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HOUSE BILL NO. 559

Offered January 9, 2008

Prefiled January 7, 2008

A BILL to amend and reenact §§ 19.2-169.6, 19.2-176, 19.2-177.1, 37.2-808, 37.2-809, 37.2-813, 37.2-815, 37.2-816, 37.2-817, and 53.1-40.2 of the Code of Virginia, relating to emergency custody orders, temporary detention orders, and involuntary commitment; standard.

Patrons—Bell, Albo, Crockett-Stark, Griffith, Howell, W.J., Janis, Kilgore, Landes, Lingamfelter, Marshall, D.W., Merricks, Miller, J.H., Nixon, Nutter, O'Bannon, Pogge, Poindexter, Purkey, Rust, Saxman and Sherwood

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.6, 19.2-176, 19.2-177.1, 37.2-808, 37.2-809, 37.2-813, 37.2-815, 37.2-816, 37.2-817, and 53.1-40.2 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-169.6. Emergency treatment prior to trial.

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

1. The court with jurisdiction over the defendant's case finds clear and convincing evidence that the defendant (i) is being properly detained in jail prior to trial; (ii) has mental illness and is imminently dangerous to himself or others there exists a substantial likelihood that, as a result of that 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 such harm or any other behavior that indicates that the defendant may cause serious physical harm to himself or others 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 has mental illness and is imminently dangerous to himself or others there exists a substantial likelihood that, as a result of that 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 such harm or any other behavior that indicates that the defendant may cause serious physical harm to himself or others and (ii) the defendant requires treatment in a hospital rather than jail and the person having such custody arranges for an evaluation of the defendant by a person skilled in the diagnosis and treatment of mental illness provided a district court judge or a special justice, as defined in § 37.2-100 or, if a judge or special justice is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, subsequently issues a temporary detention order for treatment in accordance with the procedures specified in §§ 37.2-809 through 37.2-813. In no event shall the defendant have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.2-805 or 37.2-814.

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

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

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

71 C. A defendant may not be hospitalized longer than 30 days under this section unless the court  
 72 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in  
 73 § 37.2-100, holds a hearing at which the defendant shall be represented by an attorney and finds clear  
 74 and convincing evidence that ~~the defendant continues to~~ (i) *the defendant continues to* have a mental  
 75 illness, (ii) ~~be imminently dangerous to himself or others~~ *there exists a substantial likelihood that, as a*  
 76 *result of that mental illness the defendant will, in the near future, cause serious physical harm to himself*  
 77 *or others as evidenced by recent behavior causing, attempting, or threatening such harm or any other*  
 78 *behavior that indicates that the defendant may cause serious physical harm to himself or others* , and  
 79 (iii) *the defendant continues to* be in need of psychiatric treatment in a hospital. Hospitalization may be  
 80 extended in this manner for periods of 60 days, but in no event may such hospitalization be continued  
 81 beyond trial, nor shall such hospitalization act to delay trial, so long as the defendant remains competent  
 82 to stand trial.

83 § 19.2-176. Determination of insanity after conviction but before sentence; hearing.

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

93 B. If it appears from all evidence readily available that the defendant is mentally ill and ~~poses an~~  
 94 ~~imminent danger to himself or others~~ *there exists a substantial likelihood that, as a result of that mental*  
 95 *illness the defendant will, in the near future, cause serious physical harm to himself or others as*  
 96 *evidenced by recent behavior causing, attempting, or threatening such harm or any other behavior that*  
 97 *indicates that the defendant may cause serious physical harm to himself or others* if not immediately  
 98 hospitalized, a temporary order of detention may be issued in accordance with subdivision A 2 of  
 99 § 19.2-169.6 and a hearing shall be conducted in accordance with subsections A and C within forty-eight  
 100 hours of execution of the temporary order of detention, or if the forty-eight-hour period herein specified  
 101 terminates on a Saturday, Sunday or legal holiday, such person may be detained for the same period  
 102 allowed for detention pursuant to an order for temporary detention issued pursuant to §§ 37.2-809 to  
 103 37.2-813.

104 C. A defendant may not be hospitalized longer than thirty days under this section unless the court  
 105 which has criminal jurisdiction over him, or a court designated by such court, holds a hearing, at which  
 106 the defendant shall be represented by an attorney, and finds clear and convincing evidence that ~~the~~  
 107 ~~defendant continues to be~~ (i) *the defendant continues to be* mentally ill, (ii) ~~imminently dangerous to~~  
 108 ~~self or others~~ *there exists a substantial likelihood that, as a result of that mental illness the defendant*  
 109 *will, in the near future, cause serious physical harm to himself or others as evidenced by recent*  
 110 *behavior causing, attempting, or threatening such harm or any other behavior that indicates that the*  
 111 *defendant may cause serious physical harm to himself or others, and (iii) the defendant continues to be*  
 112 in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for  
 113 periods of 180 days, but in no event may such hospitalization be continued beyond the date upon which  
 114 his sentence would have expired had he received the maximum sentence for the crime charged.

115 § 19.2-177.1. Determination of mental illness after sentencing; hearing.

116 A person convicted of a crime who is in the custody of a local correctional facility after sentencing  
 117 may be the subject of a commitment hearing for involuntary admission in accordance with the  
 118 procedures provided in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Such hearing shall be commenced

119 upon petition of the person having custody over the prisoner. If the person having custody over the  
 120 prisoner has reasonable cause to believe that (i) the prisoner has mental illness and is ~~imminently~~  
 121 ~~dangerous to himself or others~~there exists a substantial likelihood that, as a result of that mental illness  
 122 the prisoner will, in the near future, cause serious physical harm to himself or others as evidenced by  
 123 recent behavior causing, attempting, or threatening such harm or any other behavior that indicates that  
 124 the prisoner may cause serious physical harm to himself or others and (ii) requires treatment in a  
 125 hospital rather than a local correctional facility and the person having such custody arranges for an  
 126 evaluation of the prisoner by a person skilled in the diagnosis and treatment of mental illness, then a  
 127 district court judge or a special justice, as defined in § 37.2-100 or, if a judge is not available, a  
 128 magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, may  
 129 issue a temporary detention order for treatment in accordance with the procedures specified in  
 130 subdivision A 2 of § 19.2-169.6.

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

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

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

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

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

142 § 37.2-808. Emergency custody; issuance and execution of order.

143 A. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own  
 144 motion, an emergency custody order when he has probable cause to believe that (i) any person within  
 145 his judicial district ~~(i)~~ has mental illness, (ii) ~~presents an imminent danger to himself or others as a~~  
 146 ~~result of mental illness~~there exists a substantial likelihood that, as a result of that mental illness the  
 147 person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by  
 148 recent behavior causing, attempting, or threatening such harm or any other behavior that indicates that  
 149 the person may cause serious physical harm to himself or others or ~~is~~(b) be so seriously mentally ill as  
 150 to be substantially unable to care for himself, (iii) the person is in need of hospitalization or treatment,  
 151 and (iv) the person is unwilling to volunteer or incapable of volunteering for hospitalization or  
 152 treatment.

153 B. Any person for whom an emergency custody order is issued shall be taken into custody and  
 154 transported to a convenient location to be evaluated to assess the need for hospitalization or treatment.  
 155 The evaluation shall be made by a person designated by the community services board or behavioral  
 156 health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a  
 157 certification program approved by the Department.

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

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

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

177 F. A law-enforcement officer who, based upon his observation or the reliable reports of others, has  
 178 probable cause to believe that a person meets the criteria for emergency custody as stated in this section  
 179 may take that person into custody and transport that person to an appropriate location to assess the need

180 for hospitalization or treatment without prior authorization. Such evaluation shall be conducted  
181 immediately.

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

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

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

190 § 37.2-809. Involuntary temporary detention; issuance and execution of order.

191 A. For the purposes of this section:

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

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

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

206 B. A magistrate may issue, upon the sworn petition of any responsible person or upon his own  
207 motion and only after an in-person evaluation by an employee or a designee of the local community  
208 services board, a temporary detention order if it appears from all evidence readily available, including  
209 any recommendation from a physician or clinical psychologist treating the person, that ~~the person~~ (i) *the*  
210 *person* has mental illness, (ii) ~~presents an imminent danger to himself or others as a result of mental~~  
211 ~~illness~~ *there exists a substantial likelihood that, as a result of that mental illness the person will, in the*  
212 *near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior*  
213 *causing, attempting, or threatening such harm or any other behavior that indicates that the defendant*  
214 *may cause serious physical harm to himself or others or is* (b) *be so seriously mentally ill as to be*  
215 *substantially unable to care for himself, (iii) the person is in need of hospitalization or treatment, and*  
216 *(iv) the person is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.*  
217 The magistrate shall also consider the recommendations of any treating or examining physician licensed  
218 in Virginia if available either verbally or in writing prior to rendering a decision.

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

224 D. An employee or a designee of the local community services board shall determine the facility of  
225 temporary detention for all individuals detained pursuant to this section. The facility of temporary  
226 detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be  
227 identified on the preadmission screening report and indicated on the temporary detention order. Except  
228 as provided in § 37.2-811 for defendants requiring hospitalization in accordance with subdivision A 2 of  
229 § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged  
230 with criminal offenses.

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

239 F. The employee or the designee of the local community services board who is conducting the  
240 evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention  
241 order, the insurance status of the person. Where coverage by a third party payor exists, the facility

242 seeking reimbursement under this section shall first seek reimbursement from the third party payor. The  
 243 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances  
 244 covered by the third party payor have been received.

245 G. The duration of temporary detention shall not exceed 48 hours prior to a hearing. If the 48-hour  
 246 period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained,  
 247 as herein provided, until the next day that is not a Saturday, Sunday, or legal holiday.

248 H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter  
 249 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office  
 250 of the clerk of the issuing court or, if the office is not open, to any magistrate thereof. Subsequent  
 251 orders may be issued upon the original petition within 96 hours after the petition is filed. However, a  
 252 magistrate must again obtain the advice of an employee or a designee of the local community services  
 253 board prior to issuing a subsequent order upon the original petition. Any petition for which no  
 254 temporary detention order or other process in connection therewith is served on the subject of the  
 255 petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the  
 256 clerk of the issuing court.

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

262 § 37.2-813. Release of person prior to commitment hearing for involuntary admission.

263 Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341, the district court  
 264 judge or special justice may release the person on his personal recognizance or bond set by the district  
 265 court judge or special justice if it appears from all evidence readily available that ~~the person will not~~  
 266 ~~pose an imminent danger to himself or others~~ *there is no substantial likelihood that, as a result of that*  
 267 *mental illness the person will, in the near future, cause serious physical harm to himself or others as*  
 268 *evidenced by recent behavior causing, attempting, or threatening such harm or any other behavior that*  
 269 *indicates that the defendant may cause serious physical harm to himself or others.* In the case of a  
 270 minor, the juvenile and domestic relations district court judge may release the minor to his parent. The  
 271 director of any facility in which the person is detained may release the person prior to a hearing as  
 272 authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341 if it appears, based on an evaluation  
 273 conducted by the psychiatrist or clinical psychologist treating the person, that ~~the person would not~~  
 274 ~~present an imminent danger to himself or others~~ *there is no substantial likelihood that, as a result of that*  
 275 *mental illness the person will, in the near future, cause serious physical harm to himself or others as*  
 276 *evidenced by recent behavior causing, attempting, or threatening such harm or any other behavior that*  
 277 *indicates that the defendant may cause serious physical harm to himself or others if released.*

278 § 37.2-815. Commitment hearing for involuntary admission; examination required.

279 Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination of  
 280 the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in  
 281 Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of  
 282 mental illness or, if such a psychiatrist or psychologist is not available, any mental health professional  
 283 who is (i) licensed in Virginia through the Department of Health Professions and (ii) qualified in the  
 284 diagnosis of mental illness. The examiner chosen shall be able to provide an independent examination of  
 285 the person. The examiner shall (a) not be related by blood or marriage to the person, (b) not be  
 286 responsible for treating the person, (c) have no financial interest in the admission or treatment of the  
 287 person, (d) have no investment interest in the facility detaining or admitting the person under this  
 288 chapter, and (e) except for employees of state hospitals, the U.S. Department of Veterans Affairs,  
 289 community service boards, and behavioral health authorities, not be employed by the facility. For  
 290 purposes of this section, the term "investment interest" shall be as defined in § 37.2-809.

291 All such examinations shall be conducted in private. The judge or special justice shall summons the  
 292 examiner who shall certify that he has personally examined the person and has probable cause to believe  
 293 that the person (i) does or does not ~~present an imminent danger to himself or others as a result of~~  
 294 ~~mental illness~~ *have a mental illness and there does or does not exist a substantial likelihood that as a*  
 295 *result of metal illness, the person will, in the near future, (a) cause serious physical harm to himself or*  
 296 *others as evidenced by recent behavior causing, attempting, or threatening such harm or any other*  
 297 *behavior that indicates that the person may cause serious physical harm to himself or others or is or is*  
 298 ~~not~~ *(b) be so seriously mentally ill as to be substantially unable to care for himself and (ii) requires or*  
 299 *does not require involuntary inpatient treatment. Alternatively, the judge or special justice may accept*  
 300 *written certification of the examiner's findings if the examination has been personally made within the*  
 301 *preceding five days and if there is no objection sustained to the acceptance of the written certification*  
 302 *by the person or his attorney. The judge or special justice shall not render any decision on the petition*

303 until the examiner has presented his report orally or in writing.

304 § 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

305 The district court judge or special justice shall require a preadmission screening report from the  
306 community services board or behavioral health authority that serves the county or city where the person  
307 resides or, if impractical, where the person is located. The report shall be admissible as evidence of the  
308 facts stated therein and shall state (i) whether the person ~~presents an imminent danger to himself or~~  
309 ~~others as a result of mental illness~~ *has a mental illness a whether there exists a substantial likelihood*  
310 *that, as a result of that mental illness the person will, in the near future, (a) cause serious physical*  
311 *harm to himself or others as evidenced by recent behavior causing, attempting, or threatening such*  
312 *harm or any other behavior that indicates that the person may cause serious physical harm to himself*  
313 *or others or* ~~is~~(b) *be so seriously mentally ill that he is substantially unable to care for himself, (ii)*  
314 *whether the person is in need of involuntary inpatient treatment, (iii) whether there is no less restrictive*  
315 *alternative to inpatient treatment, and (iv) the recommendations for that person's placement, care, and*  
316 *treatment. The board or authority shall provide the preadmission screening report within 48 hours or if*  
317 *the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is*  
318 *lawfully closed, the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is*  
319 *lawfully closed. In the case of a person who has been sentenced and committed to the Department of*  
320 *Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge or special*  
321 *justice may proceed to adjudicate whether the person has mental illness and should be involuntarily*  
322 *admitted without requesting a preadmission screening report from the community services board or*  
323 *behavioral health authority.*

324 § 37.2-817. Involuntary admission and outpatient treatment orders.

325 A. The district court judge or special justice shall render a decision on the petition for involuntary  
326 admission after the appointed examiner has presented his report, orally or in writing, pursuant to  
327 § 37.2-815 and after the community services board or behavioral health authority that serves the county  
328 or city where the person resides or, if impractical, where the person is located has presented a  
329 preadmission screening report, orally or in writing, with recommendations for that person's placement,  
330 care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient  
331 evidence upon which the district court judge or special justice may base his decision.

332 B. After observing the person and obtaining the necessary positive certification and considering any  
333 other relevant evidence that may have been offered, if the judge or special justice finds by clear and  
334 convincing evidence that (i) the person ~~presents an imminent danger to himself or others as a result of~~  
335 ~~mental illness~~ *has a metal illness and there exists a substantial likelihood that, as a result of that mental*  
336 *illness the person will, in the near future, (a) cause serious physical harm to himself or others as*  
337 *evidenced by recent behavior causing, attempting, or threatening such harm or any other behavior that*  
338 *indicates that the person may cause serious physical harm to himself or others or (b) has been proven*  
339 *prove to be so seriously mentally ill as to be substantially unable to care for himself and (ii) alternatives*  
340 *to involuntary inpatient treatment have been investigated and deemed unsuitable and there is no less*  
341 *restrictive alternative to involuntary inpatient treatment, the judge or special justice shall by written order*  
342 *and specific findings so certify and order that the person be admitted involuntarily to a facility for a*  
343 *period of treatment not to exceed 180 days from the date of the court order. Such involuntary admission*  
344 *shall be to a facility designated by the community services board or behavioral health authority that*  
345 *serves the city or county in which the person was examined as provided in § 37.2-816. If the community*  
346 *services board or behavioral health authority does not designate a facility at the commitment hearing, the*  
347 *person shall be involuntarily admitted to a facility designated by the Commissioner. The person shall be*  
348 *released at the expiration of 180 days unless he is involuntarily admitted by further petition and order of*  
349 *a court or such person makes application for treatment on a voluntary basis as provided for in*  
350 *§ 37.2-805.*

351 C. After observing the person and obtaining the necessary positive certification and considering any  
352 other relevant evidence that may have been offered, if the judge or special justice finds by clear and  
353 convincing evidence that (i) the person ~~presents an imminent danger to himself or others as a result of~~  
354 ~~mental illness~~ *has a mental illness and there exists a substantial likelihood that, as a result of that*  
355 *mental illness the person will, in the near future, (a) cause serious physical harm to himself or others as*  
356 *evidenced by recent behavior causing, attempting, or threatening such harm or any other behavior that*  
357 *indicates that the person may cause serious physical harm to himself or others or (b) has been proven*  
358 *prove to be so seriously mentally ill as to be substantially unable to care for himself, (ii) less restrictive*  
359 *alternatives to involuntary inpatient treatment have been investigated and are deemed suitable, (iii) the*  
360 *person (a) has the degree of competency necessary to understand the stipulations of his treatment, (b)*  
361 *expresses an interest in living in the community and agrees to abide by his treatment plan, and (c) is*  
362 *deemed to have the capacity to comply with the treatment plan, and (iv) the ordered treatment can be*  
363 *delivered on an outpatient basis and be monitored by the community services board, behavioral health*  
364 *authority or designated provider, the judge or special justice shall order outpatient treatment, which may*

365 include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with  
 366 anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of  
 367 treatment as may be necessary to meet the needs of the person. The community services board or  
 368 behavioral health authority that serves the city or county in which the person resides shall recommend a  
 369 specific course of treatment and programs for the provision of involuntary outpatient treatment. The  
 370 community services board, behavioral health authority, or designated provider shall monitor the person's  
 371 compliance with the treatment ordered by the court under this section, and the person's failure to comply  
 372 with involuntary outpatient treatment as ordered by the court may be admitted into evidence in  
 373 subsequent hearings held pursuant to the provisions of this section. Upon failure of the person to adhere  
 374 to the terms of the outpatient treatment order, the judge or special justice may revoke it and, upon  
 375 notice to the person and after a commitment hearing, order involuntary admission to a facility.

376 § 53.1-40.2. Involuntary admission of prisoners with mental illness.

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

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

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

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

392 3. The judge or special justice shall require an examination of such prisoner by a psychiatrist who is  
 393 licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such psychiatrist or  
 394 clinical psychologist is not available, a physician or psychologist who is licensed in Virginia and who is  
 395 qualified in the diagnosis of mental illness. The judge or special justice shall summons the examiner,  
 396 who shall certify that he has personally examined the individual and has probable cause to believe that  
 397 *(i) the prisoner does or does not have mental illness, (ii) there does or does not exist a substantial*  
 398 *likelihood that, as a result of that mental illness the person will, in the near future, (a) cause serious*  
 399 *physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening*  
 400 *such harm or any other behavior that indicates that the person may cause serious physical harm to*  
 401 *himself or others ~~or does not present an imminent danger to himself or others~~, and (iii) *that the*  
 402 *person does or does not require involuntary hospitalization. The judge or special justice may accept*  
 403 *written certification of the examiner's findings if the examination has been personally made within the*  
 404 *preceding five days and if there is no objection to the acceptance of such written certification by the*  
 405 *prisoner or his attorney.**

406 4. If the judge or special justice, after observing the prisoner and obtaining the necessary positive  
 407 certification and other relevant evidence, finds specifically that (i) the prisoner ~~presents an imminent~~  
 408 ~~danger to himself or others as a result of mental illness~~ *has a mental illness and there exists a*  
 409 *substantial likelihood that, as a result of that mental illness the person will, in the near future, (a) cause*  
 410 *serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or*  
 411 *threatening such harm or any other behavior that indicates that the person may cause serious physical*  
 412 *harm to himself or others* or (b) ~~has been proven~~ *prove to be so seriously mentally ill as to be*  
 413 *substantially unable to care for himself, and (ii) alternatives to involuntary admission have been*  
 414 *investigated and deemed unsuitable and there is no less restrictive alternative to such admission, the*  
 415 *judge or special justice shall by written order and specific findings so certify and order that the prisoner*  
 416 *be placed in a hospital or other facility designated by the Director for a period not to exceed 180 days*  
 417 *from the date of the court order. Such placement shall be in a hospital or other facility for the care and*  
 418 *treatment of persons with mental illness that is licensed or operated by the Department of Mental*  
 419 *Health, Mental Retardation and Substance Abuse Services.*

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

423 6. The Department shall prepare the forms required in procedures for admission as approved by the  
 424 Attorney General. These forms, which shall be the legal forms used in such admissions, shall be  
 425 distributed by the Department to the clerks of the general district courts of the various counties and

**426** cities of the Commonwealth and to the directors of the respective state hospitals.