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**HOUSE BILL NO. 478**

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
 (Proposed by the Senate Committee on Education and Health  
 on February 20, 2014)

(Patrons Prior to Substitute—Delegates Villanueva, Bell, Robert B. [HB 294], Mason [HB 621], O'Bannon  
 HB [583], and Yost [HB 242])

*A BILL to amend and reenact §§ 19.2-169.6, 19.2-182.9, 37.2-808, 37.2-809, 37.2-814 and 37.2-817.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 37.2-308.1 and 37.2-809.1, relating to emergency custody; duration; temporary detention; duration; facility of temporary detention; acute psychiatric bed registry.*

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

**1. That §§ 19.2-169.6, 19.2-182.9, 37.2-808, 37.2-809, 37.2-814 and 37.2-817.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 37.2-308.1 and 37.2-809.1 as follows:**

**§ 19.2-169.6. 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 a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809. After considering the evaluation of the employee or designee of the local community services board or behavioral health authority, and any other information presented, and finding that probable cause exists to meet the criteria, the magistrate may issue a temporary detention order in accordance with the applicable procedures specified in §§ 37.2-809

60 through 37.2-813. The person having custody over the inmate shall notify the court having jurisdiction  
61 over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention pursuant to a  
62 temporary detention order or as soon thereafter as is reasonable.

63 Upon detention pursuant to this subdivision, a hearing shall be held either (a) before the court having  
64 jurisdiction over the inmate's case or (b) before a district court judge or a special justice, as defined in  
65 § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate  
66 shall be represented by counsel as specified in § 37.2-814. The hearing shall be held ~~within 48~~ *no less*  
67 *than 24 hours and no more than 72 hours* ~~of~~ *after* execution of the temporary detention order issued  
68 pursuant to this subdivision. If the ~~48-hour~~ 72-hour period terminates on a Saturday, Sunday, legal  
69 holiday, or day on which the court is lawfully closed, the inmate may be detained until the close of  
70 business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is  
71 lawfully closed. Any employee or designee of the local community services board or behavioral health  
72 authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission  
73 screening report shall attend the hearing in person or, if physical attendance is not practicable, shall  
74 participate in the hearing through a two-way electronic video and audio communication system as  
75 authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services  
76 board or behavioral health authority that prepared the preadmission screening report, and it is not  
77 practicable for a representative of the board or authority to attend or participate in the hearing,  
78 arrangements shall be made by the board or authority for an employee or designee of the board or  
79 authority serving the area in which the hearing is held to attend or participate on behalf of the board or  
80 authority that prepared the preadmission screening report. The judge or special justice conducting the  
81 hearing may order the inmate hospitalized if, after considering the examination conducted in accordance  
82 with § 37.2-815, the preadmission screening report prepared in accordance with § 37.2-816, and any  
83 other available information as specified in subsection C of § 37.2-817, he finds by clear and convincing  
84 evidence that (1) the inmate has a mental illness; (2) there exists a substantial likelihood that, as a result  
85 of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others  
86 as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information,  
87 if any; and (3) the inmate requires treatment in a hospital rather than a local correctional facility. The  
88 examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available  
89 whenever possible for questioning during the hearing through a two-way electronic video and audio or  
90 telephonic communication system as authorized in § 37.2-804.1. The examination and the preadmission  
91 screening report shall be admitted into evidence at the hearing.

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

95 C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the  
96 court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the  
97 inmate's competency to stand trial and his mental state at the time of the offense pursuant to  
98 §§ 19.2-169.1 and 19.2-169.5.

99 D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court  
100 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in  
101 § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the  
102 provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a  
103 court other than the court which has jurisdiction over his criminal case, the facility at which the inmate  
104 is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in  
105 the criminal case, if the case is still pending.

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

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

119 G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an  
120 inmate who is the subject of a proceeding under this section, upon request, shall disclose to a  
121 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~~. *The hearing shall be held no less than 24 hours and no more than 72 hours after execution of the temporary detention order.* 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

183 revoke the acquittee's conditional release and place him in the custody of the Commissioner.

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

193 **§ 37.2-308.1. Acute psychiatric bed registry.**

194 A. The Department shall develop and administer a web-based acute psychiatric bed registry to  
195 collect, aggregate, and display information about available acute beds in public and private inpatient  
196 psychiatric facilities and public and private residential crisis stabilization units to facilitate the  
197 identification and designation of facilities for the temporary detention and treatment of individuals who  
198 meet the criteria for temporary detention pursuant to § 37.2-809.

199 B. The acute psychiatric bed registry created pursuant to subsection A shall:

200 1. Include descriptive information for every public and private inpatient psychiatric facility and every  
201 public and private crisis stabilization unit in the Commonwealth, including contact information for the  
202 facility;

203 2. Provide information about the number of beds available at each facility and, for each available  
204 bed, the type of patient that may be admitted, the level of security provided, and any other information  
205 that may be necessary to allow employees or designees of community services boards and employees of  
206 inpatient psychiatric facilities to identify appropriate facilities for detention and treatment of individuals  
207 who are subject to the civil admission process; and

208 3. Allow employees and designees of community services boards and employees of inpatient  
209 psychiatric facilities to perform searches of the registry to identify available beds that are appropriate  
210 for the detention and treatment of individuals who meet the criteria for temporary detention.

211 C. Every state facility, community services board, behavioral health authority, and inpatient private  
212 provider licensed by the Department shall participate in the acute psychiatric bed registry established  
213 pursuant to subsection A and shall designate an employee to serve as site administrator and a point of  
214 contact for the Department. Information reported to the acute psychiatric bed registry shall be updated  
215 at least daily in order to provide as current information as practicable.

216 D. The Commissioner may enter into a contract with a private entity for the development and  
217 administration of the acute psychiatric bed registry established pursuant to subsection A.

218 **§ 37.2-808. Emergency custody; issuance and execution of order.**

219 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician,  
220 or upon his own motion, an emergency custody order when he has probable cause to believe that any  
221 person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental  
222 illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
223 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if  
224 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide  
225 for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to  
226 volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order  
227 entered pursuant to this section shall provide for the disclosure of medical records pursuant to  
228 § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

236 B. Any person for whom an emergency custody order is issued shall be taken into custody and  
237 transported to a convenient location to be evaluated to determine whether the person meets the criteria  
238 for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment.  
239 The evaluation shall be made by a person designated by the community services board who is skilled in  
240 the diagnosis and treatment of mental illness and who has completed a certification program approved  
241 by the Department.

242 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement  
243 agency and jurisdiction to execute the emergency custody order and provide transportation. However, in  
244 cases in which the emergency custody order is based upon a finding that the person who is the subject

of the order 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, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs but there is no substantial likelihood that the person will cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, the magistrate shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person 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 person's treating physician, if any; or other persons who are available and have knowledge of the person, 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 person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the person 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 person 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 person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person 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 person to the facility or location to which the person 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 person and others from harm, (ii) is actually capable of providing the level of security necessary to protect the person 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 person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person 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~~ 24 hours from the time the law-enforcement officer takes the person 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 person can be temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if necessary.~~

H. A law-enforcement officer who is transporting a person 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 person 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 person 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 person meets the criteria for emergency custody as stated in this section. The period of custody shall not exceed ~~four~~ 24 hours from the time the law-enforcement officer takes the person 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) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809, or (b) 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 person in his custody as provided in this section.

J. The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed ~~four~~ 24 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 person can be temporarily detained pursuant to § 37.2-809 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 local community services board as defined in § 37.2-809, treating physician, or law-enforcement officer may request the two-hour extension.~~

K. If an emergency custody order is not executed within ~~six~~ 24 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 persons with mental illnesses while in emergency custody.

**§ 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 *in accordance with the provisions of § 37.2-809.1* 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 hours prior to~~ *in no case shall a hearing be held less than 24 hours or more than 72 hours after execution of the temporary detention order.* If the ~~48-hour~~ 72-hour period herein specified terminates on a Saturday, Sunday, or 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, or legal holiday, *or day on which the court is lawfully closed.* 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 Executive Secretary of the Supreme Court of Virginia 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 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 onsite treating physician of his recommendation.

**§ 37.2-809.1. Facility of temporary detention.**

A. An individual for whom a temporary detention order is issued in accordance with the provisions of § 37.2-809 shall be detained in a public or private facility identified by an employee or designee of the community services board, provided such facility is able to provide temporary detention and appropriate care for the individual.

B. In each case in which an employee or designee of the local community services board is required to make an evaluation of a person who is subject to an emergency custody order pursuant to subsection B of § 37.2-808 or is taken into custody pursuant to subsection G of § 37.2-808 and the person is found to meet the criteria for temporary detention, the employee or designee of the local community services board shall notify the Department if an appropriate facility of temporary detention for the person has not been identified within four hours of the issuance of the emergency custody order. The notification of the Department shall be made in a manner established by the Department.

C. In each case in which the Department receives notice that a facility of temporary detention has not been identified, the Department shall assist the local community services board in identifying an appropriate facility of temporary detention.

D. In each case in which a facility of temporary detention has not been identified by either the Department or the employee or designee of the local community services board within eight hours of issuance of an emergency custody order, the Department shall identify a facility operated by the Department to accept the person for temporary detention.

E. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the Board.

**§ 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 in no case shall the hearing for involuntary admission be held within 48 less than 24 hours or more than 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, or transporting 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.

**§ 37.2-817.2. Court review of mandatory outpatient treatment plan or discharge plan.**

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

B. If requested by the person, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan or discharge plan, or the original petitioner for the person's involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally examine the person and certify to the court whether or not he has probable cause to believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient treatment as specified in subsections C, C1, C2, and D of § 37.2-817. The examination shall include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not detained in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination, if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board. If the person refuses or fails to appear, the community services board shall notify the court, or a

552 magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination  
553 order and *capias* directing the primary law-enforcement agency in the jurisdiction where the person  
554 resides to transport the person to the examination. The person shall remain in custody until a temporary  
555 detention order is issued or until the person is released, but in no event shall the period exceed ~~four~~ 24  
556 hours.

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

562 D. After hearing the evidence regarding the person's material noncompliance with the mandatory  
563 outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following  
564 inpatient treatment and the person's current condition, and any other relevant information referenced in  
565 subsection C of § 37.2-817, the judge or special justice shall make one of the following dispositions:

566 1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary  
567 admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order  
568 the person's involuntary admission to a facility designated by the community services board for a period  
569 of treatment not to exceed 30 days;

570 2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment  
571 specified in subsection C1, C2, or D of § 37.2-817, and that a continued period of mandatory outpatient  
572 treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient  
573 treatment, making any necessary modifications that are acceptable to the community services board or  
574 treatment provider responsible for the person's treatment. In determining the appropriateness of  
575 outpatient treatment, the court may consider the person's material noncompliance with the previous  
576 mandatory treatment order; or

577 3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall  
578 rescind the order for mandatory outpatient treatment or order authorizing discharge to mandatory  
579 outpatient treatment following inpatient treatment.

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

582 **2. That the Governor's Task Force on Mental Health Services and Crisis Response created on**  
583 **December 10, 2013, by Executive Order 68 shall identify and examine issues related to the use of**  
584 **law enforcement in the involuntary admission process. The task force shall consider options to**  
585 **reduce the amount of resources needed to detain individuals during the emergency custody order**  
586 **period, including the amount of time spent providing transportation throughout the admission**  
587 **process. Such options shall include developing crisis stabilization units in all regions of the**  
588 **Commonwealth and contracting for retired officers to provide needed transportation. The task**  
589 **force shall report its findings and recommendations to the Governor and the General Assembly by**  
590 **October 1, 2014.**

591 **3. That the State Board of Behavioral Health and Developmental Services shall promulgate**  
592 **regulations to implement the provisions of this act to be effective within 280 days of its enactment.**

593 **4. That the provisions of this act shall not become effective unless an appropriation effectuating**  
594 **the purposes of this act is included in a general appropriation act passed in 2014 by the General**  
595 **Assembly that becomes law.**