

LD7410200

HOUSE BILL NO. 1960**FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by Delegate DeBoer
on February 6, 1995)

(Patron Prior to Substitute—Delegate DeBoer)

A BILL to amend and reenact §§ 15.1-131, 15.1-138, 19.2-169.6, 19.2-177.1, 37.1-67.1, 37.1-67.3, 37.1-67.4, 37.1-71, 37.1-72, 37.1-88, 37.1-89, 37.1-134.5, 37.1-197, 37.1-197.1 and 63.1-174.001 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 37.1-67.01; and to repeal § 37.1-67.2 of the Code of Virginia, relating to involuntary commitments.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-131, 15.1-138, 19.2-169.6, 19.2-177.1, 37.1-67.1, 37.1-67.3, 37.1-67.4, 37.1-71, 37.1-72, 37.1-88, 37.1-89, 37.1-134.5, 37.1-197, 37.1-197.1 and 63.1-174.001 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 37.1-67.01 as follows:

§ 15.1-131. Police, etc., may be sent beyond territorial limits; reciprocal agreements between counties, cities or towns and certain private police forces for mutual aid.

Whenever the necessity arises for the enforcement of laws designed to control or prohibit the use or sale of controlled drugs as defined in § 54.1-3401 or laws contained in Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2, or in response to any law-enforcement emergency involving any immediate threat to life or public safety, or during the execution of the provisions of § 37.1-67.01 or § 37.1-67.1 relating to orders for temporary detention or emergency custody for mental health evaluation or during any emergency resulting from the existence of a state of war, internal disorder, or fire, flood, epidemic or other public disaster, the policemen and other officers, agents and employees of any county, city or town and the police of any state-supported institution of higher learning appointed pursuant to § 23-233 may, together with all necessary equipment, lawfully go or be sent beyond the territorial limits of such county, city or town or such state-supported institution of higher learning to any point within or without the Commonwealth to assist in meeting such emergency or need, or while enroute to a part of the jurisdiction which is only accessible by roads outside the jurisdiction. However, the police of any state-supported institution of higher learning may be sent only to a county, city or town within the Commonwealth, or locality outside the Commonwealth, whose boundaries are contiguous with the county or city in which such institution is located. No member of a police force of any state-supported institution of higher learning shall be sent beyond the territorial limits of the county or city in which such institution is located unless such member has met the requirements established by the Department of Criminal Justice Services as provided in subdivision 2 (i) of § 9-170.

In such event the acts performed for such purpose by such policemen or other officers, agents or employees and the expenditures made for such purpose by such county, city or town or a state-supported institution of higher learning shall be deemed conclusively to be for a public and governmental purpose, and all of the immunities from liability enjoyed by a county, city or town or a state-supported institution of higher learning when acting through its policemen or other officers, agents or employees for a public or governmental purpose within its territorial limits shall be enjoyed by it to the same extent when such county, city or town or a state-supported institution of higher learning within the Commonwealth is so acting, under this section or under other lawful authority, beyond its territorial limits.

The policemen and other officers, agents and employees of any county, city or town or a state-supported institution of higher learning when acting hereunder or under other lawful authority beyond the territorial limits of such county, city or town or such state-supported institution of higher learning shall have all of the immunities from liability and exemptions from laws, ordinances and regulations and shall have all of the pension, relief, disability, workers' compensation and other benefits enjoyed by them while performing their respective duties within the territorial limits of such county, city or town or such state-supported institution of higher learning.

Subject to the approval of the Congress of the United States, the governing body of any county, city or town or a state-supported institution of higher learning, may in its discretion, enter into reciprocal agreements for such periods as it deems advisable with any county, city or town, within or without the Commonwealth, including the District of Columbia, in order to establish and carry into effect a plan to provide mutual aid through the furnishing of its police and other employees and agents together with all necessary equipment in the event of such need or emergency as provided herein. No county, city or town or state-supported institution of higher learning, shall enter into such agreement unless the agreement provides that each of the parties to such agreement shall: (i) waive any and all claims against all the other parties thereto which may arise out of their activities outside their respective jurisdictions

60 under such agreement and (ii) indemnify and save harmless the other parties to such agreement from all
61 claims by third parties for property damage or personal injury which may arise out of the activities of
62 the other parties to such agreement outside their respective jurisdictions under such agreement.

63 The principal law-enforcement officer, in any city, county or town or of a state-supported institution
64 of higher learning having a reciprocal agreement with a jurisdiction outside the Commonwealth for
65 police mutual aid under the provisions hereof, shall be responsible for directing the activities of all
66 policemen and other officers and agents coming into his jurisdiction under the reciprocal agreement, and
67 while operating under the terms of the reciprocal agreement, the principal law-enforcement officer is
68 empowered to authorize all policemen and other officers and agents from outside the Commonwealth to
69 enforce the laws of the Commonwealth of Virginia to the same extent as if they were duly authorized
70 law-enforcement officers of any city, county or town or a state-supported institution of higher learning
71 in Virginia.

72 The governing body of any city, county or town or a state-supported institution of higher learning in
73 the Commonwealth is authorized to procure or extend the necessary public liability insurance to cover
74 claims arising out of mutual aid agreements executed with other cities, counties or towns outside the
75 Commonwealth.

76 The policemen, and other officers, agents and employees of a county, city or town or a
77 state-supported institution of higher learning serving in a jurisdiction outside the Commonwealth under a
78 reciprocal agreement entered into pursuant hereto are authorized to carry out the duties and functions
79 provided for in the agreement under the command and supervision of the chief law-enforcement officer
80 of the jurisdiction outside the Commonwealth.

81 § 15.1-138. Powers and duties of police force; compensation; rewards.

82 The officers and privates constituting the police force of counties, cities and towns of the
83 Commonwealth are hereby invested with all the power and authority which formerly belonged to the
84 office of constable at common law in taking cognizance of, and in enforcing the criminal laws of the
85 Commonwealth and the ordinances and regulations of the county, city or town, respectively, for which
86 they are appointed or elected. Each policeman shall endeavor to prevent the commission within the
87 county, city or town of offenses against the law of the Commonwealth and against the ordinances and
88 regulations of the county, city or town; shall observe and enforce all such laws, ordinances and
89 regulations; shall detect and arrest offenders against the same; shall preserve the good order of the
90 county, city or town; and shall secure the inhabitants thereof from violence and the property therein
91 from injury.

92 Such policeman shall have no power or authority in civil matters, except that a policeman of a
93 county, city or town may execute and serve an order of temporary detention and an emergency custody
94 order and may exercise such other powers as may be specified for law-enforcement officers pursuant to
95 § 37.1-67.01 or § 37.1-67.1 or may serve an order of protection pursuant to §§ 16.1-253.1, 16.1-253.4
96 and 16.1-279.1. However, a policeman of a city or town shall in all other cases execute such warrants or
97 summons as may be placed in his hands by any magistrate for the county, city or town and shall make
98 due return thereof.

99 Except as otherwise specifically provided in the charter of any city or town, such policeman shall not
100 receive any fee or other compensation out of the state treasury or the treasury of the city or town for
101 any service rendered under the provisions of this chapter other than the salary paid him by the city or
102 town and a fee as a witness in cases arising under the criminal laws of the Commonwealth. And except
103 as otherwise specifically provided in the charter of any city or town, such policeman shall not receive
104 any fee as a witness in any case arising under the ordinances of his city or town; nor for attendance as a
105 witness before any magistrate in his city or town. If, however, it shall become necessary or expedient
106 for him to travel beyond the limits of the county, city or town in his capacity as a policeman, he shall
107 be entitled to his actual expenses, to be allowed and paid as is now provided by law for other expenses
108 in criminal cases.

109 Nothing in this section shall be construed as prohibiting a policeman of a county, city or town from
110 claiming and receiving any reward which may be offered for the arrest and detention of any offender
111 against the criminal laws of this or any other state or nation.

112 § 19.2-169.6. Emergency treatment prior to trial.

113 A. Any defendant who is not subject to the provisions of § 19.2-169.2 may be hospitalized for
114 psychiatric treatment prior to trial if:

115 1. The court with jurisdiction over the defendant's case finds clear and convincing evidence that the
116 defendant (i) is being properly detained in jail prior to trial; (ii) is mentally ill and imminently
117 dangerous to self or others in the opinion of a qualified mental health professional; and (iii) requires
118 treatment in a hospital rather than the jail in the opinion of a qualified mental health professional; or

119 2. The person having custody over a defendant who is awaiting trial has reasonable cause to believe
120 that (i) the defendant is mentally ill and imminently dangerous to himself or others and (ii) requires
121 treatment in a hospital rather than jail and the person having such custody arranges for an evaluation of

the defendant by a person skilled in the diagnosis and treatment of mental illness provided a judge, as defined in § 37.1-1 or, if a judge is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, subsequently issues a temporary order of detention for treatment in accordance with the procedures specified in § 37.1-67.1. In no event shall the defendant have the right to make application for voluntary admission and treatment as may be otherwise provided in § ~~37.1-67.2~~ or § 37.1-65.

If the defendant is committed pursuant to subdivision 1 of this subsection, the attorney for the defendant shall be notified that the court is considering hospitalizing the defendant for psychiatric treatment and shall have the opportunity to challenge the findings of the qualified mental health professional. If the defendant is detained pursuant to subdivision 2 of this subsection, the court having jurisdiction over the defendant's case and the attorney for the defendant shall be given notice prior to the detention pursuant to a temporary order of detention or as soon thereafter as is reasonable. Upon detention pursuant to subdivision 2 of this subsection, a hearing shall be held, upon notice to the attorney for the defendant, either (i) before the court having jurisdiction over the defendant's case or (ii) before a judge as defined in § 37.1-1, in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be represented by counsel as specified in § 37.1-67.3; the hearing shall be held within forty-eight hours of execution of the temporary order to allow the court which hears the case to make the findings, based upon clear and convincing evidence, which are specified in subdivision 1 of this subsection. If the forty-eight-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such person may be detained for the same period allowed for detention pursuant to an order for temporary detention issued pursuant to § 37.1-67.1.

In any case in which the defendant is hospitalized pursuant to this section, the court having jurisdiction over the defendant's case may provide by order that the admitting hospital evaluate the defendant's competency to stand trial and his mental state at the time of the offense pursuant to §§ 19.2-169.1 and 19.2-169.5.

B. A defendant subject to this section shall be treated at a hospital designated by the Commissioner as appropriate for treatment and evaluation of persons under criminal charge. The director of the hospital shall, within thirty days of the defendant's admission, send a report to the court with jurisdiction over the defendant addressing the defendant's continued need for treatment as mentally ill and imminently dangerous to self or others and, if so ordered by the court, the defendant's competency to stand trial, pursuant to § 19.2-169.1 D, and his mental state at the time of the offense, pursuant to § 19.2-169.5 D. Based on this report, the court shall either (i) find the defendant incompetent to stand trial pursuant to § 19.2-169.1 E and proceed accordingly, (ii) order that the defendant be discharged from custody pending trial, (iii) order that the defendant be returned to jail pending trial, or (iv) make other appropriate disposition, including dismissal of charges and release of the defendant.

C. A defendant may not be hospitalized longer than thirty days under this section unless the court which has criminal jurisdiction over him or a judge as defined in § 37.1-1 holds a hearing at which the defendant shall be represented by an attorney and finds clear and convincing evidence that the defendant continues to be (i) mentally ill, (ii) imminently dangerous to self or others, and (iii) in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for periods of sixty days, but in no event may such hospitalization be continued beyond trial, nor shall such hospitalization act to delay trial, so long as the defendant remains competent to stand trial.

§ 19.2-177.1. Determination of mental illness after sentencing; hearing.

A person convicted of a crime who is in the custody of a local correctional facility after sentencing may be the subject of a mental commitment proceeding in accordance with the procedures provided in Chapter 2 (§ 37.1-63 et seq.) of Title 37.1. Such proceeding shall be commenced upon petition of the person having custody over the prisoner. If the person having custody over the prisoner has reasonable cause to believe that (i) the prisoner is mentally ill and imminently dangerous to himself or others and (ii) requires treatment in a hospital rather than a local correctional facility and the person having such custody arranges for an evaluation of the prisoner by a person skilled in the diagnosis and treatment of mental illness, then a judge, as defined in § 37.1-1 or, if a judge is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, may issue a temporary order of detention for treatment in accordance with the procedures specified in subdivision A 2 of § 19.2-169.6.

In all other respects, the involuntary civil detention and commitment procedures specified in Chapter 2 of Title 37.1 shall be applicable, except:

1. Any detention or commitment shall be only to a facility designated for this purpose by the Commissioner;

2. In no event shall the prisoner have the right to make application for voluntary admission and treatment as may be otherwise provided in § ~~37.1-67.2~~ or § 37.1-65;

3. The time that such prisoner is confined to a hospital shall be deducted from any term for which

183 he may be sentenced, but in no event may such hospitalization be continued beyond the date upon
184 which his sentence would have expired;

185 4. Any prisoner hospitalized pursuant to this section who has not completed service of his sentence
186 upon discharge from the hospital shall serve the remainder of his sentence.

187 § 37.1-67.01. *Emergency custody; issuance and execution of order.*

188 Any magistrate may, upon the sworn petition of any responsible person or upon his own motion,
189 issue an emergency custody order requiring any person within his judicial district to be taken into
190 custody and transported to a convenient location to be evaluated by a person designated by the
191 community services board who is skilled in the diagnosis and treatment of mental illness in order to
192 assess the need for hospitalization. If a person is incapable of volunteering or unwilling to volunteer for
193 treatment, a magistrate may issue an emergency custody order based upon probable cause to believe
194 that the person is mentally ill and in need of hospitalization and that the person presents an imminent
195 danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially
196 unable to care for self. A law-enforcement officer who, based upon his observation or the reliable
197 reports of others, has probable cause to believe that a person meets the criteria for emergency custody
198 as stated in this section may take that person into custody and transport that person to an appropriate
199 location to assess the need for hospitalization without prior authorization. Such evaluation shall be
200 conducted immediately. The person shall remain in custody until a temporary detention order is issued
201 or until the person is released, but in no event shall the period of custody exceed four hours. A
202 law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city or
203 town in which he serves to any point in the Commonwealth for the purpose of executing an order for
204 emergency custody pursuant to this section. Nothing herein shall preclude a law-enforcement officer
205 from obtaining emergency medical treatment or further medical evaluation at any time for a person in
206 his custody as provided in this section.

207 If an order of emergency custody is not executed within four hours of its issuance the order shall be
208 void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is
209 not open, to any judge or magistrate thereof.

210 § 37.1-67.1. *Involuntary temporary detention; issuance and execution of order.*

211 Any judge as defined in § 37.1-1 or a magistrate may, upon the sworn petition of any responsible
212 person or upon his own motion based upon probable cause to believe that a person is mentally ill and in
213 need of hospitalization, issue an emergency custody order requiring any person within his judicial
214 district to be taken into custody and transported to a convenient location to be evaluated by a person
215 designated by the community services board who is skilled in the diagnosis and treatment of mental
216 illness to assess the need for hospitalization. A law-enforcement officer who, based upon his observation
217 or the reliable reports of others, has probable cause to believe that any person is mentally ill and in need
218 of emergency evaluation for hospitalization, may take that person into custody and transport him to an
219 appropriate location to assess the need for hospitalization without prior judicial authorization. Such
220 evaluation shall be conducted immediately. The person shall remain in custody until a temporary
221 detention order is issued or until the person is released but in no event shall the period of custody
222 exceed four hours. If it appears from all evidence readily available that the person is mentally ill and in
223 need of hospitalization, the judge, or magistrate upon the advice of, and only after an in-person
224 evaluation by, such person skilled in the diagnosis and treatment of mental illness, may issue an order
225 of temporary detention which may include transportation of the person to such other medical facility as
226 may be necessary to obtain emergency medical evaluation or treatment prior to placement. A magistrate,
227 upon the advice of a person skilled in the diagnosis and treatment of mental illness, may issue an order
228 of temporary detention without a prior in-person evaluation if (i) the person has been personally
229 examined within the previous seventy-two hours by an evaluator designated by the community services
230 board or (ii) there is a significant physical, psychological or medical risk, to the person or to others,
231 associated with conducting such evaluation.

232 For the purposes of this section, a designee of a community services board is defined as an examiner
233 able to provide an independent examination of the person who is not related by blood or marriage to
234 the person, who has no financial interest in the detaining or admitting hospital and, except for
235 employees of state hospitals, who is not employed by the detaining or admitting hospital.

236 A magistrate may, upon the advice of, and only after an in-person evaluation by, an employee of the
237 local community services board or its designee who is skilled in the diagnosis and treatment of mental
238 illness, issue an order of temporary detention, which may include transportation of the person to such
239 other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to
240 placement. A magistrate may issue an order of temporary detention if it appears from all evidence
241 readily available that the person is mentally ill and in need of hospitalization and that the person
242 presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill
243 as to be substantially unable to care for self, and the person is incapable of volunteering or unwilling to
244 volunteer for treatment.

A magistrate may issue an order of temporary detention without an emergency custody order preceding, upon the advice of, and only after an in-person evaluation by, an employee of the local community services board or its designee who is skilled in the diagnosis and treatment of mental illness. A magistrate may issue an order of temporary detention without a prior in-person evaluation if (i) the person has been personally examined within the previous seventy-two hours by an employee of the local community services board or its designee who is skilled in the diagnosis and treatment of mental illness or (ii) there is a significant physical, psychological or medical risk, to the person or to others, associated with conducting such evaluation.

An employee of the local community services board or its designee shall determine the facility of temporary detention for all individuals detained pursuant to this section. The facility shall be identified on the prescreening report and indicated on the temporary detention order. The Board of Medical Assistance Services shall, by the regulation, establish a reasonable rate per day of inpatient care for temporary detention and shall approve the institution or other place of detention. The employee of the community services board or its designee 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. Except as provided herein for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, such person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.

A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any order for temporary detention or emergency custody pursuant to this section. The officer executing the order of temporary detention shall place such person in some convenient and willing institution or other willing place for a period duration of temporary detention shall not to exceed forty-eight hours prior to a hearing. If the forty-eight-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday or legal holiday, but in no event may he be detained for longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. For purposes of this section, a Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. The institution or other place of temporary detention shall be approved pursuant to regulations of the Board. Except as provided herein for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, such person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.

In any case in which temporary detention is ordered pursuant to this section upon petition of a person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the judge or magistrate executing the order of temporary detention shall place such person in a hospital designated by § 19.2-169.6 B, or if such facility is not available, the defendant shall be detained in a jail or other place of confinement for persons charged with criminal offenses and shall be transferred to such hospital as soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant, either (i) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be represented by counsel as specified in § 37.1-67.3. In any case in which temporary detention is ordered pursuant to this section upon petition for involuntary commitment of a minor, the petition shall be filed and the hearing scheduled in accordance with the provisions of § 16.1-341.

On such petition and prior to a hearing as authorized in §§ ~~37.1-67.2~~, 37.1-67.3 or § 16.1-341, the judge may release such person on his personal recognizance or bond set by the judge if it appears from all evidence readily available that such release will not pose an imminent danger to himself or others. In the case of a minor, the judge may release the minor to his parent. *The director of the hospital in which the person is detained may release such person prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that the person would not present an imminent danger to self or others if released.*

If an order of temporary detention is not executed within twenty-four hours of its issuance, or within such 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 such office is not open, to any judge or magistrate thereof. Subsequent orders may be issued upon the original petition within ninety-six hours after the petition is filed. However, a magistrate must again obtain the advice of a ~~person~~ an employee of the local community services board or its designee who is skilled in the diagnosis or treatment of mental illness prior to issuing a subsequent order upon the original petition. Any petition for which no order of temporary detention or other process in connection therewith is served on the subject of the petition

306 within ninety-six hours after the petition is filed shall be void and shall be returned to the office of the
307 clerk of the issuing court.

308 The chief judge of each general district court shall establish and require that a judge, as defined in
309 § 37.1-1, or a magistrate, as provided by this section, be available seven days a week, twenty-four hours
310 a day, for the purpose of performing the duties established by this section. Each community services
311 board shall provide to each general district court and magistrate's office within its jurisdiction a list of
312 persons its employees and designees who are available to perform the evaluations required herein as
313 well as the locations at which such evaluations may take place.

314 § 37.1-67.3. Same; involuntary admission and treatment.

315 *The commitment hearing shall be held within forty-eight hours of the execution of the temporary*
316 *detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified*
317 *terminates on a Saturday, Sunday, or legal holiday, such person may be detained, as herein provided,*
318 *until the next day which is not a Saturday, Sunday, or legal holiday, but in no event may the person be*
319 *detained for a period longer than seventy-two hours or ninety-six hours when such legal holiday occurs*
320 *on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to include the time*
321 *period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday.*

322 *The judge, in commencing the commitment hearing, shall inform the person whose involuntary*
323 *admission is being sought of his right to apply for voluntary admission and treatment as provided for in*
324 *§ 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall*
325 *ascertain if such person is then willing and capable of seeking voluntary admission and treatment. If the*
326 *person is capable and willingly accepts voluntary admission and treatment, the judge shall require him*
327 *to accept voluntary admission for a minimum period of treatment and after such minimum period, not to*
328 *exceed seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital,*
329 *during which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98*
330 *or § 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and*
331 *the requirement for prescreening by a community services board or community mental health clinic as*
332 *provided in § 37.1-65.*

333 If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the
334 judge shall inform such person of his right to a commitment hearing and right to counsel. The judge
335 shall ascertain if a person whose admission is sought is represented by counsel, and if he is not
336 represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such
337 person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to
338 employ counsel at his own expense. ~~The commitment hearing shall be held within forty-eight hours of~~
339 ~~the execution of the detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour~~
340 ~~period herein specified terminates on a Saturday, Sunday or a legal holiday, such person may be~~
341 ~~detained, as herein provided, until the next day which is not a Saturday, Sunday or legal holiday, but in~~
342 ~~no event may he be detained for a period longer than seventy-two hours or ninety-six hours when such~~
343 ~~legal holiday occurs on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to~~
344 ~~include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal~~
345 ~~holiday. Prior to such hearing, the judge shall fully inform such person of the basis for his detention, the~~
346 ~~standard upon which he may be detained, the right of appeal from such hearing to the circuit court, the~~
347 ~~right to jury trial on appeal, and the place, date, and time of such hearing.~~

348 If such person is incapable of accepting or unwilling to accept voluntary admission and treatment as
349 provided for in ~~§ 37.1-67.2~~, a commitment hearing shall be scheduled as soon as possible, allowing the
350 person who is the subject of the hearing an opportunity to prepare any defenses which he may have,
351 obtain independent evaluation and expert opinion at his own expense, and summons other witnesses.

352 *A written explanation of the involuntary commitment process and the statutory protections associated*
353 *with the process shall be given to the person and its contents explained by an attorney prior to the*
354 *commitment hearing. The written explanation shall include, at a minimum, an explanation of the*
355 *person's right to retain private counsel or be represented by a court-appointed attorney, to present any*
356 *defenses including independent evaluation and expert testimony or the testimony of other witnesses, to*
357 *be present during the hearing and testify, to appeal any certification for involuntary admission to the*
358 *circuit court, and to have a jury trial on appeal. The judge shall ascertain whether the person whose*
359 *admission is sought has been given the written explanation required herein.*

360 To the extent possible, during the commitment hearing, the attorney for the person whose admission
361 is sought shall interview his client, the petitioner, the examiner described below, *the community services*
362 *board staff in attendance*, and any other material witnesses. He shall also examine all relevant diagnostic
363 and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively
364 represent his client in the proceedings. *The role of the attorney shall be to represent the wishes of his*
365 *client, to the extent possible.*

366 The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing.
367 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 admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.*

Notwithstanding the above, the judge shall require an examination of such person by a psychiatrist who is licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such a psychiatrist or clinical psychologist is not available, a physician or psychologist who is licensed in Virginia and who is qualified in the diagnosis of mental illness. *The examiner chosen shall be able to provide an independent examination of the person. The examiner shall not be related by blood or marriage to the person, shall not be responsible for treating the person, shall have no financial interest in the detaining or admitting hospital, and , except for employees of state hospitals, shall not be employed by the detaining or admitting hospital.* All such examinations shall be conducted in private. The judge shall summons the examiner who shall certify that he has personally examined the individual and has probable cause to believe that the individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and (iii) requires or does not require involuntary hospitalization or treatment. The judge, in his discretion, may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection to the acceptance of such written certification by the person or his attorney. The judge shall not render any decision on the petition until such examiner has presented his report either orally or in writing.

Except as otherwise provided in this section, prior to making any adjudication that such person is mentally ill and shall be confined to an institution pursuant to this section, the judge shall ~~request~~ *require* from the community services board which serves the political subdivision where the person resides a prescreening report, and the board or clinic shall provide such a report within forty-eight hours or within seventy-two hours if the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. The report shall state whether the person is deemed to be so seriously mentally ill that he is substantially unable to care for himself, an imminent danger to himself or others as a result of mental illness and in need of involuntary hospitalization or treatment, whether there is no less restrictive alternative to institutional confinement and what the recommendations are for that person's care and treatment. ~~If the prescreening report is not received by the judge within the specified period, the judge shall proceed to dispose of the case without the board's or clinic's recommendation.~~ In the case of a person sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should be confined pursuant to this section without requesting a prescreening report from the community services board.

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (iii) that alternatives to involuntary confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to institutional confinement and treatment, the judge shall by written order and specific findings so certify and order that the person be placed in a hospital or other facility for a period of treatment not to exceed 180 days from the date of the court order. Such placement shall be in a hospital or other facility designated by the community services board which serves the political subdivision in which the person was examined as provided in this section. If the community services board does not provide a placement recommendation at the commitment hearing, the person shall be placed in a hospital or other facility designated by the Commissioner.

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (iii) that less restrictive alternatives to institutional confinement and treatment have been investigated and are deemed suitable, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.5, or such other appropriate course of treatment as may be necessary to meet the needs of the individual. Upon failure of the patient to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to the patient and after a commitment hearing, order involuntary commitment for treatment at a hospital. The community services board which serves the political subdivision in which the person resides shall recommend a specific course of treatment and programs for provision of such treatment. The community services board shall monitor the person's compliance with such treatment as may be ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to § ~~37.1-67.2~~ *or the*

429 provisions of this section.

430 *The judge shall ensure that an audio recording of the hearing is made and submitted to the*
431 *appropriate district court clerk to be retained in a confidential file and used only to respond to*
432 *questions regarding the conduct of the hearing. The audio recording shall be retained for not less than*
433 *three years from the date of the commitment hearing.* The judge shall also order that the relevant
434 medical records of such person be released to the facility or program in which he is placed upon request
435 of the treating physician or director of the facility or program. Except as provided in this section, the
436 relevant medical records, reports, and court documents pertaining to the hearings provided for in this
437 section ~~and § 37.1-67.2~~ shall be kept confidential by the court if so requested by such person, or his
438 counsel, with access provided only upon court order for good cause shown. Such records, reports, and
439 documents shall not be subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such
440 person shall be released at the expiration of 180 days unless involuntarily committed by further petition
441 and order of a court as provided herein or such person makes application for treatment on a voluntary
442 basis as provided for in § 37.1-65.

443 Any person committed pursuant to this section for whom a subsequent commitment order is being
444 sought prior to the expiration of the 180-day commitment period shall not be entitled to a separate
445 preliminary hearing prior to such commitment hearing.

446 The procedures required by ~~§ 37.1-67.2~~ or by this section shall be followed at such commitment
447 hearing. The judge shall render a decision on such petition after the appointed examiner has presented
448 his report, either orally or in writing, and after the community services board which serves the political
449 subdivision where the person resides has presented a prescreening report, either orally or in writing, with
450 recommendations for that person's placement, care and treatment.

451 The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form
452 provided by the Exchange, a copy of any order for involuntary commitment to a hospital ~~and a~~
453 ~~thumbprint of the person who is committed. The thumbprint shall be obtained at the site of the~~
454 ~~commitment hearing.~~ The copy of the form and the order shall be kept confidential in a separate file and
455 used only for the purpose of conducting a firearms transaction record check authorized by
456 § 18.2-308.2:2.

457 § 37.1-67.4. Same; where hearings may be held; services during temporary detention; costs.

458 The ~~hearings~~ hearing provided for pursuant to §§ ~~37.1-67.2~~ and 37.1-67.3 may be conducted by the
459 judge at the convenient institution or other place provided for in § 37.1-67.1, if he deems it advisable,
460 even though such institution or place is located in a county or city other than his own. In conducting
461 such hearings in a county or city other than his own, the judge shall have all of the authority and power
462 which he would have in his own county or city. A judge, substitute judge or special justice of the
463 county or city in which such institution or place is located may conduct the hearing provided for in §§
464 ~~37.1-67.2~~ and 37.1-67.3.

465 Any such convenient institution caring for a person placed with it pursuant to a temporary order of
466 detention is authorized to provide emergency medical and psychiatric services within its capabilities
467 when the institution determines such services are in the best interests of the person within its care. The
468 costs incurred as a result of such hearings and such costs incurred by the convenient institution in
469 providing such services during such period of temporary detention shall be paid and recovered as
470 provided in § 37.1-89. The maximum costs reimbursable by the Commonwealth pursuant to this section
471 shall be established by the State Board of Medical Assistance Services based on reasonable criteria.

472 Where coverage by a third-party payor exists, the institution seeking reimbursement under this
473 section shall first seek reimbursement from the third-party payor. The Commonwealth shall reimburse
474 the providers only for the balance of costs remaining after the allowances covered by the third-party
475 payor have been received.

476 § 37.1-71. Transportation of person certified for admission.

477 When a person has been certified for admission to a hospital under §§ ~~37.1-67.2~~ through 37.1-67.3,
478 § 37.1-67.4 or § 37.1-67.6, *a determination shall be made by the judge regarding the transportation of*
479 *that person to the proper hospital. The judge may consult with the person's treating mental health*
480 *professional and any involved community services board staff regarding the person's dangerousness and*
481 *whether the sheriff should transport or whether transportation alternatives as provided in § 37.1-72 may*
482 *be utilized. If the judge determines that the person requires transportation by the sheriff,* such person
483 may be delivered to the care of the sheriff, as specified in this section, who shall transport such person
484 to the proper hospital. In no event shall transport commence later than six hours after notification to the
485 sheriff of such certification.

486 The sheriff of the jurisdiction where the person is a resident shall be responsible for transporting the
487 person unless the sheriff's office of such jurisdiction is located more than 100 miles from the jurisdiction
488 in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is
489 a resident is more than 100 miles from the jurisdiction in which the proceedings took place, it shall be
490 the responsibility of the sheriff of the latter jurisdiction to transport the person. The cost of

transportation of any person so applying or certified for admission pursuant to §§ ~~37.1-67.2 through 37.1-67.3~~ or § 37.1-67.4 shall be paid by the Commonwealth from the same funds as for care in jail.

If any state hospital has become too crowded to accommodate any such person certified for admission therein, the Commissioner shall give notice of the fact to all sheriffs and shall designate the hospital to which they shall transport such persons.

§ 37.1-72. Custody of certified person for purpose of transportation.

Any judge who shall certify an admission under this chapter may order that such person be placed in the custody of any responsible person or persons, *including a representative of the facility in which the individual is temporarily hospitalized during the temporary detention period*, for the sole purpose of transporting such person to the proper hospital.

§ 37.1-88. Special justices to perform duties of judge under this title.

The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of performing the duties required of a judge by this title. At the time of appointment each such special justice shall be a person licensed to practice law in this Commonwealth, shall have all the powers and jurisdiction conferred upon a judge by this title and shall serve under the supervision and at the pleasure of the chief judge making the appointment. *Within six months of appointment, each special justice appointed on or after January 1, 1996, shall complete a minimum training program as prescribed by the Executive Secretary of the Supreme Court.* Special justices shall collect the fees prescribed in this title for such service and shall retain fees unless the governing body of the county or city in which such services are performed shall provide for the payment of an annual salary for such services, in which event such fees shall be collected and paid into the treasury of such county or city.

§ 37.1-89. Fees and expenses.

Any special justice as defined in § 37.1-88 and any district court substitute judge who presides over hearings pursuant to the provisions of §§ ~~37.1-65.1, 37.1-67.1 through 37.1-67.4 or § 37.1-134.5~~ shall receive a fee of ~~twenty-eight~~ *fifty-seven* dollars and ~~seventy-five~~ *fifty* cents for each preliminary hearing, each commitment hearing, each certification hearing and each order under § ~~37.1-134.5~~ ruling ~~on competency or treatment~~ and his necessary mileage. *Any special justice and any district court substitute judge who presides over a hearing shall receive a fee of twenty-eight dollars and seventy-five cents for each hearing for recommitment and each certification hearing and each order under § 37.1-134.5 ruling on competency or treatment and his necessary mileage.* Every physician, clinical psychologist or interpreter for the deaf appointed pursuant to § 37.1-67.5 who is not regularly employed by the Commonwealth of Virginia who is required to serve as a witness or as an interpreter for the Commonwealth in any proceeding under this chapter shall receive a fee of ~~twenty-five~~ *fifty* dollars and his necessary expenses for each preliminary hearing, each commitment hearing and each certification hearing in which he serves. *Every physician, clinical psychologist or interpreter for the deaf appointed pursuant to § 37.1-67.5 who is not regularly employed by the Commonwealth and who is required to serve as a witness or as an interpreter for the Commonwealth in any proceeding under this chapter shall receive a fee of twenty-five dollars and necessary expenses for each hearing for recommitment and each certification hearing in which he serves.* Other witnesses regularly summoned before a judge under the provisions of this chapter shall receive such compensation for their attendance and mileage as is allowed witnesses summoned to testify before grand juries. Every attorney appointed under §§ 37.1-65.1, or §§ 37.1-67.1 through 37.1-67.4 ~~or § 37.1-134.5~~ shall receive a fee of ~~twenty-five~~ *fifty* dollars and his necessary expenses for each preliminary hearing, each commitment hearing, each certification hearing and each proceeding under § ~~37.1-134.5~~ for which he is appointed. *Every attorney appointed shall receive a fee of twenty-five dollars and his necessary expenses for each hearing for recommitment and each certification hearing and each proceeding under § 37.1-134.5.* Except as hereinafter provided, all expenses incurred, including the fees, attendance and mileage aforesaid, shall be paid by the Commonwealth. Any such fees, costs and expenses incurred in connection with an examination or hearing for an admission pursuant to § 37.1-65.1 or §§ 37.1-67.1 through 37.1-67.4 in carrying out the provisions of this chapter or in connection with a proceeding under § 37.1-134.5, when paid by the Commonwealth, shall be recoverable by the Commonwealth from the person who is the subject of the examination, hearing or proceeding, or from his estate. Such collection or recovery may be undertaken by the Department. All such fees, costs and expenses, if collected or recovered by the Department, shall be refunded to the Commonwealth. No such fees or costs shall be recovered, however, from the person who is the subject of the examination or his estate when no good cause for his admission exists or when the recovery would create an undue financial hardship.

§ 37.1-134.5. Judicial authorization of treatment and detention of certain persons.

A. An appropriate circuit court, or judge as defined in § 37.1-1, may authorize on behalf of an adult person, in accordance with this section, a specific treatment or course of treatment for a mental or physical disorder, if it finds upon clear and convincing evidence that (i) the person is either incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due

552 to a physical or mental disorder, and (ii) the proposed treatment is in the best interest of the person.

553 B. For purposes of this section:

554 "Disorder" shall include any physical or mental disorder or impairment, whether caused by injury,
555 disease, genetics, or other cause.

556 "Incapable of making an informed decision" shall mean unable to understand the nature, extent or
557 probable consequences of a proposed treatment, or unable to make a rational evaluation of the risks and
558 benefits of the proposed treatment as compared with the risks and benefits of alternatives to that
559 treatment. Persons with dysphasia or other communication disorders who are mentally competent and
560 able to communicate shall not be considered incapable of giving informed consent.

561 C. Any person may request authorization of a specific treatment, or course of treatment, for an adult
562 person by filing a petition in the circuit court, or with a judge as defined in § 37.1-1, of the county or
563 city in which the allegedly incapable person resides or is located, or in the county or city in which the
564 proposed place of treatment is located. Upon filing such a petition, the petitioner or the court shall
565 deliver or send a certified copy of the petition to the person for whom treatment is sought and, if the
566 identity and whereabouts of the person's next of kin are known, to the next of kin.

567 D. As soon as reasonably possible after the filing of the petition, the court shall appoint an attorney
568 to represent the interests of the allegedly incapable person at the hearing. However, such appointment
569 shall not be required in the event that the person, or another interested person on behalf of the person,
570 elects to retain private counsel at his own expense to represent the interests of the person at the hearing.
571 In the event that the allegedly incapable person is indigent, his counsel shall be paid by the
572 Commonwealth as provided in § 37.1-89 from funds appropriated to reimburse expenses incurred in the
573 involuntary mental commitment process. However, this provision shall not be construed to prohibit the
574 direct payment of an attorney's fee either by the patient, or by an interested person on his behalf, which
575 fee shall be subject to the review and approval of the court.

576 E. Following the appointment of an attorney pursuant to subsection D above, the court shall schedule
577 an expedited hearing of the matter. The court shall notify the person who is the subject of the petition,
578 his next of kin, if known, the petitioner, and their respective counsel of the date and time for the
579 hearing. In scheduling such a hearing, the court shall take into account the type and severity of the
580 alleged physical or mental disorder, as well as the need to provide the person's attorney with sufficient
581 time to adequately prepare his client's case.

582 F. Notwithstanding the provisions of subsections C and E above regarding delivery or service of the
583 petition and notice of the hearing to the next of kin of any person for whom consent to observation,
584 testing or treatment is sought, if such person is a patient in any hospital at the time the petition is filed,
585 the court, in its discretion, may dispense with the requirement of any notice to the next of kin.

586 G. Evidence presented at the hearing may be submitted by affidavit in the absence of objection by
587 the person who is the subject of the petition, the petitioner, either of their respective counsel, or by any
588 other interested party. Prior to the hearing, the attorney shall investigate the risks and benefits of the
589 treatment decision for which authorization is sought and of alternatives to the proposed decision. The
590 attorney shall make a reasonable effort to inform the person of this information and to ascertain the
591 person's religious beliefs and basic values and the views and preferences of the person's next of kin.

592 H. Prior to authorizing treatment pursuant to this section, the court shall find:

593 1. That there is no legally authorized guardian or committee available to give consent;

594 2. That the person who is the subject of the petition is incapable either of making an informed
595 decision regarding a specific treatment or course of treatment or is physically or mentally incapable of
596 communicating such a decision;

597 3. That the person who is the subject of the petition is unlikely to become capable of making an
598 informed decision or of communicating an informed decision within the time required for decision; and

599 4. That the proposed treatment or course of treatment is in the best interest of the patient. However,
600 the court shall not authorize a proposed treatment or course of treatment which is proven by a
601 preponderance of the evidence to be contrary to the person's religious beliefs or basic values unless such
602 treatment is necessary to prevent death or a serious irreversible condition. The court shall take into
603 consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion
604 in lieu of medical treatment.

605 I. The court may not authorize the following under this section:

606 1. Nontherapeutic sterilization, abortion, or psychosurgery.

607 2. Admission to a mental retardation facility or a psychiatric hospital, as defined in § 37.1-1.
608 However, the court may issue an order under this section authorizing a specific treatment or course of
609 treatment of a person whose admission to such facility has been or is simultaneously being authorized
610 under §§ 37.1-65, 37.1-65.1, 37.1-65.2, 37.1-65.3, or 37.1-67.1 ~~or § 37.1-67.2~~, or of a person who is
611 subject to an order of involuntary commitment previously or simultaneously issued under § 37.1-67.3.

612 3. Administration of antipsychotic medication for a period to exceed 180 days or electroconvulsive
613 therapy for a period to exceed 60 days pursuant to any petition filed under this section. The court may

authorize electroconvulsive therapy only if it is demonstrated by clear and convincing evidence, which shall include the testimony of a licensed psychiatrist, that all other reasonable forms of treatment have been considered, and that electroconvulsive therapy is the most effective treatment for the person. Even if the court has authorized administration of antipsychotic medication or electroconvulsive therapy hereunder, these treatments may be administered over the person's objection only if he is subject to an order of involuntary commitment, including outpatient involuntary commitment, previously or simultaneously issued under § 37.1-67.3 or the provisions of Chapter 11 (§ 19.2-167 et seq.) of Title 19.2.

4. Restraint or transportation of the person, unless it finds upon clear and convincing evidence that restraint or transportation is necessary to the provision of an authorized treatment for a physical disorder.

J. Any order authorizing treatment pursuant to subsection A shall describe the treatment or course of treatment authorized and may authorize generally such related examinations, tests, or services as the court may determine to be reasonably related to the treatment authorized. The order shall require the treating physician to review and document the appropriateness of the continued admission of antipsychotic medications not less frequently than every thirty days. Such order shall require the treating physician or other service provider to report to the court and the person's attorney any change in the person's condition resulting in probable restoration or development of the person's capacity to make and to communicate an informed decision prior to completion of the authorized treatment and related services. The order may further require the treating physician or other service provider to report to the court and the person's attorney any change in circumstances regarding the authorized treatment or related services which may indicate that such authorization is no longer in the person's best interests. Upon receipt of such report, or upon the petition of any interested party, the court may enter such order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided a written order shall be subsequently executed.

K. Any order hereunder of a judge, or of a judge or magistrate under subsection M, may be appealed de novo within ten days to the circuit court for the jurisdiction where the order was entered, and any such order of a circuit court hereunder, either originally or on appeal, may be appealed within ten days to the Court of Appeals.

L. Any licensed health professional or licensed hospital providing treatment, testing or detention pursuant to the court's or magistrate's authorization as provided in this section shall have no liability arising out of a claim to the extent it is based on lack of consent to such treatment, testing or detention. Any such professional or hospital providing, withholding or withdrawing treatment with the consent of the person receiving or being offered treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent if a court or a magistrate has denied a petition hereunder to authorize such treatment, and such denial was based on an affirmative finding that the person was capable of making and communicating an informed decision regarding the proposed provision, withholding or withdrawal of treatment.

M. Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding of probable cause to believe that an adult person within the court's or a magistrate's jurisdiction is incapable of making an informed decision regarding treatment of a physical or mental disorder, or is incapable of communicating such a decision due to a physical or mental disorder, and that the medical standard of care calls for testing, observation or treatment of the disorder within the next twenty-four hours to prevent death, disability or a serious irreversible condition, the court or, if the court is unavailable, a magistrate may issue an order authorizing temporary detention of the person by a hospital emergency room or other appropriate facility and authorizing such testing, observation or treatment. The detention may not be for a period exceeding twenty-four hours unless extended by the court as part of an order authorizing treatment under subsection A. 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 observation, testing or treatment. If before issuance of an order under this subsection or during its period of effectiveness, the physician learns of 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.

N. The provisions of § 37.1-89 relating to payment by the Commonwealth shall not apply to the cost of detention, testing or treatment under this section.

O. Nothing in this section shall be deemed to affect the right to use, and the authority conferred by, any other applicable statutory or regulatory procedure relating to consent, or to diminish any common law authority of a physician or other treatment provider to provide, withhold or withdraw services to a person unable to give or to communicate informed consent to those actions, with or without the consent of the person's relative, including but not limited to common law or other authority to provide treatment

in an emergency situation; nor shall anything in this section be construed to affect the law defining the conditions under which consent shall be obtained for medical treatment, or the nature of the consent required.

§ 37.1-197. Community services board; powers and duties.

Every community services board shall:

1. Review and evaluate all existing and proposed public community mental health, mental retardation and substance abuse services and facilities available to serve the community and such private services and facilities as receive funds through the board and advise the appropriate local governments as to its findings.

2. Submit to the governing body or bodies of each political subdivision, of which it is an agency, a program of community mental health, mental retardation and substance abuse services and facilities for its approval.

3. Within amounts appropriated therefor, execute such programs and maintain such services as may be authorized under such appropriations.

4. In accordance with its approved program, enter into contracts for rendition or operation of services or facilities.

5. Make rules or regulations concerning the rendition or operation of services and facilities under its direction or supervision, subject to applicable standards or regulations promulgated by the State Board.

6. Appoint a coordinator or director of community mental health, mental retardation and substance abuse services, according to minimum qualifications as may be established by the Department, and prescribe his duties. The compensation of such coordinator or director shall be fixed by the board within the amounts made available by appropriation therefor.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and collection of the same. All fees collected shall be included in the program submitted to the local governing body or bodies pursuant to subdivision 2 hereof and in the budget submitted to the local governing body or bodies pursuant to § 37.1-198 and shall be used only for community mental health, mental retardation and substance abuse purposes. Every board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under the jurisdiction or supervision of the board consistent with the provisions of § 37.1-202.1 and from responsible third-party payors. *Boards shall not attempt to bill or collect fees for time spent participating in involuntary commitment hearings pursuant to § 37.1-67.3.*

8. Accept or refuse gifts, donations, bequests or grants of money or property from any source and utilize the same as authorized by the governing body or bodies of the political subdivision or subdivisions of which it is an agency.

9. Seek and accept funds through federal grants. In accepting such grants the board shall not bind the governing body or bodies of the political subdivision or subdivisions of which it is an agency to any expenditures or conditions of acceptance without the prior approval of such governing body or bodies.

10. Have authority, notwithstanding any provision of law to the contrary, to disburse funds appropriated to it in accordance with such regulations as may be established by the governing body of the political subdivision of which the board is an agency or, in the case of a joint board, as may be established by agreement.

11. Apply for and accept loans as authorized by the governing body or bodies of the political subdivision or subdivisions of which it is an agency. This provision is not intended to affect the validity of loans so authorized and accepted prior to July 1, 1984.

12. Develop joint annual written agreements, consistent with policies and procedures established by the State Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging and regional Department of Rehabilitative Services offices. The agreements shall specify what services will be provided to clients. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

§ 37.1-197.1. Prescription team.

A. In order to provide comprehensive mental health, mental retardation and substance abuse services within a continuum of care, the community services board shall:

1. Establish and coordinate the operation of a prescription team which shall be composed of representatives from the community services board, social services or public welfare department, health department, Department of Rehabilitative Services serving in the community services board's area and, as appropriate, the social services staff of the state institution serving the community services board's catchment area and the local school division. Such other human resources agency personnel may serve on the team as the team deems necessary. The team, under the direction of the community services board, shall be responsible for integrating the community services necessary to accomplish effective prescreening and predischarge planning for clients referred to the community services board. When prescreening reports are required by the court on an emergency basis pursuant to ~~§ 37.1-67.2 or §~~

37.1-67.3, the team may designate one team member to develop the report for the court and report thereafter to the team.

2. Provide prescreening services prior to the admission for treatment pursuant to §§ 37.1-65; ~~37.1-67.2~~ or § 37.1-67.3 of any person who requires emergency mental health services while in a political subdivision served by the board.

3. Cooperate and participate in predischarge planning for any person, who prior to hospitalization resided in a political subdivision served by the board or who chooses to reside after hospitalization in a political subdivision served by the board, who is to be released from a state hospital pursuant to § 37.1-98.

B. The community services board may perform the functions set out in subsection A hereof in the case of children by referring clients who are minors to the locality's family assessment and planning team and cooperating with the community policy and management team in the coordination of services for troubled youths and their families.

§ 63.1-174.001. Admissions and discharge.

A. The Board shall promulgate regulations:

1. Governing admissions to adult care residences.

2. Establishing a process to ensure that residents admitted or retained in an adult care residence receive the appropriate services and that, in order to determine whether a resident's needs can continue to be met by the residence and whether continued placement in the residence is in the best interests of the resident, each resident receives periodic independent reassessments and reassessments in the event of significant deterioration of the resident's condition.

3. Governing appropriate discharge planning for residents whose care needs can no longer be met by the residence.

4. Addressing the involuntary discharge of residents.

5. Requiring that residents are informed of their rights pursuant to § 63.1-182.1 at the time of admission.

6. Establishing a process to ensure that any resident temporarily detained in an inpatient facility pursuant to § 37.1-67.1 is accepted back in the adult care residence if the resident is not involuntarily committed pursuant to § 37.1-67.3.

B. Adult care residences shall not care for individuals with any of the following conditions or care needs:

1. Ventilator dependency.

2. Dermal ulcers III and IV.

3. Intravenous therapy or injections directly into the vein.

4. Airborne infectious disease in a communicable state.

5. Psychotropic medications without appropriate diagnosis and treatment plans.

6. Nasogastric tubes/gastric tubes.

7. Individuals presenting an imminent physical threat or danger to self or others.

8. Individuals requiring continuous nursing care (seven-days-a-week, twenty-four-hours-a-day).

9. Individuals whose physician certifies that placement is no longer appropriate.

10. Individuals who require maximum physical assistance as documented by the uniform assessment instrument.

11. Individuals whose health care needs cannot be met in the specific adult care residence.

12. Such other medical and functional care needs of residents which the Board determines cannot properly be met in an adult care residence.

C. In promulgating regulations pursuant to subsections A and B above, the Board shall consult with the Departments of Health and Mental Health, Mental Retardation and Substance Abuse Services.

2. That § 37.1-67.2 of the Code of Virginia is repealed.