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SENATE BILL NO. 246

Offered January 9, 2008

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A BILL to amend and reenact §§ 16.1-337, 19.2-169.6, 19.2-176, 19.2-177.1, 32.1-127.1:03, 37.2-808, 37.2-809, 37.2-813, 37.2-814, 37.2-815, 37.2-816, 37.2-817, 37.2-818, 37.2-819, 37.2-821, and 53.1-40.2 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 8 of Title 37.2 a section numbered 37.2-804.2, relating to involuntary commitment.

Patrons—Howell, Hanger and Lucas

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-337, 19.2-169.6, 19.2-176, 19.2-177.1, 32.1-127.1:03, 37.2-808, 37.2-809, 37.2-813, 37.2-814, 37.2-815, 37.2-816, 37.2-817, 37.2-818, 37.2-819, 37.2-821, and 53.1-40.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 8 of Title 37.2 a section numbered 37.2-804.2 as follows:

§ 16.1-337. Inpatient treatment of minors; general applicability.

A. A minor may be admitted to a mental health facility for inpatient treatment only pursuant to §§ 16.1-338, 16.1-339, or § 16.1-340 or in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345. The provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title relating to the confidentiality of files, papers, and records shall apply to proceedings under §§ 16.1-339 through 16.1-345.

B. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a minor who is the subject of proceedings under this article shall disclose to a magistrate, the juvenile intake officer, the court, the minor's attorney as required in § 16.1-343, the evaluator as required under §16.1-338, 16.1-339, and 16.1-342 the community services board or behavioral health authority performing evaluation, preadmission screening, or monitoring duties under this article, or a law-enforcement officer any and all information as requested or as may be necessary and appropriate to enable each of them to perform their duties under this article. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the person and to monitor that care and treatment.

§ 19.2-169.6. Emergency treatment prior to trial.

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

1. The court with jurisdiction over the defendant's case finds clear and convincing evidence that the defendant (i) is being properly detained in jail prior to trial; (ii) has mental illness and ~~is imminently dangerous to himself or others~~*that there exists a substantial likelihood that, as a result of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm,* in the opinion of a qualified mental health professional; and (iii) requires treatment in a hospital rather than the jail in the opinion of a qualified mental health professional; or

2. The person having custody over a defendant who is awaiting trial has reasonable cause to believe that ~~(i)~~ the defendant *(i)* has mental illness and ~~is imminently dangerous to himself or others~~*that there exists a substantial likelihood that, as a result of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm* and (ii) requires 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 district court judge or a special justice, as defined in § 37.2-100 or, if a judge or special justice is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, subsequently issues a temporary detention order for treatment in accordance with the procedures specified in §§ 37.2-809 through 37.2-813. In no event shall the defendant have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.2-805 or 37.2-814.

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 detention order 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 district court judge or a special justice, as defined in § 37.2-100, in accordance with the provisions of § 37.2-820, in which case the defendant shall be represented by counsel as specified in § 37.2-814; the hearing shall be held within 48 hours of execution of the temporary order to allow the court that hears the case to make the findings, based upon clear and convincing evidence, that are specified in subdivision 1 of this subsection. If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained for the same period allowed for detention pursuant to a temporary detention order issued pursuant to §§ 37.2-809 through 37.2-813.

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 30 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 for a mental illness and ~~being imminently dangerous~~*the continued substantial likelihood that, as a result of mental illness, the defendant will, in the near future, cause serious physical harm* to himself or others *as evidenced by recent behavior causing, attempting, or threatening such harm* and, if so ordered by the court, the defendant's competency to stand trial, pursuant to subsection D of § 19.2-169.1, and his mental state at the time of the offense, pursuant to subsection D of § 19.2-169.5. Based on this report, the court shall (i) find the defendant incompetent to stand trial pursuant to subsection E of § 19.2-169.1 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 30 days under this section unless the court which has criminal jurisdiction over him or a district court judge or a special justice, as defined in § 37.2-100, holds a hearing at which the defendant shall be represented by an attorney and finds clear and convincing evidence that the defendant continues to (i) have a mental illness~~, (ii) be imminently dangerous to himself or others~~*and that there continues to exist a substantial likelihood that, as a result of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm*, and ~~(iii)~~*(ii)* be in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for periods of 60 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.

D. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a defendant who is the subject of a proceeding under this section, § 19.2-176, or 19.2-177.1 shall disclose to a magistrate, the court, the defendant's attorney, the qualified mental health professional, the community service board or behavioral health authority performing evaluation, preadmission screening, or monitoring duties under these sections, or the sheriff or administrator of the jail any and all information as requested or as may be necessary and appropriate to enable each of them to perform their duties under these sections. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the defendant and to monitor that care and treatment.

§ 19.2-176. Determination of insanity after conviction but before sentence; hearing.

A. If, after conviction and before sentence of any person, the judge presiding at the trial finds reasonable ground to question such person's mental state, he may order an evaluation of such person's mental state by at least one psychiatrist or clinical psychologist who is qualified by training and experience to perform such evaluations. If the judge, based on the evaluation, and after hearing representations of the defendant's counsel, finds clear and convincing evidence that the defendant (i) is mentally ill, and (ii) requires treatment in a mental hospital rather than the jail, he may order the defendant hospitalized in a facility designated by the Commissioner as appropriate for treatment of persons convicted of crime. The time such person is confined to such hospital shall be deducted from any term for which he may be sentenced to any penal institution, reformatory or elsewhere.

B. If it appears from all evidence readily available that the defendant is mentally ill and ~~poses an imminent danger to himself or others~~ *that there exists a substantial likelihood that, as a result of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm*~~if not immediately hospitalized~~, a temporary order of detention may be issued in accordance with subdivision A 2 of § 19.2-169.6 and a hearing shall be conducted in accordance with subsections A and C within forty-eight hours of execution

of the temporary order of detention, or 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 §§ 37.2-809 to 37.2-813.

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 court designated by such court, 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 that there continues to exist a substantial likelihood that, as a result of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm*, and ~~(iii)~~*(ii)* in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for periods of 180 days, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired had he received the maximum sentence for the crime charged.

§ 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 commitment hearing for involuntary admission in accordance with the procedures provided in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Such hearing 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 *(i)* has mental illness and ~~is imminently dangerous to himself or others~~*that there exists a substantial likelihood that, as a result of mental illness, the prisoner will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm,* 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 district court judge or a special justice, as defined in § 37.2-100 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 detention order for treatment in accordance with the procedures specified in subdivision A 2 of § 19.2-169.6.

In all other respects, the involuntary admission procedures specified in Chapter 8 of Title 37.2 shall be applicable, except:

1. Any involuntary admission 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 § 37.2-805 or 37.2-814;

3. The time that such prisoner is confined to a hospital shall be deducted from any term for which he may be sentenced, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired;

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

§ 32.1-127.1:03. Health records privacy.

A. There is hereby recognized an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.

Pursuant to this subsection:

1. Health care entities shall disclose health records to the individual who is the subject of the health record, except as provided in subsections E and F of this section and subsection B of § 8.01-413.

2. Health records shall not be removed from the premises where they are maintained without the approval of the health care entity that maintains such health records, except in accordance with a court order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the regulations relating to change of ownership of health records promulgated by a health regulatory board established in Title 54.1.

3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records of an individual, beyond the purpose for which such disclosure was made, without first obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any health care entity that receives health records from another health care entity from making subsequent disclosures as permitted under this section and the federal Department of Health and Human Services regulations relating to privacy of the electronic transmission of data and protected health information promulgated by the United States Department of Health and Human Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data, from which individually identifying prescription information has been removed, encoded or encrypted, to

qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

B. As used in this section:

"Agent" means a person who has been appointed as an individual's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Certification" means a written representation that is delivered by hand, by first-class mail, by overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated confirmation reflecting that all facsimile pages were successfully transmitted.

"Guardian" means a court-appointed guardian of the person.

"Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a public or private entity, such as a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that performs either of the following functions: (i) processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction; or (ii) receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

"Health care entity" means any health care provider, health plan or health care clearinghouse.

"Health care provider" means those entities listed in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the purposes of this section. Health care provider shall also include all persons who are licensed, certified, registered or permitted or who hold a multistate licensure privilege issued by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Health plan" means an individual or group plan that provides, or pays the cost of, medical care. "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

"Health record" means any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. "Health record" also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual.

"Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as payment or reimbursement for any such services.

"Individual" means a patient who is receiving or has received health services from a health care entity.

"Individually identifying prescription information" means all prescriptions, drug orders or any other prescription information that specifically identifies an individual.

"Parent" means a biological, adoptive or foster parent.

"Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a mental health professional, documenting or analyzing the contents of conversation during a private counseling session with an individual or a group, joint, or family counseling session that are separated from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations relating to medication and prescription monitoring, counseling session start and stop times, treatment modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status, treatment plan, or the individual's progress to date.

C. The provisions of this section shall not apply to any of the following:

1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia Workers' Compensation Act;

2. Except where specifically provided herein, the health records of minors; or

3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to § 16.1-248.3.

D. Health care entities may, and, when required by other provisions of state law, shall, disclose health records:

1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an individual's written authorization, pursuant to the individual's oral authorization for a health care provider or health plan to discuss the individual's health records with a third party specified by the

individual;

2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413;

3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care entity's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;

4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

5. In compliance with the provisions of § 8.01-413;

6. As required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283, 32.1-283.1, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1509, and 63.2-1606;

7. Where necessary in connection with the care of the individual;

8. In connection with the health care entity's own health care operations or the health care operations of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411, and 54.1-3412;

9. When the individual has waived his right to the privacy of the health records;

10. When examination and evaluation of an individual are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such order;

11. To the guardian ad litem and any attorney representing the respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2;

12. To the attorney appointed by the court to represent an individual who is or has been a patient who is the subject of a civil commitment proceeding under Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

13. *To a magistrate, the court, the evaluator examiner required under § 16.1-338, 16.1-339, 16.1-342, or 37.2-815, a community services board or behavioral health authority or a designee of a community services board or behavioral health authority, or a law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6, 19.2-176, or 19.2-177.1, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to any health care provider evaluating or providing services to the person who is the subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those provisions;*

14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or administrative proceeding, if the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the health care entity of such order;

~~14.~~*15.* With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records in accord with § 9.1-156;

~~15.~~*16.* To an agent appointed under an individual's power of attorney or to an agent or decision maker designated in an individual's advance directive for health care or for decisions on anatomical gifts and organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);

~~16.~~*17.* To third-party payors and their agents for purposes of reimbursement;

~~17.~~*18.* As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided or as necessary to the coordination of prevention and control of disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

~~18.~~*19.* Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

~~19.~~*20.* In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

~~20.~~*21.* Where necessary in connection with the implementation of a hospital's routine contact process

for organ donation pursuant to subdivision B 4 of § 32.1-127;

~~21.~~*22.* In the case of substance abuse records, when permitted by and in conformity with requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

~~22.~~*23.* In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges;

~~23.~~*24.* If the health records are those of a deceased or mentally incapacitated individual to the personal representative or executor of the deceased individual or the legal guardian or committee of the incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian or committee appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual in order of blood relationship;

~~24.~~*25.* For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's designated organ procurement organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks;

~~25.~~*26.* To the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2;

~~26.~~*27.* To an entity participating in the activities of a local health partnership authority established pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4 of this title, pursuant to subdivision 1 of this subsection;

~~27.~~*28.* To law-enforcement officials by each licensed emergency medical services agency, (i) when the individual is the victim of a crime or (ii) when the individual has been arrested and has received emergency medical services or has refused emergency medical services and the health records consist of the prehospital patient care report required by § 32.1-116.1;

~~28.~~*29.* To law-enforcement officials, in response to their request, for the purpose of identifying or locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information may be disclosed: (i) name and address of the person, (ii) date and place of birth of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii) description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by the person.

~~29.~~*30.* To law-enforcement officials regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct;

~~30.~~*31.* To law-enforcement officials if the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises;

~~31.~~*32.* To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title; and

~~32.~~*33.* To the Commissioner of the Department of Labor and Industry or his designee by each licensed emergency medical services agency when the records consist of the prehospital patient care report required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing duties or tasks that are within the scope of his employment.

Notwithstanding the provisions of subdivisions 1 through 32 of this subsection, a health care entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

E. Requests for copies of health records shall (i) be in writing, dated and signed by the requester; (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the requester to receive such copies and identification of the person to whom the information is to be disclosed. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed by the requestor as if it were an original. Within 15 days of receipt of a request for copies of health

records, the health care entity shall do one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the requester if the information does not exist or cannot be found; (iii) if the health care entity does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the health care entity who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not established his authority to receive such health records or proof of his identity, or (c) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for health records not specifically governed by other provisions of state law.

F. Except as provided in subsection B of § 8.01-413, copies of an individual's health records shall not be furnished to such individual or anyone authorized to act on the individual's behalf when the individual's treating physician or the individual's treating clinical psychologist has made a part of the individual's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the individual of such health records would be reasonably likely to endanger the life or physical safety of the individual or another person, or that such health record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to such referenced person. If any health care entity denies a request for copies of health records based on such statement, the health care entity shall inform the individual of the individual's right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist, whose licensure, training and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The designated reviewing physician or clinical psychologist shall make a judgment as to whether to make the health record available to the individual.

The health care entity denying the request shall also inform the individual of the individual's right to request in writing that such health care entity designate, at its own expense, a physician or clinical psychologist, whose licensure, training, and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial is based and who did not participate in the original decision to deny the health records, who shall make a judgment as to whether to make the health record available to the individual. The health care entity shall comply with the judgment of the reviewing physician or clinical psychologist. The health care entity shall permit copying and examination of the health record by such other physician or clinical psychologist designated by either the individual at his own expense or by the health care entity at its expense.

Any health record copied for review by any such designated physician or clinical psychologist shall be accompanied by a statement from the custodian of the health record that the individual's treating physician or clinical psychologist determined that the individual's review of his health record would be reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely to cause substantial harm to a person referenced in the health record who is not a health care provider.

Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized to act on his behalf.

G. A written authorization to allow release of an individual's health records shall substantially include the following information:

AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

Individual's Name .....

Health Care Entity's Name .....

Person, Agency, or Health Care Entity to whom disclosure is to be made .....

Information or Health Records to be disclosed .....

Purpose of Disclosure or at the Request of the Individual .....

As the person signing this authorization, I understand that I am giving my permission to the above-named health care entity for disclosure of confidential health records. I understand that the health care entity may not condition treatment or payment on my willingness to sign this authorization unless the specific circumstances under which such conditioning is permitted by law are applicable and are set forth in this authorization. I also understand that I have the right to revoke this authorization at any time, but that my revocation is not effective until delivered in writing to the person who is in possession of my health records and is not effective as to health records already disclosed under this authorization. A copy of this authorization and a notation concerning the persons or agencies to whom

disclosure was made shall be included with my original health records. I understand that health information disclosed under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no longer be protected to the same extent as such health information was protected by law while solely in the possession of the health care entity.
This authorization expires on (date) or (event) .....
Signature of Individual or Individual's Legal Representative if Individual is Unable to Sign .....
Relationship or Authority of Legal Representative .....
Date of Signature .....

H. Pursuant to this subsection:

1. Unless excepted from these provisions in subdivision 9 of this subsection, no party to a civil, criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for another party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the request or issuance of the attorney-issued subpoena.

No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date of the subpoena except by order of a court or administrative agency for good cause shown. When a court or administrative agency directs that health records be disclosed pursuant to a subpoena duces tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena duces tecum is being issued shall have the duty to determine whether the individual whose health records are being sought is pro se or a nonparty.

In instances where health records being subpoenaed are those of a pro se party or nonparty witness, the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, or a copy of the subpoena in the case of an attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface capital letters:

NOTICE TO INDIVIDUAL

The attached document means that (insert name of party requesting or causing issuance of the subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has been issued by the other party's attorney to your doctor, other health care providers (names of health care providers inserted here) or other health care entity (name of health care entity to be inserted here) requiring them to produce your health records. Your doctor, other health care provider or other health care entity is required to respond by providing a copy of your health records. If you believe your health records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued subpoena. You may contact the clerk's office or the administrative agency to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health care provider(s), or other health care entity, that you are filing the motion so that the health care provider or health care entity knows to send the health records to the clerk of court or administrative agency in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for an individual's health records shall include a Notice in the same part of the request in which the recipient of the subpoena duces tecum is directed where and when to return the health records. Such notice shall be in boldface capital letters and shall include the following language:

NOTICE TO HEALTH CARE ENTITIES

A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED

THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

NO MOTION TO QUASH WAS FILED; OR

ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH SUCH RESOLUTION.

IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING PROCEDURE:

PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE AGENCY.

3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8 of this subsection.

4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such health records until they have received a certification as set forth in subdivision 5 or 8 of this subsection from the party on whose behalf the subpoena duces tecum was issued.

If the health care entity has actual receipt of notice that a motion to quash the subpoena has been filed or if the health care entity files a motion to quash the subpoena for health records, then the health care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or administrative agency issuing the subpoena or in whose court or administrative agency the action is pending. The court or administrative agency shall place the health records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge or administrative agency. In the event the court or administrative agency grants the motion to quash, the health records shall be returned to the health care entity in the same sealed envelope in which they were delivered to the court or administrative agency. In the event that a judge or administrative agency orders the sealed envelope to be opened to review the health records in camera, a copy of the order shall accompany any health records returned to the health care entity. The health records returned to the health care entity shall be in a securely sealed envelope.

5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion to quash was filed. Any health care entity receiving such certification shall have the duty to comply with the subpoena duces tecum by returning the specified health records by either the return date on the subpoena or five days after receipt of the certification, whichever is later.

6. In the event that the individual whose health records are being sought files a motion to quash the subpoena, the court or administrative agency shall decide whether good cause has been shown by the discovering party to compel disclosure of the individual's health records over the individual's objections. In determining whether good cause has been shown, the court or administrative agency shall consider (i) the particular purpose for which the information was collected; (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v) any other relevant factor.

7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed health records have been submitted by a health care entity to the court or administrative agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no submitted health records should be disclosed, return all submitted health records to the health care entity in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the submitted health records should be disclosed, provide such portion to the party on whose behalf the subpoena was issued and return the remaining health records to the health care entity in a sealed envelope.

8. Following the court or administrative agency's resolution of a motion to quash, the party on whose

behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed health care entity a statement of one of the following:

a. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the health records previously delivered in a sealed envelope to the clerk of the court or administrative agency will not be returned to the health care entity;

b. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no health records have previously been delivered to the court or administrative agency by the health care entity, the health care entity shall comply with the subpoena duces tecum by returning the health records designated in the subpoena by the return date on the subpoena or five days after receipt of certification, whichever is later;

c. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no health records shall be disclosed and all health records previously delivered in a sealed envelope to the clerk of the court or administrative agency will be returned to the health care entity;

d. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only limited disclosure has been authorized. The certification shall state that only the portion of the health records as set forth in the certification, consistent with the court or administrative agency's ruling, shall be disclosed. The certification shall also state that health records that were previously delivered to the court or administrative agency for which disclosure has been authorized will not be returned to the health care entity; however, all health records for which disclosure has not been authorized will be returned to the health care entity; or

e. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no health records have previously been delivered to the court or administrative agency by the health care entity, the health care entity shall return only those health records specified in the certification, consistent with the court or administrative agency's ruling, by the return date on the subpoena or five days after receipt of the certification, whichever is later.

A copy of the court or administrative agency's ruling shall accompany any certification made pursuant to this subdivision.

9. The provisions of this subsection have no application to subpoenas for health records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a health care entity's conduct.

The provisions of this subsection shall apply to subpoenas for the health records of both minors and adults.

Nothing in this subsection shall have any effect on the existing authority of a court or administrative agency to issue a protective order regarding health records, including, but not limited to, ordering the return of health records to a health care entity, after the period for filing a motion to quash has passed.

A subpoena for substance abuse records must conform to the requirements of federal law found in 42 C.F.R. Part 2, Subpart E.

I. Health care entities may testify about the health records of an individual in compliance with §§ 8.01-399 and 8.01-400.2.

J. If an individual requests a copy of his health record from a health care entity, the health care entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and labor of copying the requested information, postage when the individual requests that such information be mailed, and preparation of an explanation or summary of such information as agreed to by the individual. For the purposes of this section, "individual" shall subsume a person with authority to act on behalf of the individual who is the subject of the health record in making decisions related to his health care.

§ 37.2-804.2. Disclosure of records.

Any health care provider, as defined in § 32.1-127.1:03, or any provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to this chapter shall disclose to a magistrate, the court, the person's attorney, the examiner identified to perform an examination pursuant to § 37.2-815, the community services board or behavioral health authority or its designee performing any evaluation, preadmission screening or monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is requested or that may be necessary and appropriate for the performance of duties pursuant to this chapter. Any health care provider, as defined in § 32.1-127.1:03, or any 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.

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

A. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when he has probable cause to believe that any person within his judicial district (i) has *a* mental illness~~, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself~~ *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, or (b) suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs,* ~~(iii)~~*(ii)* is in need of hospitalization or treatment, and ~~(iv)~~*(iii)* is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

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

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include transportation to a medical facility for a medical evaluation if a physician at the hospital in which the person subject to the emergency custody order may be detained requires a medical evaluation prior to admission.

D. The magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board or behavioral health authority that designated the person to perform the evaluation required in subsection B to execute the order and provide transportation. If the community services board or behavioral health authority serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's or behavioral health authority's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person is presently located to execute the order and provide transportation.

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

F. 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. Such evaluation shall be conducted immediately.

G. 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.

H. The person shall remain in custody until a temporary detention order is issued, ~~or~~ until the person is released, ~~but in no event shall the period of custody exceed four hours~~*or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed four hours from the time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension, an emergency custody order may be renewed one time for a second period not to exceed four hours. Good cause for an extension includes the need for additional time to allow (i) the community services board or behavioral health authority to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if necessary.*

I. If an emergency custody order is not executed within four 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 thereof.

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

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board or behavioral health authority 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 or behavioral health authority 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 may issue, upon the sworn petition of any responsible person or upon his own motion and only after ~~an in-person~~*a face-to-face* evaluation *of the person* by an employee or a designee of the local community services board *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 or clinical psychologist treating the person, that the person (i) has *a* mental illness~~, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself~~ *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, or (b) suffer serious harm due to a substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs,* ~~(iii)~~*(ii)* is in need of hospitalization or treatment, and ~~(iv)~~*(iii)* is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision.

C. 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 ~~in-person~~*face-to-face* evaluation 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 (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

D. An employee or a designee of the local community services board shall determine the facility of temporary detention for all individuals detained pursuant to this section. The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. Except as provided in § 37.2-811 for defendants 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.

E. 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.

F. The employee or the designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

G. 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 48 hours prior to a hearing. If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, or legal holiday. *The person may be released before the 48-hour period herein specified has run, pursuant to § 37.2-813, upon a finding that there is not a substantial likelihood that as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening such harm.*

H. 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 thereof. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

I. The chief judge of each general district court 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 or behavioral health authority 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.

§ 37.2-813. Release of person prior to commitment hearing for involuntary admission.

Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341, the district court judge or special justice may release the person on his personal recognizance or bond set by the district court judge or special justice if it appears from all evidence readily available *that there is not a substantial likelihood* that, *as a result of mental illness,* the person will, ~~not pose an imminent danger to himself or others~~ *in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening such harm.* In the case of a minor, the juvenile and domestic relations district court judge may release the minor to his parent. The director of any facility in which the person is detained may release the person prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that *there is not a substantial likelihood that, as a result of mental illness,* the person ~~would not present an imminent danger to himself or others~~*will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening such harm,* if released.

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

A. The commitment hearing for involuntary admission shall be held *after a sufficient period of time has passed to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held* within 48 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, if the 48-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 next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

B. At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission ~~and~~ *to an inpatient facility for* treatment as provided for in § 37.2-805 and shall afford the person an opportunity for voluntary admission. The judge or special justice shall ascertain if the person is then willing and capable of seeking voluntary admission ~~and~~ *to an inpatient facility for* treatment. If the judge or special justice finds that the person is capable and willingly accepts voluntary admission ~~and~~*to an inpatient facility for* 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 ~~hospital~~*facility* 48 hours' notice prior to leaving the ~~hospital~~*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 behavioral health authority 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 or behavioral health authority staff, 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.

§ 37.2-815. Commitment hearing for involuntary admission; examination required.

Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination of the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not available, ~~any~~*a* mental health professional who is (i) licensed in Virginia through the Department of Health Professions *as a clinical social worker or professional counselor* and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall *have completed a certification program approved by the Department and* be able to provide an independent ~~examination~~*clinical evaluation* of the person *and recommendations for his placement, care, and treatment*. The examiner shall (a) not be related by blood or marriage to the person, (b) not be responsible for treating the person, (c) have no financial interest in the admission or treatment of the person, (d) have no investment interest in the facility detaining or admitting the person under this chapter, and (e) except for employees of state hospitals, the U.S. Department of Veterans Affairs, community service boards, and behavioral health authorities, not be employed by the facility. For purposes of this section, the term "investment interest" shall be as defined in § 37.2-809.

The examination conducted pursuant to this section shall be a comprehensive, face-to-face evaluation of the person. Translation or interpreter services shall be provided during the evaluation where necessary. The examination shall consist of (i) a clinical assessment that includes a mental status examination; determination of current use of psychotropic and other medications; a medical and psychiatric history; a substance use, abuse, or dependency determination; and a determination of the person's ability to protect himself from harm or to provide for his basic human needs; (ii) a substance abuse screening, when indicated; (iii) a risk assessment that includes an evaluation of the likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm; (iv) an assessment of the person's capacity to consent to treatment, including his ability to maintain and communicate choice, understand relevant information, and comprehend the situation and its consequences; (v) an assessment of alternatives to involuntary inpatient treatment; (vi) recommendations for the placement, care, and treatment of the person; and (vii) a review of the temporary detention facility's records, including the treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes.

All such examinations shall be conducted in private. The judge or special justice shall summons the examiner who shall certify that he has personally examined the person and *state whether he* has probable cause to believe that the person (i) ~~does or does not present an imminent danger to himself or others as a result of mental illness or is or is not so seriously mentally ill as to be substantially unable to care for himself~~ *has a mental illness and there is 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, or (b) suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs,* and (ii) requires ~~or does not require~~ involuntary inpatient treatment. ~~Alternatively, the judge or special justice 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 sustained to the acceptance of the written certification by the person or his attorney.~~ The judge or special justice shall not render any decision on the petition until the examiner has presented his report ~~orally or in writing~~. *The examiner may report orally at the hearing, but he shall provide a written report of his examination*

prior to the hearing. If the examiner has determined that the person does not meet the commitment criteria and that opinion is objected to by the treating physician, the examiner shall attend the hearing in person or by means of a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1 to determine whether his opinion would change based upon the evidence presented at the hearing. In all other circumstances, the examiner's written certification may be accepted into evidence unless objected to by the person or his attorney, in which case the examiner shall attend in person or by electronic communication.

§ 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 or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located. The report shall be admissible as evidence of the facts stated therein and shall state (i) whether the person ~~presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill that he is substantially unable to care for himself~~*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, or (b) suffer serious harm due to substantial deterioration of his 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 authority shall provide the preadmission screening report ~~within 48 hours or if the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed~~*to the court prior to the hearing*. 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 or behavioral health authority.

§ 37.2-817. Involuntary admission and mandatory outpatient treatment orders.

A. The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented ~~his~~ *the* report~~, orally or in writing, pursuant to~~ *required by* § 37.2-815, and after the community services board or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report~~, orally or in writing,~~ 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 by § 37.2-804.1. An employee or a designee of the local community services board, as defined in § 37.2-809, that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not possible, 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 possible for a representative of the community services board to attend or participate in the hearing, arrangements shall be made by the community services board 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.*

B. After observing the person ~~and obtaining the necessary positive certification~~ and considering *the appointed examiner's certification, the preadmission screening report, and* any other relevant evidence that may have been offered, if the judge or special justice finds by clear and convincing evidence that (i) the person ~~presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself~~ *has a mental illness and there is 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, or (b) suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs,* and (ii) *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 ~~deemed unsuitable and there is no less restrictive alternative to involuntary inpatient treatment~~*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 ~~180~~*30* days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board or behavioral health authority that serves the city or county in which the person was examined as provided in § 37.2-816. ~~If the community services board or behavioral health authority does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner.~~ ~~The~~*Upon the expiration of any order for involuntary admission, the* person shall be released ~~at the expiration of 180 days~~ unless he is involuntarily admitted*, for a period not to exceed 180 days,* by further petition and order of a court or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805.

C. After observing the person and ~~obtaining the necessary positive certification and~~ considering *the appointed examiner's certification, the preadmission screening report, and* any other relevant evidence that may have been offered, if the judge or special justice finds by clear and convincing evidence that (i) the person ~~presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself~~*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, or (b) suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs*, (ii) less restrictive alternatives to involuntary inpatient treatment *that would offer an opportunity for improvement of his condition*, have been investigated and ~~are deemed suitable, (iii)~~ *are determined to be appropriate, and (iii)* the person (a) has ~~the degree of competency necessary~~*sufficient capacity* to understand the stipulations of his treatment, (b) ~~expresses~~*has expressed* an interest in living in the community and ~~agrees~~*has agreed* to abide by his treatment plan, and (c) is deemed to have the capacity to comply with the treatment plan *and understand and adhere to conditions and requirements of the treatment and services*, and (iv) the ordered treatment can be delivered on an outpatient basis ~~and be monitored~~ by the community services board, behavioral health authority or designated provider, the judge or special justice shall *by written* order *and specific findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community and providers of the services have actually agreed to deliver the services.*

Mandatory outpatient treatment~~, which~~ may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. The community services board or behavioral health authority that serves the city or county in which the person resides shall recommend a specific course of treatment and programs for the provision of ~~involuntary~~*mandatory* outpatient treatment. ~~The community services board, behavioral health authority, or designated provider shall monitor the person's compliance with the treatment 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 the provisions of this section. Upon failure of the person to adhere to the terms of the outpatient treatment order, the judge or special justice may revoke it and, upon notice to the person and after a commitment hearing, order involuntary admission to a facility.~~ *The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board or behavioral health authority, but shall not exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is extended in accordance with subsection K. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment the court may order a subsequent period of mandatory outpatient treatment not to exceed 180 days.*

Any order for mandatory outpatient treatment shall include an initial mandatory outpatient treatment plan developed by the community services board or the behavioral health authority that completed the preadmission screening report. The plan shall, at minimum, (1) identify the specific services to be provided, (2) identify the provider who has agreed to provide each service, (3) describe the arrangements made for the initial face-to-face appointment or contact with each service provider, and (4) include any other relevant information that may be available regarding the mandatory outpatient treatment ordered. The order shall require the community services board or behavioral health authority to monitor the implementation of the mandatory outpatient treatment plan and report any material noncompliance to the court.

D. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered pursuant to this section, the community services board or behavioral health authority that shall be responsible for monitoring compliance with the order shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be

provided to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii) certify that the services are the most appropriate and least restrictive treatment available for the person, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department's licensing regulations, (v) be developed with the fullest possible involvement and participation of the person and reflect his preferences to the greatest extent possible to support his recovery and self-determination, (vi) specify the particular conditions with which the person shall be required to comply, and (vii) describe how the community services board or behavioral health authority shall monitor the person's compliance with the plan and report any material noncompliance with the plan. Where a comprehensive mandatory outpatient treatment plan is developed after receipt of the order, the community services board or behavioral health authority shall submit the plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be reviewed by the court and filed with the order for mandatory outpatient treatment.

If the community services board or behavioral health authority responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, the community services board or behavioral health authority shall notify the court within five days of the entry of the order for mandatory outpatient treatment. Within 48 hours of receiving such notice, excluding Saturdays, Sundays, and legal holidays, the judge or special justice, after notice to the person, the person's attorney, and the community services board or behavioral health authority responsible for developing the comprehensive mandatory outpatient treatment plan, shall hold a hearing to determine whether the person continues to meet the criteria for involuntary inpatient treatment. Where the judge or special justice determines that the person continues to meet the criteria for involuntary inpatient commitment, the judge or special justice shall by written order so certify and order that the person be admitted involuntarily to a facility for a period of involuntary inpatient treatment. The period of involuntary inpatient treatment shall be determined by the court based on recommendations of the community services board or behavioral health authority.

E. Upon entry of any order for mandatory outpatient treatment, the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to the community services board or behavioral health authority that shall be required to monitor compliance with the plan. The community services board or behavioral health authority shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose. The court may transfer jurisdiction of the case to the general district court where the person resides at any time after the entry of the order.

F. The community services board or behavioral health authority where the person resides shall monitor the person's compliance with the mandatory outpatient treatment plan ordered by the court pursuant to this section. Providers of services identified in the plan shall report any material noncompliance to the community services board or behavioral health authority. The community services board or behavioral health authority shall report any material noncompliance to the court. However, prior to reporting any material noncompliance to the court, the community services board or behavioral health authority shall take all reasonable steps to determine why the person has failed to comply with a mandatory outpatient treatment order and make all reasonable efforts to resolve any issues resulting in noncompliance and to encourage compliance. The community services board or behavioral health authority shall document all steps taken in attempting to address noncompliance.

When a person materially fails to comply with a mandatory outpatient treatment order despite all reasonable steps taken to bring the person into compliance with the order, an employee or designee of the community services board or behavioral health authority charged with monitoring the person's compliance with the mandatory outpatient treatment order shall attempt to arrange a meeting with the person to determine whether a substantial likelihood continues to exist that, as a result of mental illness, the person will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm, or (ii) suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs. If the person refuses to meet with an employee or designee of the community services board or behavioral health authority, the community services board or behavioral health authority shall petition the court for a mandatory examination order requiring the person to appear at the time and place stated in the order and to submit to an evaluation by a qualified examiner pursuant to § 37.2-815 to determine whether a substantial likelihood continues to exist 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, or (b) suffer serious harm due to substantial deterioration of his

capacity to protect himself from harm or to provide for his basic human needs. If the person fails to appear as required in the mandatory examination order, the judge or special justice shall enter an order directing a law-enforcement officer from the jurisdiction in which the community services board or behavioral health authority is located to take the person into custody and transport him to a convenient location to be evaluated by an employee or designee of the community services board as defined in § 37.2-809. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours.

G. If following the examination required in subsection F, the community services board or behavioral health authority determines that the person is no longer in need of mandatory outpatient treatment, the community services board or behavioral health authority shall request the court to rescind the order of mandatory outpatient treatment pursuant to subsection J. If the community services board or behavioral health authority has probable cause to believe that a substantial likelihood continues to exist that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm, or suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs, the community services board or behavioral health authority may file a petition for a temporary detention order pursuant to § 37.2-809 or petition the court for a review of the mandatory outpatient treatment order. Transportation of the person shall be provided pursuant to § 37.2-810.

H. If the person subject to an order for mandatory outpatient treatment has materially failed to comply with the order without good cause, and the community services board or behavioral health authority has been unable after reasonable efforts to obtain the person's compliance with the order, the community services board or behavioral health authority shall report the person's material noncompliance to the clerk of the general district court in the locality that issued the order or to which venue has been transferred in writing within three days of making that determination, or within 24 hours if the person is being detained under a temporary detention order, and shall recommend an appropriate disposition. Copies of the report shall be sent to the person and the person's attorney. The attorney who represented the person at the proceeding that resulted in the issuance of the original mandatory outpatient treatment order shall be considered for re-appointment to represent the person at any subsequent hearings related to the mandatory outpatient treatment order.

If more than 10 days has passed since the person's commitment hearing that resulted in the issuance of the mandatory outpatient treatment order, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally examine the person and certify to the court whether or not he has probable cause to believe that the person meets the criteria for involuntary admission to a facility or mandatory outpatient treatment as provided in this section. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not detained in an inpatient facility, the community services board or behavioral health authority shall arrange for the person to be examined at a convenient location and time, and shall offer to arrange for the person's transportation to the examination, if the person has no other source of transportation, and if the person resides within the jurisdiction of the community services board or behavioral health authority or an adjacent jurisdiction. If the person refuses or fails to appear, the community services board or behavioral health authority shall notify the clerk of the general district court in the locality that issued the order or to which venue has been transferred, or a magistrate if the court is not available, and the court or magistrate shall issue an order directing a law-enforcement officer in the jurisdiction where the person resides to transport the person to the examination.

I. The judge or special justice shall schedule a hearing within five days after receiving the report of material noncompliance; however, if the fifth day is a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday. If the person is being detained under a temporary detention order, the noncompliance hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. If the person is not detained, the person shall be provided notice at least 48 hours before the hearing. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order need not preside at the noncompliance hearing.

The community services board or behavioral health authority shall offer to arrange the person's transportation to the hearing, if the person is not detained and has no other source of transportation. If the community services board or behavioral health authority believes that the person may be a danger to himself or others or is unable to determine the clinical condition of the person, it shall notify the clerk of the general district court and the court shall issue an order directing the sheriff in the jurisdiction where the person resides to transport the person to the hearing. If the person fails or refuses to attend or is not able to be located by law enforcement, the hearing may proceed in the person's absence. Nothing herein shall prevent the community services board or behavioral health

authority from obtaining either an emergency custody order as provided in § 37.2-808 or a temporary detention order as provided in § 37.2-809, if at any time the community services board or behavioral health authority has probable cause to believe that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others or suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs.

After hearing the evidence regarding the person's noncompliance with the mandatory outpatient treatment order and the person's current condition, the judge or special justice shall make one of the following dispositions:

1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary admission and treatment specified in subsection B, the judge or special justice shall order the person's involuntary admission to a facility designated by the community services board or behavioral health authority for a period of treatment not to exceed 30 days;

2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment specified in subsection C, and that a continued period of mandatory outpatient treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient treatment, making any necessary modifications that are acceptable to the community services board, behavioral health authority, or treatment provider responsible for the person's treatment; or

3. Upon finding that neither of these dispositions is appropriate, the judge or special justice shall rescind the order for mandatory outpatient treatment.

Upon entry of an order for involuntary inpatient admission, transportation shall be provided in accordance with § 37.2-829 or 37.2-830.

J. At any time prior to the expiration of the mandatory outpatient treatment order, if the community services board or behavioral health authority determines that the person has complied with the order and that the person no longer meets the criteria for involuntary commitment, or that continued mandatory outpatient treatment is no longer necessary for any other reason, the community services board or behavioral health authority shall notify the clerk of the court that entered the order or to which venue has been transferred, and the court shall rescind the order.

At any time after 30 days from entry of the mandatory outpatient treatment order, the person may petition the court to rescind the order on the grounds that he no longer meets the criteria for mandatory outpatient treatment. The court shall schedule a hearing within 10 days of receiving the petition. Within five days, excluding Saturdays, Sundays or legal holidays, of receiving the petition, the court shall provide notice of the hearing to the person, the person's attorney, the community services board or behavioral health authority, and to any members of the person's family whom the person has authorized to receive information regarding his treatment. The community services board or behavioral health authority required to monitor the person's compliance with the mandatory outpatient treatment order shall provide a preadmission screening report as required in § 37.2-816. If, after observing the person, reviewing the preadmission screening report, and considering any other relevant evidence, the court finds that the person does not meet the criteria for mandatory outpatient treatment, the judge or special justice shall rescind the order. If the court finds that the person continues to meet the criteria for mandatory outpatient treatment, the order shall remain in effect. The person may not file a petition to rescind the order more than once during a 90 day period.

K. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order, the community services board or behavioral health authority that is required to monitor the person's compliance with the order may petition the court to extend the order for a period not to exceed 180 days. If the person who is the subject of the order joins the petition, the court shall grant the petition and enter an appropriate order without further hearing. If the person who is the subject of the order does not join the petition, the court shall schedule a hearing within 10 days of receiving the petition. Within five days of receiving the petition, the court shall provide notice of the hearing to the person, the person's attorney, the community services board or behavioral health authority, and to any members of the person's family whom the person has authorized to receive information regarding his treatment. Upon receipt of the petition, the court shall appoint an examiner who shall personally examine the person and certify whether he continues to meet the criteria for mandatory outpatient treatment pursuant to subsection C. The community services board or behavioral health authority required to monitor the person's compliance with the mandatory outpatient treatment order shall provide a preadmission screening report as required in § 37.2-816. If, after observing the person, reviewing the preadmission screening report, obtaining the necessary certification from the examiner and considering any other relevant evidence the court finds that the person meets the criteria for mandatory outpatient treatment, the judge or special justice shall renew the order for a period not to exceed 180 days. Where the court finds that the person does not meet the criteria for mandatory outpatient treatment pursuant to subsection C, the court shall rescind the order for mandatory outpatient treatment. Any order of

mandatory outpatient treatment that is in effect at the time a petition for renewal of an order of mandatory outpatient treatment is filed shall remain in effect until the disposition of the hearing to extend the period of mandatory outpatient treatment.

§ 37.2-818. Commitment hearing for involuntary admission; recordings and records.

A. The district court judge or special justice shall make or cause to be made a tape or other audio recording of ~~the commitment hearing~~*any hearings held under this chapter* and shall submit the recording to the ~~appropriate district court~~ clerk *of the general district court in the locality in which the hearing is held* to be retained in a confidential file. *The person who was the subject of the hearing shall be entitled, upon request, to obtain a copy of the tape or other audio recording of such hearing.* ~~Recordings shall be used only to document and to answer questions concerning the judge's or special justice's conduct of the hearing.~~ These recordings shall be retained for at least three years from the date of the commitment hearing.

B. Except as provided in this section and § 37.2-819, the court shall keep its copies of *recordings made pursuant to this section*, relevant medical records, reports, and court documents pertaining to the ~~hearing~~*hearings* provided for in this ~~section~~*chapter* confidential ~~if so requested by the person who was the subject of the hearing or his counsel, with~~. *The person who is the subject of the hearing may, in writing, waive the confidentiality provided herein. In the absence of such waiver,* access *to the dispositional order only may be* provided ~~only~~ upon court order ~~for good cause shown~~. *Any person seeking access to the dispositional order may file a written motion setting forth why such access is needed. The court may issue an order to disclose the dispositional order if it finds that such disclosure is in the best interest of the person who is the subject of the hearing or of the public. The Executive Secretary of the Supreme Court and anyone acting on his behalf shall be provided access to the court's records upon request.* Such *recordings*, records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. *After entering an order for involuntary admission or mandatory outpatient treatment,* ~~The~~ *the* judge or special justice shall order that copies of the relevant ~~medical~~ records of the person be released to *(i)* the facility in which he is placed ~~upon the request of the treating physician or director of the facility~~*, (ii) the community services board or behavioral health authority of the jurisdiction where the person resides; (iii) any treatment providers identified in a treatment plan incorporated into any mandatory outpatient treatment order; and (iv) any other treatment providers or entities*.

§ 37.2-819. Order of involuntary admission forwarded to CCRE; firearm background check.

The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order for involuntary admission to a facility *or mandatory outpatient treatment*. The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.

§ 37.2-821. Appeal of involuntary admission or certification order.

A. Any person involuntarily admitted *to an inpatient facility or ordered to mandatory outpatient treatment* pursuant to §§ 37.2-814 through 37.2-819 or certified as eligible for admission pursuant to § 37.2-806 shall have the right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted or certified or where the facility to which he was admitted is located. Choice of venue shall rest with the party noting the appeal. The court may transfer the case upon a finding that the other forum is more convenient. An appeal shall be filed within 30 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241 regarding the time within which the court shall set criminal cases for trial. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the petitioner in the case in accordance with procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required, and the appeal shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in § 37.2-804.

B. The appeal shall be heard de novo in accordance with the provisions set forth in § 37.2-806 or this article. The circuit court may require an independent evaluation of the person pursuant to § 37.2-815, or may rely upon the evaluation report in the commitment hearing from which the appeal is taken. An order continuing the involuntary admission shall be entered only if the criteria in § 37.2-817 are met at the time the appeal is heard. The person so admitted or certified shall be entitled to trial by jury. Seven persons from a panel of 13 shall constitute a jury.

C. If the person is not represented by counsel, the judge shall appoint an attorney to represent him. Counsel so appointed shall be paid a fee of $75 and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.

§ 53.1-40.2. Involuntary admission of prisoners with mental illness.

A. Upon the petition of the Director or his designee, any district court judge or any special justice, as defined by § 37.2-100, of the county or city where the prisoner is located may issue an order authorizing involuntary admission of a prisoner who is sentenced and committed to the Department of

Corrections and who is alleged or reliably reported to have a mental illness to a degree that warrants hospitalization.

B. Such prisoner may be involuntarily admitted to a hospital or facility for the care and treatment of persons with mental illness by complying with the following admission procedures:

1. A hearing on the petition shall be scheduled as soon as possible, allowing the prisoner an opportunity to prepare any defenses which he may have, obtain independent evaluation and expert opinion at his own expense, and summons other witnesses.

2. Prior to such hearing, the judge or special justice shall fully inform the prisoner of the allegations of the petition, the standard upon which he may be admitted involuntarily, the right of appeal from such hearing to the circuit court, and the right to jury trial on appeal. The judge or special justice shall ascertain if the prisoner is represented by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint an attorney to represent the prisoner.

3. The judge or special justice shall require an examination of such prisoner by a psychiatrist who is licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such 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 judge or special justice shall summons the examiner, who shall certify that he has personally examined the individual and has probable cause to believe that the prisoner does or does not have mental illness, ~~does or does not present an imminent danger to himself or others~~*that there does or does not exist a substantial likelihood that, as a result of mental illness, the prisoner will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm,* and *that the prisoner* does or does not require involuntary hospitalization. The judge or special justice 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 prisoner or his attorney.

4. If the judge or special justice, after observing the prisoner and obtaining the necessary positive certification and other relevant evidence, finds specifically that (i) ~~the prisoner presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself~~*the prisoner has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the prisoner will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm or (b) suffer serious harm due to substantial deterioration of his capacity to protect himself from harm or to provide for his basic human needs,* and (ii) alternatives to involuntary admission have been investigated and deemed unsuitable and there is no less restrictive alternative to such admission, the judge or special justice shall by written order and specific findings so certify and order that the prisoner be placed in a hospital or other facility designated by the Director for a period not to exceed 180 days from the date of the court order. Such placement shall be in a hospital or other facility for the care and treatment of persons with mental illness that is licensed or operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

5. The judge or special justice shall also order that the relevant medical records of such prisoner be released to the hospital, facility, or program in which he is placed upon request of the treating physician or director of the hospital, facility, or program.

6. The Department shall prepare the forms required in procedures for admission as approved by the Attorney General. These forms, which shall be the legal forms used in such admissions, shall be distributed by the Department to the clerks of the general district courts of the various counties and cities of the Commonwealth and to the directors of the respective state hospitals.