

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 221

An Act to amend and reenact §§ 37.2-817, 37.2-817.1, 37.2-817.2, and 37.2-817.4 of the Code of Virginia and to repeal § 37.2-817.3 of the Code of Virginia, relating to involuntary admission.

[H 2166]

Approved March 18, 2021

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-817, 37.2-817.1, 37.2-817.2, and 37.2-817.4 of the Code of Virginia are amended and reenacted as follows:

§ 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 *community services board that prepared the preadmission screening report* to attend or participate in the hearing, arrangements shall be made by the *community services board that prepared the preadmission screening report* for an employee or designee of the *community services board* serving the area in which the hearing is held to attend or participate on behalf of the *community services 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 *community services 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 *with documented acknowledgment of receipt* 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 *with documented acknowledgment of receipt*.

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 *that prepared the preadmission screening report* will be present by telephonic means, the court shall provide the telephone number to the *community services board*. *If a representative of a community services board will be attending the hearing on behalf of the community services board that prepared the preadmission screening report, the community services board that prepared the preadmission screening report shall promptly communicate the time and location of the hearing and, if the representative of the community services board attending on behalf of the community services board that prepared the preadmission screening report will be present by telephonic means, the telephone number to the attending community services 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) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) 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 (A) 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~~ (B) *he* makes application for treatment on a voluntary basis as provided for in § 37.2-805, or (C) *he* is ordered to mandatory outpatient treatment ~~pursuant to subsection D following a period of inpatient treatment. Upon motion of~~ *At any time prior to the discharge of a person who has been involuntarily admitted pursuant to this subsection, the person, the person's 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 will receive treatment; following discharge may file a motion with the court for 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 following a period of inpatient treatment pursuant to subsection C1 or D upon his release discharge if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (A) (I) involuntarily admitted pursuant to this section or (B) (II) the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814, except that such 36-month period shall not include any time during which the person was receiving inpatient psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing.* A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a hearing to determine whether the person should be ordered to mandatory outpatient treatment ~~order following a period of involuntary inpatient treatment~~; 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. *The district court judge or special justice may enter an order for a period of mandatory outpatient treatment following a period of involuntary inpatient treatment upon finding that the person meets the criteria set forth in subsection C1.*

C1. ~~In the an order for involuntary admission pursuant to subsection C, the judge or special justice may authorize the treating physician to also order that, upon discharge from inpatient treatment, the person to adhere to a comprehensive mandatory outpatient treatment under a discharge plan developed pursuant to subsection C2 plan, 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 adherence to treatment for mental illness that has, 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 or being subject to a temporary detention order and then voluntarily admitting himself in accordance with subsection B of § 37.2-814, except that such 36-month period shall not include any time during which the person was receiving inpatient psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing; (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 has the ability to adhere to the comprehensive mandatory outpatient treatment following inpatient treatment plan; and (iv) the person is likely to benefit from mandatory outpatient treatment. The duration of the period of inpatient treatment shall be determined by the court and the maximum period of inpatient treatment shall not exceed 30 days. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board, but and the maximum period of mandatory outpatient treatment shall not exceed 90 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment. The period of mandatory outpatient treatment shall begin upon discharge of the person from involuntary inpatient treatment, either upon expiration of the 30-day period or pursuant to § 37.2-837 or 37.2-838. The treating physician and facility staff shall develop the comprehensive~~

mandatory outpatient treatment plan in conjunction with the community services board and the person. The comprehensive mandatory outpatient treatment plan shall include all of the components described in, and shall be filed with the court and incorporated into, the order for mandatory outpatient treatment following a period of involuntary inpatient treatment in accordance with subsection G. The community services board where the person resides upon discharge shall monitor the person's progress and adherence to the comprehensive mandatory outpatient treatment plan. Upon expiration of the order for mandatory outpatient treatment following a period of involuntary inpatient 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. Prior to discharging a person to mandatory outpatient treatment under a discharge plan who has not executed an advance directive, the treating physician or his designee shall give to the person a written explanation of the procedures for executing an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an advance directive form, which may be the form set forth in § 54.1-2984. 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) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) 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, *as reflected in the initial outpatient treatment plan prepared in accordance with subsection F*; (c) the person has agreed to abide by his treatment plan and has the ability to do so *adhere to the mandatory outpatient treatment plan*; and (d) the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community. *The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board but shall not exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment. Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is continued in accordance with § 37.2-817.4.**

*E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of any kind in the provision of the medication. The community services board that serves the county or city in which the person resides shall recommend a specific course of treatment and programs for the provision of 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 an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is continued in accordance with § 37.2-817.4.

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

G. ~~No~~ Prior to discharging a person to mandatory outpatient treatment in accordance with an order for mandatory outpatient treatment following a period of involuntary inpatient treatment entered pursuant to subsection C1 or no later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered pursuant to subsection D, the community services board where the person resides that is responsible for monitoring ~~compliance with the order the person's progress and adherence to the comprehensive mandatory outpatient treatment plan~~ shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided to the person; (ii) identify the provider that has agreed to provide each service included in the plan; (iii) certify that the services are the most appropriate and least restrictive treatment available for the person; (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department's licensing regulations; (v) be developed with the fullest possible involvement and participation of the person and his family, with the person's consent, and reflect his preferences to the greatest extent possible to support his recovery and self-determination, including incorporating any preexisting crisis plan or advance directive of the person; (vi) specify the particular conditions ~~with to~~ which the person shall be required to ~~comply, and adhere;~~ and (vii) describe (a) how the community services board shall monitor the person's ~~compliance with progress and adherence to the plan and report any material noncompliance with the plan~~ (b) any conditions, including scheduled meetings or continued adherence to medication, necessary for mandatory outpatient treatment to be appropriate for the person. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment entered pursuant to subsection C1 or D, as appropriate. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment. A copy of the comprehensive mandatory outpatient treatment plan shall be provided to the person by the community services board upon approval of the comprehensive mandatory outpatient treatment plan by the court.

H. If the community services board responsible for developing ~~the a~~ comprehensive mandatory outpatient treatment plan pursuant to subsection C1 or D determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, it shall ~~notify petition~~ the court ~~within five business days of the entry of the order for rescission of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment in accordance with the provisions of § 37.2-817.2. Within two business days of receiving such notice, the judge or special justice, after notice to the person, the person's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to § 37.2-817.2.~~

I. Upon entry of any order for mandatory outpatient treatment *following a period of involuntary inpatient treatment pursuant to subsection C1 or mandatory outpatient treatment* entered pursuant to subsection D, the clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to the community services board required to monitor ~~compliance with the person's progress and adherence to the comprehensive mandatory outpatient treatment plan.~~ The community services board shall acknowledge 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 within five business days.

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

§ 37.2-817.1. Monitoring mandatory outpatient treatment.

A. As used in this section, "material nonadherence" means deviation from a comprehensive mandatory outpatient treatment plan by a person who is subject to an order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C1 of § 37.2-817 or an order for mandatory outpatient treatment pursuant to subsection D of § 37.2-817 that it is likely to lead to the person's relapse or deterioration and for which the person cannot provide a reasonable explanation.

B. The community services board where the person resides shall monitor the person's ~~compliance~~ with progress and adherence to the comprehensive mandatory outpatient treatment plan or discharge plan ordered by the court pursuant to prepared in accordance with § 37.2-817. Monitoring ~~compliance~~ Such monitoring shall include (i) contacting or making documented efforts to contact the person regarding the comprehensive mandatory outpatient treatment plan and any support necessary for the person to adhere to the comprehensive mandatory outpatient treatment plan, (ii) contacting the service providers to determine if the person is ~~complying with~~ adhering to the comprehensive mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment plan and (ii) notifying the court of the person's material noncompliance with the mandatory outpatient treatment order, in the event of material nonadherence, if the person fails or refuses to cooperate with efforts of the community services board or providers of services identified in the comprehensive mandatory outpatient treatment plan to address the factors leading to the person's material nonadherence, petitioning for a review hearing pursuant to § 37.2-817.2. Providers of services Service providers identified in the comprehensive mandatory outpatient treatment plan shall report any material ~~noncompliance~~ nonadherence and any material changes in the person's condition to the community services board. Any finding of material nonadherence shall be based upon a totality of the circumstances.

B. If the community services board determines that the person materially failed to comply with the order, it shall petition the court for a review of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment as provided in § 37.2-817.2. The community services board shall petition the court for a review of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment within three days of making that determination, or within 24 hours if the person is being detained under a temporary detention order, and shall recommend an appropriate disposition. Copies of the petition shall be sent to the person and the person's attorney.

C. The community services board responsible for monitoring the person's progress and adherence to the comprehensive mandatory outpatient treatment plan shall report monthly, in writing, to the court regarding the person's and the community services board's compliance with the provisions of the comprehensive mandatory outpatient treatment plan. If the community services board determines that the deterioration of the condition or behavior of a person is not materially complying with the who is subject to an order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C1 of § 37.2-817 or a mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment or for any other reason, and pursuant to subsection D of § 37.2-817 is such that there is a substantial likelihood that, as a result of the person's mental illness that, the person will, in the near future, (i) 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 (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, it shall immediately request that the magistrate issue an emergency custody order pursuant to § 37.2-808 or a temporary detention order pursuant to § 37.2-809. Entry of an emergency custody order, temporary detention order, or involuntary inpatient treatment order shall suspend but not rescind an existing order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C1 of § 37.2-817 or a mandatory outpatient treatment order pursuant to subsection D of § 37.2-817.

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

A. The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the comprehensive 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. 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~~ hearing under §§ 37.2-817.3 and this section or § 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~~ for mandatory outpatient treatment following a period of involuntary 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~~ for mandatory outpatient treatment following a period of involuntary inpatient treatment need not preside at the ~~noncompliance~~ nonadherence 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.

Any of the following may petition the court for a hearing pursuant to this subsection: (i) the person who is subject to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (ii) the community services board responsible for monitoring the person's progress and adherence to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (iii) a treatment provider designated in the comprehensive mandatory outpatient treatment plan; (iv) the person who originally filed the petition that resulted in the entry of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (v) any health care agent designated in the advance directive of the person who is the subject of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; or (vi) if the person who is the subject of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment has been determined to be incapable of making an informed decision, the person's guardian or other person authorized to make health care decisions for the person pursuant to § 54.1-2986.

A petition filed pursuant to this subsection may request that the court do any of the following:

1. Enforce a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment and require the person who is the subject of the order to adhere to the comprehensive mandatory outpatient treatment plan, in the case of material nonadherence, as defined in § 37.2-817.1;

2. Modify a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment or a comprehensive mandatory outpatient treatment plan due to a change in circumstances, including changes in the condition, behavior, living arrangement, or access to services of the person who is the subject to the order; or

3. Rescind a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment.

A person who is the subject of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment shall not (i) file a petition for rescission of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment unless at least 30 days have elapsed from the date on which the order was entered or (ii) file a petition for rescission of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment more than one time during any 90-day period.

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 in a petition filed pursuant to subsection A or on the court's own motion, the court shall may appoint an examiner in accordance with § 37.2-815 who shall personally examine the person on or before the date of the review, as directed by the court, 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, subsection C1, C2, and or D of § 37.2-817, as may be applicable. 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 incarcerated or receiving treatment 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~~ *may*, 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) dismiss the petition, (ii) issue an emergency custody order pursuant to § 37.2-808, or (iii) 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 and issue a subpoena for the person's appearance at the hearing and enter an order for mandatory examination, to be conducted prior to the hearing and in accordance with subsection B.~~

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~~ observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed to practice in the Commonwealth, if available; (ii) the person's adherence to the comprehensive mandatory outpatient treatment plan; (iii) any past mental health treatment of the person; (iv) any examiner's certification; (v) any health records available; (vi) any report from the community services board; and (vii) any other relevant evidence that may have been admitted at the hearing, 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 In a hearing on any petition seeking enforcement of a mandatory outpatient treatment order, 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 continuing mandatory outpatient treatment appears is warranted, the judge or special justice shall renew the order for mandatory outpatient treatment, making any necessary the court shall direct the person to fully comply with the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment and may make any modifications to such order or the comprehensive mandatory outpatient treatment plan that are acceptable to the community services board or treatment provider responsible for the person's treatment. In determining the appropriateness of the outpatient treatment specified in such order and the comprehensive mandatory outpatient treatment plan, the court may consider the person's material noncompliance with nonadherence to the previous existing mandatory treatment order; or.~~

2. In a hearing on any petition seeking modification of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment, upon a finding that (i) one or more modifications of the order would benefit the person and help prevent relapse or deterioration of the person's condition, (ii) the community services board and the treatment provider responsible for the person's treatment are able to provide services consistent with such modification, and (iii) the person is able to adhere to the modified comprehensive mandatory outpatient treatment plan, the court may order such modification of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment or the comprehensive mandatory outpatient treatment plan as the court finds appropriate.

3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall rescind the order for mandatory outpatient treatment or order authorizing discharge to mandatory outpatient treatment following inpatient treatment. In a hearing on any petition filed to enforce, modify, or rescind a mandatory outpatient treatment order, upon finding that mandatory outpatient treatment is no longer appropriate, the court may rescind the order.

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

E. The judge or special justice may schedule periodic status hearings for the purpose of obtaining information regarding the person's progress while the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment remains in effect. The clerk shall provide notice of the hearing to the person who is the subject of the order and the community services board responsible for monitoring the person's condition and adherence to the plan. The person shall have the right to be represented by counsel at the hearing, and if the person does not have counsel the court shall appoint an attorney to represent the person. However, status hearings may be held without counsel present by mutual consent of the parties. 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. During a status hearing, the treatment plan may be amended upon mutual agreement of the parties. Contested matters shall not be decided during a status hearing, nor shall any decision regarding enforcement, rescission, or renewal of the order be entered.

§ 37.2-817.4. Continuation of mandatory outpatient treatment order.

A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order or

order authorizing discharge to for mandatory outpatient treatment following a period of involuntary inpatient treatment, the community services board that is required to monitor the person's compliance with the order, the treating physician, or other responsible person any person or entity that may file a petition for review of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection A of § 37.2-817.2 may petition the court to continue the order for a period not to exceed 180 days.

B. If the person who is the subject of the order and the monitoring community services board, if it did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate order without further hearing. If either the person or the monitoring community services board does not join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2.

C. Upon receipt of ~~the~~ a contested petition for continuation, the court shall appoint an examiner who shall personally examine the person pursuant to subsection B of § ~~37.2-815~~ 37.2-817.2. The community services board required to monitor the person's compliance with adherence to the mandatory outpatient treatment order or order authorizing discharge to for mandatory outpatient treatment following a period of involuntary inpatient treatment shall provide a preadmission screening report as required in § ~~37.2-816~~ addressing whether the person continues to meet the criteria for being subject to a mandatory outpatient treatment order pursuant to subsection D of § 37.2-817 or order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C1 of § 37.2-817, as may be appropriate.

D. If, after observing the person, reviewing the preadmission screening report of the community services board provided pursuant to subsection C and considering the appointed examiner's certification and any other relevant evidence, including any relevant evidence referenced in subsection D of § 37.2-817, the court shall make one of the dispositions specified in subsection D of § 37.2-817.2. If the court finds that a continued period of mandatory outpatient treatment is warranted submitted at the hearing, the court finds that the person continues to meet the criteria for mandatory outpatient treatment pursuant to subsection C1 or D of § 37.2-817, it may continue the order for a period not to exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment. Any order of mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is filed shall remain in effect until the disposition of the hearing.

2. That § 37.2-817.3 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on July 1, 2022.