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# HOUSE BILL NO. 2061

Offered January 14, 2009

Prefiled January 13, 2009

*A BILL to amend and reenact §§ 16.1-336 through 16.1-342, 16.1-344, 16.1-345, 16.1-345.1, 37.2-808, and 37.2-809 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-339.1 and 16.1-346.2 through 16.1-346.5, relating to the Psychiatric Inpatient Treatment of Minors Act.*

Patron—Hamilton

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-336 through 16.1-342, 16.1-344, 16.1-345, 16.1-345.1, 37.2-808, and 37.2-809 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-339.1 and 16.1-346.2 through 16.1-346.5 as follows:**

§ 16.1-336. Definitions.

When used in this article, unless the context otherwise requires:

*"Community services board" has the same meaning as provided in § 37.2-100. Whenever the term community services board appears, it shall include behavioral health authority, as that term is defined in § 37.2-100.*

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor ~~fourteen~~ *14* years of age or older and by a parent or a legally authorized custodian.

"Incapable of making an informed decision" means unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to the treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the State Mental Health, Mental Retardation and Substance Abuse Services Board to be substantially similar to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

"Judge" means a juvenile and domestic relations district judge. In addition, "judge" includes a retired judge sitting by designation pursuant to § 16.1-69.35, substitute judge, or special justice authorized by § 37.2-803 who has completed a training program regarding the provisions of this article, prescribed by the Executive Secretary of the Supreme Court.

"Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the minor or others from physical injury.

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior. Mental retardation, head injury, a learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness within the meaning of this article.

"Minor" means a person less than ~~eighteen~~ *18* years of age.

*"Outpatient treatment" means treatment of mental illness rendered to a minor while not confined as an inpatient.*

"Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director of the local department of social services, or his designee, may stand as the minor's parent when the minor is in the legal custody of the local department of social services.

"Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology who is skilled in the diagnosis and treatment of mental illness in minors and familiar with the provisions of this article. If such psychiatrist or psychologist is unavailable, any mental health professional (i) licensed in Virginia through the Department of Health Professions or (ii) employed by a community services board who is skilled in the diagnosis and treatment of mental illness in minors and who is familiar with the provisions of this article may serve as the qualified evaluator.

"Treatment" means any planned intervention intended to improve a minor's functioning in those areas which show impairment as a result of mental illness.

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

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

B. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a minor who is the subject of proceedings under this article, upon request, shall disclose to a magistrate, the juvenile intake officer, the court, the minor's attorney as required in § 16.1-343, the minor's guardian ad litem, the evaluator as required under §§ 16.1-338, 16.1-339, and 16.1-342, the community services board ~~or behavioral health authority~~ performing the evaluation, preadmission screening, or monitoring duties under this article, or a law-enforcement officer any and all information that is necessary and appropriate to enable each of them to perform his duties under this article. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the person and to monitor that care and treatment. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the minor, or the public from physical injury or to address the health care needs of the minor. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

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

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

§ 16.1-338. Parental admission of minors younger than 14 and nonobjecting minors 14 years of age or older.

A. A minor younger than 14 years of age may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent. A minor 14 years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parent.

B. Admission of a minor under this section shall be approved by a qualified evaluator who has conducted a personal examination of the minor within 48 hours after admission and has made the following written findings:

1. The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and

2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and

3. If the minor is 14 years of age or older, that he has been provided with an explanation of his rights under this Act as they would apply if he were to object to admission, and that he has consented to admission; and

4. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide the examination required by this section and shall ensure that the necessary written findings have been made before approving the admission. A copy of the written findings of the evaluation required by this section shall be provided to the consenting parent and the parent shall have the opportunity to discuss the findings with the evaluator.

C. Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. The minor shall be involved in the preparation of the plan to the maximum

feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured. A copy of the plan shall be provided to the minor and to his parents.

D. If the parent who consented to a minor's admission under this section revokes his consent at any time, or if a minor 14 or older objects at any time to further treatment, the minor shall be discharged within 48 hours to the custody of such consenting parent unless the minor's continued hospitalization is authorized pursuant to § 16.1-339, 16.1-340, or 16.1-345. If the 48-hour time period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

E. Inpatient treatment of a minor hospitalized under this section may not exceed 90 consecutive days unless it has been authorized by appropriate hospital medical personnel, based upon their written findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the minor and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the minor's condition.

F. Any minor admitted under this section while younger than 14 and his consenting parent shall be informed orally and in writing by the director of the facility for inpatient treatment within 10 days of his fourteenth birthday that continued voluntary treatment under the authority of this section requires his consent.

G. Any minor 14 years of age or older who joins in an application and consents to admission pursuant to subsection A, shall, in addition to his parent, have the right to access his health information. The concurrent authorization of both the parent and the minor shall be required to disclose such minor's health information.

*H. A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.*

§ 16.1-339. Parental admission of an objecting minor 14 years of age or older.

A. A minor 14 years of age or older who (i) objects to admission, or (ii) is incapable of making an informed decision may be admitted to a willing facility for up to 96 hours, pending the review required by subsections B and C of this section, upon the application of a parent. If admission is sought to a state hospital, the community services board ~~or behavioral health authority~~ serving the area in which the minor resides shall provide the examination required by subsection B of § 16.1-338 and shall ensure that the necessary written findings, except the minor's consent, have been made before approving the admission.

B. A minor admitted under this section shall be examined within 24 hours of his admission by a qualified evaluator designated by the community services board ~~or behavioral health authority~~ serving the area where the facility is located who is not and will not be treating the minor and who has no significant financial interest in the minor's hospitalization. The evaluator shall prepare a report that shall include written findings as to whether:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction in which the facility is located.

C. Upon admission of a minor under this section, the facility shall file a petition for judicial approval no sooner than 24 hours and no later than 96 hours after admission with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. *To the extent available, the petition shall contain the information required by § 16.1-339.1.* A copy of this petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the judge shall appoint a guardian ad litem for the minor and counsel to represent the minor, unless it has been determined that the minor has retained counsel. *A copy of the evaluator's report shall be provided to the minor's counsel.* The court and the guardian ad litem shall review the petition and evaluator's report and shall ascertain the views of the minor, the minor's

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consenting parent, the evaluator, and the attending psychiatrist. The court shall conduct its review in such place and manner, including the facility, as it deems to be in the best interests of the minor. Based upon its review and the recommendations of the guardian ad litem, the court shall order one of the following dispositions:

1. If the court finds that the minor does not meet the criteria for admission specified in subsection B, the court shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.

2. If the court finds that the minor meets the criteria for admission specified in subsection B, the court shall issue an order authorizing continued hospitalization of the minor for up to 90 days on the basis of the parent's consent.

Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem and to counsel for the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured.

3. If the court determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the criteria specified in subsection B, the court shall schedule a commitment hearing that shall be conducted in accordance with the procedures specified in §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to 96 additional hours pending the holding of the commitment hearing.

D. A minor admitted under this section who rescinds his objection may be retained in the hospital pursuant to § 16.1-338.

E. If the parent who consented to a minor's admission under this section revokes his consent at any time, the minor shall be released within 48 hours to the parent's custody unless the minor's continued hospitalization is authorized pursuant to § 16.1-340 or 16.1-345. If the 48-hour time period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

*F. A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.*

*§ 16.1-339.1. Minors in detention homes or shelter care facilities.*

*If a minor admitted to a mental health facility pursuant to this article was in a detention home or a shelter care facility at the time of his admission, the director of the detention home or shelter care facility or his designee shall provide, if available, the charges against the minor that are the basis of the detention and the names and addresses of the minor's parents and the juvenile and domestic relations district court ordering the minor's placement in detention or shelter care to the mental health facility and to the juvenile and domestic relations district court for the jurisdiction in which the mental health facility is located if different from the court ordering the minor's placement in detention or shelter care.*

§ 16.1-340. Emergency admission.

A minor, including a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations court, may be taken into custody and admitted for inpatient treatment pursuant to the procedures specified in Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2, *except that an emergency custody order pursuant to § 37.2-808 or a temporary detention order pursuant to § 37.2-809 shall only be issued for a minor if the minor meets the criteria for involuntary commitment set forth in § 16.1-345*. If the minor is admitted to a willing facility in accordance with § 37.2-809, the temporary detention order shall be effective until such time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is located schedules a hearing. The juvenile and domestic relations district court serving the jurisdiction in which the minor is located shall schedule a hearing pursuant to § 16.1-341 no sooner than 24 hours and no later than 96 hours from the time of the issuance of the temporary detention order or filing of the petition pursuant to § 16.1-341, whichever occurs later. If the 96-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 96 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

§ 16.1-341. Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

A. A petition for the involuntary commitment of a minor may be filed with the juvenile and domestic relations district court serving the jurisdiction in which the minor is located by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court. The petition shall include the name and address of the petitioner and the minor and shall set forth in specific terms why the petitioner believes the minor meets the criteria for involuntary commitment specified in § 16.1-345. *To the extent available, the petition shall contain the information required by § 16.1-339.1.* The petition shall be taken under oath.

If a commitment hearing has been scheduled pursuant to subdivision 3 of subsection C of § 16.1-339, the petition for judicial approval filed by the facility under subsection C of § 16.1-339 shall serve as the petition for involuntary commitment as long as such petition complies in substance with the provisions of this subsection.

B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic relations district court serving the jurisdiction in which the minor is located ~~may~~ *shall* schedule a hearing which shall occur no sooner than 24 hours and no later than 96 hours from the time the petition was filed. If the 96-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 96 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. The attorney for the minor, the guardian ad litem for the minor, the attorney for the Commonwealth in the jurisdiction giving rise to the detention, and the juvenile and domestic relations district court having jurisdiction over any minor in detention or shelter care shall be given notice prior to the hearing.

If the petition is not dismissed or withdrawn, copies of the petition, together with a notice of the hearing, shall be served immediately upon the minor and the minor's parents, if they are not petitioners. No later than 24 hours before the hearing, the court shall appoint a guardian ad litem for the minor and counsel to represent the minor, unless it has determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause shown, and after notice to the petitioner and all other persons receiving notice of the hearing, the court may continue the hearing once for a period not to exceed 96 hours.

Any recommendation made by a state mental health facility or state hospital regarding the minor's involuntary commitment may be admissible during the course of the hearing.

§ 16.1-342. Involuntary commitment; clinical evaluation.

Upon the filing of a petition for involuntary commitment, the juvenile and domestic relations district court shall direct the community services board serving the area in which the minor is located to arrange for an evaluation, if one has not already been performed pursuant to subsection B of § 16.1-339, by a qualified evaluator who is not and will not be treating the minor and who has no significant financial interest in the facility to which the minor would be committed. In conducting a clinical evaluation of a minor in detention or shelter care, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in § 16.1-345, the evaluator shall recommend that the minor meets the criteria for involuntary commitment. The petitioner, all public agencies, and all providers or programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of treatment or education of the minor. At least 24 hours before the scheduled hearing, the evaluator shall submit to the court a written report which includes the evaluator's opinion regarding whether the minor meets the criteria for involuntary commitment specified in § 16.1-345. *A copy of the evaluator's report shall be provided to the minor's guardian ad litem and to the minor's counsel.* The evaluator ~~shall attend the hearing as a witness~~, *if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 16.1-345.1*.

§ 16.1-344. Involuntary commitment; hearing.

The court shall summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony shall be under oath. The rules of evidence shall apply; however, the evaluator's report required by § 16.1-342 shall be admissible into evidence ~~by stipulation of the parties~~ *unless objected to by the minor or his attorney, in which case the evaluator shall attend the hearing in person or by electronic communication*. The petitioner, minor and, with leave of court for good cause shown, any other person shall be given the opportunity to present evidence and cross-examine witnesses. The hearing shall be closed to the public unless the minor and petitioner request that it be open. Within ~~thirty~~ *30* days of any final order committing the minor or dismissing the petition, the minor or petitioner shall have the right to appeal de novo to the circuit court having jurisdiction where the minor was committed or where the minor is hospitalized pursuant to the commitment order. The juvenile and domestic relations district court shall appoint an attorney to represent any minor desiring to appeal who does not appear to be already represented.

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*An employee or a designee of the community services board that arranged for the evaluation of the minor shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 16.1-345.1. If (i) the minor does not reside in the jurisdiction served by the juvenile and domestic relations district court that conducts the hearing and (ii) the minor is being considered for mandatory outpatient treatment pursuant to § 16.1-346.2, an employee or designee of the community services board serving the area where the minor resides shall also attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 16.1-345.1. The employee or designee of the community services board serving the area where the minor resides may, instead of attending the hearing, make arrangements with the community services board that arranged for the evaluation of the minor to present on its behalf the recommendations for a specific course of treatment and programs for the provision of mandatory outpatient treatment required by subsection C of § 16.1-346.2 and the initial mandatory outpatient treatment plan required by subsection D of § 16.1-346.2. When a community services board attends the hearing on behalf of the community services board serving the area where the minor resides, the attending community services board shall inform the community services board serving the area where the minor resides of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board serving the area where the minor resides.*

*At least 12 hours prior to the hearing, the court shall provide to any participating community services board the time and location of the hearing. If the representative of any participating community services board will be present by telephonic means, the court shall provide the telephone number to the board.*

§ 16.1-345. Involuntary commitment; criteria.

The court shall order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. ~~If inpatient treatment is ordered, such treatment is the least restrictive alternative that meets the minor's needs.~~ *All available less restrictive alternatives to inpatient treatment that would offer an opportunity for the improvement of the minor's condition have been investigated and determined to be inappropriate.* If the court finds that inpatient treatment is not the least restrictive treatment, the court ~~may~~ *shall* order the minor to participate in *mandatory* outpatient ~~or other clinically appropriate~~ treatment *pursuant to § 16.1-346.2*.

A minor who has been hospitalized while properly detained ~~for a criminal offense~~ by a juvenile and domestic relations district court shall be returned to the detention home following completion of a period of inpatient treatment, unless the court having jurisdiction over the ~~criminal~~ case orders that the minor be released from custody. *However, such a minor shall not be eligible for mandatory outpatient treatment.*

In conducting an evaluation of a minor who has been properly detained, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in this section, the evaluator shall recommend that the minor meets the criteria for involuntary commitment.

~~In no event shall a minor who has been properly detained by a juvenile and domestic relations district court, and who meets criteria for involuntary commitment, have the right to make application for voluntary admission and treatment as may otherwise be provided for in this section.~~

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, or normal development, and that issuance of a removal order or protective order is authorized by § 16.1-252 or 16.1-253.

Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political

subdivision in which the minor was evaluated pursuant to § 16.1-342. If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. The judge shall order the sheriff to transport the minor to the designated mental health facility as specified in § 37.2-829. The transportation of the committed minor by the minor's parent may be authorized at the discretion of the judge.

§ 16.1-345.1. Use of electronic communication.

A. Petitions and orders for emergency custody pursuant to § 37.2-808, temporary detention pursuant to § 37.2-809, and involuntary commitment pursuant to § 16.1-341 of minors may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.

B. Any judge may conduct proceedings pursuant to ~~§ 16.1-344~~ *this article* using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses. Any two-way electronic video and audio communication system used to conduct a proceeding shall meet the standards set forth in subsection B of § 19.2-3.1. When a witness whose testimony would be helpful to the conduct of the proceeding is not able to be physically present, his testimony may be received using a telephonic communication system.

*§ 16.1-346.2. Mandatory outpatient treatment; criteria; orders.*

*A. The court shall order that the minor be admitted involuntarily to mandatory outpatient treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:*

*1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;*

*2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment;*

*3. Less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate;*

*4. The minor, if 14 years of age or older, and his parents (i) have sufficient capacity to understand the stipulations of the minor's treatment, (ii) have expressed an interest in the minor's living in the community and have agreed to abide by the minor's treatment plan, and (iii) are deemed to have the capacity to comply with the treatment plan and understand and adhere to conditions and requirements of the treatment and services; and*

*5. The ordered treatment can be delivered on an outpatient basis by the community services board or a designated provider.*

*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.*

*B. If the parent or parents with whom the minor resides are not willing to approve the proposed treatment, the court shall order mandatory outpatient treatment only if it finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, or normal development, and that issuance of a removal order or protective order is authorized by § 16.1-252 or 16.1-253. Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.*

*C. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital, or other appropriate course of treatment as may be necessary to meet the needs of the minor. The community services board serving the area in which the minor resides shall recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment. Upon expiration of an order for mandatory outpatient treatment, the minor shall be released from the requirements of the order unless the order is continued in accordance with § 16.1-346.5.*

*D. Any order for mandatory outpatient treatment shall include an initial mandatory outpatient treatment plan developed by the community services board serving the area in which the minor resides. The plan shall, at a minimum, (i) identify the specific services to be provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the arrangements made for the initial in-person appointment or contact with each service provider, and (iv) include any other relevant information that may be available regarding the mandatory outpatient treatment ordered. The order shall require the community services board to monitor the implementation of the mandatory outpatient treatment plan and report any material noncompliance to the court.*

*E. No later than five business days after an order for mandatory outpatient treatment has been*

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*entered pursuant to this section, the community services board that is 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 minor, (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 minor, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department of Mental Health, Mental Retardation and Substance Abuse Services' licensing regulations, (v) be developed with the fullest involvement and participation of the minor and his parents and reflect their preferences to the greatest extent possible to support the minor's recovery and self-determination, (vi) specify the particular conditions with which the minor shall be required to comply, and (vii) describe how the community services board shall monitor the minor's compliance with the plan and report any material noncompliance with the plan. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The community services board shall submit the comprehensive mandatory outpatient treatment 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. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment.*

*F. If the community services board responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the minor's mental illness are not available or cannot be provided to the minor in accordance with the order for mandatory outpatient treatment, it shall notify the court within five business days of the entry of the order for mandatory outpatient treatment. Within five business days of receiving such notice, the judge, after notice to the minor, the minor's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan, shall hold a hearing pursuant to § 16.1-346.4.*

*G. Upon entry of any order for mandatory outpatient treatment, the clerk of the court shall provide a copy of the order to the minor who is the subject of the order, his parents, his attorney, his guardian ad litem, and the community services board required to monitor his compliance with the plan. The community services board 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.*

*H. After entry of any order for mandatory outpatient treatment if the court that entered the order is not the juvenile and domestic relations district court for the jurisdiction in which the minor resides, it shall transfer jurisdiction of the case to the court where the minor resides.*

*§ 16.1-346.3. Monitoring mandatory outpatient treatment; motion for review.*

*A. The community services board where the minor resides shall monitor the minor's compliance with the mandatory outpatient treatment plan ordered by the court pursuant to § 16.1-346.2. Monitoring compliance shall include (i) contacting the service providers to determine if the minor is complying with the mandatory outpatient treatment order and (ii) notifying the court of the minor's material noncompliance with the mandatory outpatient treatment order. Providers of services identified in the plan shall report any material noncompliance to the community services board.*

*B. If the community services board determines that the minor materially failed to comply with the order, it shall file with the juvenile and domestic relations district court for the jurisdiction in which the minor resides a motion for review of the mandatory outpatient treatment order as provided in § 16.1-346.4. The community services board shall file the motion for review of the mandatory outpatient treatment order within three business days of making that determination, or within 24 hours if the minor is being detained under a temporary detention order, and shall recommend an appropriate disposition. Copies of the motion for review shall be sent to the minor, his parents, his attorney, and his guardian ad litem.*

*C. If the community services board determines that the minor is not materially complying with the mandatory outpatient treatment order or for any other reason, and that because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control, it shall immediately request that the magistrate issue an emergency custody order or a temporary detention order pursuant to § 16.1-340.*

*D. If the community services board determines at any time prior to the expiration of the mandatory outpatient treatment order that the minor has complied with the order and that continued mandatory outpatient treatment is no longer necessary, it shall file a motion to review the order with the juvenile*

*and domestic relations district court for the jurisdiction in which the minor resides. The court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 16.1-346.4.*

*§ 16.1-346.4. Court review of mandatory outpatient treatment plan.*

*A. The juvenile and domestic relations district court judge shall hold a hearing within 15 days after receiving the motion for review of the mandatory outpatient treatment plan; however, if the fifteenth day is a Saturday, Sunday, or legal holiday, the hearing shall be held on the next day that is not a Saturday, Sunday, or legal holiday. If the minor is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 16.1-340. The clerk shall provide notice of the hearing to the minor, his parents, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order, and the original petitioner for the minor's involuntary treatment. If the minor is not represented by counsel, the judge shall appoint an attorney to represent the minor in this hearing and any subsequent hearings under § 16.1-346.5, giving consideration to appointing the attorney who represented the minor at the proceeding that resulted in the issuance of the mandatory outpatient treatment order. The judge shall also appoint a guardian ad litem for the minor. The same judge that presided over the hearing resulting in the mandatory outpatient treatment order need not preside at the noncompliance hearing or any subsequent hearings. The community services board shall offer to arrange the minor's transportation to the hearing if the minor is not detained and has no other source of transportation.*

*B. If requested by the minor's parents, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan, or the original petitioner for the minor's involuntary treatment, the juvenile and domestic relations district court judge shall order an evaluation and appoint an evaluator in accordance with § 16.1-342 who shall personally examine the minor and certify to the court whether or not he has probable cause to believe that the minor meets the criteria for involuntary inpatient treatment or mandatory outpatient treatment as specified in § 16.1-345 and subsection A of § 16.1-346.2. The evaluator's report may be admitted into evidence without the appearance of the evaluator at the hearing if not objected to by the minor or his attorney. If the minor is not detained in an inpatient facility, the community services board shall arrange for the minor to be examined at a convenient location and time. The community services board shall offer to arrange for the minor's transportation to the examination, if the minor has no other source of transportation. If the minor refuses or fails to appear, the community services board shall notify the court, and the court shall issue a mandatory examination order and a civil show cause summons.*

*C. If the minor fails to appear for the hearing, the juvenile and domestic relations district court judge shall, after consideration of any evidence from the minor, from his parents, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan regarding why the minor failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to § 16.1-340, or (iii) issue a temporary detention order pursuant to § 16.1-340.*

*D. After hearing the evidence regarding the minor's material noncompliance with the mandatory outpatient treatment order and the minor's current condition, and any other relevant information, the juvenile and domestic relations district court judge shall make one of the following dispositions:*

*1. Upon finding by clear and convincing evidence that the minor meets the criteria for involuntary admission and treatment specified in § 16.1-345, the judge shall order the minor's involuntary admission to a facility designated by the community services board for a period of treatment not to exceed 30 days;*

*2. Upon finding that the minor continues to meet the criteria for mandatory outpatient treatment specified in subsection A of § 16.1-346.2, and that a continued period of mandatory outpatient treatment appears warranted, the judge shall renew the order for mandatory outpatient treatment, making any necessary modifications that are acceptable to the community services board or treatment provider responsible for the minor's treatment. In determining the appropriateness of outpatient treatment, the court may consider the minor's material noncompliance with the previous mandatory treatment order; or*

*3. Upon finding that neither of the above dispositions is appropriate, the judge shall rescind the order for mandatory outpatient treatment.*

*Upon entry of an order for involuntary inpatient admission, transportation shall be provided in accordance with § 16.1-345.*

*§ 16.1-346.5. Continuation of mandatory outpatient treatment order.*

*A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order, the community services board that is required to monitor the minor's compliance with the order may file with the juvenile and domestic relations district court for the jurisdiction in which the minor resides a motion for review to continue the order for a period not to exceed 90 days.*

*B. The court shall grant the motion for review and enter an appropriate order without further hearing if it is joined by (i) the minor's parents and the minor if he is 14 years of age or older, or (ii)*

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*the minor's parents if the minor is younger than 14 years of age. If the minor's parents and the minor, if necessary, do not join the motion, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 16.1-346.4.*

*C. Upon receipt of the motion for review, the court shall appoint a qualified evaluator who shall personally examine the minor pursuant to § 16.1-342.*

*D. After observing the minor and considering the appointed qualified evaluator's report and any other relevant evidence, the court shall make one of the dispositions specified in subsection D of § 16.1-346.4. If the court finds that a continued period of mandatory outpatient treatment is warranted, it may continue the order for a period not to exceed 90 days. Any order of mandatory outpatient treatment that is in effect at the time a motion for review for the continuation of the order is filed shall remain in effect until the disposition of the hearing.*

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

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment, *except that an emergency custody order for a minor pursuant to § 16.1-340 shall only be issued if the minor meets the criteria for involuntary commitment set forth in § 16.1-345*. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

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

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

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

E. The law-enforcement agency providing transportation pursuant to this section may transfer custody of the person to the facility or location to which the person is transported for the evaluation required in subsection B or G if the facility or location (i) is licensed to provide the level of security necessary to protect both the person and others from harm, (ii) is actually capable of providing the level of security necessary to protect the person and others from harm, and (iii) has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

F. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing

an emergency custody order pursuant to this section.

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

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

I. The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed four hours from the time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension, an emergency custody order may be renewed one time for a second period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (i) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if necessary. Any family member, as defined in § 37.2-100, employee or designee of the local community services board as defined in § 37.2-809, treating physician, or law-enforcement officer may request the two-hour extension.

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

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

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

A. For the purposes of this section:

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

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

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

B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the local community services board to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment, *except that a temporary detention order for a minor pursuant to § 16.1-340 shall only be issued if the minor meets the criteria for involuntary commitment set forth in § 16.1-345*. The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

D. 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 evaluation pursuant to subsection B if (i) the person has been personally examined within the previous 72 hours by an employee or a designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

E. 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 and shall remain in the custody of law enforcement until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by the facility identified in the temporary detention order.

F. 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.

G. 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.

H. 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 close of business on the next day that is not a Saturday, Sunday, or legal holiday. The person may be released, pursuant to § 37.2-813, before the 48-hour period herein specified has run.

I. 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 serving the jurisdiction of the issuing court. 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.

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

K. For purposes of this section a healthcare provider or designee of a local community services board or behavioral health authority shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

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