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SENATE BILL NO. 996

Senate Amendments in [] - January 31, 2013

A *BILL to amend and reenact §§ 19.2-169.6, as it is currently effective and as it shall become effective, 19.2-182.9, 37.2-809, and 37.2-814 of the Code of Virginia, relating to temporary detention orders; duration.*

Patron Prior to Engrossment—Senator Barker

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.6, as it is currently effective and as it shall become effective, 19.2-182.9, 37.2-809, and 37.2-814 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-169.6. (Effective until July 1, 2014) Inpatient psychiatric hospital admission from local correctional facility.

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

1. The court with jurisdiction over the inmate's case, if it is still pending, on the petition of the person having custody over an inmate or on its own motion, holds a hearing at which the inmate is represented by counsel and finds by clear and convincing evidence that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate 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 any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information; and (iii) the inmate requires treatment in a hospital rather than the local correctional facility. Prior to making this determination, the court shall consider the examination conducted in accordance with § 37.2-815 and the preadmission screening report prepared in accordance with § 37.2-816 and 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, who is not providing treatment to the inmate, and who has completed a certification program approved by the Department of Behavioral Health and Developmental Services as provided in § 37.2-809. 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. 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; or

2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate 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 any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information; and (iii) the inmate requires treatment in a hospital rather than a local correctional facility, and the magistrate issues a temporary detention order for the inmate. 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

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60 provided in § 37.2-809. After considering the evaluation of the employee or designee of the local
61 community services board or behavioral health authority, and any other information presented, and
62 finding that probable cause exists to meet the criteria, the magistrate may issue a temporary detention
63 order in accordance with the applicable procedures specified in §§ 37.2-809 through 37.2-813. The
64 person having custody over the inmate shall notify the court having jurisdiction over the inmate's case,
65 if it is still pending, and the inmate's attorney prior to the detention pursuant to a temporary detention
66 order or as soon thereafter as is reasonable.

67 Upon detention pursuant to this subdivision, a hearing shall be held either before the court having
68 jurisdiction over the inmate's case or before a district court judge or a special justice, as defined in
69 § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate
70 shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within ~~48-hour~~ 72 hours
71 of execution of the temporary detention order issued pursuant to this subdivision. If the ~~48-hour~~ 72-hour
72 period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the
73 inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal
74 holiday, or day on which the court is lawfully closed. Any employee or designee of the local
75 community services board or behavioral health authority, as defined in § 37.2-809, representing the
76 board or authority that prepared the preadmission screening report shall attend the hearing in person or,
77 if physical attendance is not practicable, shall participate in the hearing through a two-way electronic
78 video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside
79 the service area of the community services board or behavioral health authority that prepared the
80 preadmission screening report, and it is not practicable for a representative of the board or authority to
81 attend or participate in the hearing, arrangements shall be made by the board or authority for an
82 employee or designee of the board or authority serving the area in which the hearing is held to attend or
83 participate on behalf of the board or authority that prepared the preadmission screening report. The
84 judge or special justice conducting the hearing may order the inmate hospitalized if, after considering
85 the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in
86 accordance with § 37.2-816, and any other available information as specified in subsection C of
87 § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there
88 exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, (a)
89 cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
90 threatening harm and any other relevant information or (b) suffer serious harm due to his lack of
91 capacity to protect himself from harm as evidenced by recent behavior and any other relevant
92 information; and (3) the inmate requires treatment in a hospital rather than a local correctional facility.
93 The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be
94 available whenever possible for questioning during the hearing through a two-way electronic video and
95 audio or telephonic communication system as authorized in § 37.2-804.1. The examination and the
96 preadmission screening report shall be admitted into evidence at the hearing.

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

100 C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the
101 court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the
102 inmate's competency to stand trial and his mental state at the time of the offense pursuant to
103 §§ 19.2-169.1 and 19.2-169.5.

104 D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court
105 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
106 § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the
107 provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a
108 court other than the court which has jurisdiction over his criminal case, the facility at which the inmate
109 is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in
110 the criminal case, if the case is still pending.

111 E. Hospitalization may be extended in accordance with subsection D for periods of 60 days for
112 inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such
113 hospitalization act to delay trial, as long as the inmate remains competent to stand trial. Hospitalization
114 may be extended in accordance with subsection D for periods of 180 days for an inmate who has been
115 convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the
116 custody of a local correctional facility after sentencing, but in no event may such hospitalization be
117 continued beyond the date upon which his sentence would have expired had he received the maximum
118 sentence for the crime charged. Any inmate who has not completed service of his sentence upon
119 discharge from the hospital shall serve the remainder of his sentence.

120 F. For any inmate who has been convicted and not yet sentenced, or who has been convicted of a
121 crime and is in the custody of a local correctional facility after sentencing, the time the inmate is

confined in a hospital for psychiatric treatment shall be deducted from any term for which he may be sentenced to any penal institution, reformatory or elsewhere.

G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an inmate who is the subject of a proceeding under this section, upon request, shall disclose to a magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed pursuant to § 37.2-815, the community service board or behavioral health authority preparing the preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional facility any and all information that is necessary and appropriate to enable each of them to perform his duties under this section. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the inmate and to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local correctional facility shall be limited to information necessary to protect the sheriff or administrator of the local correctional facility and his employees, the inmate, or the public from physical injury or to address the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

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

H. Any order entered where an inmate is the subject of proceedings under this section shall provide for the disclosure of medical records pursuant to subsection G. This subsection shall not preclude any other disclosures as required or permitted by law.

§ 19.2-169.6. (Effective July 1, 2014) Inpatient psychiatric hospital admission from local correctional facility.

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

1. The court with jurisdiction over the inmate's case, if it is still pending, on the petition of the person having custody over an inmate or on its own motion, holds a hearing at which the inmate is represented by counsel and finds by clear and convincing evidence that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a 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 (iii) the inmate requires treatment in a hospital rather than the local correctional facility. Prior to making this determination, the court shall consider the examination conducted in accordance with § 37.2-815 and the preadmission screening report prepared in accordance with § 37.2-816 and 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, who is not providing treatment to the inmate, and who has completed a certification program approved by the Department of Behavioral Health and Developmental Services as provided in § 37.2-809. 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. 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; or

2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a 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 (iii) the inmate requires treatment in a hospital rather than a local correctional facility, and the magistrate issues a temporary detention order for the inmate. 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

183 a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an
184 employee or designee of the local community services board or behavioral health authority who is
185 skilled in the assessment and treatment of mental illness and who has completed a certification program
186 approved by the Department as provided in § 37.2-809. After considering the evaluation of the employee
187 or designee of the local community services board or behavioral health authority, and any other
188 information presented, and finding that probable cause exists to meet the criteria, the magistrate may
189 issue a temporary detention order in accordance with the applicable procedures specified in §§ 37.2-809
190 through 37.2-813. The person having custody over the inmate shall notify the court having jurisdiction
191 over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention pursuant to a
192 temporary detention order or as soon thereafter as is reasonable.

193 Upon detention pursuant to this subdivision, a hearing shall be held either (a) before the court having
194 jurisdiction over the inmate's case or (b) before a district court judge or a special justice, as defined in
195 § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate
196 shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within 48 72 hours
197 of execution of the temporary detention order issued pursuant to this subdivision. If the ~~48-hour~~ 72-hour
198 period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the
199 inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal
200 holiday, or day on which the court is lawfully closed. Any employee or designee of the local
201 community services board or behavioral health authority, as defined in § 37.2-809, representing the
202 board or authority that prepared the preadmission screening report shall attend the hearing in person or,
203 if physical attendance is not practicable, shall participate in the hearing through a two-way electronic
204 video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside
205 the service area of the community services board or behavioral health authority that prepared the
206 preadmission screening report, and it is not practicable for a representative of the board or authority to
207 attend or participate in the hearing, arrangements shall be made by the board or authority for an
208 employee or designee of the board or authority serving the area in which the hearing is held to attend or
209 participate on behalf of the board or authority that prepared the preadmission screening report. The
210 judge or special justice conducting the hearing may order the inmate hospitalized if, after considering
211 the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in
212 accordance with § 37.2-816, and any other available information as specified in subsection C of
213 § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there
214 exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future,
215 cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
216 threatening harm and other relevant information, if any; and (3) the inmate requires treatment in a
217 hospital rather than a local correctional facility. The examiner appointed pursuant to § 37.2-815, if not
218 physically present at the hearing, shall be available whenever possible for questioning during the hearing
219 through a two-way electronic video and audio or telephonic communication system as authorized in
220 § 37.2-804.1. The examination and the preadmission screening report shall be admitted into evidence at
221 the hearing.

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223 otherwise provided in § 37.2-805 or 37.2-814 or be subject to an order for mandatory outpatient
224 treatment as provided in § 37.2-817.

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226 court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the
227 inmate's competency to stand trial and his mental state at the time of the offense pursuant to
228 §§ 19.2-169.1 and 19.2-169.5.

229 D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court
230 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
231 § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the
232 provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a
233 court other than the court which has jurisdiction over his criminal case, the facility at which the inmate
234 is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in
235 the criminal case, if the case is still pending.

236 E. Hospitalization may be extended in accordance with subsection D for periods of 60 days for
237 inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such
238 hospitalization act to delay trial, as long as the inmate remains competent to stand trial. Hospitalization
239 may be extended in accordance with subsection D for periods of 180 days for an inmate who has been
240 convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the
241 custody of a local correctional facility after sentencing, but in no event may such hospitalization be
242 continued beyond the date upon which his sentence would have expired had he received the maximum
243 sentence for the crime charged. Any inmate who has not completed service of his sentence upon
244 discharge from the hospital shall serve the remainder of his sentence.

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

G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an inmate who is the subject of a proceeding under this section, upon request, shall disclose to a magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed pursuant to § 37.2-815, the community service board or behavioral health authority preparing the preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional facility any and all information that is necessary and appropriate to enable each of them to perform his duties under this section. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the inmate and to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local correctional facility shall be limited to information necessary to protect the sheriff or administrator of the local correctional facility and his employees, the inmate, or the public from physical injury or to address the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

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

H. Any order entered where an inmate is the subject of proceedings under this section shall provide for the disclosure of medical records pursuant to subsection G. This subsection shall not preclude any other disclosures as required or permitted by law.

§ 19.2-182.9. Emergency custody of conditionally released acquittee.

When exigent circumstances do not permit compliance with revocation procedures set forth in § 19.2-182.8, any district court judge or a special justice, as defined in § 37.2-100, or a magistrate may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) requires inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial district to be taken into custody and transported to a convenient location where a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization. A law-enforcement officer who, based on his observation or the reliable reports of others, has probable cause to believe that any acquittee on conditional release has violated the conditions of his release and is no longer a proper subject for conditional release and requires emergency evaluation to assess the need for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate location to assess the need for hospitalization without prior judicial authorization. The evaluation shall be conducted immediately. The acquittee shall remain in custody until a temporary detention order is issued or until he is released, but in no event shall the period of custody exceed four hours. However, upon a finding by a district court judge, special justice as defined in § 37.2-100, or magistrate that good cause exists to grant an extension, the district court judge, special justice, or magistrate shall extend the emergency custody order, or shall issue an order extending the period of emergency custody, one time for an additional period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (a) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to this section or (b) a medical evaluation of the person to be completed if necessary. If it appears from all evidence readily available (i) that the acquittee has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) that he requires emergency evaluation to assess the need for inpatient hospitalization, the district court judge or a special justice, as defined in § 37.2-100, or magistrate, upon the advice of such person skilled in the diagnosis and treatment of mental illness, may issue a temporary detention order authorizing the executing officer to place the acquittee in an appropriate institution for a period not to exceed 48 72 hours prior to a hearing. If the ~~48-hour~~ 72-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the acquittee may be detained until the next day which is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present

at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) has mental illness or intellectual disability and is in need of inpatient hospitalization, the court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner.

When an acquittee on conditional release pursuant to this chapter is taken into emergency custody, detained, or hospitalized, such action shall be considered to have been taken pursuant to this section, notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody, detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law other than those applicable to insanity acquittees pursuant to this chapter shall not render the detention or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not recognized at the time of emergency custody or detention, at the time his status as such is verified, the provisions applicable to such persons shall be applied and the court hearing the matter shall notify the committing court of the proceedings.

§ 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. 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 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 72 hours prior to a hearing. If the ~~48-hour~~ 72-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~~ 72-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~~ *health care* provider or designee of a local community services board or behavioral health authority shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

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

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

A. The commitment hearing for involuntary admission shall be held after a sufficient period of time has passed 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 be held within 48 72 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, if the ~~48-hour~~ 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, 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.

B. At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary

admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an opportunity for voluntary admission. The district court judge or special justice shall advise the person whose involuntary admission is being sought that if the person chooses to be voluntarily admitted pursuant to § 37.2-805, such person will be prohibited from possessing or purchasing a firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then willing and capable of seeking voluntary admission for inpatient treatment. In determining whether a person is capable of consenting to voluntary admission, the judge or special justice may consider evidence regarding the person's past compliance or noncompliance with treatment. If the judge or special justice finds that the person is capable and willingly accepts voluntary admission for inpatient treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a community services board as provided in § 37.2-805.

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

D. A written explanation of the involuntary admission process and the statutory protections associated with the process shall be given to the person, and its contents shall be explained by an attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the person whose involuntary admission is sought has been given the written explanation required herein.

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

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

[2. That the provisions of this act shall become effective on January 1, 2014.

3. That the provisions of this act shall not become effective unless an appropriation of general funds effectuating the purposes of this act is included in a general appropriation act passed by the 2013 Session of the General Assembly, which becomes law.]