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## SENATE BILL NO. 260

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee  
on March 8, 2014)

(Patron Prior to Substitute—Senator Deeds)

A *BILL to amend and reenact §§ 16.1-340, 16.1-340.1, 16.1-345.4, 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 16.1-340.1:1, 37.2-308.1, and 37.2-809.1, relating to emergency custody and temporary detention; duration; facility of temporary detention; acute psychiatric bed registry.*

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

**1. That §§ 16.1-340, 16.1-340.1, 16.1-345.4, 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 16.1-340.1:1, 37.2-308.1, and 37.2-809.1 as follows:**

**§ 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 delusory 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 delusory 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

60 minor into custody, and to transfer custody of the minor to the alternative transportation provider  
61 identified in the order. In such cases, a copy of the emergency custody order shall accompany the minor  
62 being transported pursuant to this section at all times and shall be delivered by the alternative  
63 transportation provider to the community services board or its designee responsible for conducting the  
64 evaluation. The community services board or its designee conducting the evaluation shall return a copy  
65 of the emergency custody order to the court designated by the magistrate as soon as is practicable.  
66 Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an  
67 order to the court may be accomplished electronically or by facsimile.

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

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

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

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

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

110 H. A law-enforcement officer who is transporting a minor who has voluntarily consented to be  
111 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial  
112 limits of the county, city, or town in which he serves may take such minor into custody and transport  
113 him to an appropriate location to assess the need for hospitalization or treatment without prior  
114 authorization when the law-enforcement officer determines (i) that the minor has revoked consent to be  
115 transported to a facility for the purpose of assessment or evaluation and (ii) based upon his observations,  
116 that probable cause exists to believe that the minor meets the criteria for emergency custody as stated in  
117 this section. The period of custody shall not exceed ~~four~~ eight hours from the time the law-enforcement  
118 officer takes the minor into custody. ~~However, upon a finding by a magistrate that good cause exists to~~  
119 ~~grant an extension, the magistrate shall issue an order extending the period of emergency custody one~~  
120 ~~time for an additional period not to exceed two hours. Good cause for an extension includes the need~~  
121 ~~for additional time to allow (a) 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) a medical evaluation of the person to be completed if necessary.

I. A representative of the primary law-enforcement agency specified to execute an emergency custody order or a representative of the law-enforcement agency employing a law-enforcement officer who takes a person into custody pursuant to subsection G or H shall notify the community services board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after execution of the emergency custody order or after the person has been taken into custody pursuant to subsection G or H.

J. 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.

K. 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~~ eight 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.

L. If an emergency custody order is not executed within six ~~eight~~ 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.

M. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if the minor is detained in a state facility pursuant to subsection D of § 16.1-340.1, the state facility and an employee or designee of the community services board may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the minor.

N. 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 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 irreparable 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 delusory 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 *in accordance with the provisions of § 16.1-340.1:1* 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. *Subject to the provisions of § 16.1-340.1:1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall be detained in a state facility for the treatment of minors with mental illness and such facility shall be 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.

**§ 16.1-340.1:1. Facility of temporary detention.**

A. In each case in which an employee or designee of the local community services board is required to make an evaluation of a minor pursuant to subsection B, G, or H of § 16.1-340, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the minor will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 16.1-340. Upon completion of the evaluation, the employee or designee of the local community services board shall convey to the state facility information about the minor necessary to allow the state facility to determine the services the minor will require upon admission.

B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to provide temporary detention and appropriate care to the minor, which may include another state facility if the state facility notified in accordance with subsection A is unable to provide temporary detention and appropriate care for the minor. Under no circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for temporary detention pursuant to § 16.1-340.1 unless an alternative facility that is able to provide temporary detention and appropriate care agrees to accept the minor for temporary detention, and the minor shall not during the duration of the temporary detention order be released from the custody of the community services board except for purposes of transporting the minor to the state facility or alternative facility in accordance with the provisions of § 16.1-340.2. If an alternative facility is identified and agrees to accept the minor for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the State Board of Behavioral Health and Developmental Services.

**§ 16.1-345.4. Court review of mandatory outpatient treatment plan.**

A. The juvenile and domestic relations district court judge shall hold a hearing within 15 days after receiving the motion for review of the mandatory outpatient treatment plan; however, if the fifteenth day is a Saturday, Sunday, ~~or~~ legal holiday, *or day on which the court is lawfully closed*, the hearing shall be held on the next day that is not a Saturday, Sunday, ~~or~~ legal holiday, *or day on which the court is lawfully closed*. If the minor is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 16.1-341. The clerk shall provide notice of the hearing to the minor, his parents, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order, and the original petitioner for the minor's involuntary treatment. If the minor is not represented by counsel, the judge shall appoint an attorney to represent the minor in this hearing and any subsequent hearings under § 16.1-345.5, giving consideration to appointing the attorney who represented the minor at the proceeding that resulted in the issuance of the mandatory outpatient treatment order. The judge shall also appoint a guardian ad litem for the minor. The community services board shall offer to arrange the minor's transportation to the hearing if the minor is not detained and has no other source of transportation.

B. If requested by the minor's parents, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan, or the original petitioner for the minor's involuntary treatment, the juvenile and domestic relations district court judge may order an evaluation and appoint a qualified evaluator in accordance with § 16.1-342 who shall personally examine the minor and certify to the court whether or not he has probable cause to believe that the minor meets the criteria for involuntary inpatient treatment or mandatory outpatient treatment as specified in § 16.1-345 and subsection A of § 16.1-345.2. The evaluator's report may be admitted into evidence without the appearance of the evaluator at the hearing if not objected to by the minor or his attorney. If the minor is not detained in an inpatient facility, the community services board shall arrange for the minor to be examined at a convenient location and time. The community services board shall offer to arrange for the minor's transportation to the examination, if the minor has no other source of transportation. If the minor refuses or fails to appear, the community services board shall notify the court, and the court shall issue a mandatory examination order and a civil show cause summons. The return date for the civil show cause summons shall be set on a date prior to the review hearing scheduled pursuant to subsection A, and the examination of the minor shall be conducted immediately after the hearing thereon, but in no event shall the period for the examination exceed ~~four~~ eight hours.

C. If the minor fails to appear for the hearing, the juvenile and domestic relations district court judge shall, after consideration of any evidence from the minor, from his parents, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan regarding why the minor failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A,

306 (ii) issue an emergency custody order pursuant to § 16.1-340, or (iii) issue a temporary detention order  
307 pursuant to § 16.1-340.1.

308 D. After hearing the evidence regarding the minor's material noncompliance with the mandatory  
309 outpatient treatment order and the minor's current condition, and any other relevant information  
310 referenced in § 16.1-345 and subsection A of § 16.1-345.2, the juvenile and domestic relations district  
311 court judge may make one of the following dispositions:

312 1. Upon finding by clear and convincing evidence that the minor meets the criteria for involuntary  
313 admission and treatment specified in § 16.1-345, the judge shall order the minor's involuntary admission  
314 to a facility designated by the community services board for a period of treatment not to exceed 30  
315 days;

316 2. Upon finding that the minor continues to meet the criteria for mandatory outpatient treatment  
317 specified in subsection A of § 16.1-345.2, and that a continued period of mandatory outpatient treatment  
318 appears warranted, the judge may renew the order for mandatory outpatient treatment, making any  
319 necessary modifications that are acceptable to the community services board or treatment provider  
320 responsible for the minor's treatment. In determining the appropriateness of outpatient treatment, the  
321 court may consider the minor's material noncompliance with the previous mandatory treatment order; or

322 3. Upon finding that neither of the above dispositions is appropriate, the judge may rescind the order  
323 for mandatory outpatient treatment.

324 Upon entry of an order for involuntary inpatient admission, transportation shall be provided in  
325 accordance with § 16.1-345.

326 E. For the purposes of this section, "juvenile and domestic relations district court judge" shall not  
327 include a special justice as authorized by § 37.2-803.

328 **§ 19.2-169.6. Inpatient psychiatric hospital admission from local correctional facility.**

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

333 1. The court with jurisdiction over the inmate's case, if it is still pending, on the petition of the  
334 person having custody over an inmate or on its own motion, holds a hearing at which the inmate is  
335 represented by counsel and finds by clear and convincing evidence that (i) the inmate has a mental  
336 illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in  
337 the near future, cause serious physical harm to himself or others as evidenced by recent behavior  
338 causing, attempting, or threatening harm and other relevant information, if any; and (iii) the inmate  
339 requires treatment in a hospital rather than the local correctional facility. Prior to making this  
340 determination, the court shall consider the examination conducted in accordance with § 37.2-815 and the  
341 preadmission screening report prepared in accordance with § 37.2-816 and conducted in-person or by  
342 means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by  
343 an employee or designee of the local community services board or behavioral health authority who is  
344 skilled in the assessment and treatment of mental illness, who is not providing treatment to the inmate,  
345 and who has completed a certification program approved by the Department of Behavioral Health and  
346 Developmental Services as provided in § 37.2-809. The examiner appointed pursuant to § 37.2-815, if  
347 not physically present at the hearing, shall be available whenever possible for questioning during the  
348 hearing through a two-way electronic video and audio or telephonic communication system as authorized  
349 in § 37.2-804.1. Any employee or designee of the local community services board or behavioral health  
350 authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission  
351 screening report shall attend the hearing in person or, if physical attendance is not practicable, shall  
352 participate in the hearing through a two-way electronic video and audio communication system as  
353 authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services  
354 board or behavioral health authority that prepared the preadmission screening report, and it is not  
355 practicable for a representative of the board or authority to attend or participate in the hearing,  
356 arrangements shall be made by the board or authority for an employee or designee of the board or  
357 authority serving the area in which the hearing is held to attend or participate on behalf of the board or  
358 authority that prepared the preadmission screening report; or

359 2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to  
360 believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result  
361 of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others  
362 as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information,  
363 if any; and (iii) the inmate requires treatment in a hospital rather than a local correctional facility, and  
364 the magistrate issues a temporary detention order for the inmate. Prior to the filing of the petition, the  
365 person having custody shall arrange for an evaluation of the inmate conducted in-person or by means of  
366 a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an  
367 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 through 37.2-813. The person having custody over the inmate shall notify the court having jurisdiction over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention pursuant to a temporary detention order or as soon thereafter as is reasonable.

Upon detention pursuant to this subdivision, a hearing shall be held either (a) before the court having jurisdiction over the inmate's case or (b) before a district court judge or a special justice, as defined in § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within ~~48~~ 72 hours of execution of the temporary detention order issued pursuant to this subdivision. If the ~~48-hour~~ 72-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report. The judge or special justice conducting the hearing may order the inmate hospitalized if, after considering the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in accordance with § 37.2-816, and any other available information as specified in subsection C of § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) 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 (3) the inmate requires treatment in a hospital rather than a local correctional facility. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. The examination and the preadmission screening report shall be admitted into evidence at the hearing.

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

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

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

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

F. For any inmate who has been convicted and not yet sentenced, or who has been convicted of a

crime and is in the custody of a local correctional facility after sentencing, the time the inmate is confined in a hospital for psychiatric treatment shall be deducted from any term for which he may be sentenced to any penal institution, reformatory or elsewhere.

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

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

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

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

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

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



right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) (2) has mental illness or intellectual disability and is in need of inpatient hospitalization, the court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner.

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

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

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

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

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

2. Provide real-time information about the number of beds available at each facility or unit and, for each available bed, the type of patient that may be admitted, the level of security provided, and any other information that may be necessary to allow employees or designees of community services boards and employees of inpatient psychiatric facilities or public and private residential crisis stabilization units to identify appropriate facilities for detention and treatment of individuals who meet the criteria for temporary detention; and

3. Allow employees and designees of community services boards, employees of inpatient psychiatric facilities or public and private residential crisis stabilization units, and health care providers as defined in § 8.01-581.1 working in an emergency room of a hospital or clinic or other facility rendering emergency medical care to perform searches of the registry to identify available beds that are appropriate for the detention and treatment of individuals who meet the criteria for temporary detention.

C. Every state facility, community services board, behavioral health authority, and private inpatient provider licensed by the Department shall participate in the acute psychiatric bed registry established pursuant to subsection A and shall designate such employees as may be necessary to submit information for inclusion in the acute psychiatric bed registry and serve as a point of contact for addressing requests for information related to data reported to the acute psychiatric bed registry.

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

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

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any 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. Any emergency custody 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.

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 person, (3) any past mental health treatment of the person, (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 person for whom an emergency custody order is issued shall be taken into custody and

552 transported to a convenient location to be evaluated to determine whether the person meets the criteria  
553 for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment.  
554 The evaluation shall be made by a person designated by the community services board who is skilled in  
555 the diagnosis and treatment of mental illness and who has completed a certification program approved  
556 by the Department.

557 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement  
558 agency and jurisdiction to execute the emergency custody order and provide transportation. However, in  
559 cases in which the emergency custody order is based upon a finding that the person who is the subject  
560 of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental  
561 illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect  
562 himself from harm or to provide for his basic human needs but there is no substantial likelihood that the  
563 person will cause serious physical harm to himself or others as evidenced by recent behavior causing,  
564 attempting, or threatening harm and other relevant information, the magistrate shall consider any request  
565 to authorize transportation by an alternative transportation provider in accordance with this section,  
566 whenever an alternative transportation provider is identified to the magistrate, which may be a person,  
567 facility, or agency, including a family member or friend of the person who is the subject of the order, a  
568 representative of the community services board, or other transportation provider with personnel trained  
569 to provide transportation in a safe manner, upon determining, following consideration of information  
570 provided by the petitioner; the community services board or its designee; the local law-enforcement  
571 agency, if any; the person's treating physician, if any; or other persons who are available and have  
572 knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative  
573 transportation provider, either in person or via two-way electronic video and audio or telephone  
574 communication system, that the proposed alternative transportation provider is available to provide  
575 transportation, willing to provide transportation, and able to provide transportation in a safe manner.  
576 When transportation is ordered to be provided by an alternative transportation provider, the magistrate  
577 shall order the specified primary law-enforcement agency to execute the order, to take the person into  
578 custody, and to transfer custody of the person to the alternative transportation provider identified in the  
579 order. In such cases, a copy of the emergency custody order shall accompany the person being  
580 transported pursuant to this section at all times and shall be delivered by the alternative transportation  
581 provider to the community services board or its designee responsible for conducting the evaluation. The  
582 community services board or its designee conducting the evaluation shall return a copy of the  
583 emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of  
584 an order to a law-enforcement officer or alternative transportation provider and return of an order to the  
585 court may be accomplished electronically or by facsimile.

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

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

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

611 F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county,  
612 city, or town in which he serves to any point in the Commonwealth for the purpose of executing an  
613 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~~ eight 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~~ eight 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. *A representative of the primary law-enforcement agency specified to execute an emergency custody order or a representative of the law-enforcement agency employing a law-enforcement officer who takes a person into custody pursuant to subsection G or H shall notify the community services board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after execution of the emergency custody order or after the person has been taken into custody pursuant to subsection G or H.*

K. 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~~ eight 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. L. Any person taken into emergency custody pursuant to this section shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures.~~

M. If an emergency custody order is not executed within ~~six~~ eight 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.

N. *In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and an employee or designee of the community services board as defined in § 37.2-809 may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual.*

~~L. O. 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.**

675 A. For the purposes of this section:

676 "Designee of the local community services board" means an examiner designated by the local  
677 community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has  
678 completed a certification program approved by the Department, (iii) is able to provide an independent  
679 examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has  
680 no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment  
681 interest in the facility detaining or admitting the person under this article, and (vii) except for employees  
682 of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

683 "Employee" means an employee of the local community services board who is skilled in the  
684 assessment and treatment of mental illness and has completed a certification program approved by the  
685 Department.

686 "Investment interest" means the ownership or holding of an equity or debt security, including shares  
687 of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or  
688 debt instruments.

689 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
690 upon his own motion and only after an evaluation conducted in-person or by means of a two-way  
691 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a  
692 designee of the local community services board to determine whether the person meets the criteria for  
693 temporary detention, a temporary detention order if it appears from all evidence readily available,  
694 including any recommendation from a physician or clinical psychologist treating the person, that the  
695 person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental  
696 illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
697 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if  
698 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide  
699 for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to  
700 volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider  
701 the recommendations of any treating or examining physician licensed in Virginia if available either  
702 verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to  
703 this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection  
704 shall not preclude any other disclosures as required or permitted by law.

705 C. When considering whether there is probable cause to issue a temporary detention order, the  
706 magistrate may, in addition to the petition, consider (i) the recommendations of any treating or  
707 examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person,  
708 (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical  
709 records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the  
710 affidavit, and (vii) any other information available that the magistrate considers relevant to the  
711 determination of whether probable cause exists to issue a temporary detention order.

712 D. A magistrate may issue a temporary detention order without an emergency custody order  
713 proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to  
714 subsection B if (i) the person has been personally examined within the previous 72 hours by an  
715 employee or a designee of the local community services board or (ii) there is a significant physical,  
716 psychological, or medical risk to the person or to others associated with conducting such evaluation.

717 E. An employee or a designee of the local community services board shall determine the facility of  
718 temporary detention *in accordance with the provisions of § 37.2-809.1* for all individuals detained  
719 pursuant to this section. ~~The facility of temporary detention shall be one that has been approved~~  
720 ~~pursuant to regulations of the Board.~~ The facility shall be identified on the preadmission screening report  
721 and indicated on the temporary detention order. *Subject to the provisions of § 37.2-809.1, if a facility of*  
722 *temporary detention cannot be identified by the time of the expiration of the period of emergency*  
723 *custody pursuant to § 37.2-808, the individual shall be detained in a state facility for the treatment of*  
724 *individuals with mental illness and such facility shall be indicated on the temporary detention order.*  
725 Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A  
726 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons  
727 charged with criminal offenses and shall remain in the custody of law enforcement until the person is  
728 either detained within a secure facility or custody has been accepted by the appropriate personnel  
729 designated by the facility identified in the temporary detention order. *The person detained or in custody*  
730 *pursuant to this section shall be given a written summary of the temporary detention procedures and the*  
731 *statutory protections associated with those procedures.*

732 F. Any facility caring for a person placed with it pursuant to a temporary detention order is  
733 authorized to provide emergency medical and psychiatric services within its capabilities when the facility  
734 determines that the services are in the best interests of the person within its care. The costs incurred as a  
735 result of the hearings and by the facility in providing services during the period of temporary detention  
736 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the

Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

G. The employee or the designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

H. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 48 72 hours prior to a hearing. If the ~~48-hour~~ 72-hour period herein specified terminates on a Saturday, Sunday, ~~or~~ legal holiday, ~~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. In each case in which an employee or designee of the local community services board as defined in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of § 37.2-808, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the individual will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808. Upon completion of the evaluation, the employee or designee of the local community services board shall convey to the state facility information about the individual necessary to allow the state facility to determine the services the individual will require upon admission.

B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual, which may include another state facility if the state facility notified in accordance with subsection A is unable to provide temporary detention and appropriate care for the individual. Under no circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary detention pursuant to § 37.2-809 unless an alternative facility that is able to provide temporary detention and appropriate care agrees to accept the individual for temporary detention and the individual shall not during the duration of the temporary detention order be released from the custody of the community services board except for purposes of transporting the individual to the state facility or alternative facility in accordance with the provisions of § 37.2-810. If an alternative facility is identified and agrees to accept the individual for temporary detention, the state facility shall notify the

798 community services board, and an employee or designee of the community services board shall  
799 designate the alternative facility on the prescreening report.

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

802 **§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to**  
803 **counsel; rights of petitioner.**

804 A. The commitment hearing for involuntary admission shall be held after a sufficient period of time  
805 has passed to allow for completion of the examination required by § 37.2-815, preparation of the  
806 preadmission screening report required by § 37.2-816, and initiation of mental health treatment to  
807 stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be  
808 held within 48 72 hours of the execution of the temporary detention order as provided for in § 37.2-809;  
809 however, if the 48-hour 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday,  
810 or day on which the court is lawfully closed, the person may be detained, as herein provided, until the  
811 close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the  
812 court is lawfully closed.

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

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

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

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

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

858 **§ 37.2-817.2. Court review of mandatory outpatient treatment plan or discharge plan.**

859 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, *or day on which the court is lawfully closed*, the hearing shall be held by 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*. 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 magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and *capias* directing the primary law-enforcement agency in the jurisdiction where the person resides to transport the person to the examination. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period exceed ~~four~~ eight hours.

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

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

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

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

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

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

**2. That an emergency exists and the provisions of § 37.2-308.1 as created by this act are in force**

921 from the passage of this act and that the remaining provisions of this act shall become effective in  
922 due course except as provided in the third enactment.

923 3. That the provisions of this act adding subsection M to § 16.1-340 and subsection N to § 37.2-808  
924 of the Code of Virginia shall expire on June 30, 2018.

925 4. That the Department of Behavioral Health and Developmental Services shall submit an annual  
926 report on or before June 30 of each year on the implementation of this act to the Governor and  
927 the Chairmen of the House Appropriations and Senate Finance Committees. The report shall  
928 include the number of notifications of individuals in need of facility services by the community  
929 services boards, the number of alternative facilities contacted by community services boards and  
930 state facilities, the number of temporary detentions provided by state facilities and alternative  
931 facilities, the length of stay in state facilities and alternative facilities, and the cost of the  
932 detentions in state facilities and alternative facilities.

933 5. That the Governor's Task Force on Improving Mental Health Services and Crisis Response  
934 created on December 10, 2013, by Executive Order 68 shall identify and examine issues related to  
935 the use of law enforcement in the involuntary admission process. The task force shall consider  
936 options to reduce the amount of resources needed to detain individuals during the emergency  
937 custody order period, including the amount of time spent providing transportation throughout the  
938 admission process. Such options shall include developing crisis stabilization units in all regions of  
939 the Commonwealth and contracting for retired officers to provide needed transportation. The task  
940 force shall report its findings and recommendations to the Governor and the General Assembly by  
941 October 1, 2014.