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HOUSE BILL NO. 811

Offered January 13, 2016

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A BILL to amend and reenact §§ 37.2-804.2, 37.2-809, 37.2-814, 37.2-817, and 37.2-817.2 of the Code of Virginia, relating to temporary detention and involuntary admission procedures.

 Patron—Bell, Robert B.

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-804.2, 37.2-809, 37.2-814, 37.2-817, and 37.2-817.2 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-804.2. Disclosure of records.

Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to this chapter shall, upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to § 37.2-815, the community services board or its designee performing any evaluation, preadmission screening, or monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant to this chapter. Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently evaluating or providing services to a person who is the subject of proceedings pursuant to this chapter shall disclose information that may be necessary for the treatment of such person to any other health care provider or other provider evaluating or providing services to or monitoring the treatment of the person. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider providing services to a person who is the subject of proceedings under this chapter ~~may~~ shall make a reasonable effort to notify the person's family member or personal representative, including any agent named in an advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.), of information that is directly relevant to such individual's involvement with the person's health care, which may include the person's location and general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, unless the provider has actual knowledge that the family member or personal representative is currently prohibited by court order from contacting the person.

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.

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

A. For the purposes of this section:

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

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

"Interested relative" means an individual's spouse, parent, grandparent, child, grandchild, brother, or sister, either by consanguinity or affinity.

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

B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way

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59 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a
60 designee of the local community services board to determine whether the person meets the criteria for
61 temporary detention, a temporary detention order if it appears from all evidence readily available,
62 including any recommendation from a physician or clinical psychologist treating the person, that the
63 person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental
64 illness, the person will, in the near future, (a) cause serious physical harm to himself or others as
65 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if
66 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide
67 for his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling to
68 volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also
69 consider, *if available*, the recommendations of (a) *the person's personal representative, including any*
70 *agent named in an advance directive executed in accordance with the Health Care Decisions Act (§*
71 *54.1-2981 et seq.), or any interested relative of the person and (b) any treating or examining physician*
72 *licensed in Virginia if available either verbally or in writing prior to rendering a decision. Any*
73 temporary detention order entered pursuant to this section shall provide for the disclosure of medical
74 records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or
75 permitted by law.

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

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

88 E. An employee or a designee of the local community services board shall determine the facility of
89 temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained
90 pursuant to this section. An employee or designee of the local community services board may change
91 the facility of temporary detention and may designate an alternative facility for temporary detention at
92 any point during the period of temporary detention if it is determined that the alternative facility is a
93 more appropriate facility for temporary detention of the individual given the specific security, medical,
94 or behavioral health needs of the person. In cases in which the facility of temporary detention is
95 changed following transfer of custody to an initial facility of temporary custody, transportation of the
96 individual to the alternative facility of temporary detention shall be provided in accordance with the
97 provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the
98 preadmission screening report and indicated on the temporary detention order; however, if an employee
99 or designee of the local community services board designates an alternative facility, that employee or
100 designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the
101 Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative
102 facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be
103 identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the
104 individual shall be detained in a state facility for the treatment of individuals with mental illness and
105 such facility shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for
106 inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall
107 not be detained in a jail or other place of confinement for persons charged with criminal offenses and
108 shall remain in the custody of law enforcement until the person is either detained within a secure facility
109 or custody has been accepted by the appropriate personnel designated by either the initial facility of
110 temporary detention identified in the temporary detention order or by the alternative facility of
111 temporary detention designated by the employee or designee of the local community services board
112 pursuant to this subsection. The person detained or in custody pursuant to this section shall be given a
113 written summary of the temporary detention procedures and the statutory protections associated with
114 those procedures.

115 F. Any facility caring for a person placed with it pursuant to a temporary detention order is
116 authorized to provide emergency medical and psychiatric services within its capabilities when the facility
117 determines that the services are in the best interests of the person within its care. The costs incurred as a
118 result of the hearings and by the facility in providing services during the period of temporary detention
119 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the
120 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 72 hours prior to a hearing. If the 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. The person may be released, pursuant to § 37.2-813, before the 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~~ If 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, ~~such employee or designee shall~~ (i) inform the petitioner ~~and, an onsite treating physician, and the person's personal representative, including any agent named in an advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.), or if no personal representative exists and the petitioner is not an interested relative of the person, the person's nearest interested relative~~ of his recommendation; (ii) include in the evaluation any available recommendations of the petitioner, the person's personal representative, any interested relative of the person, or any treating or examining physician that are contrary to the recommendations of the employee or designee; and (iii) upon request of the petitioner, the person's personal representative, or the person's nearest interested relative, arrange for the petitioner, the person's personal representative, or the person's nearest interested relative to communicate with the magistrate in person, by telephone, or by means of a two-way electronic video and audio communication system prior to the expiration of the period of emergency custody and before the magistrate acts on the petition. During any communications between the petitioner, the person's personal representative, or the person's nearest relative and the magistrate pursuant to clause (iii), the magistrate shall hear any available recommendations of the petitioner, the person's personal representative, the person's nearest relative, or any treating or examining physician and consider such recommendations pursuant to subsection B in making his determination to issue a temporary detention order. Nothing in this subsection shall require the employee or designee of the community services board to inform the person's personal representative or any interested relative of the person of his recommendation that the person should not be subject to a temporary detention order if he (a) is not aware of the existence of the person's personal representative or any interested relative of the person or (b) does not know how to contact the person's personal representative or any interested relative of the person.

§ 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 72 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, if the 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, purchasing, or transporting a firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then willing and capable of seeking voluntary admission for inpatient treatment. In determining whether a person is capable of consenting to voluntary admission, the judge or special justice may consider evidence regarding the person's past compliance or noncompliance with treatment. If the judge or special justice finds that the person is capable and willingly accepts voluntary admission for inpatient treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a community services board as provided in § 37.2-805.

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

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

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

F. The petitioner and the person's personal representative, including any agent named in an advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.), or if no personal representative exists and the petitioner is not an interested relative as defined in § 37.2-809 of the person, the nearest interested relative of the person, if any, shall be given adequate notice of the place, date, and time of the commitment hearing. ~~The petitioner~~ Any person given notice pursuant to this subsection shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. ~~The petitioner~~ Any person given notice pursuant to this subsection shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's, the personal representative's, or the nearest relative's failure to attend or testify during the hearing. Nothing in this subsection shall require that notice of the hearing be given to the person's personal representative or any interested relative of the person if it is not known (i) whether the person has a personal representative or any interested relative of the person or (ii) how to contact the person's personal representative or any interested relative of the person.

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

A. The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented the report required by § 37.2-815, and after the community services board that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report with recommendations for that person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient evidence upon which the district court judge or special justice may base his decision. The examiner, if not physically present at the hearing, and the treating physician at the facility of temporary detention 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.

B. Any employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board 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 or telephonic communication system as authorized in § 37.2-804.1. Where a hearing is held outside of the service area of the community services board that prepared the preadmission screening report, and it is not practicable for a representative of the board to attend or participate in the hearing, arrangements shall be made by the board for an employee or designee of the board serving the area in which the hearing is held to attend or participate on behalf of the board that prepared the preadmission screening report. The employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board that prepared the preadmission screening report or attending or participating on behalf of the board that prepared the preadmission screening report shall not be excluded from the hearing pursuant to an order of sequestration of witnesses. The community services board that prepared the preadmission screening report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board attending the hearing. Where a community services board attends the hearing on behalf of the community services board that prepared the preadmission screening report, the attending community services board shall inform the community 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) *the recommendations of the person's personal representative, including any agent named in an advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) or any interested relative as defined in § 37.2-809 of the person*, (iii) any past actions of the person, ~~(iii)~~ (iv) any past mental health treatment of the person, ~~(iv)~~ (v) any examiner's certification, ~~(v)~~ (vi) any health records available, ~~(vi)~~ (vii) the preadmission screening report, and ~~(vii)~~ (viii) 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 discharge to prevent relapse or deterioration of his condition that would likely result in his meeting the criteria for involuntary inpatient treatment, and (c) has agreed to abide by his discharge plan and has the ability to do so; and (ii) the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person. In no event shall the treating physician discharge a person to mandatory outpatient treatment under a discharge plan as authorized pursuant to subsection C1 if the person meets the criteria for involuntary commitment set forth in subsection C. The discharge plan developed by the treating physician and facility staff in conjunction with the community services board and the person shall serve as and shall contain all the components of the comprehensive mandatory outpatient treatment plan set forth in subsection G, and no initial mandatory outpatient treatment plan set forth in subsection F shall be required. The discharge plan shall be submitted to the court for approval and, upon approval by the court, shall be filed and incorporated into the order entered pursuant to subsection C1. The discharge plan shall be provided to the person by the community services board at the time of the person's discharge from the inpatient facility. The community services board where the person resides upon discharge shall monitor the person's compliance with the discharge plan and report any material noncompliance to the court in accordance with § 37.2-817.1.

D. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) *the recommendations of the person's personal representative, including any agent named in an advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) or any interested relative as defined in § 37.2-809 of the person*, (iii) any past actions of the person, ~~(iii)~~ (iv) any past mental health treatment of the person, ~~(iv)~~ (v) any examiner's certification, ~~(v)~~ (vi) any health records available, ~~(vi)~~ (vii) the preadmission screening report, and ~~(vii)~~ (viii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person 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, (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; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate; (c) the person has agreed to abide by his treatment plan and has the ability to do so; and (d) the ordered

367 treatment will be delivered on an outpatient basis by the community services board or designated
368 provider to the person, the judge or special justice shall by written order and specific findings so certify
369 and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive
370 alternatives shall not be determined to be appropriate unless the services are actually available in the
371 community.

372 E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a
373 hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11
374 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of
375 the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of
376 any kind in the provision of the medication. The community services board that serves the county or
377 city in which the person resides shall recommend a specific course of treatment and programs for the
378 provision of mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be
379 determined by the court based on recommendations of the community services board, but shall not
380 exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be
381 released from the requirements of the order unless the order is continued in accordance with §
382 37.2-817.4.

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

391 G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for
392 mandatory outpatient treatment has been entered pursuant to subsection D, the community services board
393 where the person resides that is responsible for monitoring compliance with the order shall file a
394 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment
395 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided
396 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)
397 certify that the services are the most appropriate and least restrictive treatment available for the person,
398 (iv) certify that each provider has complied and continues to comply with applicable provisions of the
399 Department's licensing regulations, (v) be developed with the fullest possible involvement and
400 participation of the person and his family, with the person's consent, and reflect his preferences to the
401 greatest extent possible to support his recovery and self-determination, (vi) specify the particular
402 conditions with which the person shall be required to comply, and (vii) describe how the community
403 services board shall monitor the person's compliance with the plan and report any material
404 noncompliance with the plan. The community services board shall submit the comprehensive mandatory
405 outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive
406 mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of
407 mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with
408 the court for review and attached to any order for mandatory outpatient treatment.

409 H. If the community services board responsible for developing the comprehensive mandatory
410 outpatient treatment plan determines that the services necessary for the treatment of the person's mental
411 illness are not available or cannot be provided to the person in accordance with the order for mandatory
412 outpatient treatment, it shall notify the court within five business days of the entry of the order for
413 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special
414 justice, after notice to the person, the person's attorney, and the community services board responsible
415 for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to
416 § 37.2-817.2.

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

423 J. The court may transfer jurisdiction of the case to the district court where the person resides at any
424 time after the entry of the mandatory outpatient treatment order. The community services board
425 responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan
426 shall remain responsible for monitoring the person's compliance with the plan until the community
427 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.

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

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

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

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

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

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

2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment specified in subsection C1, C2, or D of § 37.2-817, and that a continued period of mandatory outpatient treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient treatment, making any necessary modifications that are acceptable to the community services board or

490 treatment provider responsible for the person's treatment. In determining the appropriateness of
491 outpatient treatment, the court may consider the person's material noncompliance with the previous
492 mandatory treatment order; or

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

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

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