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HOUSE BILL NO. 1693

House Amendments in [] - February 9, 2015

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.

Patron Prior to Engrossment—Delegate Bell, Robert B.

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 delusional 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 delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider

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

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

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

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

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

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

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

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

118 J. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from
119 obtaining emergency medical treatment or further medical evaluation at any time for a minor in his
120 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 [to the person being transported] 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 [to the person being transported] 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 past mental health treatment of the minor, (iv) any qualified evaluator's report, (v) any medical records

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

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

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

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

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

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

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

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

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

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

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

243 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 [to the person being transported] 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 accordance with state and federal law. Transportation under this section shall include transportation to a

305 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the
306 emergency custody order may be detained requires a medical evaluation prior to admission.

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

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

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

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

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

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

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

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

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

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

366 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 [to the person being transported] 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 [to the person being transported] 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 [to the person being transported] for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.