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HOUSE BILL NO. 559

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Cuccinelli
on March 4, 2008)

(Patrons Prior to Substitute—Delegates Bell, Amundson [HB 1059] and Jones, D.C. [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 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, or threatening harm and other relevant information, if any, and (ii) requires treatment in a hospital rather than jail and the person having such custody arranges for an evaluation of the defendant by a person skilled in the diagnosis and treatment of mental illness provided a district court judge or a special justice, as defined in § 37.2-100 or, if a judge or special justice is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, subsequently issues a temporary detention order for treatment in accordance with the procedures specified in §§ 37.2-809 through 37.2-813. In no event shall the defendant have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.2-805 or 37.2-814.*

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

B. A defendant subject to this section shall be treated at a hospital designated by the Commissioner as appropriate for treatment and evaluation of persons under criminal charge. The director of the hospital shall, within 30 days of the defendant's admission, send a report to the court with jurisdiction over the defendant addressing the defendant's continued need for treatment for a mental illness and ~~being imminently dangerous~~ *the continued 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 such harm and other relevant information, if any,*

60 and, if so ordered by the court, the defendant's competency to stand trial, pursuant to subsection D of
 61 § 19.2-169.1, and his mental state at the time of the offense, pursuant to subsection D of § 19.2-169.5.
 62 Based on this report, the court shall (i) find the defendant incompetent to stand trial pursuant to
 63 subsection E of § 19.2-169.1 and proceed accordingly, (ii) order that the defendant be discharged from
 64 custody pending trial, (iii) order that the defendant be returned to jail pending trial, or (iv) make other
 65 appropriate disposition, including dismissal of charges and release of the defendant.

66 C. A defendant may not be hospitalized longer than 30 days under this section unless the court
 67 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
 68 § 37.2-100, holds a hearing at which the defendant shall be represented by an attorney and finds clear
 69 and convincing evidence that the defendant continues to (i) have a mental illness, ~~(ii) be imminently~~
 70 ~~dangerous to himself or others, and that there continues to exist a substantial likelihood that, as a result~~
 71 ~~of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others~~
 72 ~~as evidenced by recent behavior causing, attempting, or threatening harm and other relevant~~
 73 ~~information, if any, and (iii)(ii) be in need of psychiatric treatment in a hospital. Hospitalization may be~~
 74 extended in this manner for periods of 60 days, but in no event may such hospitalization be continued
 75 beyond trial, nor shall such hospitalization act to delay trial, so long as the defendant remains competent
 76 to stand trial.

77 § 19.2-176. Determination of insanity after conviction but before sentence; hearing.

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

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

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

107 § 19.2-177.1. Determination of mental illness after sentencing; hearing.

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

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

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

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

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

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

133 § 37.2-808. Emergency custody; issuance and execution of order.

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

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

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

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

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

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

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

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

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

181 § 37.2-809. Involuntary temporary detention; issuance and execution of order.

182 A. For the purposes of this section:

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

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

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

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

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

216 D. An employee or a designee of the local community services board shall determine the facility of
217 temporary detention for all individuals detained pursuant to this section. The facility of temporary
218 detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be
219 identified on the preadmission screening report and indicated on the temporary detention order. Except
220 as provided in § 37.2-811 for defendants requiring hospitalization in accordance with subdivision A 2 of
221 § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged
222 with criminal offenses.

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

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

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

240 H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter
241 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office
242 of the clerk of the issuing court or, if the office is not open, to any magistrate thereof. Subsequent
243 orders may be issued upon the original petition within 96 hours after the petition is filed. However, a
244 magistrate must again obtain the advice of an employee or a designee of the local community services

245 board prior to issuing a subsequent order upon the original petition. Any petition for which no
246 temporary detention order or other process in connection therewith is served on the subject of the
247 petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the
248 clerk of the issuing court.

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

254 § 37.2-813. Release of person prior to commitment hearing for involuntary admission.

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

265 § 37.2-815. Commitment hearing for involuntary admission; examination required.

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

278 All such examinations shall be conducted in private. The judge or special justice shall summons the
279 examiner who shall certify that he has personally examined the person and *state whether he has*
280 *probable cause to believe that the person (i) does or does not present an imminent danger to himself or*
281 *others as a result of mental illness or is or is not so seriously mentally ill as to be substantially unable*
282 *to care for himself has a mental illness and there is a substantial likelihood that, as a result of mental*
283 *illness, the person will, in the near future, (a) cause serious physical harm to himself or others as*
284 *evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if*
285 *any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide*
286 *for his basic human needs, and (ii) requires or does not require involuntary inpatient treatment.*
287 Alternatively, the judge or special justice may accept written certification of the examiner's findings if
288 the examination has been personally made within the preceding five days and if there is no objection
289 sustained to the acceptance of the written certification by the person or his attorney. The judge or
290 special justice shall not render any decision on the petition until the examiner has presented his report
291 orally or in writing.

292 § 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

293 The district court judge or special justice shall require a preadmission screening report from the
294 community services board or behavioral health authority that serves the county or city where the person
295 resides or, if impractical, where the person is located. The report shall be admissible as evidence of the
296 facts stated therein and shall state (i) whether the person ~~presents an imminent danger to himself or~~
297 ~~others as a result of mental illness or is so seriously mentally ill that he is substantially unable to care~~
298 ~~for himself~~ *has a mental illness and whether there exists a substantial likelihood that, as a result of*
299 *mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others*
300 *as evidenced by recent behavior causing, attempting, or threatening harm and other relevant*
301 *information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm*
302 *or to provide for his basic human needs, (ii) whether the person is in need of involuntary inpatient*
303 *treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the*
304 *recommendations for that person's placement, care, and treatment. The board or authority shall provide*
305 *the preadmission screening report within 48 hours or if the 48-hour period terminates on a Saturday,*

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

312 § 37.2-817. Involuntary admission and mandatory outpatient treatment orders.

313 A. The district court judge or special justice shall render a decision on the petition for involuntary
314 admission after the appointed examiner has presented his report, orally or in writing, pursuant to
315 § 37.2-815 and after the community services board or behavioral health authority that serves the county
316 or city where the person resides or, if impractical, where the person is located has presented a
317 preadmission screening report, orally or in writing, with recommendations for that person's placement,
318 care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient
319 evidence upon which the district court judge or special justice may base his decision.

320 B. After observing the person and obtaining the necessary positive certification and considering any
321 other relevant evidence that may have been offered, if the judge or special justice finds by clear and
322 convincing evidence that (i) the person ~~presents an imminent danger to himself or others as a result of~~
323 ~~mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for~~
324 ~~himself has a mental illness and there is a substantial likelihood that, as a result of mental illness, the~~
325 ~~person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by~~
326 ~~recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b)~~
327 ~~suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic~~
328 ~~human needs, and (ii) alternatives to involuntary inpatient treatment have been investigated and deemed~~
329 ~~unsuitable and there is no less restrictive alternative to involuntary inpatient treatment, the judge or~~
330 ~~special justice shall by written order and specific findings so certify and order that the person be~~
331 ~~admitted involuntarily to a facility for a period of treatment not to exceed 180 days from the date of the~~
332 ~~court order. Such involuntary admission shall be to a facility designated by the community services~~
333 ~~board or behavioral health authority that serves the city or county in which the person was examined as~~
334 ~~provided in § 37.2-816. If the community services board or behavioral health authority does not~~
335 ~~designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility~~
336 ~~designated by the Commissioner. The person shall be released at the expiration of 180 days unless he is~~
337 ~~involuntarily admitted by further petition and order of a court or such person makes application for~~
338 ~~treatment on a voluntary basis as provided for in § 37.2-805.~~

339 C. 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 for~~
343 ~~himself has a mental illness and that there exists a substantial likelihood that, as a result of 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 causing, attempting, or threatening harm and other relevant information, if~~
346 ~~any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide~~
347 ~~for his basic human needs, (ii) less restrictive alternatives to involuntary inpatient treatment have been~~
348 ~~investigated and are deemed suitable, (iii) the person (a) has the degree of competency necessary to~~
349 ~~understand the stipulations of his treatment, (b) expresses an interest in living in the community and~~
350 ~~agrees to abide by his treatment plan, and (c) is deemed to have the capacity to comply with the~~
351 ~~treatment plan, and (iv) the ordered treatment can be delivered on an outpatient basis and be monitored~~
352 ~~by the community services board, behavioral health authority or designated provider, the judge or special~~
353 ~~justice shall order outpatient treatment, which may include day treatment in a hospital, night treatment in~~
354 ~~a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11~~
355 ~~(§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of~~
356 ~~the person. The community services board or behavioral health authority that serves the city or county~~
357 ~~in which the person resides shall recommend a specific course of treatment and programs for the~~
358 ~~provision of involuntary outpatient treatment. The community services board, behavioral health authority,~~
359 ~~or designated provider shall monitor the person's compliance with the treatment ordered by the court~~
360 ~~under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by~~
361 ~~the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this~~
362 ~~section. Upon failure of the person to adhere to the terms of the outpatient treatment order, the judge or~~
363 ~~special justice may revoke it and, upon notice to the person and after a commitment hearing, order~~
364 ~~involuntary admission to a facility.~~

365 § 53.1-40.2. Involuntary admission of prisoners with mental illness.

366 A. Upon the petition of the Director or his designee, any district court judge or any special justice,
367 as defined by § 37.2-100, of the county or city where the prisoner is located may issue an order

368 authorizing involuntary admission of a prisoner who is sentenced and committed to the Department of
369 Corrections and who is alleged or reliably reported to have a mental illness to a degree that warrants
370 hospitalization.

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

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

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

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

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

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

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