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HOUSE BILL NO. 918

Offered January 8, 2020

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A BILL to amend and reenact §§ 37.2-808 through 37.2-811, and 37.2-814 of the Code of Virginia, relating to emergency custody and temporary detention orders; execution.

Patron—Convirs-Fowler

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-808 through 37.2-811, and 37.2-814 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-808. Emergency custody; issuance and execution of order.

A. As used in this section, "execute" means to take the person who is the subject of an emergency custody order into custody and transport the person to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention and to assess the need for hospitalization or treatment.

B. 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. C. 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. D. 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, 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

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59 shall be delivered by the alternative transportation provider to the community services board or its
60 designee responsible for conducting the evaluation. The community services board or its designee
61 conducting the evaluation shall return a copy of the emergency custody order to the court designated by
62 the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative
63 transportation provider and return of an order to the court may be accomplished electronically or by
64 facsimile.

65 Transportation under this section shall include transportation to a medical facility as may be
66 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in
67 accordance with state and federal law. Transportation under this section shall include transportation to a
68 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the
69 emergency custody order may be detained requires a medical evaluation prior to admission. *If an*
70 *emergency custody order cannot be executed within the time period specified in subsection L due to the*
71 *duration of an emergency medical evaluation or medical treatment, the medical facility to which the*
72 *person has been transported shall notify the community services board responsible for conducting the*
73 *evaluation.*

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

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

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

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

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

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

118 ~~J. K.~~ A representative of the primary law-enforcement agency specified to execute an emergency
119 custody order or a representative of the law-enforcement agency employing a law-enforcement officer
120 who takes a person into custody pursuant to subsection G or H or I shall notify the community services

board responsible for conducting the evaluation required in subsection ~~B~~ C, ~~G~~ H, or ~~H~~ I 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 or I.

~~K~~ L. The person shall remain in the custody of the law-enforcement officer who executed the emergency custody order or, if the criteria set forth in subsection F have been met, the facility to which the person is transported for evaluation, 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~~ at which the person is taken into custody pursuant to the emergency custody order.

~~L~~ M. 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~~ N. 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~~ O. 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~~ P. In addition to the eight-hour period of emergency custody set forth in subsection ~~G~~, H, I, or ~~K~~, L, 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.

~~P~~ Q. 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~~ R. 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.

§ 37.2-809. 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.

"Execute" means to take the person who is the subject of a temporary detention order into custody, transport the person to the facility of temporary detention identified in the temporary detention order or to an alternate facility of temporary detention designated by the employee or designee of the local community services board, and transfer custody of the person to the facility of temporary detention.

"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 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the local community services board to determine whether the person meets the criteria for

182 temporary detention, a temporary detention order if it appears from all evidence readily available,
183 including any recommendation from a physician or clinical psychologist treating the person, that the
184 person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental
185 illness, the person will, in the near future, (a) cause serious physical harm to himself or others as
186 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if
187 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide
188 for his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling to
189 volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also
190 consider, if available, (a) information provided by the person who initiated emergency custody and (b)
191 the recommendations of any treating or examining physician licensed in Virginia either verbally or in
192 writing prior to rendering a decision. Any temporary detention order entered pursuant to this section
193 shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not
194 preclude any other disclosures as required or permitted by law.

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

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

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

234 *A physician at the facility of temporary detention may require a medical evaluation or treatment of*
235 *the person prior to admission. Such medical evaluation or treatment shall not exceed the assessment and*
236 *screening guidelines published by the Department, and no physician at a facility of temporary detention*
237 *shall deny admission unless the results of such assessment and screening indicate a medical condition*
238 *that would preclude the person from receiving standard psychiatric care at the facility of temporary*
239 *detention.*

240 F. Any facility caring for a person placed with it pursuant to a temporary detention order is
241 authorized to provide emergency medical and psychiatric services within its capabilities when the facility
242 determines that the services are in the best interests of the person within its care. The costs incurred as a
243 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 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 from the time the person is taken into custody and detained pursuant to the temporary detention order.~~ 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~~ *In cases in which a temporary detention order is not executed within 24 hours of its issuance and becomes void, 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 is *executed* 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. If the employee or designee of the community services board who is conducting the evaluation 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 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 or H 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, C, G, H, or I 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. Upon completion of the evaluation, 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. As used in this section, "execute" shall have the same meaning as in § 37.2-809.

B. 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- C. 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. *If a temporary*

detention order cannot be executed within the time period specified in subsection I of § 37.2-809 due to the duration of an emergency medical evaluation or medical treatment, the medical facility to which the person has been transported shall notify the employee or the designee of the local community services board that conducted the evaluation pursuant to § 37.2-809.

~~C.~~ D. 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~~ C 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~~ C 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.~~ E. 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.~~ F. 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.

§ 37.2-811. Emergency treatment of inmates in the custody of local correctional facilities.

A. In any case in which temporary detention is ordered pursuant to § 37.2-809 upon petition of a person having custody of an inmate in accordance with subdivision A 2 of § 19.2-169.6, the magistrate ~~executing~~ issuing the temporary detention order shall place the person in a hospital designated by the Commissioner as appropriate for treatment and evaluation of persons under a criminal charge or, if such facility is not available, the inmate shall be detained in a local correctional facility or other place of confinement for persons charged with criminal offenses and shall be transferred to such hospital as soon as possible thereafter.

B. The hearing shall be held, upon notice to the attorney for the inmate, either (i) before the court having jurisdiction over the inmate's case or (ii) before a district court judge or special justice in accordance with the provisions of § 37.2-820, in which case the inmate shall be represented by counsel as specified in § 37.2-814.

§ 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 time at which the person is taken into custody and detained~~ pursuant to 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

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

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

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

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

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