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SENATE BILL NO. 246

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 21, 2008)(Patrons Prior to Substitute—Senators Howell, Cuccinelli [SBs 75, 78, 79,
80, 101, 103, 104, 129, 341], Deeds [SB 273],
Edwards [SBs 139, 144, 217, 220], Hurt [SB 769] and Lucas [SBs 96, 97])

A BILL to amend and reenact §§ 16.1-337, 19.2-169.6, 19.2-176, 19.2-177.1, 32.1-127.1:03, 37.2-800, 37.2-808, 37.2-809, 37.2-813, 37.2-814, 37.2-815, 37.2-816, 37.2-817, 37.2-818, and 37.2-821 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 8 of Title 37.2a section numbered 37.2-804.2 and by adding a section numbered 37.2-817.1, relating to involuntary commitment.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-337, 19.2-169.6, 19.2-176, 19.2-177.1, 32.1-127.1:03, 37.2-800, 37.2-808, 37.2-809, 37.2-813, 37.2-814, 37.2-815, 37.2-816, 37.2-817, 37.2-818, and 37.2-821 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 8 of Title 37.2 a section numbered 37.2-804.2 and by adding a section numbered 37.2-817.1 as follows:

§ 16.1-337. Inpatient treatment of minors; general applicability.

A. A minor may be admitted to a mental health facility for inpatient treatment only pursuant to §§ 16.1-338, 16.1-339, or § 16.1-340 or in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345. The provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title relating to the confidentiality of files, papers, and records shall apply to proceedings under §§ 16.1-339 through 16.1-345.

B. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a minor who is the subject of proceedings under this article shall disclose to a magistrate, juvenile intake officer, the court, the minor's attorney as required in § 16.1-343, the evaluator as required in § 16.1-342, the community services board or behavioral health authority performing an evaluation, preadmission screening, or monitoring duties under this article, or a law-enforcement officer, any and all information of the individual necessary and appropriate to enable each of them to perform their duties under this chapter. These health care providers and other service providers shall disclose to one another such records and information as necessary to provide care and treatment to the individual and to monitor that care and treatment. Health care records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer or the minor from physical injury or to address the medical needs of the minor.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act, unless the person or provider disclosing such records intended the harm or acted in bad faith.

§ 19.2-169.6. Emergency treatment prior to trial.

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

1. The court with jurisdiction over the defendant's case, only after a face-to-face evaluation by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809, finds clear and convincing evidence that the defendant (i) is being properly detained in jail prior to trial; (ii) ~~has mental illness and is imminently dangerous to himself or others~~ 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

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

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

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

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

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

116 Any health care provider, as defined in § 32.1-127.1:03, or any other person providing services to a
117 defendant who is the subject of a proceeding under this section, § 19.2-176, or § 19.2-177.1, shall, upon
118 request, disclose to a magistrate, a court, the person's attorney, an employee or designee of a
119 community services board or behavioral health authority performing an evaluation, preadmission
120 screening, or monitoring duties under this chapter, or the sheriff or administrator of the jail, any and
121 all information of the individual necessary and appropriate to enable each of them to perform their

duties under this chapter. These health care providers and other service providers shall disclose to one another such records and information as necessary to provide care and treatment to the individual and to monitor that care and treatment. Health care records disclosed to a sheriff or administrator of the jail shall be limited to information necessary to protect the sheriff or administrator of the jail or the person from physical injury or to address the medical needs of the person.

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

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

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

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

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

A person convicted of a crime who is in the custody of a local correctional facility after sentencing may be the subject of a commitment hearing for involuntary admission in accordance with the procedures provided in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Such hearing shall be commenced upon petition of the person having custody over the prisoner. If the person having custody over the prisoner has reasonable cause to believe that (i) the prisoner 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 prisoner 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) requires treatment in a hospital rather than a local correctional facility and the person having such custody arranges for an evaluation of the prisoner by a person skilled in the diagnosis and treatment of mental illness a face-to-face evaluation by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809, then a district court judge or a special justice, as defined in § 37.2-100 or, if a judge is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, may issue a temporary detention order for treatment in accordance with the procedures specified in subdivision A 2 of § 19.2-169.6.

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

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

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

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

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

192 § 32.1-127.1:03. Health records privacy.

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

197 Pursuant to this subsection:

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

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

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

218 B. As used in this section:

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

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

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

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

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

234 "Health care provider" means those entities listed in the definition of "health care provider" in
235 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
236 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
237 registered or permitted or who hold a multistate licensure privilege issued by any of the health
238 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
239 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

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

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

242 "Health record" means any written, printed or electronically recorded material maintained by a health
243 care entity in the course of providing health services to an individual concerning the individual and the
244 services provided. "Health record" also includes the substance of any communication made by an

individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. As required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283, 32.1-283.1, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1509, and 63.2-1606;

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

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

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

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

11. To the guardian ad litem and any attorney representing the respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10

306 (§ 37.2-1000 et seq.) of Title 37.2;

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

311 13. *To a magistrate, a court, a mental health examiner required under §§ 16.1-339 or 37.2-815 an*
312 *employee or designee of a community services board or behavioral health authority, the person's*
313 *attorney who is the subject of a commitment hearing, and law-enforcement officers participating in any*
314 *involuntary admission proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1,*
315 *§ 19.2-169.6, 19.2-176, or 19.2-177.1, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2, regarding the*
316 *subject of the proceeding and to any health care provider evaluating or providing services to the subject*
317 *of the proceeding or monitoring the subject's adherence to a treatment plan ordered under those*
318 *provisions. Health care records disclosed to a law-enforcement officer shall be limited to information*
319 *necessary to protect the officer or the person from physical injury or to address the medical needs of*
320 *the person.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2829. To law-enforcement officials, in response to their request, for the purpose of identifying or locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information may be disclosed: (i) name and address of the person, (ii) date and place of birth of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii) description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by the person.

2930. To law-enforcement officials regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct;

3031. To law-enforcement officials if the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises;

3132. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title; and

3233. To the Commissioner of the Department of Labor and Industry or his designee by each licensed emergency medical services agency when the records consist of the prehospital patient care report required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing duties or tasks that are within the scope of his employment.

Notwithstanding the provisions of subdivisions 1 through 3233 of this subsection, a health care entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

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

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

The health care entity denying the request shall also inform the individual of the individual's right to request in writing that such health care entity designate, at its own expense, a physician or clinical psychologist, whose licensure, training, and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial

429 is based and who did not participate in the original decision to deny the health records, who shall make
430 a judgment as to whether to make the health record available to the individual. The health care entity
431 shall comply with the judgment of the reviewing physician or clinical psychologist. The health care
432 entity shall permit copying and examination of the health record by such other physician or clinical
433 psychologist designated by either the individual at his own expense or by the health care entity at its
434 expense.

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

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

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

445 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

446 Individual's Name

447 Health Care Entity's Name

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

450 Information or Health Records to be disclosed

451 Purpose of Disclosure or at the Request of the Individual

452 As the person signing this authorization, I understand that I am
453 giving my permission to the above-named health care entity for

454 disclosure of confidential health records. I understand that the

455 health care entity may not condition treatment or payment on my

456 willingness to sign this authorization unless the specific

457 circumstances under which such conditioning is permitted by law are

458 applicable and are set forth in this authorization. I also understand

459 that I have the right to revoke this authorization at any time, but

460 that my revocation is not effective until delivered in writing to the

461 person who is in possession of my health records and is not effective

462 as to health records already disclosed under this authorization. A

463 copy of this authorization and a notation concerning the persons or

464 agencies to whom disclosure was made shall be included with my

465 original health records. I understand that health information

466 disclosed under this authorization might be redisclosed by a

467 recipient and may, as a result of such disclosure, no longer be

468 protected to the same extent as such health information was protected

469 by law while solely in the possession of the health care entity.

470 This authorization expires on (date) or (event)

471 Signature of Individual or Individual's Legal Representative if

472 Individual is Unable to Sign

473 Relationship or Authority of Legal Representative

474 Date of Signature

475 H. Pursuant to this subsection:

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

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

tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

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

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

NOTICE TO INDIVIDUAL

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

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

NOTICE TO HEALTH CARE ENTITIES

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

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

NO MOTION TO QUASH WAS FILED; OR

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

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

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

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

4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such

health records until they have received a certification as set forth in subdivision 5 or 8 of this subsection from the party on whose behalf the subpoena duces tecum was issued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 37.2-800. Applicability of chapter.

For the purposes of this chapter, whenever the term mental illness appears, it shall include substance abuse *and when the term responsible person appears it shall include a family member as that term is defined in § 37.2-100, a community services board or behavioral health authority designee or employee, any treating physician of the person, or a law enforcement officer.*

§ 37.2-804.2. Disclosure of health records.

Any health care provider, as defined in § 32.1-127.1:03, or any other person providing services under this chapter, shall, upon request, disclose to a magistrate, a court, the person's attorney, a mental health examiner required under §§ 16.1-339 or 37.2-815, an employee or designee of a community services board or behavioral health authority performing an evaluation, preadmission screening, or monitoring duties under this chapter, or a law-enforcement officer, any and all information of the individual necessary and appropriate to enable each of them to perform their duties under this chapter. These health care providers and other service providers shall disclose to one another such records and information as necessary to provide care and treatment to the individual and to monitor that care and treatment. Health care records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer or the person from physical injury or to address the medical needs of the person.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act, unless the person or provider disclosing such records intended the harm or acted in bad faith.

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

A. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when he has probable cause to believe that any person within his judicial district (i) has mental illness, (ii) ~~presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself~~ *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,* (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated *to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment.*

672 The evaluation shall be made by a person designated by the community services board or behavioral
673 health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a
674 certification program approved by the Department.

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

682 D. The magistrate shall order the primary law-enforcement agency from the jurisdiction served by the
683 community services board or behavioral health authority that designated the person to perform the
684 evaluation required in subsection B to execute the order and provide transportation. If the community
685 services board or behavioral health authority serves more than one jurisdiction, the magistrate shall
686 designate the primary law-enforcement agency from the particular jurisdiction within the community
687 services board's or behavioral health authority's service area where the person who is the subject of the
688 emergency custody order was taken into custody or, if the person has not yet been taken into custody,
689 the primary law-enforcement agency from the jurisdiction where the person is presently located to
690 execute the order and provide transportation.

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

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

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

702 H. The person shall remain in custody until a temporary detention order is issued, ~~or until the person~~
703 ~~is released, but in no event shall the period of custody exceed four hours or until the emergency custody~~
704 ~~order expires. An emergency custody order shall be valid for a period not to exceed four hours from the~~
705 ~~time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension,~~
706 ~~an emergency custody order may be renewed one time for a second period not to exceed two hours.~~
707 ~~Good cause for an extension includes the need for additional time to allow (i) the community services~~
708 ~~board or behavioral health authority to identify a suitable facility in which the person can be~~
709 ~~temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed~~
710 ~~if necessary. Any family member, as the term is defined in § 37.1-100, community services board or~~
711 ~~behavioral health authority designee or employee, treating physician of the person, or law enforcement~~
712 ~~officer may request the two-hour extension period.~~

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

716 § 37.2-809. Involuntary temporary detention; issuance and execution of order.

717 A. For the purposes of this section:

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

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

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

732 B. A magistrate ~~may~~shall issue, upon the sworn petition of any responsible person or upon his own
733 motion and only after ~~an in-person~~ face-to-face evaluation of the person by an employee or a designee

of the local community services board *to determine whether the person meets the criteria for temporary detention*, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (i) has mental illness, (ii) ~~presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself~~*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*, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision.

C. When considering whether to issue a temporary detention order pursuant to subsection B, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether to issue a temporary detention order.

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

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

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

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

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

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

IJ. The chief judge of each general district court shall establish and require that a magistrate, as

795 provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing
796 the duties established by this section. Each community services board or behavioral health authority
797 shall provide to each general district court and magistrate's office within its service area a list of its
798 employees and designees who are available to perform the evaluations required herein.

799 *K. The employee or the designee of the local community services board or behavioral health*
800 *authority who is conducting the evaluation pursuant to this section shall, if he recommends that the*
801 *person should not be subject to a temporary detention order or if he determines that he cannot locate*
802 *an appropriate facility for the person pursuant to subsection D, notify the petitioner and any treating*
803 *physician or clinical psychologist of his recommendations and provide those parties the contact*
804 *information of the nearest magistrate.*

805 § 37.2-813. Release of person prior to commitment hearing for involuntary admission.

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

821 § 37.2-814. Commitment hearing for involuntary admission; written explanation; right to counsel;
822 rights of petitioner.

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

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

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

851 D. A written explanation of the involuntary admission process and the statutory protections
852 associated with the process shall be given to the person, and its contents shall be explained by an
853 attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the
854 person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present
855 any defenses including independent evaluation and expert testimony or the testimony of other witnesses,
856 (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the

circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the person whose involuntary admission is sought has been given the written explanation required herein.

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

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

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

Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination of the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not available, ~~any~~ a mental health professional who is (i) licensed in Virginia through the Department of Health Professions *as a clinical social worker or professional counselor and who has completed a certification program approved by the Department* and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be able to provide an independent examination of the person *and recommendations for his placement, care, and treatment*. The examiner shall (a) not be related by blood or marriage to the person, (b) not be responsible for treating the person, (c) have no financial interest in the admission or treatment of the person, (d) have no investment interest in the facility detaining or admitting the person under this chapter, and (e) except for employees of state hospitals, the U.S. Department of Veterans Affairs, community service boards, and behavioral health authorities, not be employed by the facility. For purposes of this section, the term "investment interest" shall be as defined in § 37.2-809.

The examination conducted pursuant to this section shall be a comprehensive, face-to-face evaluation of the person. Translation or interpreter services shall be provided during the evaluation where necessary. The examination shall include (1) a clinical assessment that includes a mental status examination; determination of current use of psychotropic and other medications; a medical and psychiatric history; a substance use, abuse, or dependency determination; and a determination of the person's ability to protect himself from harm or to provide for his basic human needs; (2) a substance abuse screening, when indicated; (3) a risk assessment that includes an evaluation of the likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior or other relevant information or suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (4) an assessment of the person's capacity to consent to treatment, including his ability to maintain and communicate choice of treatment options, understand relevant information, and comprehend the situation and its consequences; (5) recommendations for the placement, care, and treatment of the person including an assessment of the appropriateness of alternatives to involuntary inpatient treatment; (6) a review of the temporary detention facility's records, including the treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes; and (7) a consultation with the person regarding his preferences for treatment in order to achieve recovery.

All such examinations shall be conducted in private. The judge or special justice shall summons the examiner who shall certify that he has personally examined the person and has probable cause to believe that the person (i) does or does not ~~present an imminent danger to himself or others as a result of mental illness or is or is not so seriously mentally ill as to be substantially unable to care for himself~~ *have a mental illness and there does or does not exist 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) requires or does not require involuntary inpatient treatment. Alternatively, the judge or special justice may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection sustained to the acceptance of the written certification by the person or his attorney. The judge or special justice shall not render any decision on the petition until the examiner has presented his report orally or in writing.

918 § 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

919 The district court judge or special justice shall require a preadmission screening report from the
920 community services board or behavioral health authority that serves the county or city where the person
921 resides or, if impractical, where the person is located. The report shall be admissible as evidence of the
922 facts stated therein and shall state (i) whether the person ~~presents an imminent danger to himself or~~
923 ~~others as a result of mental illness or is so seriously mentally ill that he is substantially unable to care~~
924 ~~for himself~~*has a mental illness and there exists a substantial likelihood that as a result of that mental*
925 *illness the defendant will, in the near future, (a) cause serious physical harm to himself or others as*
926 *evidenced by recent behavior or any other relevant information or (b) suffer serious harm due to his*
927 *lack of capacity to protect himself from harm or to provide for his basic human needs;* (ii) whether the
928 person is in need of involuntary inpatient treatment, (iii) whether there is no less restrictive alternative to
929 inpatient treatment, and (iv) the recommendations for that person's placement, care, and treatment
930 *including, where appropriate, recommendations for mandatory outpatient treatment.* The board or
931 authority shall provide the preadmission screening report ~~within 48 hours or if the 48-hour period~~
932 ~~terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the next~~
933 ~~day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed~~*to the*
934 *court prior to the hearing.* In the case of a person who has been sentenced and committed to the
935 Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the
936 judge or special justice may proceed to adjudicate whether the person has mental illness and should be
937 involuntarily admitted without requesting a preadmission screening report from the community services
938 board or behavioral health authority.

939 § 37.2-817. Involuntary admission and mandatory outpatient treatment orders.

940 A. The district court judge or special justice shall render a decision on the petition for involuntary
941 admission after the appointed examiner has presented ~~his~~*the* report, ~~orally or in writing, pursuant~~
942 ~~to~~*required by § 37.2-815 and after the community services board or behavioral health authority that*
943 *serves the county or city where the person resides or, if impractical, where the person is located has*
944 *presented a preadmission screening report, orally or in writing, with recommendations for that person's*
945 *placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute*
946 *sufficient evidence upon which the district court judge or special justice may base his decision. The*
947 *examiner, if not physically present at the hearing, and the treating physician at the facility of temporary*
948 *detention shall be available whenever possible for questioning during the hearing through a two-way*
949 *electronic video and audio or telephonic communication system as authorized by § 37.2-804.1. An*
950 *employee or a designee of the community services board or behavioral health authority as defined in*
951 *subsection A of § 37.2-809 that prepared the prescreening report shall attend the hearing, either in*
952 *person or via a two-way electronic video and audio communication or telephonic communication system*
953 *as authorized by § 37.2-804.1. When a hearing is held outside of the jurisdiction of the community*
954 *services board or behavioral health authority that prepared the prescreening report, and it is not*
955 *reasonably possible for a representative of the community services board to attend the hearing,*
956 *arrangements shall be made by the community services board or behavioral health authority for an*
957 *employee or designee of the community services board or behavioral health authority serving the*
958 *jurisdiction in which the hearing is held to attend the hearing on behalf of the community services*
959 *board or behavioral health authority that prepared the prescreening report. The community services*
960 *board or behavioral health authority prepared the prescreening report shall remain responsible for the*
961 *person subject to the hearing and shall send prior to the hearing, through certified mail, facsimile with*
962 *return receipt acknowledged, or by other electronic means, or by personal delivery, the prescreening*
963 *report to the community services board or behavioral health authority that is providing the attendee.*

964 *At least 12 hours prior to the commitment hearing, the court shall provide to the community services*
965 *board or behavioral health authority who prepared the prescreening report, the time and location of the*
966 *commitment hearing. If the community services board or behavioral health authority will be present by*
967 *telephonic means the telephone number for the telephonic presence shall be provided.*

968 B. After observing the person and ~~obtaining the necessary positive certification~~ and considering the
969 ~~appointed examiner's certification, the preadmission screening report, and the following, —any other~~
970 ~~relevant evidence that may have been offered~~*(i) the recommendations of any other treating or examining*
971 *physician licensed in Virginia, if available, (ii) any past actions of the person, (iii) any other past*
972 *mental health treatment of the person, (iv) any other medical records available, and (v) any affidavits*
973 *submitted, if the witness is unavailable and it so states in the affidavit, if the judge or special justice*
974 *finds by clear and convincing evidence that (ia) the person presents an imminent danger to himself or*
975 *others as a result of mental illness or has been proven to be so seriously mentally ill as to be*
976 *substantially unable to care for himself**has a mental illness and there exists a substantial likelihood that*
977 *as a result of that mental illness the defendant will, in the near future, (1) cause serious physical harm*
978 *to himself or others as evidenced by recent behavior or any other relevant information or (2) suffer*
979 *serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human*

needs, and (iib) all available less restrictive treatment alternatives to involuntary inpatient treatment pursuant to subsection C that would offer an opportunity for the improvement of the person's condition have been investigated and deemed unsuitable and there is no less restrictive alternative to involuntary inpatient treatment and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 180 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board or behavioral health authority that serves the city or county in which the person was examined as provided in § 37.2-816. If the community services board or behavioral health authority does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of any order for involuntary admission, the person shall be released at the expiration of 180 days unless he is involuntarily admitted, for a period not exceed 180 days, by further petition and order of a court or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805.

C. After observing the person and obtaining the necessary positive certification and considering the appointed examiner's certification, the preadmission screening report, and the following, any other relevant evidence that may have been offered: (i) the recommendations of any other treating or examining physician licensed in Virginia, if available, (ii) any past actions of the person, (iii) any other past mental health treatment of the person, (iv) any other medical records available, and (v) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, if the judge or special justice finds by clear and convincing evidence that (ia) the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself, (ib) as a result of that mental illness the defendant will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (iib) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are deemed suitable, (iii) are determined to be appropriate, and (c) the person (aa) has the degree of competency necessary, sufficient capacity to understand the stipulations of his treatment, (bb) expresses an interest in living in the community and agrees to abide by his treatment plan, and (cc) is deemed to have the capacity to comply with the treatment plan, and understand and adhere to the conditions and requirements of the treatment and services, and (ivd) the ordered treatment can be delivered on an outpatient basis and be monitored by the community services board, behavioral health authority or designated provider, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community and providers of the services have actually agreed to deliver the services.; Mandatory outpatient treatment, which may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. The community services board or behavioral health authority that serves the city or county in which the person resides shall recommend a specific course of treatment and programs for the provision of involuntary mandatory outpatient treatment. The community services board, behavioral health authority, or designated provider shall monitor the person's compliance with the treatment ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this section. Upon failure of the person to adhere to the terms of the outpatient treatment order, the judge or special justice may revoke it and, upon notice to the person and after a commitment hearing, order involuntary admission to a facility. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board or behavioral health authority, but shall not exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is extended. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment the court may order a subsequent period of mandatory outpatient treatment not to exceed 180 days.

Any order for mandatory outpatient treatment shall include an initial mandatory outpatient treatment plan developed by the community services board or the behavioral health authority that completed the preadmission screening report. The plan shall, at minimum, (1) identify the specific services to be provided, (2) identify the provider who has agreed to provide each service, (3) identify the requirements including but not limited to, the time and place for the initial face-to-face appointment or contact with each service provider, and (4) include any other relevant information that may be available regarding

the mandatory outpatient treatment ordered. The order shall require the community services board or behavioral health authority to monitor the implementation of the mandatory outpatient treatment plan and report any material noncompliance to the court.

D. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered pursuant to this section, the community services board or behavioral health authority responsible for monitoring compliance with the order shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii) certify that the services are the most appropriate and least restrictive treatment available for the person, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department's licensing regulations, (v) be developed with the fullest possible involvement and participation of the person and reflect his preferences to the greatest extent possible to support his recovery and self-determination, (vi) specify the particular conditions with which the person shall be required to comply, and (vii) identify how the community services board or behavioral health authority shall monitor the person's compliance with the plan and report any material noncompliance with the plan. Where a comprehensive mandatory outpatient treatment plan is developed after receipt of the order, the community services board or behavioral health authority shall submit the plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. The community services board may petition the court anytime after approval for a modification of the treatment plan, and if the person joins the petition, the court may grant the petition without further hearing. If the person does not join the petition the court shall schedule a hearing pursuant to § 37.2-817.1. Any order granted pursuant to this subsection shall be filed with the order for mandatory outpatient treatment.

E. Upon entry of any order for mandatory outpatient treatment, the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, if the court is on notice that the person is being represented by counsel, and to the community services board or behavioral health authority that shall be required to monitor compliance with the plan. The community services board or behavioral health authority shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose. The court may transfer jurisdiction of the case to the general district court where the person resides at any time after the entry of the order. The community services board responsible for developing the outpatient treatment plan, however, shall remain responsible for the person subject to the treatment order. If the community services board or behavioral health authority responsible for the person seek to transfer such responsibility, it shall petition the court for the authority to transfer. If the person joins the petition the court may grant the motion without further hearing. If the person does not join the petition, the court shall schedule a hearing pursuant to § 37.2-817.1. The transfer shall not occur until the community services board or behavioral health authority to which the responsibility is being transferred acknowledges the transfer and acknowledges receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose.

F. The community services board or behavioral health authority shall be required to monitor the person's compliance. Such monitoring of compliance shall include the community services board or behavioral health authority (i) contacting the service providers to determine if the person is complying with the mandatory outpatient treatment order and (ii) notifying the court of the person's compliance or material noncompliance with the mandatory outpatient treatment order. Determination of compliance shall occur and notification to the court shall be provided within seven days of the entry of the mandatory outpatient treatment order and every 30 days thereafter. Providers of services identified in the plan shall report any material noncompliance of the mandatory outpatient treatment order to the community services board or behavioral health authority.

If, at any point after the entry of a mandatory outpatient treatment order, the community services board or behavioral authority determines that the person is not materially complying with the order, it shall petition the court within 72 hours of such determination for a hearing pursuant to § 37.2-817.1.

G. If the community services board or behavioral health authority responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, the community services board or behavioral health authority shall petition the court within 72 hours of such determination for a hearing pursuant to § 37.2-817.1.

H. At any time prior to the expiration of the mandatory outpatient treatment order, if the community services board or behavioral health authority determines that the person has complied with the order

and that the person no longer meets the criteria for involuntary commitment, or that continued mandatory outpatient treatment is no longer necessary for any other reason, and the treating physician is in agreement, the community services board or behavioral health authority shall petition the court within 72 hours of such determination for the court to vacate the order, and if the person joins the petition, the court may grant the petition and enter an appropriate order without further hearing. If the court fails to grant the petition to vacate the order, it shall schedule a hearing on the petition pursuant to § 37.2-817.1.

I. At any time after 30 days from entry of the mandatory outpatient treatment order, the person may petition the court for a hearing pursuant to § 37.2-817.1 for the purpose of having the mandatory outpatient treatment order vacated. The person may not file a petition for such a hearing more than once during a 90-day period.

J. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order, the community services board or behavioral health authority that is required to monitor the person's compliance with the order may petition the court to extend the order for a period not to exceed 180 days. If the person who is the subject of the order joins the petition, the court shall grant the petition and enter an appropriate order without further hearing. If the person who is the subject of the order does not join the petition, the court shall schedule a hearing pursuant to § 37.2-817.1.

K. If the community services board or behavioral health authority determine that, because the person is not materially complying with the order or for any other reason, there is a substantial likelihood that as a result of the person's mental illness that the person 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, it shall immediately petition the court for an emergency custody order or temporary detention order in lieu of or in preparation for a hearing pursuant to § 37.2-817.1.

§ 37.2-817.1. Mandatory outpatient treatment orders; oversight hearings.

A. Any petition filed with the court pursuant to § 37.2-817 shall be docketed and resolved according to the provisions of this section. When considering a petition filed with the court pursuant to § 37.2-817, a judge or special justice may, in addition to the petition, consider (i) the recommendations of any treating or examining physician licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any medical records available, (v) any affidavits submitted, if the witness is unavailable and so states in the affidavit and (vi) any testimony or evidence from the community services board or behavioral health authority regarding the person's compliance or noncompliance with the mandatory outpatient treatment order. In addition, the court shall request a new independent examination of the person and shall review the report of any such examiner prior to any determination under this section.

B. After receipt of the petition, the court shall schedule a hearing within five days, however, if the fifth day is not a business day, the hearing shall be held by the close of business on the next day that is a business day. If the person who is the subject of the hearing is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order need not preside over the noncompliance hearing.

C. After hearing the evidence the court shall make one of the following dispositions:

1. Upon finding that the person meets the criteria for involuntary admission and treatment specified in subsection B of § 37.2-817, the court shall order the person's involuntary admission to a facility designated by the community services board or behavioral health authority pursuant to that section;

2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment specified in subsection C of § 37.2-817, and that a continued period of mandatory outpatient treatment is warranted, the court shall renew the order for mandatory outpatient treatment. The court may modify the mandatory outpatient treatment order for good cause shown. However, if the person was not materially compliant with the mandatory outpatient treatment order and no good cause was shown for such material noncompliance, the court shall order the person's involuntary admission pursuant to subsection B of § 37.2-817. Good cause shall include a finding that the person no longer meets the commitment criteria pursuant to either subsection B of § 37.2-817 or subsection C of § 27.2-817.

If a petition was filed pursuant to subsection J of § 37.2-817, the court may renew the order for mandatory outpatient treatment for a period not exceed 180 days.

3. If the court finds that the person no longer meets either the involuntary admission criteria pursuant to subsection B of § 37.2-817, or the mandatory outpatient treatment criteria pursuant to subsection C of § 37.2-817, the court shall vacate the mandatory outpatient treatment order and the person shall be released.

D. Whenever a petition is filed and considered by the court pursuant to subsection F of § 37.2-817, the court shall issue a show cause order regarding the person's failure to comply with the mandatory

outpatient treatment order and schedule a hearing. If a person fails to appear for a hearing pursuant to this section, the court shall issue a temporary detention order of the person pursuant to § 37.2-809 and schedule a hearing.

E. The community services board or behavioral health authority shall offer to arrange for the person's transportation to any hearing held pursuant to this section if the person is not detained and has no other source of transportation. If the person is detained, the primary law enforcement agency of the locality shall be responsible for the transportation of the person to the hearing.

F. The court shall provide notice of the hearing to the original petitioner, the person, the person's attorney if the court is on notice that the person is being represented by counsel, the community services board or behavioral health authority, and to any member of the person's family whom the person has authorized to receive information regarding his treatment. Except pursuant to subsection D, if the person fails or refuses to attend the hearing, the hearing may proceed in the person's absence.

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

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

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

C. After entering an order for involuntary admission or mandatory outpatient treatment, The the judge or special justice shall order that copies of the relevant medical records of the person be released to (i) the facility in which he is placed upon the request of the treating physician or director of the facility; (ii) the community services board or behavioral health authority of the jurisdiction where the person resides; (iii) any treatment providers identified in a treatment plan incorporated into any mandatory outpatient treatment order; and (iv) any other treatment providers or entities.

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

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

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

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