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SENATE BILL NO. 1512

Offered January 20, 2023

A BILL to amend and reenact §§ 37.2-800, 37.2-804.2, 37.2-808 through 37.2-810, 37.2-814, 37.2-816, 37.2-817, and 37.2-1104 of the Code of Virginia, relating to temporary detention; certified evaluators; report.

Patron—Mason

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-800, 37.2-804.2, 37.2-808 through 37.2-810, 37.2-814, 37.2-816, 37.2-817, and 37.2-1104 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-800. Applicability of chapter.

For the purposes of this chapter, whenever the term mental illness appears, it shall include substance abuse. Whenever the term responsible person appears, it shall include a family member as that term is defined in § 37.2-100, a community services board or behavioral health authority, any treating physician of the person, a *certified evaluator*, or a law-enforcement officer. Whenever the term community services board or board appears, it shall include behavioral health authority.

§ 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 a *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, or a court may issue pursuant to § 19.2-271.6, 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

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59 hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide
60 for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any
61 other disclosures as required or permitted by law.

62 When considering whether there is probable cause to issue an emergency custody order, the
63 magistrate may, in addition to the petition, or the court may pursuant to § 19.2-271.6, consider (1) the
64 recommendations of any treating or examining physician or psychologist licensed in Virginia, if
65 available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any
66 relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness
67 is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate
68 or the court considers relevant to the determination of whether probable cause exists to issue an
69 emergency custody order.

70 B. Any person for whom an emergency custody order is issued shall be taken into custody and
71 transported to a convenient location to be evaluated to determine whether the person meets the criteria
72 for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment.
73 The evaluation shall be made by a person designated by the community services board *or a certified*
74 *evaluator* who is skilled in the diagnosis and treatment of mental illness and who has completed a
75 certification program approved by the Department.

76 C. The magistrate or court issuing an emergency custody order shall specify the primary
77 law-enforcement agency and jurisdiction to execute the emergency custody order and provide
78 transportation. However, the magistrate or court shall consider any request to authorize transportation by
79 an alternative transportation provider in accordance with this section, whenever an alternative
80 transportation provider is identified to the magistrate or court, which may be a person, facility, or
81 agency, including a family member or friend of the person who is the subject of the order, a
82 representative of the community services board, *or a certified evaluator*, or other transportation provider
83 with personnel trained to provide transportation in a safe manner, upon determining, following
84 consideration of information provided by the petitioner; the community services board or its designee *or*
85 *a certified evaluator*; the local law-enforcement agency, if any; the person's treating physician, if any; or
86 other persons who are available and have knowledge of the person, and, when the magistrate or court
87 deems appropriate, the proposed alternative transportation provider, either in person or via two-way
88 electronic video and audio or telephone communication system, that the proposed alternative
89 transportation provider is available to provide transportation, willing to provide transportation, and able
90 to provide transportation in a safe manner.

91 When transportation is ordered to be provided by an alternative transportation provider, the
92 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to
93 take the person into custody, and to transfer custody of the person to the alternative transportation
94 provider identified in the order. In such cases, a copy of the emergency custody order shall accompany
95 the person being transported pursuant to this section at all times and shall be delivered by the alternative
96 transportation provider to the community services board or its designee *or certified evaluator* responsible
97 for conducting the evaluation. The community services board or its designee *or certified evaluator*
98 conducting the evaluation shall return a copy of the emergency custody order to the court designated by
99 the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of
100 an order to a law-enforcement officer or alternative transportation provider and return of an order to the
101 court may be accomplished electronically or by facsimile.

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

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

117 E. The law-enforcement agency or alternative transportation provider providing transportation
118 pursuant to this section may transfer custody of the person to the facility or location to which the person
119 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is
120 licensed to provide the level of security necessary to protect both the person and others from harm, (ii)

is actually capable of providing the level of security necessary to protect the person and others from harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer 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 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. 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 or 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 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 or 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 *or certified evaluator* 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 (i) a temporary detention order is issued in accordance with § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) 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 C 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 *or certified evaluator*, and the designee of the community services board *or certified evaluator* 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. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if

the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and an employee or designee of the community services board *or certified evaluator* 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. 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 from providing such alternative transportation.

R. For purposes of this section:

"Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731.

"Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, except for the purposes of subsection G.

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

A. For the purposes of this section:

"*Certified evaluator*" means (i) an individual with an educational attainment of a master's or doctoral degree with an associated professional license or (ii) a licensed professional counselor, licensed clinical social worker, licensed marriage and family therapist, licensed clinical psychologist, psychiatric nurse practitioner or psychiatric clinical nurse specialist, doctor of medicine, doctor of osteopathic medicine, or bachelor's prepared registered nurse with five years of experience. A certified evaluator shall (a) be employed or contracted by a hospital with a psychiatric emergency department in Planning District 21, (b) be skilled in the assessment and treatment of mental illness, (c) have completed a certification program approved by the Department, (d) be able to provide an independent examination of the person, (e) not be related by blood or marriage to the person being evaluated, (f) have no financial interest in the admission or treatment of the person being evaluated, and (g) have no investment interest in the facility detaining or admitting the person under this article.

"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.

"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 *or a certified evaluator* to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician, clinical psychologist, clinical social worker, or licensed professional counselor treating the person, that the 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. The magistrate shall also consider, if available, (a) information provided by the person who initiated emergency custody and (b) the recommendations of any treating or examining physician licensed in Virginia either verbally or in writing prior to rendering a decision. Any temporary detention 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.

C. When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician, psychologist, clinical social worker, or licensed professional counselor licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits

submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

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

E. An employee or a designee of the local community services board *or a certified evaluator* shall determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all persons detained pursuant to this section. An employee or designee of the local community services board *or a certified evaluator* 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 person 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 person 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 *or the certified evaluator* designates an alternative facility, that employee or designee *or certified evaluator* 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 person shall be detained in a state facility for the treatment of persons 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. 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 remain in the custody of law enforcement until (i) the person is either detained within a secure facility or (ii) 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 *or the certified evaluator* 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 the 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 *or a certified evaluator* 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. *The employer of any certified evaluator 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, *including any certified evaluator* 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 *or the certified evaluator* 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 *or certified evaluator* 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 *or certified evaluator* 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 *or certified evaluator* 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 *or certified evaluator* 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 person 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.

N. In any case in which a person subject to an evaluation pursuant to this section is receiving services in a hospital emergency department, the treating physician or his designee and the employee or designee of the local community services board *or certified evaluator* shall disclose to each other relevant information pertaining to the individual's treatment in the emergency department.

§ 37.2-809.1. Facility of temporary detention.

A. In each case in which an employee or designee of the local community services board *or certified evaluator* 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 *or certified evaluator* 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 *or certified evaluator* 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 or *certified evaluator*, and an employee or designee of the community services board or *certified evaluator* shall designate the alternative facility on the prescreening report.

C. A state facility may conduct a search for an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual in accordance with subsection B if the individual is in the custody of an alternative transportation provider.

D. 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 (i) specify the law-enforcement agency to execute the order and (ii) designate a transportation provider. In determining the transportation provider, 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, a *certified evaluator*, an employee of or person providing services pursuant to a contract with the Department, 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 certified evaluator*; 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 an alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall designate such alternative transportation provider to provide transportation of the person. If no alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall designate the primary law-enforcement agency and jurisdiction designated to execute the temporary detention order to provide transportation of the person.

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. The primary law-enforcement agency may transfer custody of the person to the alternative transportation provider immediately upon execution of the temporary detention order based on the availability of alternative transportation providers. The alternative transportation provider shall maintain custody of the person from the time custody is transferred to the alternative transportation provider by the primary law-enforcement agency until such time as custody of the person is transferred to the temporary detention facility, including during any period prior to the initiation of transportation of the person from the facility to which he was transported pursuant to § 37.2-808 and while transportation is being provided pursuant to this section.

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

428 at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or
429 alternative transportation provider from obtaining emergency medical treatment or further medical
430 evaluation at any time for a person in his custody as provided in this section. Such medical evaluation
431 or treatment shall be conducted immediately in accordance with state and federal law.

432 C. If an alternative transportation provider providing transportation or maintaining custody of a
433 person who is the subject of a temporary detention order becomes unable to continue providing
434 transportation or maintaining custody of the person at any time after taking custody of the person, the
435 primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is
436 located at the time he becomes unable to continue providing transportation or maintaining custody shall
437 take custody of the person and shall transport the person to the facility of temporary detention. In such
438 cases, a copy of the temporary detention order shall accompany the person being transported and shall
439 be delivered to and returned by the temporary detention facility in accordance with the provisions of
440 subsection B.

441 D. In cases in which an alternative facility of temporary detention is identified and the
442 law-enforcement agency or alternative transportation provider identified to provide transportation in
443 accordance with subsection B continues to have custody of the person, the local law-enforcement agency
444 or alternative transportation provider shall transport the person to the alternative facility of temporary
445 detention identified by the employee or designee of the community services board *or certified evaluator*.
446 In cases in which an alternative facility of temporary detention is identified and custody of the person
447 has been transferred from the law-enforcement agency or alternative transportation provider that
448 provided transportation in accordance with subsection B to the initial facility of temporary detention, the
449 employee or designee of the community services board *or certified evaluator* shall request, and a
450 magistrate may enter an order specifying, an alternative transportation provider or, if no alternative
451 transportation provider is available, willing, and able to provide transportation in a safe manner, the
452 local law-enforcement agency for the jurisdiction in which the person resides or, if the nearest boundary
453 of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the
454 jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the
455 person is located, to provide transportation.

456 E. The magistrate may change the transportation provider specified in a temporary detention order at
457 any time prior to the initiation of transportation of a person who is the subject of a temporary detention
458 order pursuant to this section. If the designated transportation provider is changed by the magistrate at
459 any time after the temporary detention order has been executed but prior to the initiation of
460 transportation, the transportation provider having custody of the person shall transfer custody of the
461 person to the transportation provider subsequently specified to provide transportation. For the purposes
462 of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative
463 transportation provider.

464 F. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the
465 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing
466 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into
467 agreements to facilitate the execution of temporary detention orders and provide transportation.

468 G. No person who provides alternative transportation pursuant to this section shall be liable to the
469 person being transported for any civil damages for ordinary negligence in acts or omissions that result
470 from providing such alternative transportation.

471 H. For purposes of this section:

472 "Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731.

473 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to
474 §§ 15.2-1731 and 15.2-1733.

475 **§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to**
476 **counsel; rights of petitioner.**

477 A. The commitment hearing for involuntary admission shall be held after a sufficient period of time
478 has passed to allow for completion of the examination required by § 37.2-815, preparation of the
479 preadmission screening report required by § 37.2-816, and initiation of mental health treatment to
480 stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be
481 held within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809;
482 however, if the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day
483 on which the court is lawfully closed, the person may be detained, as herein provided, until the close of
484 business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is
485 lawfully closed.

486 B. At the commencement of the commitment hearing, the district court judge or special justice shall
487 inform the person whose involuntary admission is being sought of his right to apply for voluntary
488 admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an
489 opportunity for voluntary admission. The district court judge or special justice shall advise the person

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

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

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

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

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

§ 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

The district court judge or special justice shall require a preadmission screening report from the community services board that serves the county or city where the person resides or, if impractical, where the person is located *or from the certified evaluator*. The report shall be admitted as evidence of the facts stated therein and shall state (i) whether the person has a mental illness and whether 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) whether the person is in need of involuntary inpatient treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the recommendations for that person's placement, care, and treatment including, where appropriate, recommendations for mandatory outpatient treatment. The board *or the certified evaluator* shall provide the preadmission screening report to the court prior to the hearing, and the report shall be admitted into evidence and made part of the record of the case. In the case of a person who has been sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person has mental illness and should be involuntarily admitted without requesting a preadmission screening report from the community services board.

§ 37.2-817. Involuntary admission.

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 *or certified evaluator* 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 *or certified evaluator* 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 *or certified evaluator* that prepared the preadmission screening report the time and location of the hearing. If the representative of the community services board *or certified evaluator* that prepared the preadmission screening report will be present by telephonic means, the court shall provide the telephone number to the community services board *or certified evaluator*. 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 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 *or by the certified evaluator* as

provided in § 37.2-816. If the community services board *or the certified evaluator* 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, (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 following a period of inpatient treatment pursuant to § 37.2-817.01.

§ 37.2-1104. Temporary detention in hospital for testing, observation, or treatment.

A. As used in this section, "mental or physical condition" includes intoxication.

B. The court or, if the court is unavailable, a magistrate serving the jurisdiction where the respondent is located may, with the advice of a licensed physician who has attempted to obtain informed consent of an adult person to treatment of a mental or physical condition, issue an order authorizing temporary detention of the adult person in a hospital emergency department or other appropriate facility for testing, observation, or treatment upon a finding that (i) probable cause exists to believe the person is incapable of making or communicating an informed decision regarding treatment of a physical or mental condition due to a mental or physical condition and (ii) the medical standard of care calls for observation, testing, or treatment within the next 24 hours to prevent injury, disability, death, or other harm to the person resulting from such mental or physical condition.

C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order.

D. A court or, if the court is unavailable, a magistrate serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if such person meets the criteria set forth in subsection B. 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 pursuant to § 37.2-808, the hospital emergency room or other appropriate facility in which the person is detained for testing, observation, or treatment shall notify the nearest community services board when such testing, observation, or treatment is complete, and the designee of the community services board *or certified evaluator* shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to subsection B, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

2. That at the end of each calendar year, participating hospitals with psychiatric emergency departments in Planning District 21 shall report the number of temporary detention order evaluations completed, the number of temporary detention orders petitioned, the number of individuals evaluated for temporary detention who were determined not to meet the criteria for temporary detention, and the number of individuals under a temporary detention order admitted to a state facility to the Chairmen of the Senate Committee on Education and Health, the House Committee on Health, Welfare and Institutions, and the Behavioral Health Commission.

3. That pursuant to the provisions of this act, the certified evaluator shall conduct the temporary detention order evaluation in lieu of the employee or designee of the local community services board if the person subject to the temporary detention order evaluation is located in a hospital in Planning District 21 with a psychiatric emergency department.

4. That the provisions of this act shall expire on July 1, 2025.