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HOUSE BILL NO. 1693

Offered January 14, 2015

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A BILL to amend and reenact §§ 16.1-340, 16.1-340.2, 16.1-345, 37.2-808, 37.2-810, and 37.2-829 of the Code of Virginia, relating to civil admission process; alternative transportation.

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Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-340, 16.1-340.2, 16.1-345, 37.2-808, 37.2-810, and 37.2-829 of the Code of Virginia are amended and reenacted 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

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

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

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

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

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

95 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
96 probable cause to believe that a minor meets the criteria for emergency custody as stated in this section
97 may take that minor into custody and transport that minor to an appropriate location to assess the need
98 for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
99 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
100 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for
101 the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
102 custody shall not exceed eight hours from the time the law-enforcement officer takes the minor into
103 custody.

104 H. A law-enforcement officer who is transporting a minor who has voluntarily consented to be
105 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial
106 limits of the county, city, or town in which he serves may take such minor into custody and transport
107 him to an appropriate location to assess the need for hospitalization or treatment without prior
108 authorization when the law-enforcement officer determines (i) that the minor has revoked consent to be
109 transported to a facility for the purpose of assessment or evaluation and (ii) based upon his observations,
110 that probable cause exists to believe that the minor meets the criteria for emergency custody as stated in
111 this section. The period of custody shall not exceed eight hours from the time the law-enforcement
112 officer takes the minor into custody.

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

119 J. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from
120 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 eight hours from the time of execution.

L. If an emergency custody order is not executed within 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. (Expires June 30, 2018) 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.

O. No person who provides alternative transportation pursuant to this section shall be liable for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

§ 16.1-340.2. Transportation of minor in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the minor resides to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the order and provide transportation. However, 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 temporary detention order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order. In such cases, a copy of the temporary detention order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

The order may include transportation of the minor to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. 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. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

C. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

D. No person who provides alternative transportation pursuant to this section shall be liable for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

§ 16.1-345. Involuntary commitment; criteria.

After observing the minor and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any

182 past mental health treatment of the minor, (iv) any qualified evaluator's report, (v) any medical records
183 available, (vi) the preadmission screening report, and (vii) any other evidence that may have been
184 admitted, the court shall order the involuntary commitment of the minor to a mental health facility for
185 treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

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

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

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

195 Upon the expiration of an order for involuntary commitment, the minor shall be released unless he is
196 involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed
197 90 days from the date of the subsequent court order, or the minor or his parent rescinds the objection to
198 inpatient treatment and consents to admission pursuant to § 16.1-338 or subsection D of § 16.1-339 or
199 the minor is ordered to mandatory outpatient treatment pursuant to § 16.1-345.2.

200 A minor who has been hospitalized while properly detained by a juvenile and domestic relations
201 district court shall be returned to the detention home, shelter care, or other facility approved by the
202 Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained
203 within 24 hours following completion of a period of inpatient treatment, unless the court having
204 jurisdiction over the case orders that the minor be released from custody. However, such a minor shall
205 not be eligible for mandatory outpatient treatment.

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

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

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

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

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

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

No person who provides alternative transportation pursuant to this section shall be liable for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

§ 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 transported to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board 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 person who is the subject of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs but there is no substantial likelihood that the person will cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, the magistrate shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in

305 accordance with state and federal law. Transportation under this section shall include transportation to a
306 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the
307 emergency custody order may be detained requires a medical evaluation prior to admission.

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

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

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

331 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
332 probable cause to believe that a person meets the criteria for emergency custody as stated in this section
333 may take that person into custody and transport that person to an appropriate location to assess the need
334 for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
335 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
336 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for
337 the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
338 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into
339 custody.

340 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be
341 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial
342 limits of the county, city, or town in which he serves may take such person into custody and transport
343 him to an appropriate location to assess the need for hospitalization or treatment without prior
344 authorization when the law-enforcement officer determines (i) that the person has revoked consent to be
345 transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his
346 observations, that probable cause exists to believe that the person meets the criteria for emergency
347 custody as stated in this section. The period of custody shall not exceed eight hours from the time the
348 law-enforcement officer takes the person into custody.

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

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

358 K. The person shall remain in custody until a temporary detention order is issued, until the person is
359 released, or until the emergency custody order expires. An emergency custody order shall be valid for a
360 period not to exceed eight hours from the time of execution.

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

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

N. (Expires June 30, 2018) 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.

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.

P. No person who provides alternative transportation pursuant to this section shall be liable for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

§ 37.2-810. Transportation of person in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to provide transportation, to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation.

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

The order may include transportation of the person to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. 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. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

C. In cases in which an alternative facility of temporary detention is identified and the law-enforcement agency or alternative transportation provider identified to provide transportation in accordance with subsection B continues to have custody of the person, the local law-enforcement agency or alternative transportation provider shall transport the person to the alternative facility of temporary detention identified by the employee or designee of the community services board. In cases in which an alternative facility of temporary detention is identified and custody of the individual has been transferred from the law-enforcement agency or alternative transportation provider that provided transportation in accordance with subsection B to the initial facility of temporary detention, the employee or designee of

the community services board shall request, and a magistrate may enter an order specifying, an alternative transportation provider or, if no alternative transportation provider is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person resides or, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located, to provide transportation.

D. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

E. No person who provides alternative transportation pursuant to this section shall be liable for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

§ 37.2-829. Transportation of person in civil admission process.

When a person has volunteered for admission pursuant to § 37.2-814 or been ordered to be admitted to a facility under §§ 37.2-815 through 37.2-821, the judge or special justice shall determine after consideration of information provided by the person's treating mental health professional and any involved community services board or behavioral health authority staff regarding the person's dangerousness, whether transportation shall be provided by the sheriff or may be provided by an alternative transportation provider, including a family member or friend of the person, a representative of the community services board, a representative of the facility at which the person was detained pursuant to a temporary detention order, or other alternative transportation provider with personnel trained to provide transportation in a safe manner. If the judge or special justice determines that transportation may be provided by an alternative transportation provider, the judge or special justice may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. If the judge or special justice finds that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the judge or special justice may order transportation by the proposed alternative transportation provider. In all other cases, the judge or special justice shall order transportation by the sheriff of the jurisdiction where the person is a resident unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person.

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

If any state hospital has become too crowded to admit any such person, the Commissioner shall give notice of the fact to all community services boards and shall designate the facility to which sheriffs or alternative transportation providers shall transport such persons.

No person who provides alternative transportation pursuant to this section shall be liable for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.