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**SENATE BILL NO. 840**

Offered January 14, 2009

Prefiled December 22, 2008

*A BILL to amend and reenact §§ 37.2-817 through 37.2-817.4 and 37.2-818 of the Code of Virginia, relating to mandatory outpatient treatment following involuntary admission.*

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 Patron—Cuccinelli
 

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 Referred to Committee for Courts of Justice
 

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

**1. That §§ 37.2-817 through 37.2-817.4 and 37.2-818 of the Code of Virginia are amended and reenacted as follows:**

§ 37.2-817. Involuntary admission and mandatory 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 the report required by § 37.2-815, and after the community services board that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report 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. The examiner, if not physically present at the hearing, and the treating physician at the facility of temporary detention 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 § 37.2-804.1.

B. An employee or a designee of the local community services board, as defined in § 37.2-809, that prepared the preadmission screening report 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 § 37.2-804.1. Where a hearing is held outside of the service area of the community services board that prepared the preadmission screening report, and it is not practicable for a representative of the board to attend or participate in the hearing, arrangements shall be made by the board for an employee or designee of the board serving the area in which the hearing is held to attend or participate on behalf of the board that prepared the preadmission screening report. The community services board that prepared the preadmission screening report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board attending the hearing. Where a community services board attends the hearing on behalf of the community services board that prepared the preadmission screening report, the attending community services board shall inform the community services board that prepared the preadmission screening report 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.

At least 12 hours prior to the hearing, the court shall provide to the community services board that prepared the preadmission screening report the time and location of the hearing. If the representative of the community services board will be present by telephonic means, the court shall provide the telephone number to the board.

C. After observing the person and considering (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 examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) 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 (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an opportunity for the improvement of the person's condition have been investigated and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the date of the court order. Such involuntary

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admission shall be to a facility designated by the community services board that serves the city or county in which the person was examined as provided in § 37.2-816. If the community services board does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the person shall be released unless he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order, or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805 or is ordered to mandatory outpatient treatment pursuant to subsection D 1.

D. After observing the person and considering (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 examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person 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, (1) 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 (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (b) 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; and (c) the person (A) has sufficient capacity to understand the stipulations of his treatment, (B) has expressed an interest in living in the community and has agreed to abide by his treatment plan, and (C) is 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 (d) the ordered treatment can be delivered on an outpatient basis by the community services board or designated provider, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community and providers of the services have actually agreed to deliver the services.

E. Mandatory outpatient treatment 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 that serves the city or county in which the person resides shall recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board, but shall not exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is continued in accordance with § 37.2-817.4.

F. Any order for mandatory outpatient treatment shall include an initial mandatory outpatient treatment plan developed by the community services board that completed the preadmission screening report. 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.

G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered pursuant to this section, the community services board where the person resides 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 person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii) certify that the services are the most appropriate and least restrictive treatment available for the person, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department's licensing regulations, (v) be developed with the fullest possible involvement and participation of the person and reflect his preferences to the greatest extent possible to support his recovery and self-determination, (vi) specify the particular conditions with which the person shall be required to comply, and (vii) describe how the community services board shall monitor the person's compliance with the plan and report any material noncompliance with the plan. 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.

H. If the community services board responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, it shall notify the court within five business days of the entry of the order for mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special justice, after notice to the person, the person's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to § 37.2-817.2.

1. Prior to the expiration of an order for involuntary admission, and upon the petition of the director of the treating facility or his designee, the community services board, or the person who is the subject of the order for involuntary admission, the court that entered the order or the court where the person resides may enter an order for mandatory outpatient treatment following involuntary admission for a period not to exceed 90 days if it finds by clear and convincing evidence, based on the person's current condition and treatment history, including the person's past compliance with treatment, that the person (i) has mental illness; (ii) no longer needs inpatient hospitalization but requires mandatory outpatient treatment to prevent rapid deterioration of his condition that would likely result in his meeting the criteria for inpatient treatment as specified in subsection C; (iii) is not likely to obtain outpatient treatment unless the court enters an order; and (iv) is likely to comply with an order. In addition, services must actually be available in the community, and providers of services must have actually agreed to deliver the services.

2. The court shall hold a hearing within five days after receiving the petition; however, if the fifth day is a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday. The clerk shall provide notice of the hearing to the director of the treating facility or his designee, the community services board, the person who is the subject of the order for involuntary admission, and the original petitioner for the person's involuntary admission. If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the order for involuntary admission. If requested by any party receiving notice of the hearing, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally examine the person who is the subject of the order for involuntary admission and certify to the court whether or not he has probable cause to believe that the person meets the criteria for mandatory outpatient treatment following involuntary admission as specified in subsection 1. The examiner's certification may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. The same judge or special justice who presided over the hearing resulting in the involuntary admission order need not preside at the hearing or any subsequent hearings.

3. At the hearing, the community services board where the person resides shall file a comprehensive mandatory outpatient treatment plan in accordance with subsection G. If the community services board is the petitioner, the plan shall be filed with the petition. The community services board where the person resides shall be responsible for monitoring the implementation of the mandatory outpatient treatment plan and reporting any material noncompliance to the court. Modifications to the plan shall be made in accordance with subsection G.

4. If the director of the treating facility or his designee, the community services board, and the person who is the subject of the order for involuntary admission join in the petition under subdivision 1, the court shall grant the petition and enter an order for mandatory outpatient treatment following involuntary admission without further hearing.

J. Upon entry of any order for mandatory outpatient treatment or order for mandatory outpatient treatment following involuntary admission, the clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to the community services board required to monitor 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.

JK. The court may transfer jurisdiction of the case to the district court where the person resides at any time after the entry of the mandatory outpatient treatment order or order for mandatory outpatient treatment following involuntary admission. The community services board responsible for monitoring compliance with the mandatory outpatient treatment plan shall remain responsible for monitoring the person's compliance with the plan until the community services board serving the locality to which jurisdiction of the case has been transferred acknowledges the transfer and 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.

182 ~~KL.~~ Any order entered pursuant to this section shall provide for the disclosure of medical records  
183 pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or  
184 permitted by law.

185 § 37.2-817.1. Monitoring mandatory outpatient treatment; petition for hearing.

186 A. The community services board where the person resides shall monitor the person's compliance  
187 with the mandatory outpatient treatment plan ordered by the court pursuant to § 37.2-817. Monitoring  
188 compliance shall include (i) contacting the service providers to determine if the person is complying  
189 with the mandatory outpatient treatment order and (ii) notifying the court of the person's material  
190 noncompliance with the mandatory outpatient treatment order. Providers of services identified in the plan  
191 shall report any material noncompliance to the community services board.

192 B. If the community services board determines that the person materially failed to comply with the  
193 order, it shall petition the court for a review of the mandatory outpatient treatment order *or order for*  
194 *mandatory outpatient treatment following involuntary admission* as provided in § 37.2-817.2. The  
195 community services board shall petition the court for a review of the mandatory outpatient treatment  
196 order *or order for mandatory outpatient treatment following involuntary admission* within three days of  
197 making that determination, or within 24 hours if the person is being detained under a temporary  
198 detention order, and shall recommend an appropriate disposition. Copies of the petition shall be sent to  
199 the person and the person's attorney.

200 C. If the community services board determines that the person is not materially complying with the  
201 mandatory outpatient treatment order *or order for mandatory outpatient treatment following involuntary*  
202 *admission* or for any other reason, and there is a substantial likelihood that, as a result of the person's  
203 mental illness that the person will, in the near future, (i) cause serious physical harm to himself or  
204 others as evidenced by recent behavior causing, attempting or threatening harm and other relevant  
205 information, if any, or (ii) suffer serious harm due to his lack of capacity to protect himself from harm  
206 or to provide for his basic human needs, it shall immediately request that the magistrate issue an  
207 emergency custody order pursuant to § 37.2-808 or a temporary detention order pursuant to § 37.2-809.

208 § 37.2-817.2. Court review of mandatory outpatient treatment plan.

209 A. The district court judge or special justice shall hold a hearing within five days after receiving the  
210 petition for review of the mandatory outpatient treatment plan; however if the fifth day is a Saturday,  
211 Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a  
212 Saturday, Sunday, or legal holiday. If the person is being detained under a temporary detention order,  
213 the hearing shall be scheduled within the same time frame provided for a commitment hearing under  
214 § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board,  
215 all treatment providers listed in the comprehensive mandatory outpatient treatment order *or order for*  
216 *mandatory outpatient treatment following involuntary admission*, and the original petitioner for the  
217 person's involuntary treatment. If the person is not represented by counsel, the court shall appoint an  
218 attorney to represent the person in this hearing and any subsequent hearings under §§ 37.2-817.3 and  
219 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding  
220 that resulted in the issuance of the mandatory outpatient treatment order *or order for mandatory*  
221 *outpatient treatment following involuntary admission*. The same judge or special justice that presided  
222 over the hearing resulting in the mandatory outpatient treatment order *or order for mandatory outpatient*  
223 *treatment following involuntary admission* need not preside at the noncompliance hearing or any  
224 subsequent hearings. The community services board shall offer to arrange the person's transportation to  
225 the hearing if the person is not detained and has no other source of transportation.

226 B. If requested by the person, the community services board, a treatment provider listed in the  
227 comprehensive mandatory outpatient treatment plan, or the original petitioner for the person's involuntary  
228 treatment, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally  
229 examine the person and certify to the court whether or not he has probable cause to believe that the  
230 person meets the criteria for involuntary inpatient admission ~~or~~, mandatory outpatient treatment, *or*  
231 *mandatory outpatient treatment following involuntary admission* as specified in subsections C ~~and~~ D,  
232 *and I* of § 37.2-817. The examination shall include all applicable requirements of § 37.2-815. The  
233 certification of the examiner may be admitted into evidence without the appearance of the examiner at  
234 the hearing if not objected to by the person or his attorney. If the person is not detained in an inpatient  
235 facility, the community services board shall arrange for the person to be examined at a convenient  
236 location and time. The community services board shall offer to arrange for the person's transportation to  
237 the examination, if the person has no other source of transportation and resides within the service area  
238 or an adjacent service area of the community services board. If the person refuses or fails to appear, the  
239 community services board shall notify the court, or a magistrate if the court is not available, and the  
240 court or magistrate shall issue a mandatory examination order and capias directing the primary  
241 law-enforcement agency in the jurisdiction where the person resides to transport the person to the  
242 examination. The person shall remain in custody until a temporary detention order is issued or until the  
243 person is released, but in no event shall the period exceed four hours.

C. If the person fails to appear for the hearing the court shall, after consideration of any evidence from the person, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan regarding why the person failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to § 37.2-808 or (iii) issue a temporary detention order pursuant to § 37.2-809.

D. After hearing the evidence regarding the person's material noncompliance with the mandatory outpatient treatment order *or order for mandatory outpatient treatment following involuntary admission* and the person's current condition, and any other relevant information referenced in subsection C of § 37.2-817, the judge or special justice shall make one of the following dispositions:

1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order the person'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 person continues to meet the criteria for mandatory outpatient treatment *or mandatory outpatient treatment following involuntary admission* specified in subsection D *or I* of § 37.2-817, and that a continued period of mandatory outpatient treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient treatment *or order for mandatory outpatient treatment following involuntary admission*, making any necessary modifications that are acceptable to the community services board or treatment provider responsible for the person's treatment. In determining the appropriateness of outpatient treatment, the court may consider the person's material noncompliance with the previous mandatory treatment order; or

3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall rescind the order for mandatory outpatient treatment *or order for mandatory outpatient treatment following involuntary admission*.

Upon entry of an order for involuntary inpatient admission, transportation shall be provided in accordance with § 37.2-829 or 37.2-830.

§ 37.2-817.3. Rescission of mandatory outpatient treatment order.

A. If the community services board determines at any time prior to the expiration of the mandatory outpatient treatment order *or order for mandatory outpatient treatment following involuntary admission* that the person has complied with the order and no longer meets the criteria for involuntary treatment, or that continued mandatory outpatient treatment is no longer necessary for any other reason, it shall file a petition to rescind the order with the court that entered the order or to which venue has been transferred. If the court agrees with the community services board's determination, the court shall rescind the order. Otherwise, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2.

B. At any time after 30 days from entry of the mandatory outpatient treatment order *or order for mandatory outpatient treatment following involuntary admission*, the person may petition the court to rescind the order on the grounds that he no longer meets the criteria for mandatory outpatient treatment *or mandatory outpatient treatment following involuntary admission* as specified in subsection D *or I* of § 37.2-817. The court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2. The community services board required to monitor the person's compliance with the mandatory outpatient treatment order *or order for mandatory outpatient treatment following involuntary admission* shall provide a preadmission screening report as required in § 37.2-816. After observing the person, and considering the person's current condition, any material noncompliance with the mandatory outpatient treatment order *or order for mandatory outpatient treatment following involuntary admission* on the part of the person, and any other relevant evidence referred to in subsection C of § 37.2-817, shall make one of the dispositions specified in subsection D of § 37.2-817.2. The person may not file a petition to rescind the order more than once during a 90-day period.

§ 37.2-817.4. Continuation of mandatory outpatient treatment order.

A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order *or order for mandatory outpatient treatment following involuntary admission*, the community services board that is required to monitor the person's compliance with the order, the treating physician, or other responsible person may petition the court to continue the order for a period not to exceed 180 days.

B. If the person who is the subject of the order and the monitoring community services board, if it did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate order without further hearing. If either the person or the monitoring community services board does not join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2.

C. Upon receipt of the petition, the court shall appoint an examiner who shall personally examine the person pursuant to subsection B of § 37.2-815. The community services board required to monitor the person's compliance with the mandatory outpatient treatment order shall provide a preadmission

305 screening report as required in § 37.2-816.

306 D. If, after observing the person, reviewing the preadmission screening report and considering the  
307 appointed examiner's certification and any other relevant evidence, including any relevant evidence  
308 referenced in subsection D of § 37.2-817, the court shall make one of the dispositions specified in  
309 subsection D of § 37.2-817.2. If the court finds that a continued period of mandatory outpatient  
310 treatment is warranted, it may continue the order for a period not to exceed 180 days. Any order of  
311 mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is  
312 filed shall remain in effect until the disposition of the hearing.

313 § 37.2-818. Commitment hearing for involuntary admission; recordings and records.

314 A. The district court judge or special justice shall make or cause to be made a tape or other audio  
315 recording of any hearings held under this chapter with no more than one hearing recorded per tape, and  
316 shall submit the recording to the clerk of the district court in the locality in which the hearing is held to  
317 be retained in a confidential file. The person who was the subject of the hearing shall be entitled, upon  
318 request, to obtain a copy of the tape or other audio recording of such hearing. These recordings shall be  
319 retained for at least three years from the date of the commitment hearing.

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

331 C. After entering an order for involuntary admission or mandatory outpatient treatment *or an order*  
332 *for mandatory outpatient treatment following involuntary admission*, the judge or special justice shall  
333 order that copies of the relevant records of the person be released to (i) the facility in which he is  
334 placed, (ii) the community services board of the jurisdiction where the person resides, (iii) any treatment  
335 providers identified in a treatment plan incorporated into any mandatory outpatient treatment order *or*  
336 *order for mandatory outpatient treatment following involuntary admission*, and (iv) any other treatment  
337 providers or entities.