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HOUSE BILL NO. 559

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 25, 2008)

(Patrons Prior to Substitute—Delegates Bell, Amundson [HB 1059], and D.C. Jones [HB 1237])

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.

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, *only after a face-to-face evaluation by an employee of the local community services board or its designee 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~~ *there exists a substantial likelihood that as a result of that mental illness the defendant will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs* 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, (a) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs*, 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~~ *a face-to-face evaluation by an employee of the local community services board or its designee 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*, 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

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60 §§ 19.2-169.1 and 19.2-169.5.

61 B. A defendant subject to this section shall be treated at a hospital designated by the Commissioner
62 as appropriate for treatment and evaluation of persons under criminal charge. The director of the hospital
63 shall, within 30 days of the defendant's admission, send a report to the court with jurisdiction over the
64 defendant addressing the defendant's continued need for treatment for a mental illness and ~~being~~
65 ~~imminently dangerous to himself or others~~*any substantial likelihood that as a result of that mental*
66 *illness the defendant will, in the near future, (a) cause serious physical harm to himself or others as*
67 *evidenced by recent behavior or any other relevant information or (b) suffer serious harm due to his*
68 *lack of capacity to protect himself from harm or to provide for his basic human needs, and, if so*
69 *ordered by the court, the defendant's competency to stand trial, pursuant to subsection D of § 19.2-169.1,*
70 *and his mental state at the time of the offense, pursuant to subsection D of § 19.2-169.5. Based on this*
71 *report, the court shall (i) find the defendant incompetent to stand trial pursuant to subsection E of*
72 *§ 19.2-169.1 and proceed accordingly, (ii) order that the defendant be discharged from custody pending*
73 *trial, (iii) order that the defendant be returned to jail pending trial, or (iv) make other appropriate*
74 *disposition, including dismissal of charges and release of the defendant.*

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

87 § 19.2-176. Determination of insanity after conviction but before sentence; hearing.

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

100 B. If it appears from all evidence readily available that the defendant is mentally ill and ~~poses an~~
101 ~~imminent danger to himself or others~~*there exists a substantial likelihood that as a result of that mental*
102 *illness the defendant will, in the near future, (a) cause serious physical harm to himself or others as*
103 *evidenced by recent behavior or any other relevant information or (b) suffer serious harm due to his*
104 *lack of capacity to protect himself from harm or to provide for his basic human needs, if not*
105 *immediately hospitalized, a temporary order of detention may be issued in accordance with subdivision*
106 *A 2 of § 19.2-169.6 and a hearing shall be conducted in accordance with subsections A and C within*
107 *forty-eight hours of execution of the temporary order of detention, or if the forty-eight-hour period*
108 *herein specified terminates on a Saturday, Sunday or legal holiday, such person may be detained for the*
109 *same period allowed for detention pursuant to an order for temporary detention issued pursuant to*
110 *§§ 37.2-809 to 37.2-813.*

111 C. A defendant may not be hospitalized longer than thirty days under this section unless the court
112 which has criminal jurisdiction over him, or a court designated by such court, holds a hearing, at which
113 the defendant shall be represented by an attorney, and finds clear and convincing evidence that ~~the~~
114 ~~defendant continues to be~~ (i) ~~the defendant continues to be~~ mentally ill, (ii) ~~imminently dangerous to~~
115 ~~self or others~~*there exists a substantial likelihood that as a result of that mental illness the defendant*
116 *will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent*
117 *behavior or any other relevant information or (b) suffer serious harm due to his lack of capacity to*
118 *protect himself from harm or to provide for his basic human needs, and (iii) the defendant continues to*
119 *be in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for*
120 *periods of 180 days, but in no event may such hospitalization be continued beyond the date upon which*
121 *his sentence would have expired had he received the maximum sentence for the crime charged.*

122 § 19.2-177.1. Determination of mental illness after sentencing; hearing.

123 A person convicted of a crime who is in the custody of a local correctional facility after sentencing
124 may be the subject of a commitment hearing for involuntary admission in accordance with the
125 procedures provided in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Such hearing shall be commenced
126 upon petition of the person having custody over the prisoner. If the person having custody over the
127 prisoner has reasonable cause to believe that (i) the prisoner has mental illness and is ~~imminently~~
128 ~~dangerous to himself or others~~there exists a substantial likelihood that as a result of that mental illness
129 the prisoner will, in the near future, (a) cause serious physical harm to himself or others as evidenced
130 by recent behavior or any other relevant information or (b) suffer serious harm due to his lack of
131 capacity to protect himself from harm or to provide for his basic human needs, and (ii) requires
132 treatment in a hospital rather than a local correctional facility and the person having such custody
133 arranges for an evaluation of the prisoner by a person skilled in the diagnosis and treatment of mental
134 illness a face-to-face evaluation by and employee of the local community services board or its designee
135 who is skilled in the assessment and treatment of mental illness and who has completed a certification
136 program approved by the Department as provided in § 37.2-809,, then a district court judge or a special
137 justice, as defined in § 37.2-100 or, if a judge is not available, a magistrate, upon the advice of a person
138 skilled in the diagnosis and treatment of mental illness, may issue a temporary detention order for
139 treatment in accordance with the procedures specified in subdivision A 2 of § 19.2-169.6.

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

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

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

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

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

151 § 37.2-808. Emergency custody; issuance and execution of order.

152 A. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own
153 motion, an emergency custody order when he has probable cause to believe that (i) any person within
154 his judicial district ~~(i)~~ has mental illness, (ii) ~~presents an imminent danger to himself or others as a~~
155 ~~result of mental illness or is so seriously mentally ill as to be substantially unable to care for~~
156 ~~himself,~~there exists a substantial likelihood that, as a result of that mental illness the person will, in the
157 near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior or any
158 other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from
159 harm or to provide for his basic human needs, (iii) is in need of hospitalization or treatment, and (iv) is
160 unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

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

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

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

182 E. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the

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

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

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

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

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

198 § 37.2-809. Involuntary temporary detention; issuance and execution of order.

199 A. For the purposes of this section:

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

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

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

214 B. A magistrate may issue, upon the sworn petition of any responsible person or upon his own
215 motion and only after an in-person evaluation by an employee or a designee of the local community
216 services board, a temporary detention order if it appears from all evidence readily available, including
217 any recommendation from a physician or clinical psychologist treating the person, that ~~the person~~ (i) *the*
218 *person* has mental illness, (ii) ~~presents an imminent danger to himself or others as a result of mental~~
219 ~~illness or is so seriously mentally ill as to be substantially unable to care for himself,~~ *there exists a*
220 *substantial likelihood that, as a result of that mental illness the person will, in the near future, (a) cause*
221 *serious physical harm to himself or others as evidenced by recent behavior or any other relevant*
222 *information or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to*
223 *provide for his basic human needs,* (iii) *the person* is in need of hospitalization or treatment, and (iv)
224 *the person* is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The
225 magistrate shall also consider the recommendations of any treating or examining physician licensed in
226 Virginia if available either verbally or in writing prior to rendering a decision.

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

232 D. An employee or a designee of the local community services board shall determine the facility of
233 temporary detention for all individuals detained pursuant to this section. The facility of temporary
234 detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be
235 identified on the preadmission screening report and indicated on the temporary detention order. Except
236 as provided in § 37.2-811 for defendants requiring hospitalization in accordance with subdivision A 2 of
237 § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged
238 with criminal offenses.

239 E. Any facility caring for a person placed with it pursuant to a temporary detention order is
240 authorized to provide emergency medical and psychiatric services within its capabilities when the facility
241 determines that the services are in the best interests of the person within its care. The costs incurred as a
242 result of the hearings and by the facility in providing services during the period of temporary detention
243 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the
244 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance

245 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by
246 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

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

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

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

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

270 § 37.2-813. Release of person prior to commitment hearing for involuntary admission.

271 Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341, the district court
272 judge or special justice may release the person on his personal recognizance or bond set by the district
273 court judge or special justice if it appears from all evidence readily available that ~~the person will not~~
274 ~~pose 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, (a) cause serious physical harm to himself or others as*
276 *evidenced by recent behavior or any other relevant information or (b) suffer serious harm due to his*
277 *lack of capacity to protect himself from harm or to provide for his basic human needs.* In the case of a
278 minor, the juvenile and domestic relations district court judge may release the minor to his parent. The
279 director of any facility in which the person is detained may release the person prior to a hearing as
280 authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341 if it appears, based on an evaluation
281 conducted by the psychiatrist or clinical psychologist treating the person, that ~~the person would not~~
282 ~~present an imminent danger to himself or others~~ *there is no substantial likelihood that, as a result of that*
283 *mental illness the person will, in the near future, cause serious physical harm to himself or others as*
284 *evidenced by recent behavior or other relevant information or (b) suffer serious harm due to his lack of*
285 *capacity to protect himself from harm or to provide for his basic human needs* if released.

286 § 37.2-815. Commitment hearing for involuntary admission; examination required.

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

299 All such examinations shall be conducted in private. The judge or special justice shall summons the
300 examiner who shall certify that he has personally examined the person and has probable cause to believe
301 that the person (i) does or does not ~~present an imminent danger to himself or others as a result of~~
302 ~~mental illness~~ *have a mental illness and there does or does not exist a substantial likelihood that as a*
303 *result of that mental illness the person will, in the near future, (a) cause serious physical harm to*
304 *himself or others as evidenced by recent behavior or any other relevant information* ~~or is or is not so~~
305 ~~seriously mentally ill as to be substantially unable to care for himself~~ *for (b) suffer serious harm due to*

306 *his lack of capacity to protect himself from harm or to provide for his basic human needs, and (ii)*
307 *requires or does not require involuntary inpatient treatment. Alternatively, the judge or special justice*
308 *may accept written certification of the examiner's findings if the examination has been personally made*
309 *within the preceding five days and if there is no objection sustained to the acceptance of the written*
310 *certification by the person or his attorney. The judge or special justice shall not render any decision on*
311 *the petition until the examiner has presented his report orally or in writing.*

312 § 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

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

331 § 37.2-817. Involuntary admission and outpatient treatment orders.

332 A. The district court judge or special justice shall render a decision on the petition for involuntary
333 admission after the appointed examiner has presented his report, orally or in writing, pursuant to
334 § 37.2-815 and after the community services board or behavioral health authority that serves the county
335 or city where the person resides or, if impractical, where the person is located has presented a
336 preadmission screening report, orally or in writing, with recommendations for that person's placement,
337 care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient
338 evidence upon which the district court judge or special justice may base his decision.

339 B. After observing the person and obtaining the necessary positive certification and considering any
340 other relevant evidence that may have been offered, if the judge or special justice finds by clear and
341 convincing evidence that (i) the person ~~presents an imminent danger to himself or others as a result of~~
342 ~~mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care~~
343 ~~for himself~~*has a mental illness and there exists a substantial likelihood that, as a result of that mental*
344 *illness the person will, in the near future, (a) cause serious physical harm to himself or others as*
345 *evidenced by recent behavior or any other relevant information or (b) suffer serious harm due to his*
346 *lack of capacity to protect himself from harm or to provide for his basic human needs and (ii)*
347 *alternatives to involuntary inpatient treatment have been investigated and deemed unsuitable and there is*
348 *no less restrictive alternative to involuntary inpatient treatment, the judge or special justice shall by*
349 *written order and specific findings so certify and order that the person be admitted involuntarily to a*
350 *facility for a period of treatment not to exceed 180 days from the date of the court order. Such*
351 *involuntary admission shall be to a facility designated by the community services board or behavioral*
352 *health authority that serves the city or county in which the person was examined as provided in*
353 *§ 37.2-816. If the community services board or behavioral health authority does not designate a facility*
354 *at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the*
355 *Commissioner. The person shall be released at the expiration of 180 days unless he is involuntarily*
356 *admitted by further petition and order of a court or such person makes application for treatment on a*
357 *voluntary basis as provided for in § 37.2-805.*

358 C. After observing the person and obtaining the necessary positive certification and considering any
359 other relevant evidence that may have been offered, if the judge or special justice finds by clear and
360 convincing evidence that (i) the person ~~presents an imminent danger to himself or others as a result of~~
361 ~~mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for~~
362 ~~himself~~*has a mental illness and there exists a substantial likelihood that, as a result of that mental*
363 *illness the person will, in the near future, (a) cause serious physical harm to himself or others as*
364 *evidenced by recent behavior or any other relevant information or (b) suffer serious harm due to his*
365 *lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) less*
366 *restrictive alternatives to involuntary inpatient treatment have been investigated and are deemed suitable,*
367 *(iii) the person (a) has the degree of competency necessary to understand the stipulations of his*

368 treatment, (b) expresses an interest in living in the community and agrees to abide by his treatment plan,
 369 and (c) is deemed to have the capacity to comply with the treatment plan, and (iv) the ordered treatment
 370 can be delivered on an outpatient basis and be monitored by the community services board, behavioral
 371 health authority or designated provider, the judge or special justice shall order outpatient treatment,
 372 which may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary
 373 treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other
 374 appropriate course of treatment as may be necessary to meet the needs of the person. The community
 375 services board or behavioral health authority that serves the city or county in which the person resides
 376 shall recommend a specific course of treatment and programs for the provision of involuntary outpatient
 377 treatment. The community services board, behavioral health authority, or designated provider shall
 378 monitor the person's compliance with the treatment ordered by the court under this section, and the
 379 person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted
 380 into evidence in subsequent hearings held pursuant to the provisions of this section. Upon failure of the
 381 person to adhere to the terms of the outpatient treatment order, the judge or special justice may revoke it
 382 and, upon notice to the person and after a commitment hearing, order involuntary admission to a
 383 facility.

384 § 53.1-40.2. Involuntary admission of prisoners with mental illness.

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

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

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

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

400 3. The judge or special justice shall require an examination of such prisoner by a psychiatrist who is
 401 licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such psychiatrist or
 402 clinical psychologist is not available, a physician or psychologist who is licensed in Virginia and who is
 403 qualified in the diagnosis of mental illness. The judge or special justice shall summons the examiner,
 404 who shall certify that he has personally examined the individual and has probable cause to believe that
 405 (i) the prisoner does or does not have mental illness, (ii) *there does or does not exist a substantial*
 406 *likelihood that, as a result of that mental illness the person will, in the near future, (a) cause serious*
 407 *physical harm to himself or others as evidenced by recent behavior or any other relevant information or*
 408 *(b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his*
 409 *basic human needs*~~does or does not present an imminent danger to himself or others~~, and (iii) *the person*
 410 *does or does not require involuntary hospitalization. The judge or special justice may accept written*
 411 *certification of the examiner's findings if the examination has been personally made within the preceding*
 412 *five days and if there is no objection to the acceptance of such written certification by the prisoner or*
 413 *his attorney.*

414 4. If the judge or special justice, after observing the prisoner and obtaining the necessary positive
 415 certification and other relevant evidence, finds specifically that (i) ~~the prisoner presents an imminent~~
 416 ~~danger to himself or others as a result of mental illness~~*has a mental illness and there exists a*
 417 *substantial likelihood that, as a result of that mental illness the person will, in the near future, (a) cause*
 418 *serious physical harm to himself or others as evidenced by recent behavior or any other relevant*
 419 *information or has been proven to be so seriously mentally ill as to be substantially unable to care for*
 420 *himself*~~(b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for~~
 421 *his basic human needs*, and (ii) alternatives to involuntary admission have been investigated and deemed
 422 unsuitable and there is no less restrictive alternative to such admission, the judge or special justice shall
 423 by written order and specific findings so certify and order that the prisoner be placed in a hospital or
 424 other facility designated by the Director for a period not to exceed 180 days from the date of the court
 425 order. Such placement shall be in a hospital or other facility for the care and treatment of persons with
 426 mental illness that is licensed or operated by the Department of Mental Health, Mental Retardation and
 427 Substance Abuse Services.

428 5. The judge or special justice shall also order that the relevant medical records of such prisoner be

429 released to the hospital, facility, or program in which he is placed upon request of the treating physician
430 or director of the hospital, facility, or program.

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