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HOUSE BILL NO. 1097

Offered January 9, 2014

A BILL to amend and reenact §§ 16.1-336, 16.1-337, 16.1-338, 16.1-340, 16.1-340.1, 16.1-341, 16.1-342, 16.1-345, 16.1-345.2, and 16.1-345.5 of the Code of Virginia and to repeal § 16.1-339 of the Code of Virginia, relating to psychiatric treatment of minors.

Patron—LeMunyon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-336, 16.1-337, 16.1-338, 16.1-340, 16.1-340.1, 16.1-341, 16.1-342, 16.1-345, 16.1-345.2, and 16.1-345.5 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-336. Definitions.

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

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

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

"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 of Behavioral Health and Developmental Services, (iii) is able to provide an independent examination of the minor, (iv) is not related by blood, marriage, or adoption to, or is not the legal guardian of, the minor being evaluated, (v) has no financial interest in the admission or treatment of the minor being evaluated, (vi) has no investment interest in the facility detaining or admitting the minor 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 of Behavioral Health and Developmental Services.

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

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

"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.

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

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

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Behavioral Health and Developmental Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior. Intellectual disability, head injury, a

learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness within the meaning of this article.

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

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

"Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology, or if such psychiatrist or psychologist is unavailable, (i) any mental health professional licensed in Virginia through the Department of Health Professions as a clinical social worker, professional counselor, marriage and family therapist, psychiatric nurse practitioner, or clinical nurse specialist, or (ii) any mental health professional employed by a community services board. All qualified evaluators shall (a) be skilled in the diagnosis and treatment of mental illness in minors, (b) be familiar with the provisions of this article, and (c) have completed a certification program approved by the Department of Behavioral Health and Developmental Services. The qualified evaluator shall (1) not be related by blood, marriage, or adoption to, or is not the legal guardian of, the minor being evaluated, (2) not be responsible for treating the minor, (3) have no financial interest in the admission or treatment of the minor, (4) have no investment interest in the facility detaining or admitting the minor under this article, and (5) except for employees of state hospitals, the U.S. Department of Veterans Affairs, and community services boards, not be employed by the facility.

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

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

A. A minor may be admitted to a mental health facility for inpatient treatment only pursuant to § 16.1-338~~, 16.1-339,~~ or 16.1-340.1 or in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345. The provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title relating to the confidentiality of files, papers, and records shall apply to proceedings under this article.

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

Any health care provider providing services to a minor who is the subject of proceedings under this article may notify the minor's parent of information which is directly relevant to such individual's involvement with the minor's health care, which may include the minor's location and general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, unless the provider has actual knowledge that the parent is currently prohibited by court order from contacting the minor.

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

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

§ 16.1-338. Parental admission of minors.

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

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

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

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

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

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

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

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

D. If the parent who consented to a minor's admission under this section revokes his consent at any time, ~~or if a minor 14 or older objects at any time to further treatment,~~ the minor shall be discharged within 48 hours to the custody of such consenting parent unless the minor's continued hospitalization is authorized pursuant to § ~~16.1-339,~~ 16.1-340.1~~,~~ or 16.1-345. If the 48-hour time period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

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

F. Any minor admitted under this section while younger than ~~14~~*18* and his consenting parent shall be informed orally and in writing by the director of the facility for inpatient treatment within 10 days of his fourteenth birthday that continued voluntary treatment under the authority of this section requires his consent.

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

H. A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.

§ 16.1-340. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of a minor's treating physician or ~~parent or, if the parent is not available or is unable or unwilling to file a petition, by~~ any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion, an emergency custody order when he has probable cause to believe that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a

developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law. To the extent possible, the petition shall contain the information required by § 16.1-339.1.

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

B. Any minor for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether he meets the criteria for temporary detention pursuant to § 16.1-340.1 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board serving the area in which the minor is located who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, in cases in which the emergency custody order is based upon a finding that the minor who is the subject of the order has a mental illness and that, as a result of mental illness, the minor is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include transportation to a medical facility for a medical evaluation if a physician at the hospital in which the minor subject to the emergency custody order may be detained requires a medical evaluation prior to admission.

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

E. The law-enforcement agency or alternative transportation provider providing transportation

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

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

G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a minor meets the criteria for emergency custody as stated in this section may take that minor into custody and transport that minor to an appropriate location to assess the need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of custody shall not exceed four hours from the time the law-enforcement officer takes the minor into custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate 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 (i) the community services board to identify a suitable facility in which the minor can be temporarily detained pursuant to § 16.1-340.1 or (ii) a medical evaluation of the person to be completed if necessary.

H. A law-enforcement officer who is transporting a minor who has voluntarily consented to be transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of the county, city, or town in which he serves may take such minor into custody and transport him to an appropriate location to assess the need for hospitalization or treatment without prior authorization when the law-enforcement officer determines (i) that the minor has revoked consent to be transported to a facility for the purpose of assessment or evaluation and (ii), based upon his observations, that probable cause exists to believe that the minor meets the criteria for emergency custody as stated in this section. The period of custody shall not exceed four hours from the time the law-enforcement officer takes the minor into custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate 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)~~ *(i)* the community services board to identify a suitable facility in which the minor can be temporarily detained pursuant to § 16.1-340.1 or ~~(b)~~ *(ii)* a medical evaluation of the person to be completed if necessary.

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

J. The minor shall remain in custody until a temporary detention order is issued, until the minor is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed four hours from the time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate shall extend the emergency custody order one time for a second period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (i) the community services board to identify a suitable facility in which the minor can be temporarily detained pursuant to § 16.1-340.1 or (ii) a medical evaluation of the person to be completed if necessary. Any family member, as defined in § 37.2-100, employee or designee of the community services board, treating physician, or law-enforcement officer may request the two-hour extension.

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

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

§ 16.1-340.1. Involuntary temporary detention; issuance and execution of order.

A. A magistrate shall issue, upon the sworn petition of a minor's treating physician or ~~parent or, if the parent is not available or is unable or unwilling to file a petition, by any~~ *other* responsible adult,

including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, 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 § 16.1-345.1 by an employee or designee of the local community services board to determine whether the minor 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 (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. The magistrate shall also consider the recommendations of the minor's parents and of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. To the extent possible, the petition shall contain the information required by § 16.1-339.1. Any temporary detention order entered pursuant to this section shall be effective until such time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is located conducts a hearing pursuant to subsection B of § 16.1-341. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law.

B. 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 minor, (iii) any past mental health treatment of the minor, (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.

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

D. An employee or designee of the community services board shall determine the facility of temporary detention for all minors detained pursuant to this section. The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board of Behavioral Health and Developmental Services. The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. Except for minors who are detained for a criminal offense by a juvenile and domestic relations district court and who require hospitalization in accordance with this article, the minor 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 minor 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.

E. Any facility caring for a minor 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 minor within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

F. The employee or 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 minor. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

G. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 16.1-342, preparation of the preadmission screening report required by § 16.1-340.4, and initiation of mental health treatment to stabilize the minor's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 96 hours prior to a hearing. If the 96-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the minor 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 minor may be released, pursuant to § 16.1-340.3, before the 96-hour period herein specified has run.

H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate 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 designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

I. For purposes of this section a healthcare provider or an employee or designee of the local community services board 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.

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

K. Each community services board shall provide to each juvenile and domestic relations district court and magistrate's office within its service area a list of employees and designees who are available to perform the evaluations required herein.

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

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

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

B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic relations district court serving the jurisdiction in which the minor is located shall schedule a hearing which shall occur no sooner than 24 hours and no later than 96 hours from the time the petition was filed or from the issuance of the temporary detention order as provided in § 16.1-340.1, whichever occurs later~~, or from the time of the hearing held pursuant to subsection C of § 16.1-339 if the commitment hearing has been conducted pursuant to subdivision C 3 of § 16.1-339~~. If the 96-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 96 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. The attorney for the minor, the guardian ad litem for the minor, the attorney for the Commonwealth in the jurisdiction giving rise to the detention, and the juvenile and domestic relations district court having jurisdiction over any minor in detention or shelter care shall be given notice prior to the hearing.

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

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

§ 16.1-342. Involuntary commitment; clinical evaluation.

A. Upon the filing of a petition for involuntary commitment, the juvenile and domestic relations district court shall direct the community services board serving the area in which the minor is located to

arrange for an evaluation by a qualified evaluator~~, if one has not already been performed pursuant to subsection B of § 16.1-339~~. All such evaluations shall be conducted in private. In conducting a clinical evaluation of a minor in detention or shelter care, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in § 16.1-345, the evaluator shall recommend that the minor meets the criteria for involuntary commitment. The petitioner, all public agencies, and all providers or programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of treatment or education of the minor. At least 24 hours before the scheduled hearing, the evaluator shall submit to the court a written report which includes the evaluator's opinion regarding whether the minor meets the criteria for involuntary commitment specified in § 16.1-345. A copy of the evaluator's report shall be provided to the minor's guardian ad litem and to the minor's counsel. The evaluator, if not physically present at the hearing, shall be available for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 16.1-345.1. When the qualified evaluator attends the hearing in person or by electronic communication, he shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.

B. Any evaluation conducted pursuant to this section shall be a comprehensive evaluation of the minor conducted in-person or, if that is not practicable, by a two-way electronic video and audio communication system as authorized in § 16.1-345.1. Translation or interpreter services shall be provided during the evaluation where necessary. The examination shall consist of (i) a clinical assessment that includes a mental status examination; determination of current use of psychotropic and other medications; a medical and psychiatric history; a substance use, abuse, or dependency determination; and a determination of the likelihood that, because of mental illness, the minor is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; (ii) a substance abuse screening, when indicated; (iii) a risk assessment that includes an evaluation of the likelihood that, because of mental illness, the minor presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats; (iv) ~~for a minor 14 years of age or older, an assessment of the minor's capacity to consent to treatment, including his ability to maintain and communicate choice, understand relevant information, and comprehend the situation and its consequences; (v)~~ if prior to the examination the minor has been temporarily detained pursuant to this article, a review of the temporary detention facility's records for the minor, including the treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes; ~~(vi)~~ *(v)* a discussion of treatment preferences expressed by the minor or his parents or contained in a document provided by the minor or his parents in support of recovery; ~~(vii)~~ *(vi)* an assessment of alternatives to involuntary inpatient treatment; and ~~(viii)~~ *(vii)* recommendations for the placement, care, and treatment of the minor.

§ 16.1-345. Involuntary commitment; criteria.

After observing the minor and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (iv) any qualified evaluator's report, (v) any medical records available, (vi) the preadmission screening report, and (vii) any other evidence that may have been admitted, the court shall order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

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

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

3. If the court finds that inpatient treatment is not the least restrictive treatment, the court shall consider entering an order for mandatory outpatient treatment pursuant to § 16.1-345.2.

Upon the expiration of an order for involuntary commitment, the minor shall be released unless he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 90 days from the date of the subsequent court order, or ~~the minor or~~ his parent rescinds the objection to inpatient treatment and consents to admission pursuant to § 16.1-338 ~~or subsection D of § 16.1-339~~ or the minor is ordered to mandatory outpatient treatment pursuant to § 16.1-345.2.

A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having

jurisdiction over the case orders that the minor be released from custody. However, such a minor shall not be eligible for mandatory outpatient treatment.

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

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, safety, or normal development. If a special justice believes that issuance of a removal order or protective order may be in the child's best interest, the special justice shall report the matter to the local department of social services for the county or city where the minor resides.

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

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § 16.1-342. If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of Behavioral Health and Developmental Services.

When a minor has been involuntarily committed pursuant to this section, the judge shall determine, after consideration of information provided by the minor's treating mental health professional and any involved community services board staff regarding the minor's dangerousness, whether transportation shall be provided by the sheriff or may be provided by an alternative transportation provider, including a parent, family member, or friend of the minor, a representative of the community services board, a representative of the facility at which the minor was detained pursuant to a temporary detention order, or other alternative transportation provider with personnel trained to provide transportation in a safe manner. If the judge determines that transportation may be provided by an alternative transportation provider, the judge may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. If the judge finds that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the judge may order transportation by the proposed alternative transportation provider. In all other cases, the judge shall order transportation by the sheriff of the jurisdiction where the minor is a resident unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction in which the minor is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the minor.

If the judge determines that the minor requires transportation by the sheriff, the sheriff, as specified in this section shall transport the minor to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff or alternative transportation provider of the judge's order.

§ 16.1-345.2. Mandatory outpatient treatment; criteria; orders.

A. After observing the minor and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (iv) any evaluation of the minor, (v) any medical records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, the court shall order that the minor be admitted involuntarily to mandatory outpatient treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

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

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

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

4. The minor~~, if 14 years of age or older,~~ and his parents (i) have sufficient capacity to understand the stipulations of the minor's treatment, (ii) have expressed an interest in the minor's living in the

community and have agreed to abide by the minor's treatment plan, and (iii) are deemed to have the capacity to comply with the treatment plan and understand and adhere to conditions and requirements of the treatment and services; and

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

Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community and providers of the services have actually agreed to deliver the services.

B. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital, or other appropriate course of treatment as may be necessary to meet the needs of the minor. The community services board serving the area in which the minor resides shall recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment. Upon expiration of an order for mandatory outpatient treatment, the minor shall be released from the requirements of the order unless the order is continued in accordance with § 16.1-345.5.

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

D. No later than five business days after an order for mandatory outpatient treatment has been entered pursuant to this section, the community services board that is responsible for monitoring compliance with the order shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided to the minor, (ii) identify the provider that has agreed to provide each service included in the plan, (iii) certify that the services are the most appropriate and least restrictive treatment available for the minor, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department of Behavioral Health and Developmental Services' licensing regulations, (v) be developed with the fullest involvement and participation of the minor and his parents and reflect their preferences to the greatest extent possible to support the minor's recovery and self-determination, (vi) specify the particular conditions with which the minor shall be required to comply, and (vii) describe how the community services board shall monitor the minor's compliance with the plan and report any material noncompliance with the plan. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment.

E. If the community services board responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the minor's mental illness are not available or cannot be provided to the minor in accordance with the order for mandatory outpatient treatment, it shall notify the court within five business days of the entry of the order for mandatory outpatient treatment. Within five business days of receiving such notice, the judge, after notice to the minor, the minor's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan, shall hold a hearing pursuant to § 16.1-345.4.

F. Upon entry of any order for mandatory outpatient treatment, the clerk of the court shall provide a copy of the order to the minor who is the subject of the order, his parents, his attorney, his guardian ad litem, and the community services board required to monitor his compliance with the plan. The community services board shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose.

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

§ 16.1-345.5. Continuation of mandatory outpatient treatment order.

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

B. The court shall grant the motion for review and enter an appropriate order without further hearing if it is joined by ~~(i)~~ the minor's parents ~~and the minor if he is 14 years of age or older, or (ii) the minor's parents if the minor is younger than 14 years of age~~. If the minor's parents ~~and the minor, if necessary,~~ do not join the motion, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 16.1-345.4.

C. Upon receipt of the motion for review, the court shall appoint a qualified evaluator who shall personally examine the minor pursuant to § 16.1-342. The community services board required to monitor the minor's compliance with the mandatory outpatient treatment order shall provide a preadmission screening report as required in § 16.1-340.4.

D. After observing the minor, reviewing the preadmission screening report, and considering the appointed qualified evaluator's report and any other relevant evidence referenced in § 16.1-345 and subsection A of § 16.1-345.2, the court may make one of the dispositions specified in subsection D of § 16.1-345.4. If the court finds that a continued period of mandatory outpatient treatment is warranted, it may continue the order for a period not to exceed 90 days. Any order of mandatory outpatient treatment that is in effect at the time a motion for review for the continuation of the order is filed shall remain in effect until the court enters a subsequent order in the case.

E. For the purposes of this section, the "court" shall not include a special justice as authorized in § 37.2-803.

2. That § 16.1-339 of the Code of Virginia is repealed.