

072705264

## SENATE BILL NO. 177

Offered January 9, 2008

Prefiled January 7, 2008

*A BILL to amend and reenact §§ 37.2-505, 37.2-802, 37.2-809, 37.2-817, 37.2-820, and 37.2-821 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 8 of Title 37.2 an article numbered 5.1, consisting of sections numbered 37.2-828.10 through 37.2-828.17, relating to assisted outpatient treatment.*

---

 Patrons—Marsh and Hanger
 

---



---

 Referred to Committee for Courts of Justice
 

---

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

**1. That §§ 37.2-505, 37.2-802, 37.2-809, 37.2-817, 37.2-820, and 37.2-821 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 8 of Title 37.2 an article numbered 5.1, consisting of sections numbered 37.2-828.10 through 37.2-828.17 as follows:**

§ 37.2-505. Coordination of services for preadmission screening and discharge planning.

A. The community services board shall fulfill the following responsibilities:

1. Be responsible for coordinating the community services necessary to accomplish effective preadmission screening and discharge planning for persons referred to the community services board. When preadmission screening reports are required by the court on an emergency basis pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8, the community services board shall ensure the development of the report for the court. To accomplish this coordination, the community services board shall establish a structure and procedures involving staff from the community services board and, as appropriate, representatives from (i) the state hospital or training center serving the board's service area, (ii) the local department of social services, (iii) the health department, (iv) the Department of Rehabilitative Services office in the board's service area, (v) the local school division, and (vi) other public and private human services agencies, including licensed hospitals.

2. Provide preadmission screening services prior to the admission for treatment pursuant to § 37.2-805 or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of any person who requires emergency mental health services while in a city or county served by the community services board.

3. Provide, in consultation with the appropriate state hospital or training center, discharge planning for any person who, prior to admission, resided in a city or county served by the community services board or who chooses to reside after discharge in a city or county served by the board and who is to be released from a state hospital or training center pursuant to § 37.2-837. The discharge plan shall be completed prior to the person's discharge. The plan shall be prepared with the involvement and participation of the consumer or his representative and must reflect the consumer's preferences to the greatest extent possible. The plan shall include the mental health, mental retardation, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the consumer will need upon discharge into the community and identify the public or private agencies that have agreed to provide these services.

4. Provide a written plan for assisted outpatient treatment and monitor compliance with that plan for any person who requires such mental health services pursuant to Article 5.1 (§ 37.2-828.10 et seq.) of Chapter 8 of this title.

No person shall be discharged from a state hospital or training center without completion by the community services board of the discharge plan described in this subdivision. If state hospital or training center staff identify a consumer as ready for discharge and the community services board that is responsible for the person's care disagrees, the community services board shall document in the treatment plan within 30 days of the person's identification any reasons for not accepting the person for discharge. If the state hospital or training center disagrees with the community services board and the board refuses to develop a discharge plan to accept the person back into the community, the state hospital or training center or the community services board shall ask the Commissioner to review the state hospital's or training center's determination that the person is ready for discharge in accordance with procedures established by the Department in collaboration with state hospitals, training centers, and community services boards. If the Commissioner determines that the person is ready for discharge, a discharge plan shall be developed by the Department to ensure the availability of adequate services for the consumer and the protection of the community. The Commissioner also shall verify that sufficient state-controlled funds have been allocated to the community services board through the performance

INTRODUCED

SB177

59 contract. If sufficient state-controlled funds have been allocated, the Commissioner may contract with a  
60 private provider, another community services board, or a behavioral health authority to deliver the  
61 services specified in the discharge plan and withhold allocated funds applicable to that consumer's  
62 discharge plan from the community services board in accordance with subsections C and E of  
63 § 37.2-508.

64 B. The community services board may perform the functions set out in subdivision A 1 in the case  
65 of children by referring them to the locality's family assessment and planning team and by cooperating  
66 with the community policy and management team in the coordination of services for troubled youths  
67 and their families. The community services board may involve the family assessment and planning team  
68 and the community policy and management team, but it remains responsible for performing the  
69 functions set out in subdivisions A 2 and A 3 in the case of children.

70 § 37.2-802. Interpreters in admission or certification proceedings.

71 A. In any proceeding pursuant to § 37.2-806 ~~or~~, §§ 37.2-809 through 37.2-820, *or Article 5.1*  
72 *(§ 37.2-828.10 et seq.) of this chapter* in which a person who is deaf is alleged to have mental  
73 retardation or mental illness, an interpreter for the person shall be appointed by the district court judge  
74 or special justice before whom the proceeding is pending from a list of qualified interpreters provided  
75 by the Department for the Deaf and Hard-of-Hearing. The interpreter shall be compensated as provided  
76 for in § 37.2-804.

77 B. In any proceeding pursuant to § 37.2-806 ~~or~~, §§ 37.2-809 through 37.2-820, *or Article 5.1*  
78 *(§ 37.2-828.10 et seq.) of this chapter* in which a non-English-speaking person is alleged to have mental  
79 retardation or mental illness or is a witness in such proceeding, an interpreter for the person shall be  
80 appointed by the district court judge or special justice, or in the case of §§ 37.2-809 through 37.2-813 a  
81 magistrate, before whom the proceeding is pending. Failure to appoint an interpreter when an interpreter  
82 is not reasonably available or when the person's level of English fluency cannot be determined shall not  
83 be a basis to dismiss the petition or void the order entered at the proceeding. The compensation for the  
84 interpreter shall be fixed by the court in accordance with the guidelines set by the Judicial Council of  
85 Virginia and shall be paid out of the state treasury.

86 § 37.2-809. Involuntary temporary detention; issuance and execution of order.

87 A. For the purposes of this section:

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

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

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

102 B. A magistrate may issue, upon the sworn petition of any responsible person or upon his own  
103 motion and only after an in-person evaluation by an employee or a designee of the local community  
104 services board, a temporary detention order if it appears from all evidence readily available, including  
105 any recommendation from a physician or clinical psychologist treating the person, that the person (i) has  
106 mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so  
107 seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization  
108 or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or  
109 treatment. The magistrate shall also consider the recommendations of any treating or examining  
110 physician licensed in Virginia if available either verbally or in writing prior to rendering a decision.

111 C. A magistrate may issue a temporary detention order without an emergency custody order  
112 proceeding. A magistrate may issue a temporary detention order without a prior in-person evaluation if  
113 (i) the person has been personally examined within the previous 72 hours by an employee or a designee  
114 of the local community services board; ~~or~~ (ii) there is a significant physical, psychological, or medical  
115 risk to the person or to others associated with conducting such evaluation; *or (iii) the magistrate has*  
116 *received notice from the community services board or treatment provider that the individual is under an*  
117 *assisted outpatient treatment order and without good cause has substantially failed to comply with that*  
118 *order.*

119 D. An employee or a designee of the local community services board shall determine the facility of  
120 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.

E. 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.

F. 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.

G. The duration of temporary detention 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.

H. 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.

I. 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 or behavioral health authority 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.

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

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

B. After observing the person and obtaining the necessary positive certification and considering any other relevant evidence that may have been offered, if the judge or special justice finds by clear and convincing evidence that (i) 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 and (ii) alternatives to involuntary inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to involuntary inpatient treatment, 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. The person shall be released at the expiration of 180 days unless he is involuntarily admitted 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 any other relevant evidence that may have been offered, if the judge or special justice finds by clear and

convincing evidence that (i) 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; (ii) less restrictive alternatives to involuntary inpatient treatment have been investigated and are deemed suitable; (iii) the person (a) has the degree of competency necessary to understand the stipulations of his treatment, (b) expresses an interest in living in the community and agrees to abide by his treatment plan; and (c) is deemed to have the capacity to comply with the treatment plan; and (iv) 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 order 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 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 criteria for assisted outpatient treatment set forth in § 37.2-828.11 have been met, the judge or special justice shall order assisted outpatient treatment pursuant to Article 5.1 (§ 37.2-828.10 et seq.) of this chapter.*

§ 37.2-820. Place of hearing.

The hearing provided for pursuant to §§ 37.2-814 through 37.2-819 *or pursuant to Article 5.1 (§ 37.2-828.10 et seq.) of this chapter* may be conducted by the district court judge or a special justice at the convenient facility or other place open to the public provided for in § 37.2-809, if he deems it advisable, even though the facility or place is located in a county or city other than his own. In conducting such hearings in a county or city other than his own, the judge or special justice shall have all of the authority and power that he would have in his own county or city. A district court judge or special justice of the county or city in which the facility or place is located may conduct the hearing provided for in §§ 37.2-814 through 37.2-819 *or Article 5.1 (§ 37.2-828.10 et seq.) of this chapter.*

§ 37.2-821. Appeal of involuntary admission or certification order or order to obtain assisted outpatient treatment.

A. Any person involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819 ~~or~~, certified as eligible for admission pursuant to § 37.2-806, *or ordered to obtain assisted outpatient treatment pursuant to Article 5.1 (§ 37.2-828.10 et seq.) of this chapter* shall have the right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted ~~or~~, certified, *or ordered to obtain assisted outpatient treatment*, or where the facility to which he was admitted, *or the outpatient facility in which he was treated*, is located. *The petitioner in such cases shall also have the right to appeal the denial of an order to the circuit court in the jurisdiction in which the petition was filed.* 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, *or continuing the assisted outpatient treatment order*, shall be entered only if the criteria in § 37.2-817 *or 37.2-828.11, respectively*, are met at the time the appeal is heard. The person so admitted ~~or~~, certified, *or ordered* 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.

Article 5.1.

Assisted Outpatient Treatment.

§ 37.2-828.10. Purpose.

The purpose of this article is to create an assisted outpatient treatment program so that those mentally ill persons who are capable of being maintained safely in the community with the help of such a program can receive those services.

§ 37.2-828.11. Criteria for assisted outpatient treatment.

A district court judge or special justice may order a person to obtain assisted outpatient treatment if the judge or special justice finds that (i) the person is suffering from a mental illness; (ii) the person has a history of lack of compliance with treatment for mental illness that has: (a) at least twice been a significant factor in necessitating hospitalization or receipt of services in a mental health unit of a correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition, or (b) resulted in one or more acts of violent behavior toward self or others or threats of, or attempts at, physical harm to self or others within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition; (iii) in view of the person's treatment history and current behavior, the person now needs treatment in order to prevent a relapse or deterioration that would be likely to result in the person meeting the inpatient commitment criteria specified in § 37.2-817; (iv) as a result of the person's mental illness, the person is unlikely to seek or comply with needed treatment unless the court enters an order for assisted outpatient treatment; (v) a written treatment plan has been prepared that sets forth the specific type, amount, duration, and frequency of treatment and services the person is to obtain; (vi) the proposed treatment is in the person's best medical interest and constitutes the least restrictive appropriate treatment for the person, taking into consideration all relevant circumstances, including any reasonably possible alternative treatments preferred by the person, as expressed in an advance directive or otherwise; (vii) the treatment and services providers are identified in and have agreed to the treatment plan; and (viii) the community services board that serves the jurisdiction where the person resides has the capacity to provide the prescribed treatment or services.

§ 37.2-828.12. Contents of petition for assisted outpatient treatment; treatment plan.

A. A sworn petition for assisted outpatient treatment of a person may be filed by any responsible person. The petition shall allege each of the criteria of § 37.2-828.11, and shall allege the facts on which the allegations as to criteria in clauses (i) through (iii) of § 37.2-828.11 are based. The petition shall be supported by an affirmation or affidavit of a mental health professional licensed in Virginia through the Department of Health Professions and qualified in the diagnosis of mental illness, who shall not be the petitioner, and shall state either that: (i) such mental health professional has personally examined the person who is the subject of the petition no more than 10 days prior to the submission of the petition, he recommends assisted outpatient treatment for the subject of the petition, and he is willing and able to testify at the hearing of the petition; or (ii) no more than 10 days prior to the filing of the petition, such mental health professional or his designee has made appropriate attempts to elicit the cooperation of the subject of the petition but has not been successful in persuading the subject to submit to an examination, that such professional has reason to suspect that the subject meets the criteria for assisted outpatient treatment, and that the professional is willing and able to examine the subject of the petition and testify at the hearing on the petition.

B. Upon receipt of the sworn petition for assisted outpatient treatment by the magistrate, an employee or designee of the local community services board shall develop a proposed treatment plan which recommends a specific course of treatment and programs for the provision of assisted outpatient treatment. In developing the treatment plan, the community services board shall seek the active participation of the person who is the subject of the petition and shall consider the person's treatment preferences, as expressed in an advance directive or otherwise. Additionally, the community services board shall attempt to consult and consider the views of any relative, friend, advisor, or advocate who either has been identified in an advance directive as someone the person wishes to be consulted, or who is otherwise so identified by the person.

§ 37.2-828.13. Hearing procedures.

A. The hearing shall be held within five days of the filing of the petition with the magistrate; however, if the fifth day is a Saturday, Sunday, or legal holiday, the hearing may be held on the next day that is not a Saturday, Sunday, or legal holiday. The petition and notice of the hearing shall be served on the person who is the subject of the petition, and notice of the hearing shall be provided to the petitioner. The community services board shall offer to transport the person who is the subject of the petition to the hearing. If the person fails or refuses to attend, the hearing may proceed in the person's absence.

B. If the subject of the petition has refused to be examined by a physician, the district court judge or special justice may request the subject to consent to an examination by a physician appointed by the court. If the subject does not consent and the district court judge or special justice finds reasonable cause to believe that the allegations in the petition are true, the district court judge or special justice may order peace officers, acting pursuant to their special duties, or police officers who are members of

305 an authorized police department or force, or of a sheriff's department, to take the subject into custody  
306 and transport him to a hospital for examination by a physician. Retention of the subject under such  
307 order shall not exceed 24 hours. The examination of the subject may be performed by the physician  
308 whose affirmation or affidavit accompanied the petition pursuant to § 37.2-828.12, if such physician is  
309 privileged by such hospital or otherwise authorized by such hospital to do so. If such examination is  
310 performed by another physician of such hospital, the examining physician shall be authorized to consult  
311 with the physician whose affirmation or affidavit accompanied the petition regarding the issues of  
312 whether the allegations in the petition are true and whether the subject meets the criteria for assisted  
313 outpatient treatment.

314 C. No person shall be ordered to receive assisted outpatient treatment unless a mental health  
315 professional who is licensed in Virginia through the Department of Health Professions and qualified in  
316 the diagnosis of mental illness testifies at the hearing to establish the criteria in clauses (i), (iii), (iv),  
317 and (vi) of § 37.2-828.11, and to explain the rationale for the recommended assisted outpatient  
318 treatment. If the recommended assisted outpatient treatment includes medication, the petition must be  
319 supported by the affidavit or testimony of a psychiatrist who is licensed in Virginia by the Board of  
320 Medicine, and this affidavit or testimony must describe the types or classes of medication that should be  
321 authorized, describe the beneficial and detrimental physical and mental effects of such medication, and  
322 establish that there is no appropriate less restrictive alternative treatment reasonably possible for the  
323 person. If the person or his attorney objects to proof by affidavit, the district court judge or special  
324 justice shall require the psychiatrist to testify and submit to cross-examination, in person or, at his  
325 discretion, electronically, pursuant to § 37.2-804.1. The person who is the subject of the petition shall be  
326 given an opportunity to state and explain any objections to the recommended assisted outpatient  
327 treatment, to suggest alternatives, and to present expert and other testimony in support thereof.

328 D. The person who is the subject of the petition shall have the right to a hearing, to retain private  
329 counsel or be represented by a court-appointed attorney, to present any defenses, including independent  
330 evaluation and expert testimony or the testimony of other witnesses, to be present during the hearing  
331 and testify, to appeal any order for assisted outpatient treatment to the circuit court, and to have a jury  
332 trial on appeal. A written explanation of the assisted outpatient treatment process and the statutory  
333 protections associated with the process shall be given to the person and its contents explained by an  
334 attorney prior to the hearing. The district court judge or special justice shall ascertain whether the  
335 person has been given the written explanation required herein and shall ascertain if the person is  
336 represented by counsel, and if he is not represented by counsel, the district court judge or special  
337 justice shall appoint an attorney to represent him. However, if the person requests an opportunity to  
338 employ counsel, the district court judge or special justice shall give him a reasonable opportunity to  
339 employ counsel at his own expense.

340 E. The attorney for the person who is the subject of the petition shall actively represent his client.  
341 Judges and appointed counsel shall be compensated in the same manner as proceedings held pursuant  
342 to § 37.2-814.

343 F. A recording of the hearing shall be made, submitted to the appropriate district court clerk, and  
344 retained in a confidential file for at least three years from the date of the hearing, to be used solely to  
345 document and to answer questions concerning the judge's conduct of the hearing. All relevant medical  
346 records, reports, and court documents pertaining to the hearing provided for in this section shall be  
347 confidential if so requested by such person or his counsel, with access provided only upon court order  
348 for good cause shown. Such records, reports, and documents shall not be subject to the Virginia  
349 Freedom of Information Act (§ 2.2-3700 et seq.). However, such records shall be accessible for the  
350 purposes of medical treatment or for the purposes of investigating whether an individual is a candidate  
351 for assisted outpatient treatment.

352 § 37.2-828.14. Disposition.

353 A. If the district court judge or special justice finds that each of the criteria for assisted outpatient  
354 treatment set forth in § 37.2-828.11 has been established by clear and convincing evidence, the district  
355 court judge or special justice shall enter an order setting forth its findings, granting the petition, and  
356 directing the person and the treatment and service providers to comply with the treatment plan approved  
357 by the district court judge or special justice for a period of 180 days or less, and in that event the  
358 community services board shall monitor such compliance.

359 B. If, after hearing all relevant evidence, the district court judge or special justice finds by clear and  
360 convincing evidence that the subject of the petition meets the criteria for assisted outpatient treatment,  
361 and the district court judge or special justice has yet to be provided with a written proposed treatment  
362 plan and testimony pursuant to § 37.2-828.13, the district court judge or special justice shall order the  
363 community services board to provide the district court judge or special justice with such plan and  
364 testimony no later than the third day, excluding Saturdays, Sundays, and holidays, immediately following  
365 the date of such order. Upon receiving such plan and testimony, the district court judge or special  
366 justice may order assisted outpatient treatment as provided in subsection A.

§ 37.2-828.15. *Noncompliance with order for assisted outpatient treatment.*

A. If a person subject to an order for assisted outpatient treatment fails to comply with the order, the community services board or treatment provider shall make reasonable efforts to contact the person and to secure the person's compliance with the order. If the community services board or treatment provider determines that such reasonable efforts have been made, and that the person without good cause has substantially failed to comply with the order, the community services board or treatment provider shall report that noncompliance to a magistrate who shall issue a temporary detention order as specified in § 37.2-809. Except as otherwise authorized by law, the person may not be detained for more than 48 hours, including transportation time, and may not be forced to take prescribed medication.

B. If a person subject to an order for assisted outpatient treatment has substantially failed to comply with the order without good cause, and the community services board or treatment provider has been unable after reasonable efforts to secure the person's compliance with the order, the community services board shall report to the district court judge or special justice promptly in writing and shall recommend an appropriate disposition. Copies of the report shall be sent to the person and the person's attorney. The district court judge or special justice shall schedule a supplemental hearing to occur within 48 hours of the execution of the temporary detention order; however, if the 48 hour period terminates on a Saturday, Sunday, or legal holiday, the hearing may be held on the next day that is not a Saturday, Sunday, or legal holiday. The hearing shall be conducted in accordance with the procedures set forth in § 37.2-828.13, and the person and his attorney shall be given at least adequate notice of the hearing. The community services board shall offer to transport the person to the hearing. If the person fails or refuses to attend, the hearing may proceed in the person's absence. After hearing evidence of the person's current condition and compliance with the order for assisted outpatient treatment, the district court judge or special justice shall make whichever of the following dispositions is appropriate:

1. Upon finding that the person meets the criteria for involuntary admission and treatment specified in § 37.2-817, the district court judge or special justice shall order that the person be placed in a hospital or other facility for a period of treatment not to exceed 180 days from the date of the order.

2. Upon finding that the person continues to meet the criteria for assisted outpatient treatment specified in § 37.2-828.11, and that a continued period of assisted outpatient treatment appears warranted, the district court judge or special justice shall renew the order for assisted outpatient treatment, making any necessary modifications that are acceptable to the treatment provider or facility responsible for the person's treatment.

3. Upon finding that neither of these dispositions is appropriate, the judge shall rescind the order for assisted outpatient treatment.

C. The fact that a person is subject to an order for assisted outpatient treatment does not displace or modify the authority conferred by § 37.2-809 to detain the person if he is believed to be mentally ill and in need of hospitalization or to initiate new proceedings for involuntary admission thereunder.

§ 37.2-828.16. *Petition to terminate or extend order for assisted outpatient treatment.*

At any time at least 45 days after the most recent hearing, a person who is subject to an order for assisted outpatient treatment may petition the court to terminate the order. A petition to terminate the order must allege that at least one of the criteria of § 37.2-828.11 is not met and allege the facts on which this allegation is based. At any time within 30 days before the expiration of an order for assisted outpatient treatment, the community services board or treatment provider that is monitoring the person's compliance with the order may petition the court to extend the order for a period of 180 days or less. A petition to extend the order must comply with the requirements of § 37.2-828.12. If both parties join in the petition, the court shall grant the petition and enter an appropriate order. Otherwise, the court shall schedule a hearing to occur within 10 days of receiving the petition, and shall provide at least five days' notice of the hearing to the person, the person's attorney, and the community services board. The hearing shall be conducted in accordance with the procedures set forth in § 37.2-828.13. Upon finding that the criteria for assisted outpatient treatment specified in § 37.2-828.11 are met, and that a continued period of assisted outpatient treatment in accordance with the treatment plan approved by the court appears warranted, the district court judge or special justice shall renew the order for assisted outpatient treatment for a period of 180 days or less. Otherwise, the district court judge or special justice shall rescind the order for assisted outpatient treatment. An order that expires prior to the hearing to extend shall remain in effect until the disposition of the petition to extend.

§ 37.2-828.17. *Appeal of an assisted outpatient treatment order.*

Any person who is the subject of an order for assisted outpatient treatment shall have the same right of appeal as an appeal of admission or certification order pursuant to § 37.2-821. The order for assisted outpatient treatment shall be affirmed only if the criteria of § 37.2-828.11 are met at the time the appeal is heard. Any petitioner whose petition is denied shall have the same right of appeal as a petitioner pursuant to § 37.2-821.