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## SENATE BILL NO. 1233

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health  
on February 2, 2017)

(Patron Prior to Substitute—Senator Chafin)

A BILL to amend and reenact §§ 37.2-804.2 and 37.2-808 through 37.2-810 of the Code of Virginia, relating to temporary detention; certified evaluators.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-804.2 and 37.2-808 through 37.2-810 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 or the certified evaluator 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 shall (i) inform the person that his 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.), will be notified 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, and (ii) make a reasonable effort to so notify the person's family member or personal representative, unless the provider has actual knowledge that the family member or personal representative is currently prohibited by court order from contacting the person. No health care provider shall be required to notify a person's family member or personal representative pursuant to this section if the health care provider has actual knowledge that such notice has been provided.

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.

§ 37.2-808. 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.

60 B. Any person for whom an emergency custody order is issued shall be taken into custody and  
61 transported to a convenient location to be evaluated to determine whether the person meets the criteria  
62 for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment.  
63 The evaluation shall be made by a person designated by the community services board who is skilled in  
64 the diagnosis and treatment of mental illness and who has completed a certification program approved  
65 by the Department. *If such person is not available to perform the evaluation within two hours of receipt*  
66 *of notification that an evaluation is required, the evaluation may be conducted by a certified evaluator*  
67 *as defined in § 37.2-809 on behalf of the community services board, provided that the facility at which*  
68 *the person is being detained is located in health planning district 1, 2, or 3.*

69 *If the evaluation is performed by a certified evaluator and the certified evaluator determines that the*  
70 *individual meets the criteria for temporary detention pursuant to § 37.2-809, the certified evaluator shall*  
71 *provide the local community services board with the results of the evaluation immediately after*  
72 *conducting the evaluation.*

73 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement  
74 agency and jurisdiction to execute the emergency custody order and provide transportation. However, the  
75 magistrate shall consider any request to authorize transportation by an alternative transportation provider  
76 in accordance with this section, whenever an alternative transportation provider is identified to the  
77 magistrate, which may be a person, facility, or agency, including a family member or friend of the  
78 person who is the subject of the order, a representative of the community services board, or other  
79 transportation provider with personnel trained to provide transportation in a safe manner, upon  
80 determining, following consideration of information provided by the petitioner; the community services  
81 board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any;  
82 or other persons who are available and have knowledge of the person, and, when the magistrate deems  
83 appropriate, the proposed alternative transportation provider, either in person or via two-way electronic  
84 video and audio or telephone communication system, that the proposed alternative transportation  
85 provider is available to provide transportation, willing to provide transportation, and able to provide  
86 transportation in a safe manner. When transportation is ordered to be provided by an alternative  
87 transportation provider, the magistrate shall order the specified primary law-enforcement agency to  
88 execute the order, to take the person into custody, and to transfer custody of the person to the  
89 alternative transportation provider identified in the order. In such cases, a copy of the emergency  
90 custody order shall accompany the person being transported pursuant to this section at all times and  
91 shall be delivered by the alternative transportation provider to the community services board or its  
92 designee ~~responsible for conducting the evaluation~~. The community services board or its designee  
93 ~~conducting the evaluation~~ shall return a copy of the emergency custody order to the court designated by  
94 the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative  
95 transportation provider and return of an order to the court may be accomplished electronically or by  
96 facsimile.

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

102 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,  
103 the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the  
104 community services board that designated the person to perform the evaluation required in subsection B  
105 to execute the order and, in cases in which transportation is ordered to be provided by the primary  
106 law-enforcement agency, provide transportation. If the community services board serves more than one  
107 jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular  
108 jurisdiction within the community services board's service area where the person who is the subject of  
109 the emergency custody order was taken into custody or, if the person has not yet been taken into  
110 custody, the primary law-enforcement agency from the jurisdiction where the person is presently located  
111 to execute the order and provide transportation.

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

F. 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 an emergency custody order pursuant to this section.

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

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

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

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

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

L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency custody order issued pursuant to this section. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order, the person may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to § 37.2-1101, in accordance with subsection A of § 37.2-1104. Upon completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility in which the person is detained shall notify the nearest community services board, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

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

N. 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.

O. (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~~ *the* employee or designee of the community services board as ~~defined in~~ *charged with determining the facility of temporary detention in accordance with subsection E of* § 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.

P. 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.

Q. 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

183 from providing such alternative transportation.

184 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

185 A. For the purposes of this section:

186 *"Certified evaluator" means (i) an emergency physician or psychiatrist employed or contracted by the*  
187 *facility at which the person is being held for evaluation or (ii) a psychiatric nurse practitioner,*  
188 *psychiatric clinical nurse specialist, licensed clinical psychologist, licensed professional counselor, or*  
189 *licensed clinical social worker employed or contracted by the facility at which the person is being held*  
190 *for evaluation who (a) is skilled in the assessment and treatment of mental illness, (b) has completed a*  
191 *certification program approved by the Department, (c) is able to provide an independent examination of*  
192 *the person, (d) is not related by blood or marriage to the person being evaluated, (e) has no financial*  
193 *interest in the admission or treatment of the person being evaluated, and (f) has no investment interest*  
194 *in the facility's detaining or admitting the person under this article.*

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

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

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

208 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
209 upon his own motion and only after an evaluation conducted in-person or by means of a two-way  
210 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a  
211 designee of the local community services board *or certified evaluator pursuant to subsection B of*  
212 *§ 37.2-808 or subsection D* to determine whether the person meets the criteria for temporary detention, a  
213 temporary detention order if it appears from all evidence readily available, including any  
214 recommendation from a physician or clinical psychologist treating the person, that the person (i) has a  
215 mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person  
216 will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent  
217 behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer  
218 serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human  
219 needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling to volunteer or incapable of  
220 volunteering for hospitalization or treatment. The magistrate shall also consider, if available, (a)  
221 information provided by the person who initiated emergency custody and (b) the recommendations of  
222 any treating or examining physician licensed in Virginia either verbally or in writing prior to rendering a  
223 decision. Any temporary detention order entered pursuant to this section shall provide for the disclosure  
224 of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as  
225 required or permitted by law.

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

233 D. A magistrate may issue a temporary detention order without an emergency custody order  
234 proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to  
235 subsection B if (i) the person has been personally examined within the previous 72 hours by an  
236 employee or a designee of the local community services board *or a certified evaluator* or (ii) there is a  
237 significant physical, psychological, or medical risk to the person or to others associated with conducting  
238 such evaluation. *In any case in which the magistrate issues a temporary detention order without a prior*  
239 *evaluation pursuant to clause (i) and the examination of the person was performed by a certified*  
240 *evaluator, the magistrate shall contact the local community services board and inform such community*  
241 *services board of the magistrate's intention to issue a temporary detention order once a temporary*  
242 *detention facility is identified by the community services board.*

243 E. An employee or a designee of the local community services board shall determine the facility of  
244 temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained

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

F. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

G. The employee or the designee of the local community services board *or certified evaluator* 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, *or certified evaluator* 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. If the employee or designee of the community services board who is conducting the evaluation *or on whose behalf the evaluation is being conducted by a certified evaluator* pursuant to this section recommends that the person should not be subject to a temporary detention order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if such person is present, and an onsite treating physician of his recommendation; (ii) promptly inform such person who initiated emergency custody that the community services board will facilitate communication between the person and the magistrate if the person disagrees with recommendations of the employee or designee of the community services board who conducted the evaluation and the person who initiated emergency custody so requests; and (iii) upon prompt request made by the person who initiated emergency custody, arrange for such person who initiated emergency custody to communicate with the magistrate as soon as is practicable and prior to the expiration of the period of emergency custody. The magistrate shall consider any information provided by the person who initiated emergency custody and any recommendations of the treating or examining physician and the employee or designee of the community services board who conducted the evaluation *or on whose behalf the evaluation is being conducted by a certified evaluator* and consider such information and recommendations in accordance with subsection B in making his determination to issue a temporary detention order. The individual who is the subject of emergency custody shall remain in the custody of law enforcement or a designee of law enforcement and shall not be released from emergency custody until communication with the magistrate pursuant to this subsection has concluded and the magistrate has made a determination regarding issuance of a temporary detention order.

M. For purposes of this section, "person who initiated emergency custody" means any person who initiated the issuance of an emergency custody order pursuant to § 37.2-808 or a law-enforcement officer who takes a person into custody pursuant to subsection G of § 37.2-808.

**§ 37.2-809.1. Facility of temporary detention.**

A. In each case in which an employee or designee of the local community services board as defined in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of § 37.2-808, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the individual will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808.

*If the evaluation of an individual pursuant to subsection B, G, or H of § 37.2-808 is performed by a certified evaluator, an employee of the community services board shall, upon receipt of the results of the evaluation from the certified evaluator, contact the state facility for the area in which the community services board is located and notify the state facility that the individual will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808.* Upon completion of the evaluation *or the receipt of the results of the evaluation performed by a certified evaluator*, the employee or designee of the local community services board shall convey to the state facility information about the individual necessary to allow the state facility to determine the services the individual will require upon admission.

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

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

**§ 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, 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.