
730 *as defined in § 37.2-100, employee or designee of the local community services board as defined in*  
731 *§ 37.2-809, treating physician, or law-enforcement officer may request the two-hour extension.*

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

not open, to any magistrate thereof.

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

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

A. For the purposes of this section:

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

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

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

B. A magistrate ~~may~~ *shall* issue, upon the sworn petition of any responsible person, *treating physician*, or upon his own motion and only after an ~~in-person~~ *evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1* by an employee or a designee of the local community services board *to determine whether the person meets the criteria for temporary detention*, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (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 and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (iii)(ii) is in need of hospitalization or treatment, and (iv)(iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.~~ The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. *Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.*

C. When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical 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

795 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance  
796 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by  
797 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

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

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

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

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

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

829 § 37.2-813. Release of person prior to commitment hearing for involuntary admission.

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

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

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

851 B. At the commencement of the commitment hearing, the district court judge or special justice shall  
852 inform the person whose involuntary admission is being sought of his right to apply for voluntary  
853 admission ~~and for inpatient~~ treatment as provided for in § 37.2-805 and shall afford the person an  
854 opportunity for voluntary admission. The judge or special justice shall ascertain if the person is then  
855 willing and capable of seeking voluntary admission ~~and for inpatient~~ treatment. If the judge or special  
856 justice finds that the person is capable and willingly accepts voluntary admission ~~and for inpatient~~

treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the ~~hospital~~ facility 48 hours' notice prior to leaving the ~~hospital~~ facility. During this notice period, the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a community services board ~~or behavioral health authority~~ as provided in § 37.2-805.

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

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

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

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

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

A. Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination of the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not available, ~~any~~ a mental health professional 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, if that is not practicable, 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 likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity 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*

918 will, in the near future, cause serious physical harm to himself or others as evidenced by recent  
919 behavior causing, attempting, or threatening harm and other relevant information, if any; (iv) an  
920 assessment of the person's capacity to consent to treatment, including his ability to maintain and  
921 communicate choice, understand relevant information, and comprehend the situation and its  
922 consequences; (v) a review of the temporary detention facility's records for the person, including the  
923 treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests  
924 conducted, and all admission forms and nurses' notes; (vi) a discussion of treatment preferences  
925 expressed by the person or contained in a document provided by the person in support of recovery; (vii)  
926 an assessment of alternatives to involuntary inpatient treatment; and (viii) recommendations for the  
927 placement, care, and treatment of the person.

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

945 § 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

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

966 § 37.2-817. Involuntary admission and mandatory outpatient treatment orders.

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

977 B. An employee or a designee of the local community services board, as defined in § 37.2-809, that  
978 prepared the preadmission screening report shall attend the hearing in person or, if physical attendance  
979 is not practicable, shall participate in the hearing through a two-way electronic video and audio or

telephonic communication system as authorized in § 37.2-804.1. Where a hearing is held outside of the service area of the community services board that prepared the preadmission screening report, and it is not practicable for a representative of the board to attend or participate in the hearing, arrangements shall be made by the board for an employee or designee of the board serving the area in which the hearing is held to attend or participate on behalf of the board that prepared the preadmission screening report. The community services board that prepared the preadmission screening report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board attending the hearing. Where a community services board attends the hearing on behalf of the community services board that prepared the preadmission screening report, the attending community services board shall inform the community services board that prepared the preadmission screening report of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means.

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

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

CD. After observing the person and obtaining the necessary positive certification and considering (i) the recommendations of any treating physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been offered, if the judge or special justice finds by clear and convincing evidence that (i) (a) the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) (b) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are deemed suitable, (iii) are determined to be appropriate, and (c) the person (a) (A) has the degree of competency necessary sufficient capacity to understand the stipulations of his treatment, (b) (B) expresses has expressed an interest in living in the community and agrees has agreed to abide by his treatment plan,

1041 and (e) (C) is deemed to have the capacity to comply with the treatment plan *and understand and*  
1042 *adhere to conditions and requirements of the treatment and services*, and ~~(iv)~~ (d) the ordered treatment  
1043 can be delivered on an outpatient basis ~~and be monitored~~ by the community services board, behavioral  
1044 health authority or designated provider, the judge or special justice shall *by written order and specific*  
1045 *findings so certify and order that the person be admitted involuntarily to mandatory outpatient*  
1046 *treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are*  
1047 *actually available in the community and providers of the services have actually agreed to deliver the*  
1048 *services.*

1049 E. Mandatory outpatient treatment, ~~which~~ may include day treatment in a hospital, night treatment in  
1050 a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11  
1051 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of  
1052 the person. The community services board ~~or behavioral health authority~~ that serves the city or county  
1053 in which the person resides shall recommend a specific course of treatment and programs for the  
1054 provision of ~~involuntary~~ mandatory outpatient treatment. ~~The community services board, behavioral~~  
1055 ~~health authority, or designated provider shall monitor the person's compliance with the treatment ordered~~  
1056 ~~by the court under this section, and the person's failure to comply with involuntary outpatient treatment~~  
1057 ~~as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the~~  
1058 ~~provisions of this section. Upon failure of the person to adhere to the terms of the outpatient treatment~~  
1059 ~~order, the judge or special justice may revoke it and, upon notice to the person and after a commitment~~  
1060 ~~hearing, order involuntary admission to a facility. The duration of mandatory outpatient treatment shall~~  
1061 ~~be determined by the court based on recommendations of the community services board, but shall not~~  
1062 ~~exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be~~  
1063 ~~released from the requirements of the order unless the order is continued in accordance with~~  
1064 ~~§ 37.2-817.4.~~

1065 F. Any order for mandatory outpatient treatment shall include an initial mandatory outpatient  
1066 treatment plan developed by the community services board that completed the preadmission screening  
1067 report. The plan shall, at a minimum, (i) identify the specific services to be provided, (ii) identify the  
1068 provider who has agreed to provide each service, (iii) describe the arrangements made for the initial  
1069 in-person appointment or contact with each service provider, and (iv) include any other relevant  
1070 information that may be available regarding the mandatory outpatient treatment ordered. The order  
1071 shall require the community services board to monitor the implementation of the mandatory outpatient  
1072 treatment plan and report any material noncompliance to the court.

1073 G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for  
1074 mandatory outpatient treatment has been entered pursuant to this section, the community services board  
1075 where the person resides that is responsible for monitoring compliance with the order shall file a  
1076 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment  
1077 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided  
1078 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)  
1079 certify that the services are the most appropriate and least restrictive treatment available for the person,  
1080 (iv) certify that each provider has complied and continues to comply with applicable provisions of the  
1081 Department's licensing regulations, (v) be developed with the fullest possible involvement and  
1082 participation of the person and reflect his preferences to the greatest extent possible to support his  
1083 recovery and self-determination, (vi) specify the particular conditions with which the person shall be  
1084 required to comply, and (vii) describe how the community services board shall monitor the person's  
1085 compliance with the plan and report any material noncompliance with the plan. The community services  
1086 board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval.  
1087 Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with  
1088 the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive  
1089 modifications to the plan shall be filed with the court for review and attached to any order for  
1090 mandatory outpatient treatment.

1091 H. If the community services board responsible for developing the comprehensive mandatory  
1092 outpatient treatment plan determines that the services necessary for the treatment of the person's mental  
1093 illness are not available or cannot be provided to the person in accordance with the order for  
1094 mandatory outpatient treatment, it shall notify the court within five days of the entry of the order for  
1095 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special  
1096 justice, after notice to the person, the person's attorney, and the community services board responsible  
1097 for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to  
1098 § 37.2-817.2.

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

Executive Secretary of the Supreme Court and provided by the court for this purpose.

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

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

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

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

B. If the community services board determines that the person materially failed to comply with the order, it shall petition the court for a review of the mandatory outpatient treatment order as provided in § 37.2-817.2. The community services board shall petition the court for a review of the mandatory 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.

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

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

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 plan; 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 hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order, and the original petitioner for the person's involuntary treatment. 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 or any subsequent hearings. 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.

B. If requested by the person, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan, or the original petitioner for the person's involuntary treatment, 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 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. If the person fails to appear for the hearing the court shall, after consideration of any evidence from the person, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan regarding why the person failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to § 37.2-808 or (iii) issue a temporary detention order pursuant to § 37.2-809.

D. After hearing the evidence regarding the person's material 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. In determining the appropriateness of outpatient treatment, the court may consider the person's material noncompliance with the previous mandatory treatment order; 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 file a petition to rescind the order with the court that entered the order or to which venue has been transferred. If the court agrees with the community services board's determination, the court shall rescind the order. Otherwise, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2.

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

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

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

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

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

D. If, after observing the person, reviewing the preadmission screening report and considering the appointed examiner's certification and any other relevant evidence, including any relevant evidence

referenced in subsection D of § 37.2-817, the court shall make one of the dispositions specified in subsection D of § 37.2-817.2. If the court finds that a continued period of mandatory outpatient treatment is warranted, it may continue the order for a period not to exceed 180 days. Any order of mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is filed shall remain in effect until the disposition of the hearing.

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

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

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

C. The After entering an order for involuntary admission or mandatory outpatient treatment, the 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

1287 hospitalization.

1288 B. Such prisoner may be involuntarily admitted to a hospital or facility for the care and treatment of  
1289 persons with mental illness by complying with the following admission procedures:

1290 1. A hearing on the petition shall be scheduled as soon as possible, allowing the prisoner an  
1291 opportunity to prepare any defenses which he may have, obtain independent evaluation and expert  
1292 opinion at his own expense, and summons other witnesses.

1293 2. Prior to such hearing, the judge or special justice shall fully inform the prisoner of the allegations  
1294 of the petition, the standard upon which he may be admitted involuntarily, the right of appeal from such  
1295 hearing to the circuit court, and the right to jury trial on appeal. The judge or special justice shall  
1296 ascertain if the prisoner is represented by counsel, and, if he is not represented by counsel, the judge or  
1297 special justice shall appoint an attorney to represent the prisoner.

1298 3. The judge or special justice shall require an examination of such prisoner by a psychiatrist who is  
1299 licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such psychiatrist or  
1300 clinical psychologist is not available, a physician or psychologist who is licensed in Virginia and who is  
1301 qualified in the diagnosis of mental illness. The judge or special justice shall summons the examiner,  
1302 who shall certify that he has personally examined the individual and has probable cause to believe that  
1303 the prisoner does or does not have mental illness, ~~does or does not present an imminent danger to~~  
1304 ~~himself or others~~*that there does or does not exist a substantial likelihood that, as a result of mental*  
1305 *illness, the prisoner will, in the near future, cause serious physical harm to himself or others as*  
1306 *evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if*  
1307 *any, and that the prisoner does or does not require involuntary hospitalization.* The judge or special  
1308 justice may accept written certification of the examiner's findings if the examination has been personally  
1309 made within the preceding five days and if there is no objection to the acceptance of such written  
1310 certification by the prisoner or his attorney.

1311 4. If the judge or special justice, after observing the prisoner and obtaining the necessary positive  
1312 certification and other relevant evidence, finds specifically that (i) ~~the prisoner presents an imminent~~  
1313 ~~danger to himself or others as a result of mental illness or has been proven to be so seriously mentally~~  
1314 ~~ill as to be substantially unable to care for himself~~*the prisoner has a mental illness and that there exists*  
1315 *a substantial likelihood that, as a result of mental illness, the prisoner will, in the near future, (a) cause*  
1316 *serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or*  
1317 *threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of*  
1318 *capacity to protect himself from harm or to provide for his basic human needs*, and (ii) alternatives to  
1319 involuntary admission have been investigated and deemed unsuitable and there is no less restrictive  
1320 alternative to such admission, the judge or special justice shall by written order and specific findings so  
1321 certify and order that the prisoner be placed in a hospital or other facility designated by the Director for  
1322 a period not to exceed 180 days from the date of the court order. Such placement shall be in a hospital  
1323 or other facility for the care and treatment of persons with mental illness that is licensed or operated by  
1324 the Department of Mental Health, Mental Retardation and Substance Abuse Services.

1325 5. The judge or special justice shall also order that the relevant medical records of such prisoner be  
1326 released to the hospital, facility, or program in which he is placed upon request of the treating physician  
1327 or director of the hospital, facility, or program.

1328 6. The Department shall prepare the forms required in procedures for admission as approved by the  
1329 Attorney General. These forms, which shall be the legal forms used in such admissions, shall be  
1330 distributed by the Department to the clerks of the general district courts of the various counties and  
1331 cities of the Commonwealth and to the directors of the respective state hospitals.