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HOUSE BILL NO. 311

Offered January 13, 2010

Prefiled January 11, 2010

A *BILL to amend and reenact §§ 19.2-169.1, 19.2-169.6, 19.2-174.1, 19.2-175, 19.2-178, 19.2-389, 32.1-127.1:03, 37.2-803, 37.2-804, 37.2-809, and 37.2-811 of the Code of Virginia and to repeal §§ 19.2-176 and 19.2-177.1 of the Code of Virginia, relating to the hospitalization of inmates in local correctional facilities.*

Patron—O'Bannon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.1, 19.2-169.6, 19.2-174.1, 19.2-175, 19.2-178, 19.2-389, 32.1-127.1:03, 37.2-803, 37.2-804, 37.2-809, and 37.2-811 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-169.1. Raising question of competency to stand trial, be sentenced, or plead; evaluation and determination of competency.

A. Raising competency to *stand trial* issue; appointment of evaluators. - If, at any time after the attorney for the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who (i) *has successfully completed forensic evaluation training approved by the Commissioner of Behavioral Health and Developmental Services and* (ii) is qualified by *specialized training and experience in* to perform forensic ~~evaluation~~ evaluations.

A1. Raising competency to *be sentenced* issue; appointment of evaluators. - If, at any time after the defendant has been convicted of a criminal offense, but before sentencing, the court finds, upon hearing evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks substantial capacity to be sentenced, the court shall order a competency evaluation be performed by at least one psychiatrist or clinical psychologist who (i) *has successfully completed forensic evaluation training approved by the Commissioner of Behavioral Health and Developmental Services and* (ii) is qualified by *specialized training and experience to perform forensic* evaluations.

B. Location of evaluation. - The evaluation shall be performed on an outpatient basis at a mental health facility or in jail unless the court specifically finds that outpatient evaluation services are unavailable or unless the results of outpatient evaluation indicate that hospitalization of the defendant for evaluation on competency is necessary. If the court finds that hospitalization is necessary, the court, under authority of this subsection, may order the defendant sent to a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for evaluations of persons under criminal charge. The defendant shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the defendant's competency, but not to exceed 30 days from the date of admission to the hospital.

C. Provision of information to evaluators. - The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A *or A1* any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the evaluation request. The court shall require the attorney for the defendant to provide any available psychiatric records and other information that is deemed relevant. The court shall require that information be provided to the evaluator within 96 hours of the issuance of the court order pursuant to this section.

D. The competency report. - Upon completion of ~~the an~~ evaluation of the defendant's competency to *stand trial*, the evaluators shall promptly submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future. *Upon completion of an evaluation of the defendant's*

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59 *competency to be sentenced, the evaluators shall promptly submit a report in writing to the court and*
60 *the attorneys of record concerning (a) the defendant's capacity to be sentenced and (b) his need for*
61 *treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future.*
62 No statements of the defendant relating to the time period of the alleged offense shall be included in the
63 report.

64 E. The competency determination. - After receiving the report described in subsection D, the court
65 shall promptly determine whether the defendant is competent to stand trial *or be sentenced*. A hearing
66 on the defendant's competency is not required unless one is requested by the attorney for the
67 Commonwealth or the attorney for the defendant, or unless the court has reasonable cause to believe the
68 defendant will be hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the
69 defendant is incompetent shall bear the burden of proving by a preponderance of the evidence the
70 defendant's incompetency. The defendant shall have the right to notice of the hearing, the right to
71 counsel at the hearing and the right to personally participate in and introduce evidence at the hearing.

72 The fact that the defendant claims to be unable to remember the time period surrounding the alleged
73 offense shall not, by itself, bar a finding of competency *to stand trial* if the defendant otherwise
74 understands the charges against him and can assist in his defense. Nor shall the fact that the defendant is
75 under the influence of medication bar a finding of competency *to stand trial*, if the defendant is able to
76 understand the charges against him and assist in his defense while medicated, *or a finding of*
77 *competency to be sentenced*.

78 § 19.2-169.6. Inpatient psychiatric hospital admission from local correctional facility.

79 A. Any ~~defendant~~ *inmate of a local correctional facility* who is not subject to the provisions of
80 § 19.2-169.2 may be hospitalized for psychiatric treatment ~~prior to trial at a hospital designated by the~~
81 *Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons*
82 *under criminal charge* if:

83 1. The court with jurisdiction over the ~~defendant's inmate's~~ case, ~~only after a face-to-face evaluation~~
84 ~~by an employee or designee of the local community services board or behavioral health authority who is~~
85 ~~skilled in the assessment and treatment of mental illness and who has completed a certification program~~
86 ~~approved by the Department as provided in § 37.2-809 if it is still pending, on the petition of the person~~
87 ~~having custody over an inmate or on its own motion, holds a hearing at which the inmate is represented~~
88 ~~by counsel and finds by clear and convincing evidence that the defendant (i) is being properly detained~~
89 ~~in jail prior to trial; (ii) (i) the inmate has mental illness and that; (ii) there exists a substantial~~
90 ~~likelihood that, as a result of mental illness, the defendant inmate will, in the near future, cause serious~~
91 ~~physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening~~
92 ~~harm and other relevant information, if any; in the opinion of a qualified mental health professional; and~~
93 ~~(iii) the inmate requires treatment in a hospital rather than the jail in the opinion of a qualified mental~~
94 ~~health professional local correctional facility. Prior to making this determination, the court shall~~
95 ~~consider the examination conducted in accordance with § 37.2-815 and the preadmission screening~~
96 ~~report prepared in accordance with § 37.2-816 and conducted in-person or by means of a two-way~~
97 ~~electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or~~
98 ~~designee of the local community services board or behavioral health authority who is skilled in the~~
99 ~~assessment and treatment of mental illness, who is not providing treatment to the inmate, and who has~~
100 ~~completed a certification program approved by the Department of Behavioral Health and Developmental~~
101 ~~Services as provided in § 37.2-809. The examiner appointed pursuant to § 37.2-815, if not physically~~
102 ~~present at the hearing, shall be available whenever possible for questioning during the hearing through~~
103 ~~a two-way electronic video and audio or telephonic communication system as authorized in~~
104 ~~§ 37.2-804.1. Any employee or designee of the local community services board or behavioral health~~
105 ~~authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission~~
106 ~~screening report shall attend the hearing in person or, if physical attendance is not practicable, shall~~
107 ~~participate in the hearing through a two-way electronic video and audio communication system as~~
108 ~~authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services~~
109 ~~board or behavioral health authority that prepared the preadmission screening report, and it is not~~
110 ~~practicable for a representative of the board or authority to attend or participate in the hearing,~~
111 ~~arrangements shall be made by the board or authority for an employee or designee of the board or~~
112 ~~authority serving the area in which the hearing is held to attend or participate on behalf of the board~~
113 ~~or authority that prepared the preadmission screening report; or~~

114 2. The person having custody over a ~~defendant who is awaiting trial~~ *an inmate files a petition with a*
115 *magistrate alleging that he has reasonable probable cause to believe that (i) the defendant (i) inmate has*
116 *mental illness and that; (ii) there exists a substantial likelihood that, as a result of mental illness, the*
117 *defendant inmate will, in the near future, cause serious physical harm to himself or others as evidenced*
118 *by recent behavior causing, attempting, or threatening harm and other relevant information, if any; and*
119 *(ii) (iii) the inmate requires treatment in a hospital rather than jail and the person having such custody*
120 *arranges a face-to-face evaluation at a local correctional facility. Prior to the filing of the petition, the*

person having custody shall arrange for an evaluation of the inmate 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 designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809 provided a district court judge or a special justice, as defined in § 37.2-100 or, if a judge or special justice is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, subsequently issues a temporary detention order for treatment in accordance with the procedures specified in §§ 37.2-809 through 37.2-813. In no event shall the defendant have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.2-805 or 37.2-814. After considering the evaluation of the employee or designee of the local community services board or behavioral health authority, and any other information presented, and finding that probable cause exists to meet the criteria alleged in the petition, the magistrate may issue a temporary detention order in accordance with the applicable procedures specified in §§ 37.2-809 through 37.2-813. The person having custody over the inmate shall notify the court having jurisdiction over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention pursuant to a temporary detention order or as soon thereafter as is reasonable.

If the defendant is committed pursuant to subdivision 1 of this subsection, the attorney for the defendant shall be notified that the court is considering hospitalizing the defendant for psychiatric treatment and shall have the opportunity to challenge the findings of the qualified mental health professional. If the defendant is detained pursuant to subdivision 2 of this subsection, the court having jurisdiction over the defendant's case and the attorney for the defendant shall be given notice prior to the detention pursuant to a temporary detention order or as soon thereafter as is reasonable. Upon detention pursuant to this subdivision 2 of this subsection, a hearing shall be held, upon notice to the attorney for the defendant, either (i) (a) before the court having jurisdiction over the defendant's inmate's case or (ii) (b) before a district court judge or a special justice, as defined in § 37.2-100, in accordance with the provisions of §§ 37.2-820 through 37.2-821, in which case the defendant inmate shall be represented by counsel as specified in § 37.2-814; the hearing shall be held within 48 hours of execution of the temporary detention order to allow the court that hears the case to make the findings, based upon clear and convincing evidence, that are specified in subdivision 1 of this subsection issued pursuant to this subdivision. If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, or day on which the court is lawfully closed, the person inmate may be detained for the same period allowed for detention pursuant to a temporary detention order issued pursuant to §§ 37.2-809 through 37.2-813 until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority 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 communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report. The judge or special justice conducting the hearing may order the inmate hospitalized if, after considering the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in accordance with § 37.2-816, and any other available information as specified in subsection C of § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has mental illness; (2) there exists a substantial likelihood that, as a result of mental illness, the inmate will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; and (3) the inmate requires treatment in a hospital rather than a local correctional facility. The examiner appointed pursuant to § 37.2-815, 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 § 37.2-804.1. The examination and the preadmission screening report shall be admitted into evidence at the hearing.

B. In no event shall an inmate have the right to make application for voluntary admission as may be otherwise provided in § 37.2-805 or 37.2-814 or be subject to an order for mandatory outpatient treatment as provided in § 37.2-817.

In any case in which the defendant C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the court having jurisdiction over the defendant's inmate's case may

182 provide by order that the admitting hospital evaluate the defendant's inmate's competency to stand trial
 183 and his mental state at the time of the offense or his competency to be sentenced pursuant to
 184 §§ 19.2-169.1 and 19.2-169.5.

185 B. A defendant subject to this section shall be treated at a hospital designated by the Commissioner
 186 as appropriate for treatment and evaluation of persons under criminal charge. The director of the hospital
 187 shall, within 30 days of the defendant's admission, send a report to the court with jurisdiction over the
 188 defendant addressing the defendant's continued need for treatment for a mental illness and the continued
 189 substantial likelihood that, as a result of mental illness, the defendant will, in the near future, cause
 190 serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
 191 threatening such harm and other relevant information, if any, and, if so ordered by the court, the
 192 defendant's competency to stand trial, pursuant to subsection D of § 19.2-169.1, and his mental state at
 193 the time of the offense, pursuant to subsection D of § 19.2-169.5. Based on this report, the court shall
 194 (i) find the defendant incompetent to stand trial pursuant to subsection E of § 19.2-169.1 and proceed
 195 accordingly, (ii) order that the defendant be discharged from custody pending trial, (iii) order that the
 196 defendant be returned to jail pending trial, or (iv) make other appropriate disposition, including dismissal
 197 of charges and release of the defendant.

198 C. A defendant D. An inmate may not be hospitalized longer than 30 days under this section
 199 subsection A unless the court which has criminal jurisdiction over him or a district court judge or a
 200 special justice, as defined in § 37.2-100, holds a hearing at which the defendant shall be represented by
 201 an attorney and finds clear and convincing evidence that the defendant continues to (i) have a mental
 202 illness and that there continues to exist a substantial likelihood that, as a result of mental illness, the
 203 defendant will, in the near future, cause serious physical harm to himself or others as evidenced by
 204 recent behavior causing, attempting, or threatening harm and other relevant information, if any, and (ii)
 205 be in need of psychiatric treatment in a hospital and orders the inmate's continued hospitalization in
 206 accordance with the provisions of subdivision A 2. If the inmate's hospitalization is continued under this
 207 subsection by a court other than the court which has jurisdiction over his criminal case, the facility at
 208 which the inmate is hospitalized shall notify the court with jurisdiction over his criminal case and the
 209 inmate's attorney in the criminal case, if the case is still pending.

210 E. Hospitalization may be extended in this manner accordance with subsection D for periods of 60
 211 days for inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor
 212 shall such hospitalization act to delay trial, so as long as the defendant inmate remains competent to
 213 stand trial. Hospitalization may be extended in accordance with subsection D for periods of 180 days for
 214 an inmate who has been convicted and not yet sentenced, or for an inmate who has been convicted of a
 215 crime and is in the custody of a local correctional facility after sentencing, but in no event may such
 216 hospitalization be continued beyond the date upon which his sentence would have expired had he
 217 received the maximum sentence for the crime charged. Any inmate who has not completed service of his
 218 sentence upon discharge from the hospital shall serve the remainder of his sentence.

219 F. For any inmate who has been convicted and not yet sentenced, or who has been convicted of a
 220 crime and is in the custody of a local correctional facility after sentencing, the time the inmate is
 221 confined in a hospital for psychiatric treatment shall be deducted from any term for which he may be
 222 sentenced to any penal institution, reformatory or elsewhere.

223 DG. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to
 224 a defendant an inmate who is the subject of a proceeding under this section, § 19.2-176, or 19.2-177.1,
 225 upon request, shall disclose to a magistrate, the court, the defendant's inmate's attorney, the defendant's
 226 inmate's guardian ad litem, the qualified mental health professional examiner appointed pursuant to
 227 § 37.2-815, the community service board or behavioral health authority performing the evaluation,
 228 preparing the preadmission screening, or monitoring duties under these sections pursuant to § 37.2-816,
 229 or the sheriff or administrator of the jail local correctional facility any and all information that is
 230 necessary and appropriate to enable each of them to perform his duties under these sections. These
 231 health care providers and other service providers shall disclose to one another health records and
 232 information where necessary to provide care and treatment to the defendant inmate and to monitor that
 233 care and treatment. Health records disclosed to a sheriff or administrator of the jail local correctional
 234 facility shall be limited to information necessary to protect the sheriff or administrator of the jail local
 235 correctional facility and his employees, the defendant inmate, or the public from physical injury or to
 236 address the health care needs of the defendant inmate. Information disclosed to a law-enforcement
 237 officer shall not be used for any other purpose, disclosed to others, or retained.

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

242 EH. Any order entered where a defendant an inmate is the subject of proceedings under this section,
 243 § 19.2-176, or 19.2-177.1 shall provide for the disclosure of medical records pursuant to subsection D G.

This subsection shall not preclude any other disclosures as required or permitted by law.

§ 19.2-174.1. Information required prior to admission to a mental health facility.

Prior to any person being placed into the custody of the Commissioner for evaluation or treatment pursuant to §§ 19.2-169.2, 19.2-169.3, 19.2-169.6, ~~19.2-176, 19.2-177.1~~, 19.2-182.2, and 19.2-182.3, and Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the court or special justice shall provide the Commissioner with the following, if available: (i) the commitment order, (ii) the names and addresses for the attorney for the Commonwealth, the attorney for the person and the judge holding jurisdiction over the person, (iii) a copy of the warrant or indictment, and (iv) a copy of the criminal incident information as defined in § 2.2-3701 or a copy of the arrest report or a summary of the facts relating to the crime. The party requesting the placement into the Commissioner's custody or, in the case of admissions pursuant to §§ 19.2-169.3, ~~and 19.2-169.6, 19.2-176, and 19.2-177.1~~, and Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the person having custody over the defendant *or inmate* shall gather the above information for submission to the court at the hearing. If the information is not available at the hearing, it shall be provided by the party requesting placement or the person having custody directly to the Commissioner within ~~ninety-six~~ 96 hours of the person being placed into the Commissioner's custody. If the ~~ninety-six-hour~~ 96-hour period expires on a Saturday, Sunday or legal holiday, the ~~ninety-six~~ 96 hours shall be extended to the next day that is not a Saturday, Sunday or legal holiday.

§ 19.2-175. Compensation of experts.

Each psychiatrist, clinical psychologist or other expert appointed by the court to render professional service pursuant to §§ 19.2-168.1, 19.2-169.1, 19.2-169.5, ~~subsection A of § 19.2-176~~, §§ 19.2-182.8, 19.2-182.9, 19.2-264.3:1, 19.2-264.3:3 or 19.2-301, who is not regularly employed by the Commonwealth of Virginia except by the University of Virginia School of Medicine and the Medical College of Virginia Commonwealth University, shall receive a reasonable fee for such service. For any psychiatrist, clinical psychologist, or other expert appointed by the court to render such professional services who is regularly employed by the Commonwealth of Virginia, except by the University of Virginia School of Medicine or the Medical College of Virginia Commonwealth University, the fee shall be paid only for professional services provided during nonstate hours that have been approved by his employing agency as being beyond the scope of his state employment duties. The fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department of Behavioral Health and Developmental Services. Except in capital murder cases the fee shall not exceed \$750, but in addition if any such expert is required to appear as a witness in any hearing held pursuant to such sections, he shall receive mileage and a fee of \$100 for each day during which he is required so to serve. An itemized account of expense, duly sworn to, must be presented to the court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury, and be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court for payment out of the appropriation to pay criminal charges.

§ 19.2-178. Where prisoner kept when no vacancy in facility or hospital.

When a court shall have entered any of the orders provided for in §§ 19.2-168.1, 19.2-169.1, 19.2-169.5, ~~or 19.2-169.6, 19.2-176, or § 19.2-177.1~~, the sheriff of the county or city or the proper officer of the penal institution shall immediately proceed to ascertain whether a vacancy exists at the proper facility or hospital and until it is ascertained that there is a vacancy such person shall be kept in the jail of such county or city or in such custody as the court may order, or in the penal institution in which he is confined, until there is room in such facility or hospital. Any person whose care and custody is herein provided for shall be taken to and from the facility or hospital to which he was committed by an officer of the penal institution having custody of him, or by the sheriff of the county or city whose court issued the order of commitment, and the expenses incurred in such removals shall be paid by such penal institution, county or city.

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such

305 conduct, except that information concerning the arrest of an individual may not be disseminated to a
306 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the
307 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is
308 pending;

309 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide
310 services required for the administration of criminal justice pursuant to that agreement which shall
311 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the
312 security and confidentiality of the data;

313 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
314 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,
315 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
316 security of the data;

317 5. Agencies of state or federal government that are authorized by state or federal statute or executive
318 order of the President of the United States or Governor to conduct investigations determining
319 employment suitability or eligibility for security clearances allowing access to classified information;

320 6. Individuals and agencies where authorized by court order or court rule;

321 7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of
322 applicants for public employment, permit, or license whenever, in the interest of public welfare or
323 safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a
324 person with a conviction record would be compatible with the nature of the employment, permit, or
325 license under consideration;

326 8. Public or private agencies when authorized or required by federal or state law or interstate
327 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
328 adult members of that individual's household, with whom the agency is considering placing a child or
329 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
330 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
331 the data shall not be further disseminated to any party other than a federal or state authority or court as
332 may be required to comply with an express requirement of law;

333 9. To the extent permitted by federal law or regulation, public service companies as defined in
334 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
335 personal contact with the public or when past criminal conduct of an applicant would be incompatible
336 with the nature of the employment under consideration;

337 10. The appropriate authority for purposes of granting citizenship and for purposes of international
338 travel, including but not limited to, issuing visas and passports;

339 11. A person requesting a copy of his own criminal history record information as defined in
340 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
341 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
342 America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency
343 Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of
344 Compeer; or (vi) any board member or any individual who has been offered membership on the board
345 of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

346 12. Administrators and board presidents of and applicants for licensure or registration as a child
347 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
348 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
349 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes
350 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing
351 agencies, pursuant to §§ 63.2-1719 through 63.2-1721, subject to the restriction that the data shall not be
352 further disseminated by the facility or agency to any party other than the data subject, the Commissioner
353 of Social Services' representative or a federal or state authority or court as may be required to comply
354 with an express requirement of law for such further dissemination;

355 13. The school boards of the Commonwealth for the purpose of screening individuals who are
356 offered or who accept public school employment and those current school board employees for whom a
357 report of arrest has been made pursuant to § 19.2-83.1;

358 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery
359 Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
360 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

361 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
362 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
363 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to
364 the limitations set out in subsection E;

365 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers
366 for the conduct of investigations of applicants for compensated employment in licensed homes for adults

pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, ~~19.2-176, 19.2-177.1,~~ 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

26. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

27. The Commissioner of the Department of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

28. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct consumer care position has been convicted of a crime that affects their fitness to have responsibility for the safety and well-being of persons with mental illness, mental retardation and substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

29. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

30. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

31. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

32. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

33. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities,

428 by contractors, leased laborers, and other visitors;

429 34. Any employer of individuals whose employment requires that they enter the homes of others, for
430 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

431 35. Public agencies when and as required by federal or state law to investigate (i) applicants as
432 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
433 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,
434 subject to the restriction that the data shall not be further disseminated by the agency to any party other
435 than a federal or state authority or court as may be required to comply with an express requirement of
436 law for such further dissemination, subject to limitations set out in subsection G;

437 36. The Department of Medical Assistance Services, or its designee, for the purpose of screening
438 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,
439 or have accepted a position related to the provision of transportation services to enrollees in the
440 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other
441 program administered by the Department of Medical Assistance Services;

442 37. The State Corporation Commission for the purpose of investigating individuals who are members,
443 senior officers, directors, and principals of an applicant for licensure as a mortgage lender or mortgage
444 broker, or a licensed mortgage lender or mortgage broker for the purpose of investigating individuals
445 applying for a position of employment in which the individual may have access to or process personal
446 identifying or financial information from a member of the public, pursuant to Chapter 16 (§ 6.1-408 et
447 seq.) of Title 6.1. Notwithstanding any other provision of law, if an application for a mortgage lender or
448 mortgage broker license is denied based in whole or in part on information obtained from the Central
449 Criminal Records Exchange pursuant to § 6.1-414, the Commissioner of Financial Institutions or his
450 designee may disclose such information to the applicant or its designee;

451 38. The Department of Professional and Occupational Regulation for the purpose of investigating
452 individuals for initial licensure pursuant to § 54.1-2106.1; and

453 39. Other entities as otherwise provided by law.

454 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
455 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
456 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
457 designated in the order on whom a report has been made under the provisions of this chapter.

458 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
459 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
460 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
461 copy of conviction data covering the person named in the request to the person making the request;
462 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
463 making of such request. A person receiving a copy of his own conviction data may utilize or further
464 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
465 subject, the person making the request shall be furnished at his cost a certification to that effect.

466 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
467 section shall be limited to the purposes for which it was given and may not be disseminated further.

468 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal
469 history record information for employment or licensing inquiries except as provided by law.

470 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
471 Exchange prior to dissemination of any criminal history record information on offenses required to be
472 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
473 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
474 where time is of the essence and the normal response time of the Exchange would exceed the necessary
475 time period. A criminal justice agency to whom a request has been made for the dissemination of
476 criminal history record information that is required to be reported to the Central Criminal Records
477 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
478 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
479 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

480 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
481 organizations pursuant to subdivision 15 of subsection A shall be limited to the convictions on file with
482 the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

483 F. Criminal history information provided to licensed assisted living facilities, licensed district homes
484 for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be
485 limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or
486 63.2-1720.

487 G. Criminal history information provided to public agencies pursuant to subdivision 35 of subsection
488 A shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

489 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal

Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request; provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

§ 32.1-127.1:03. Health records privacy.

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

Pursuant to this subsection:

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

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

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

B. As used in this section:

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

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

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

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

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

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

"Health plan" means an individual or group plan that provides, or pays the cost of, medical care. "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in this subdivision shall be construed to prohibit any staff or employee of a health care entity from providing information about such individual to a law-enforcement officer in connection with such subpoena, search warrant, or court order;

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

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

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

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

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

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

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

10. When examination and evaluation of an individual are undertaken pursuant to judicial or

administrative law order, but only to the extent as required by such order;

11. To the guardian ad litem and any attorney representing the respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2;

12. To the guardian ad litem and any attorney appointed by the court to represent an individual who is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, ~~19.2-176, or 19.2-177.1~~, Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

13. To a magistrate, the court, the evaluator or examiner required under § 16.1-338, 16.1-339, 16.1-342, or 37.2-815, a community services board or behavioral health authority or a designee of a community services board or behavioral health authority, or a law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6, ~~19.2-176, or 19.2-177.1~~, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to any health care provider evaluating or providing services to the person who is the subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those provisions. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained;

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

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

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

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

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

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

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

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

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

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

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

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

26. To the Office of the Inspector General for Behavioral Health and Developmental Services pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2;

27. To an entity participating in the activities of a local health partnership authority established

674 pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4 of this title, pursuant to subdivision 1 of
675 this subsection;

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

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

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

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

693 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
694 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
695 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title;

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

700 34. To notify a family member or personal representative of an individual who is the subject of a
701 proceeding pursuant to Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly
702 relevant to such person's involvement with the individual's health care, which may include the
703 individual's location and general condition, when the individual has the capacity to make health care
704 decisions and (i) the individual has agreed to the notification, (ii) the individual has been provided an
705 opportunity to object to the notification and does not express an objection, or (iii) the health care
706 provider can, on the basis of his professional judgment, reasonably infer from the circumstances that the
707 individual does not object to the notification. If the opportunity to agree or object to the notification
708 cannot practically be provided because of the individual's incapacity or an emergency circumstance, the
709 health care provider may notify a family member or personal representative of the individual of
710 information that is directly relevant to such person's involvement with the individual's health care, which
711 may include the individual's location and general condition if the health care provider, in the exercise of
712 his professional judgment, determines that the notification is in the best interests of the individual. Such
713 notification shall not be made if the provider has actual knowledge the family member or personal
714 representative is currently prohibited by court order from contacting the individual.

715 Notwithstanding the provisions of subdivisions 1 through 34 of this subsection, a health care entity
716 shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when
717 disclosure by the health care entity is (i) for its own training programs in which students, trainees, or
718 practitioners in mental health are being taught under supervision to practice or to improve their skills in
719 group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any
720 accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of
721 § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm;
722 (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care
723 entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review
724 entity; or (v) otherwise required by law.

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

provided by law. Procedures set forth in this section shall apply only to requests for health records not specifically governed by other provisions of state law.

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

The health care entity denying the request shall also inform the individual of the individual's right to request in writing that such health care entity designate, at its own expense, a physician or clinical psychologist, whose licensure, training, and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial is based and who did not participate in the original decision to deny the health records, who shall make a judgment as to whether to make the health record available to the individual. The health care entity shall comply with the judgment of the reviewing physician or clinical psychologist. The health care entity shall permit copying and examination of the health record by such other physician or clinical psychologist designated by either the individual at his own expense or by the health care entity at its expense.

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

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

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

AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

Individual's Name

Health Care Entity's Name

Person, Agency, or Health Care Entity to whom disclosure is to

be made

Information or Health Records to be disclosed

Purpose of Disclosure or at the Request of the Individual

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

confidential health records. I understand that the health care entity may not condition treatment or payment on my willingness to sign this authorization

unless the specific circumstances under which such conditioning is permitted by law are applicable and are set forth in this authorization. I also

understand that I have the right to revoke this authorization at any time, but that my revocation is not effective until delivered in writing to the

person who is in possession of my health records and is not effective as to health records already disclosed under this authorization. A copy of this

authorization and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original health records. I

understand that health information disclosed under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no

longer be protected to the same extent as such health information was protected by law while solely in the possession of the health care entity.

795 This authorization expires on (date) or (event)
796 Signature of Individual or Individual's Legal Representative if Individual is
797 Unable to Sign
798 Relationship or Authority of Legal Representative
799 Date of Signature

800 H. Pursuant to this subsection:

801 1. Unless excepted from these provisions in subdivision 9 of this subsection, no party to a civil,
802 criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for
803 another party's health records or cause a subpoena duces tecum to be issued by an attorney unless a
804 copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other
805 party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
806 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
807 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a
808 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the
809 request or issuance of the attorney-issued subpoena.

810 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date
811 of the subpoena except by order of a court or administrative agency for good cause shown. When a
812 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces
813 tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the
814 subpoena.

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

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

823 **NOTICE TO INDIVIDUAL**

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

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

843 **NOTICE TO HEALTH CARE ENTITIES**

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

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

852 NO MOTION TO QUASH WAS FILED; OR

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

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

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

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

4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such health records until they have received a certification as set forth in subdivision 5 or 8 of this subsection from the party on whose behalf the subpoena duces tecum was issued.

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

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

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

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

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

a. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the health records previously delivered in a sealed envelope to the clerk of the court or administrative

917 agency will not be returned to the health care entity;

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

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

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

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

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

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

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

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

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

954 I. Health care entities may testify about the health records of an individual in compliance with
955 §§ 8.01-399 and 8.01-400.2.

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

963 § 37.2-803. Special justices to perform duties of judge.

964 The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of
965 performing the duties required of a judge by this chapter, Chapter 11 (§ 37.2-1100 et seq.), and
966 §§ 16.1-69.28, 16.1-335 through 16.1-348, 19.2-169.6, 19.2-174.1, ~~19.2-177.1~~, 19.2-182.9, 53.1-40.1,
967 53.1-40.2, and 53.1-40.9. Each special justice shall be a person licensed to practice law in the
968 Commonwealth or a retired or substitute judge in good standing and shall have all the powers and
969 jurisdiction conferred upon a judge. The special justice shall serve under the supervision and at the
970 pleasure of the chief judge of the judicial circuit for a period of up to six years. The special justice may
971 be reappointed and may serve additional periods of up to six years, at the pleasure of the chief judge.
972 Within six months of appointment, each special justice appointed on or after January 1, 1996, shall
973 complete a minimum training program prescribed by the Executive Secretary of the Supreme Court.
974 Special justices shall collect the fees prescribed in this chapter for their service and shall retain those
975 fees, unless the governing body of the county or city in which the services are performed provides for
976 the payment of an annual salary for the services, in which case the fees shall be collected and paid into
977 the treasury of that county or city.

978 § 37.2-804. Fees and expenses.

A. Any special justice, retired judge sitting by designation pursuant to § 16.1-69.35, or any district court substitute judge who presides over hearings pursuant to the provisions of §§ 37.2-809 through 37.2-820 ~~or~~, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, *or* § 19.2-169.6 shall receive a fee of \$86.25 for each hearing thereunder plus his necessary mileage, parking, tolls, and postage, and \$43.25 for each certification hearing and each order under Chapter 11 (§ 37.2-1100 et seq.) ruling on competency or treatment plus his necessary mileage, parking, tolls, and postage.

B. Any physician, psychologist or other mental health professional, or any interpreter, appointed pursuant to § 37.2-802 for persons who are deaf, who is not regularly employed by the Commonwealth and is required to serve as a witness or as an interpreter in any proceeding under this chapter *or* § 19.2-169.6 shall receive a fee of \$75 and his necessary expenses for each commitment hearing for involuntary admission in which he serves and \$43.25 and necessary expenses for each certification hearing in which he serves.

C. Other witnesses regularly summoned before a judge or special justice under the provisions of this chapter shall receive the compensation for their attendance and mileage that is allowed witnesses summoned to testify before grand juries.

D. Every attorney appointed under § 37.2-806 ~~or~~, §§ 37.2-809 through 37.2-820, *or* § 19.2-169.6 shall receive a fee of \$75 and his necessary expenses for each hearing thereunder and \$43.25 and his necessary expenses for each certification hearing and each proceeding under Chapter 11 (§ 37.2-1100 et seq.).

E. Except as hereinafter provided, all expenses incurred, including the fees, attendance, and mileage aforesaid, shall be paid by the Commonwealth. When any such fees, costs, and expenses, incurred in connection with an examination or hearing for an admission pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820, to carry out the provisions of this chapter or in connection with a proceeding under Chapter 11 (§ 37.2-1100 et seq.) *or* § 19.2-169.6, are paid by the Commonwealth, they shall be recoverable by the Commonwealth from the person who is the subject of the examination, hearing, or proceeding or from his estate. Collection or recovery may be undertaken by the Department. When the fees, costs, and expenses are collected or recovered by the Department, they shall be refunded to the Commonwealth. No fees or costs shall be recovered, however, from the person who is the subject of the examination or hearing or his estate when no good cause for his admission exists or when the recovery would create an undue financial hardship.

§ 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~~ *inmates* 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

1102 to intercept the email.

1103 L. The employee or designee of the community services board who is conducting the evaluation
1104 pursuant to this section shall, if he recommends that the person should not be subject to a temporary
1105 detention order, inform the petitioner and an on-site treating physician of his recommendation.

1106 § 37.2-811. Emergency treatment of inmates in the custody of local correctional facilities.

1107 A. In any case in which temporary detention is ordered pursuant to § 37.2-809 upon petition of a
1108 person having custody of a ~~defendant~~ *inmate* in accordance with subdivision A 2 of § 19.2-169.6, the
1109 magistrate executing the temporary detention order shall place the person in a hospital designated by the
1110 Commissioner as appropriate for treatment and evaluation of persons under a criminal charge or, if such
1111 facility is not available, the ~~defendant~~ *inmate* shall be detained in a ~~jail~~ *local correctional facility* or
1112 other place of confinement for persons charged with criminal offenses and shall be transferred to such
1113 hospital as soon as possible thereafter.

1114 B. The hearing shall be held, upon notice to the attorney for the ~~defendant~~ *inmate*, either (i) before
1115 the court having jurisdiction over the ~~defendant's~~ *inmate's* case or (ii) before a district court judge or
1116 special justice in accordance with the provisions of § 37.2-820, in which case the ~~defendant~~ *inmate* shall
1117 be represented by counsel as specified in § 37.2-814.

1118 2. That §§ 19.2-176 and 19.2-177.1 of the Code of Virginia are repealed.