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SENATE BILL NO. 439

AMENDMENT IN THE NATURE OF A SUBSTITUTE

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

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact §§ 19.2-169.6, 19.2-182.9, 37.2-809, 37.2-814, and 37.2-817 of the Code of Virginia, relating to temporary detention; duration; mandatory outpatient treatment.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.6, 19.2-182.9, 37.2-809, 37.2-814, and 37.2-817 of the Code of Virginia are amended and reenacted 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 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

60 jurisdiction over the inmate's case or (b) before a district court judge or a special justice, as defined in
61 § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate
62 shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within 48 72 hours
63 of execution of the temporary detention order issued pursuant to this subdivision. If the ~~48-hour~~ 72-hour
64 period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the
65 inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal
66 holiday, or day on which the court is lawfully closed. Any employee or designee of the local
67 community services board or behavioral health authority, as defined in § 37.2-809, representing the
68 board or authority that prepared the preadmission screening report shall attend the hearing in person or,
69 if physical attendance is not practicable, shall participate in the hearing through a two-way electronic
70 video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside
71 the service area of the community services board or behavioral health authority that prepared the
72 preadmission screening report, and it is not practicable for a representative of the board or authority to
73 attend or participate in the hearing, arrangements shall be made by the board or authority for an
74 employee or designee of the board or authority serving the area in which the hearing is held to attend or
75 participate on behalf of the board or authority that prepared the preadmission screening report. The
76 judge or special justice conducting the hearing may order the inmate hospitalized if, after considering
77 the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in
78 accordance with § 37.2-816, and any other available information as specified in subsection C of
79 § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there
80 exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future,
81 cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
82 threatening harm and other relevant information, if any; and (3) the inmate requires treatment in a
83 hospital rather than a local correctional facility. The examiner appointed pursuant to § 37.2-815, if not
84 physically present at the hearing, shall be available whenever possible for questioning during the hearing
85 through a two-way electronic video and audio or telephonic communication system as authorized in
86 § 37.2-804.1. The examination and the preadmission screening report shall be admitted into evidence at
87 the hearing.

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

91 C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the
92 court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the
93 inmate's competency to stand trial and his mental state at the time of the offense pursuant to
94 §§ 19.2-169.1 and 19.2-169.5.

95 D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court
96 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
97 § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the
98 provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a
99 court other than the court which has jurisdiction over his criminal case, the facility at which the inmate
100 is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in
101 the criminal case, if the case is still pending.

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

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

115 G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an
116 inmate who is the subject of a proceeding under this section, upon request, shall disclose to a
117 magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed
118 pursuant to § 37.2-815, the community service board or behavioral health authority preparing the
119 preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional
120 facility any and all information that is necessary and appropriate to enable each of them to perform his
121 duties under this section. These health care providers and other service providers shall disclose to one

another health records and information where necessary to provide care and treatment to the inmate and to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local correctional facility shall be limited to information necessary to protect the sheriff or administrator of the local correctional facility and his employees, the inmate, or the public from physical injury or to address the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

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

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

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

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

The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee (i) (A) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) (B) 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

183 or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not
184 recognized at the time of emergency custody or detention, at the time his status as such is verified, the
185 provisions applicable to such persons shall be applied and the court hearing the matter shall notify the
186 committing court of the proceedings.

187 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

188 A. For the purposes of this section:

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

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

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

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

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

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

230 E. An employee or a designee of the local community services board shall determine the facility of
231 temporary detention for all individuals detained pursuant to this section. The facility of temporary
232 detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be
233 identified on the preadmission screening report and indicated on the temporary detention order. Except
234 as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of
235 § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged
236 with criminal offenses and shall remain in the custody of law enforcement until the person is either
237 detained within a secure facility or custody has been accepted by the appropriate personnel designated
238 by the facility identified in the temporary detention order.

239 F. Any facility caring for a person placed with it pursuant to a temporary detention order is
240 authorized to provide emergency medical and psychiatric services within its capabilities when the facility
241 determines that the services are in the best interests of the person within its care. The costs incurred as a
242 result of the hearings and by the facility in providing services during the period of temporary detention
243 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the
244 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.

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

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

B. At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an opportunity for voluntary admission. The district court judge or special justice shall advise the person whose involuntary admission is being sought that if the person chooses to be voluntarily admitted pursuant to § 37.2-805, such person will be prohibited from possessing ~~or~~, purchasing, *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

306 treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the
307 facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be
308 discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the
309 transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a
310 community services board as provided in § 37.2-805.

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

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

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

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

339 **§ 37.2-817. Involuntary admission and mandatory outpatient treatment orders.**

340 A. The district court judge or special justice shall render a decision on the petition for involuntary
341 admission after the appointed examiner has presented the report required by § 37.2-815, and after the
342 community services board that serves the county or city where the person resides or, if impractical,
343 where the person is located has presented a preadmission screening report with recommendations for that
344 person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may
345 constitute sufficient evidence upon which the district court judge or special justice may base his
346 decision. The examiner, if not physically present at the hearing, and the treating physician at the facility
347 of temporary detention shall be available whenever possible for questioning during the hearing through a
348 two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.

349 B. Any employee or designee of the local community services board, as defined in § 37.2-809,
350 representing the community services board that prepared the preadmission screening report shall attend
351 the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through
352 a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.
353 Where a hearing is held outside of the service area of the community services board that prepared the
354 preadmission screening report, and it is not practicable for a representative of the board to attend or
355 participate in the hearing, arrangements shall be made by the board for an employee or designee of the
356 board serving the area in which the hearing is held to attend or participate on behalf of the board that
357 prepared the preadmission screening report. The employee or designee of the local community services
358 board, as defined in § 37.2-809, representing the community services board that prepared the
359 preadmission screening report or attending or participating on behalf of the board that prepared the
360 preadmission screening report shall not be excluded from the hearing pursuant to an order of
361 sequestration of witnesses. The community services board that prepared the preadmission screening
362 report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send
363 the preadmission screening report through certified mail, personal delivery, facsimile with return receipt
364 acknowledged, or other electronic means to the community services board attending the hearing. Where
365 a community services board attends the hearing on behalf of the community services board that prepared
366 the preadmission screening report, the attending community services board shall inform the community
367 services board that prepared the preadmission screening report of the disposition of the matter upon the

conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means.

At least 12 hours prior to the hearing, the court shall provide to the community services board that prepared the preadmission screening report the time and location of the hearing. If the representative of the community services board will be present by telephonic means, the court shall provide the telephone number to the board.

C. After observing the person and considering (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 examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, including whether the person recently has been found unrestorably incompetent to stand trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) 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 (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an opportunity for the improvement of the person's condition have been investigated and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board that serves the county or city in which the person was examined as provided in § 37.2-816. If the community services board does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the person shall be released unless he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order, or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805 or is ordered to mandatory outpatient treatment pursuant to subsection D. Upon motion of the treating physician, a family member or personal representative of the person, or the community services board serving the county or city where the facility is located, the county or city where the person resides, or the county or city where the person receives treatment, a hearing shall be held prior to the release date of any involuntarily admitted person to determine whether such person should be ordered to mandatory outpatient treatment pursuant to subsection D upon his release if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (A) involuntarily admitted pursuant to this section or (B) the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814. A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a mandatory outpatient treatment order; however, if the 72-hour period expires on 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.

C1. In the order for involuntary admission, the judge or special justice may authorize the treating physician to discharge the person to mandatory outpatient treatment under a discharge plan developed pursuant to subsection C2, if the judge or special justice further finds by clear and convincing evidence that (i) the person has a history of lack of compliance with treatment for mental illness that at least twice within the past 36 months has resulted in the person being subject to an order for involuntary admission pursuant to subsection C; (ii) in view of the person's treatment history and current behavior, the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary inpatient treatment; (iii) as a result of mental illness, the person is unlikely to voluntarily participate in outpatient treatment unless the court enters an order authorizing discharge to mandatory outpatient treatment following inpatient treatment; and (iv) the person is likely to benefit from mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board, but shall not exceed 90 days. Upon expiration of the order for mandatory outpatient treatment, the person shall be released unless the order is continued in accordance with § 37.2-817.4.

C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as authorized pursuant to subsection C1, the treating physician shall determine, based upon his professional judgment, that (i) the person (a) in view of the person's treatment history and current behavior, no longer needs inpatient hospitalization, (b) requires mandatory outpatient treatment at the time of

429 discharge to prevent relapse or deterioration of his condition that would likely result in his meeting the
430 criteria for involuntary inpatient treatment, and (c) has agreed to abide by his discharge plan and has the
431 ability to do so; and (ii) the ordered treatment will be delivered on an outpatient basis by the community
432 services board or designated provider to the person. In no event shall the treating physician discharge a
433 person to mandatory outpatient treatment under a discharge plan as authorized pursuant to subsection C1
434 if the person meets the criteria for involuntary commitment set forth in subsection C. The discharge plan
435 developed by the treating physician and facility staff in conjunction with the community services board
436 and the person shall serve as and shall contain all the components of the comprehensive mandatory
437 outpatient treatment plan set forth in subsection G, and no initial mandatory outpatient treatment plan set
438 forth in subsection F shall be required. The discharge plan shall be submitted to the court for approval
439 and, upon approval by the court, shall be filed and incorporated into the order entered pursuant to
440 subsection C1. The discharge plan shall be provided to the person by the community services board at
441 the time of the person's discharge from the inpatient facility. The community services board where the
442 person resides upon discharge shall monitor the person's compliance with the discharge plan and report
443 any material noncompliance to the court in accordance with § 37.2-817.1.

444 D. After observing the person and considering (i) the recommendations of any treating or examining
445 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any
446 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records
447 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have
448 been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person
449 has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the
450 person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by
451 recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)
452 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic
453 human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an
454 opportunity for improvement of his condition have been investigated and are determined to be
455 appropriate; (c) the person has agreed to abide by his treatment plan and has the ability to do so; and
456 (d) the ordered treatment will be delivered on an outpatient basis by the community services board or
457 designated provider to the person, the judge or special justice shall by written order and specific findings
458 so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less
459 restrictive alternatives shall not be determined to be appropriate unless the services are actually available
460 in the community.

461 E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a
462 hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11
463 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of
464 the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of
465 any kind in the provision of the medication. The community services board that serves the county or
466 city in which the person resides shall recommend a specific course of treatment and programs for the
467 provision of mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be
468 determined by the court based on recommendations of the community services board, but shall not
469 exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be
470 released from the requirements of the order unless the order is continued in accordance with
471 § 37.2-817.4.

472 F. Any order for mandatory outpatient treatment entered pursuant to subsection D shall include an
473 initial mandatory outpatient treatment plan developed by the community services board that completed
474 the preadmission screening report. The plan shall, at a minimum, (i) identify the specific services to be
475 provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the
476 arrangements made for the initial in-person appointment or contact with each service provider, and (iv)
477 include any other relevant information that may be available regarding the mandatory outpatient
478 treatment ordered. The order shall require the community services board to monitor the implementation
479 of the mandatory outpatient treatment plan and report any material noncompliance to the court.

480 G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for
481 mandatory outpatient treatment has been entered pursuant to subsection D, the community services board
482 where the person resides that is responsible for monitoring compliance with the order shall file a
483 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment
484 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided
485 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)
486 certify that the services are the most appropriate and least restrictive treatment available for the person,
487 (iv) certify that each provider has complied and continues to comply with applicable provisions of the
488 Department's licensing regulations, (v) be developed with the fullest possible involvement and
489 participation of the person and his family, with the person's consent, and reflect his preferences to the
490 greatest extent possible to support his recovery and self-determination, (vi) specify the particular

conditions with which the person shall be required to comply, and (vii) describe how the community services board shall monitor the person's compliance with the plan and report any material noncompliance with the plan. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment.

H. If the community services board responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, it shall notify the court within five business days of the entry of the order for mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special justice, after notice to the person, the person's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to § 37.2-817.2.

I. Upon entry of any order for mandatory outpatient treatment entered pursuant to subsection D, the clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to the community services board required to monitor compliance with the plan. The community services board shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose *within five business days*.

J. The court may transfer jurisdiction of the case to the district court where the person resides at any time after the entry of the mandatory outpatient treatment order. The community services board responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan shall remain responsible for monitoring the person's compliance with the plan until the community services board serving the locality to which jurisdiction of the case has been transferred acknowledges the transfer and receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose. *The community services board serving the locality to which jurisdiction of the case has been transferred shall acknowledge the transfer and receipt of the order within five business days.*

K. Any 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.