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HOUSE BILL NO. 163**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 7, 2022)

(Patron Prior to Substitute—Delegate Ransone)

A BILL to amend and reenact §§ 16.1-340, 16.1-340.1, 16.1-340.1:1, 16.1-340.2, 37.2-808, 37.2-809, 37.2-809.1, 37.2-810, 37.2-829, and 37.2-1104 of the Code of Virginia, relating to emergency custody and temporary detention; transportation and custody.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-340, 16.1-340.1, 16.1-340.1:1, 16.1-340.2, 37.2-808, 37.2-809, 37.2-809.1, 37.2-810, 37.2-829, and 37.2-1104 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-340. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion, an emergency custody order when he has probable cause to believe that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law. To the extent possible, the petition shall contain the information required by § 16.1-339.1.

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

B. Any minor 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 he meets the criteria for temporary detention pursuant to § 16.1-340.1 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board serving the area in which the minor is located 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. However, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative

60 transportation provider and return of an order to the court may be accomplished electronically or by
61 facsimile.

62 Transportation under this section shall include transportation to a medical facility as may be
63 necessary to obtain emergency medical evaluation or treatment ~~that of the minor. Such emergency~~
64 *medical evaluation* shall be conducted ~~or emergency medical treatment provided~~ immediately in
65 accordance with state and federal law. Transportation under this section shall *also* include transportation
66 to a medical facility for a medical evaluation if a physician at the hospital in which the minor subject to
67 the emergency custody order may be detained requires a medical evaluation prior to admission. *The*
68 *provision of emergency medical evaluation or treatment or medical evaluation necessary for admission*
69 *to a hospital shall not toll the running of the period of emergency custody.*

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

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

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

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

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

111 I. A representative of the primary law-enforcement agency specified to execute an emergency custody
112 order or a representative of the law-enforcement agency employing a law-enforcement officer who takes
113 a person into custody pursuant to subsection G or H shall notify the community services board
114 responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after
115 execution of the emergency custody order or after the person has been taken into custody pursuant to
116 subsection G or H.

117 J. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from
118 obtaining emergency medical treatment or further medical evaluation at any time for a minor in his
119 custody as provided in this section. *The provision of emergency medical treatment or further medical*
120 *evaluation shall not toll the running of the period of emergency custody.*

121 K. The minor shall remain in custody until a temporary detention order is issued, until the minor is

released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution.

L. If an emergency custody order is not executed within eight hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.

M. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if the minor is detained in a state facility pursuant to subsection D of § 16.1-340.1, the state facility and an employee or designee of the community services board may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the minor.

N. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical screening and assessment services provided to minors with mental illnesses while in emergency custody.

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

§ 16.1-340.1. Involuntary temporary detention; issuance and execution of order.

A. A magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 16.1-345.1 by an employee or designee of the local community services board to determine whether the minor meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician, clinical psychologist, or clinical social worker treating the person, that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. The magistrate shall also consider the recommendations of the minor's parents and of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. To the extent possible, the petition shall contain the information required by § 16.1-339.1. Any temporary detention order entered pursuant to this section shall be effective until such time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is located conducts a hearing pursuant to subsection B of § 16.1-341. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law.

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

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 evaluation pursuant to subsection A if (i) the minor has been personally examined within the previous 72 hours by an employee or designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the minor or to others associated with conducting such evaluation.

D. An employee or designee of the local community services board shall determine the facility of temporary detention in accordance with the provisions of § 16.1-340.1:1 for all minors detained pursuant to this section. An employee or designee of the local community services board may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the minor given the specific security, medical, or behavioral health needs of the minor. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary detention, transportation of the minor to the alternative facility of temporary detention shall be provided in accordance with the provisions of § 16.1-340.2. The initial facility of temporary detention shall be identified on the preadmission screening

183 report and indicated on the temporary detention order; however, if an employee or designee of the local
184 community services board designates an alternative facility, that employee or designee shall provide
185 written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of
186 Virginia, to the clerk of the issuing court of the name and address of the alternative facility. *The facility*
187 *designated by the magistrate shall accept custody of the minor immediately upon completion of*
188 *transportation and arrival of the minor at the facility and prior to the expiration of the eight-hour*
189 *period of emergency custody specified in subsections G, H, and K of § 16.1-340.*

190 Subject to the provisions of § 16.1-340.1:1, if a facility of temporary detention *that is ready and able*
191 *to accept custody of the minor upon issuance of the temporary detention order* cannot be identified by
192 the time of the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall be
193 detained in a state facility for the treatment of minors with mental illness and such facility shall be
194 indicated on the temporary detention order. *The state facility shall accept custody of the minor*
195 *immediately upon completion of transportation and arrival of the minor at the facility, and prior to the*
196 *expiration of the eight-hour period of emergency custody specified in subsections G, H, and K of*
197 *§ 16.1-340.*

198 An employee or designee of the local community services board may change the facility of temporary
199 detention and may designate an alternative facility for temporary detention at any point during the
200 period of temporary detention if it is determined that the alternative facility is a more appropriate
201 facility for temporary detention of the minor given the specific security, medical, or behavioral health
202 needs of the minor. In cases in which the facility of temporary detention is changed following transfer of
203 custody to an initial facility of temporary detention, transportation of the minor to the alternative facility
204 of temporary detention shall be provided in accordance with the provisions of § 16.1-340.2. *The initial*
205 *facility of temporary detention shall be identified on the preadmission screening report and indicated on*
206 *the temporary detention order; however, if an employee or designee of the local community services*
207 *board designates an alternative facility, that employee or designee shall provide written notice forthwith,*
208 *on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the*
209 *issuing court of the name and address of the alternative facility.*

210 Except for minors who are detained for a criminal offense by a juvenile and domestic relations
211 district court and who require hospitalization in accordance with this article, the minor shall not be
212 detained in a jail or other place of confinement for persons charged with criminal offenses and shall
213 remain in the custody of law enforcement until the minor is either detained within a secure facility or
214 custody has been accepted by the appropriate personnel designated by either the initial facility of
215 temporary detention identified in the temporary detention order or by the alternative facility of
216 temporary detention designated by the employee or designee of the local community services board
217 pursuant to this subsection.

218 E. Any facility caring for a minor placed with it pursuant to a temporary detention order is
219 authorized to provide emergency medical and psychiatric services within its capabilities when the facility
220 determines that the services are in the best interests of the minor within its care. The costs incurred as a
221 result of the hearings and by the facility in providing services during the period of temporary detention
222 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the
223 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance
224 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by
225 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

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

232 G. The duration of temporary detention shall be sufficient to allow for completion of the examination
233 required by § 16.1-342, preparation of the preadmission screening report required by § 16.1-340.4, and
234 initiation of mental health treatment to stabilize the minor's psychiatric condition to avoid involuntary
235 commitment where possible, but shall not exceed 96 hours prior to a hearing. If the 96-hour period
236 herein specified terminates on a Saturday, Sunday, or legal holiday, the minor may be detained, as
237 herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal
238 holiday. *The period of temporary detention shall begin upon acceptance of custody of the minor by the*
239 *facility of temporary detention.* The minor may be released, pursuant to § 16.1-340.3, before the 96-hour
240 period herein specified has run.

241 H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter
242 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office
243 of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of
244 the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the

petition is filed, *provided that the initial order remains unexecuted*. However, a magistrate must again obtain the advice of an employee or 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. For purposes of this section a ~~healthcare~~ *health care* provider or an employee or designee of the local community services board shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

J. The employee or designee of the local community services board who is conducting the evaluation pursuant to this section shall, if he recommends that the minor should not be subject to a temporary detention order, inform the petitioner and an on-site treating physician of his recommendation.

K. Each community services board shall provide to each juvenile and domestic relations district court and magistrate's office within its service area a list of employees and designees who are available to perform the evaluations required herein.

§ 16.1-340.1:1. Facility of temporary detention.

A. In each case in which an employee or designee of the local community services board is required to make an evaluation of a minor pursuant to subsection B, G, or H of § 16.1-340, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the minor will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 16.1-340. Upon completion of the evaluation, the employee or designee of the local community services board shall convey to the state facility information about the minor necessary to allow the state facility to determine the services the minor will require upon admission.

B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to *take custody of the minor immediately upon completion of transportation and arrival of the minor at the facility and* provide temporary detention and appropriate care to the minor, which may include another state facility if the state facility notified in accordance with subsection A is unable to *take custody of the minor immediately upon completion of transportation and arrival of the minor at the facility and* provide temporary detention and appropriate care for the minor. Under no circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for temporary detention pursuant to § 16.1-340.1 *immediately upon completion of transportation and arrival of the minor at the facility* unless an alternative facility that is able to *take custody of the minor immediately upon completion of transportation and arrival of the minor at the facility and* provide temporary detention and appropriate care ~~agrees to accept the minor for temporary detention, and the~~ *has been identified*. The minor shall not during the duration of the temporary detention order be released from custody of the facility except for purposes of transporting the minor to the state facility or alternative facility in accordance with the provisions of § 16.1-340.2. If an alternative facility is identified and agrees to accept the minor for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the State Board of Behavioral Health and Developmental Services.

D. *The minor shall not be held in the custody of law enforcement during any portion of the period of temporary detention, except that the minor may be held in the custody of law enforcement for the purpose of transporting the minor pursuant to § 16.1-340.2.*

§ 16.1-340.2. Transportation of minor in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the minor resides to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the order and provide transportation. However, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the temporary detention order, a representative of the community services board, or other

transportation provider with personnel trained to provide transportation in a safe manner upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order.

In such cases any case in which a magistrate authorizes transportation of a minor subject to a temporary detention order by an alternative transportation provider, a copy of the temporary detention order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

The order may include transportation of the minor to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a minor in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law. *The provision of emergency medical treatment or further medical evaluation shall not toll the running of the period of temporary detention.*

C. If an alternative transportation provider providing transportation of a minor who is the subject of a temporary detention order becomes unable to continue providing transportation of the minor at any time after taking custody of the minor, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the minor and shall transport the minor to the facility of temporary detention. In such cases, (i) a copy of the temporary detention order shall accompany the minor being transported and shall be delivered to and returned by the temporary detention facility in accordance with the provisions of subsection B and (ii) if the alternative transportation provider originally authorized to provide transportation is a person other than the minor's parent, the alternative transportation provider shall notify the minor's parent (a) that the primary law-enforcement agency for the jurisdiction in which he is located has taken custody of the minor and is transporting the minor to the facility of temporary detention and (b) of the name of the law-enforcement officer providing transportation of the minor.

D. In cases in which an alternative facility of temporary detention is identified and the law-enforcement agency or alternative transportation provider identified to provide transportation in accordance with subsection B continues to have custody of the minor, the local law-enforcement agency or alternative transportation provider shall transport the minor to the alternative facility of temporary detention identified by the employee or designee of the local community services board. In cases in which an alternative facility of temporary detention is identified and custody of the minor has been transferred from the law-enforcement agency or alternative transportation provider that provided transportation in accordance with subsection B to the initial facility of temporary detention, the employee or designee of the local community services board shall request, and a magistrate may enter an order specifying, an alternative transportation provider or, if no alternative transportation provider is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the minor resides or, if the nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor is located, to provide transportation. *The alternative facility of temporary detention shall accept custody of the minor immediately upon completion of transportation and arrival of the minor at the facility, and the period during which the minor is in the custody of law enforcement shall not exceed the amount of time necessary to complete transportation of the minor.*

E. The magistrate may change the transportation provider specified in a temporary detention order at any time prior to the initiation of transportation of a minor who is the subject of a temporary detention order pursuant to this section. If the designated transportation provider is changed by the magistrate at any time after the temporary detention order has been executed but prior to the initiation of transportation, the transportation provider having custody of the minor shall transfer custody of the

minor to the transportation provider subsequently specified to provide transportation. For the purposes of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative transportation provider.

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

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

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

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

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 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 or court issuing an emergency custody order shall specify (i) the primary law-enforcement agency and jurisdiction to execute the emergency custody order and ~~provide~~ (ii) *an appropriate transportation provider to provide transportation of the person to a convenient location to be evaluated in accordance with subsection B. However When specifying the appropriate transportation provider, the magistrate or court shall consider any request to authorize transportation by an all available alternative transportation provider in accordance with this section, whenever an alternative transportation provider is providers identified to the magistrate or court by the community services board, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner; upon determining. If the magistrate or court determines, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate or court deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed an alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate or court shall designate such alternative transportation provider to provide transportation of the person to a convenient location to be evaluated in accordance with subsection B. If the magistrate or court determines that no alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate or court shall designate the primary law-enforcement agency and jurisdiction designated to execute the emergency custody order to provide transportation of the person to a convenient location to be evaluated in accordance with subsection B.*

When transportation is ordered to be provided by an alternative transportation provider, the magistrate or court shall order the specified primary law-enforcement agency to execute the order, to

take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

Transportation under this section shall include transportation to a *such* medical facility as may be necessary to obtain emergency medical evaluation or treatment ~~that of the person. Such emergency medical evaluation~~ shall be conducted *or emergency medical treatment provided* immediately in accordance with state and federal law. Transportation under this section shall *also* 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. *The provision of emergency medical evaluation or treatment or medical evaluation necessary for admission to a hospital shall not toll the running of the period of emergency custody.*

D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by the community services board that designated the person to perform the evaluation required in subsection B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. If the community services board serves more than one jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board'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. The law-enforcement agency or alternative transportation provider providing transportation pursuant to this section may transfer custody of the person to the facility or location to which the person is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed to provide the level of security necessary to protect both the person and others from harm, (ii) is actually capable of providing the level of security necessary to protect the person and others from harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

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

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

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

I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. *The provision of emergency medical treatment or medical evaluation shall not toll the running of the period of emergency custody.*

J. A representative of the primary law-enforcement agency specified to execute an emergency custody order or a representative of the law-enforcement agency employing a law-enforcement officer who takes a person into custody pursuant to subsection G or H shall notify the community services board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after execution of the emergency custody order or after the person has been taken into custody pursuant to subsection G or H.

K. The person shall remain in custody until (i) a temporary detention order is issued in accordance with § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution.

L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency custody order issued pursuant to this section. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order, the law-enforcement officer or alternative transportation provider shall transport the person and transfer custody of the person to the hospital emergency department or other appropriate facility specified in the order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104. A person who is subject to an order for temporary custody for testing, observation, or treatment pursuant to § 37.2-1104 may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility in which the person is detained shall notify the nearest community services board, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809. *If an order for temporary detention is ordered pursuant to § 37.2-809, the law-enforcement agency or alternative transportation provider that initially provided transportation of the person to the hospital emergency department or other appropriate facility for testing, observation, or treatment shall resume custody of the person prior to expiration of the order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 and shall transport the person to the facility designated in the order for temporary detention pursuant to § 37.2-809. No law-enforcement officer or alternative transportation provider shall be required to remain with the person during the period of temporary detention for testing, observation, or treatment pursuant to § 37.2-1104.*

M. Any person taken into emergency custody pursuant to this section shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures.

N. If an emergency custody order is not executed within eight hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.

O. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and an employee or designee of the community services board as defined in § 37.2-809 may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual.

P. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical screening and assessment services provided to persons with mental illnesses while in emergency custody.

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

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

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii) is able to provide an independent examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board who is skilled in the

552 assessment and treatment of mental illness and has completed a certification program approved by the
553 Department.

554 "Investment interest" means the ownership or holding of an equity or debt security, including shares
555 of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or
556 debt instruments.

557 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or
558 upon his own motion and only after an evaluation conducted in-person or by means of a two-way
559 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a
560 designee of the local community services board to determine whether the person meets the criteria for
561 temporary detention, a temporary detention order if it appears from all evidence readily available,
562 including any recommendation from a physician, clinical psychologist, or clinical social worker treating
563 the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a
564 result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or
565 others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant
566 information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm
567 or to provide for his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is
568 unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall
569 also consider, if available, (a) information provided by the person who initiated emergency custody and
570 (b) the recommendations of any treating or examining physician licensed in Virginia either verbally or
571 in writing prior to rendering a decision. Any temporary detention order entered pursuant to this section
572 shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not
573 preclude any other disclosures as required or permitted by law.

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

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

586 E. An employee or a designee of the local community services board shall determine the facility of
587 temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained
588 pursuant to this section. ~~An employee or designee of the local community services board may change~~
589 ~~the facility of temporary detention and may designate an alternative facility for temporary detention at~~
590 ~~any point during the period of temporary detention if it is determined that the alternative facility is a~~
591 ~~more appropriate facility for temporary detention of the individual given the specific security, medical,~~
592 ~~or behavioral health needs of the person. In cases in which the facility of temporary detention is~~
593 ~~changed following transfer of custody to an initial facility of temporary custody, transportation of the~~
594 ~~individual to the alternative facility of temporary detention shall be provided in accordance with the~~
595 ~~provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the~~
596 ~~preadmission screening report and indicated on the temporary detention order; however, if an employee~~
597 ~~or designee of the local community services board designates an alternative facility, that employee or~~
598 ~~designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the~~
599 ~~Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative~~
600 ~~facility. Such facility shall accept custody of the person immediately upon completion of transportation~~
601 ~~and arrival of the person at the facility and prior to the expiration of the eight-hour period specified in~~
602 ~~subsections G, H, and K of § 37.2-808.~~

603 Subject to the provisions of § 37.2-809.1, if a facility of temporary detention *that is ready and able*
604 *to accept custody of the person upon issuance of the temporary detention order* cannot be identified by
605 the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the individual
606 shall be detained in a state facility for the treatment of individuals with mental illness and such facility
607 shall be indicated on the temporary detention order. *The state facility shall accept custody of the person*
608 *immediately upon completion of transportation and arrival of the person at the state facility and prior to*
609 *the expiration of the eight-hour period specified in subsections G, H, and K of § 37.2-808.*

610 *An employee or designee of the local community services board may change the facility of temporary*
611 *detention and may designate an alternative facility for temporary detention at any point during the*
612 *period of temporary detention if it is determined that the alternative facility is a more appropriate*
613 *facility for temporary detention of the individual given the specific security, medical, or behavioral*

health needs of the person. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary custody, transportation of the individual to the alternative facility of temporary detention shall be provided in accordance with the provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board designates an alternative facility, that employee or designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative facility.

Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by either the initial facility of temporary detention identified in the temporary detention order or by the alternative facility of temporary detention designated by the employee or designee of the local community services board pursuant to this subsection.

The person detained or in custody pursuant to this section shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures.

F. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

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

H. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. *The period of temporary detention shall begin upon acceptance of custody of the person by the facility of temporary detention.* The person may be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed, *provided that the original order remains unexecuted.* 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.

J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this section. Each community services board shall provide to each general district court and magistrate's office within its service area a list of its employees and designees who are available to perform the evaluations required herein.

K. For purposes of this section, a health care provider or designee of a local community services board or behavioral health authority shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

L. If the employee or designee of the community services board who is conducting the evaluation pursuant to this section recommends that the person should not be subject to a temporary detention

order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if such person is present, and an onsite treating physician of his recommendation; (ii) promptly inform such person who initiated emergency custody that the community services board will facilitate communication between the person and the magistrate if the person disagrees with recommendations of the employee or designee of the community services board who conducted the evaluation and the person who initiated emergency custody so requests; and (iii) upon prompt request made by the person who initiated emergency custody, arrange for such person who initiated emergency custody to communicate with the magistrate as soon as is practicable and prior to the expiration of the period of emergency custody. The magistrate shall consider any information provided by the person who initiated emergency custody and any recommendations of the treating or examining physician and the employee or designee of the community services board who conducted the evaluation and consider such information and recommendations in accordance with subsection B in making his determination to issue a temporary detention order. The individual who is the subject of emergency custody shall remain in the custody of law enforcement or a designee of law enforcement and shall not be released from emergency custody until communication with the magistrate pursuant to this subsection has concluded and the magistrate has made a determination regarding issuance of a temporary detention order. *However, in no case shall the individual remain in the custody of law enforcement for a period longer than the period of emergency custody specified in § 37.2-808.*

M. For purposes of this section, "person who initiated emergency custody" means any person who initiated the issuance of an emergency custody order pursuant to § 37.2-808 or a law-enforcement officer who takes a person into custody pursuant to subsection G of § 37.2-808.

§ 37.2-809.1. Facility of temporary detention.

A. In each case in which an employee or designee of the local community services board as defined in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of § 37.2-808, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the individual will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808. Upon completion of the evaluation, the employee or designee of the local community services board shall convey to the state facility information about the individual necessary to allow the state facility to determine the services the individual will require upon admission.

B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to *take custody of the person immediately upon completion of transportation and the arrival of the person at the facility* and provide temporary detention and appropriate care to the individual, which may include another state facility if the state facility notified in accordance with subsection A is unable to *take custody of the person immediately upon completion of transportation and the arrival of the person at the facility* and provide temporary detention and appropriate care for the individual. Under no circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary detention pursuant to § 37.2-809 *immediately upon completion of transportation and the arrival of the person at the facility* unless an alternative facility that is able to *take custody of the individual immediately upon completion of transportation and the arrival of the person at such alternative facility* and provide temporary detention and appropriate care ~~agrees to accept the individual for temporary detention and the~~ *has been identified. The individual shall not during the duration of the temporary detention order be released from custody of the facility except for purposes of transporting the individual to the state facility or alternative facility in accordance with the provisions of § 37.2-810. If an alternative facility is identified and agrees to accept the individual for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.*

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the Board.

D. *The person shall not be held in the custody of law enforcement during any portion of the period of temporary detention, except that the person may be held in the custody of law enforcement for purposes of transportation of the person pursuant to § 37.2-810.*

§ 37.2-810. Transportation of person in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to provide transportation, to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest

boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall specify (i) the law-enforcement agency to execute the order and ~~provide~~ (ii) *an appropriate transportation provider to provide transportation of the person who is the subject of the temporary detention order to the designated facility of temporary detention.* ~~However~~ *When specifying the appropriate transportation provider, the magistrate shall consider any request to authorize transportation by an all available alternative transportation provider in accordance with this section, whenever an alternative transportation provider is providers identified to the magistrate by the community services board, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the temporary detention order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner upon determining. If the magistrate determines, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed an alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall designate such alternative transportation provider to provide transportation of the person to the designated facility of temporary detention. If the magistrate determines that no alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall designate the primary law-enforcement agency and jurisdiction designated to execute the emergency custody order to provide transportation of the person to the facility of temporary detention.* When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the temporary detention order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

The order may include transportation of the person to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law. *The provision of emergency medical treatment or medical evaluation shall not toll the running of the period of emergency custody.*

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

D. In cases in which an alternative facility of temporary detention is identified and the law-enforcement agency or alternative transportation provider identified to provide transportation in accordance with subsection B continues to have custody of the person, the local law-enforcement agency or alternative transportation provider shall transport the person to the alternative facility of temporary detention identified by the employee or designee of the community services board. In cases in which an alternative facility of temporary detention is identified and custody of the person has been transferred from the law-enforcement agency or alternative transportation provider that provided transportation in accordance with subsection B to the initial facility of temporary detention, the employee or designee of the community services board shall request, and a magistrate may enter an order specifying, an alternative transportation provider or, if no alternative transportation provider is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person resides or, if the nearest boundary of the jurisdiction in which the person resides is

798 more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the
799 law-enforcement agency of the jurisdiction in which the person is located, to provide transportation. *The*
800 *alternative facility of temporary detention shall accept custody of the person immediately upon*
801 *completion of transportation and arrival of the person at the facility, and the period during which the*
802 *person is in the custody of law enforcement shall not exceed the amount of time necessary to complete*
803 *transportation of the person.*

804 E. The magistrate may change the transportation provider specified in a temporary detention order at
805 any time prior to the initiation of transportation of a person who is the subject of a temporary detention
806 order pursuant to this section. If the designated transportation provider is changed by the magistrate at
807 any time after the temporary detention order has been executed but prior to the initiation of
808 transportation, the transportation provider having custody of the person shall transfer custody of the
809 person to the transportation provider subsequently specified to provide transportation. For the purposes
810 of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative
811 transportation provider.

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

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

819 **§ 37.2-829. Transportation of person in civil admission process.**

820 When a person has volunteered for admission pursuant to § 37.2-814 or been ordered to be admitted
821 to a facility under §§ 37.2-815 through 37.2-821, the judge or special justice shall determine after
822 consideration of information provided by the person's treating mental health professional and any
823 involved community services board or behavioral health authority staff regarding the person's
824 dangerousness, whether transportation *of the person to the designated facility* shall be provided by the
825 sheriff or may be provided by an alternative transportation provider, including a family member or
826 friend of the person, a representative of the community services board, a representative of the facility at
827 which the person was detained pursuant to a temporary detention order, or other alternative
828 transportation provider with personnel trained to provide transportation in a safe manner. If the judge or
829 special justice determines that transportation may be provided by an alternative transportation provider,
830 the judge or special justice may consult with the proposed alternative transportation provider either in
831 person or via two-way electronic video and audio or telephone communication system to determine
832 whether the proposed alternative transportation provider is available to provide transportation, willing to
833 provide transportation, and able to provide transportation in a safe manner. If the judge or special justice
834 finds that the proposed alternative transportation provider is available to provide transportation, willing
835 to provide transportation, and able to provide transportation in a safe manner, the judge or special justice
836 may order transportation *of the person to the designated facility* by the proposed alternative
837 transportation provider. In all other cases, the judge or special justice shall order transportation *of the*
838 *person to the designated facility* by the sheriff of the jurisdiction where the person is a resident unless
839 the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of
840 the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of
841 which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction
842 in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction
843 to transport the person.

844 If the judge or special justice determines that the person requires transportation by the sheriff, the
845 person may be delivered to the care of the sheriff, as specified in this section, who shall transport the
846 person to the proper facility. In no event shall transport commence later than six hours after notification
847 to the sheriff or alternative transportation provider of the judge's or special justice's order.

848 If any state hospital has become too crowded to admit any such person, the Commissioner shall give
849 notice of the fact to all community services boards and shall designate the facility to which sheriffs or
850 alternative transportation providers shall transport such persons. *The designated facility shall accept*
851 *custody of any person transported to such facility pursuant to this subsection immediately upon*
852 *completion of transportation and arrival of the person at the facility.*

853 If an alternative transportation provider providing transportation of a person becomes unable to
854 continue providing transportation of the person at any time after taking custody of the person, the
855 primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is
856 located at the time he becomes unable to continue providing transportation shall take custody of the
857 person and shall transport the person to the proper facility.

858 No person who provides alternative transportation pursuant to this section shall be liable to the
859 person being transported for any civil damages for ordinary negligence in acts or omissions that result

from providing such alternative transportation.

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

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

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

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

D. A court or, if the court is unavailable, a magistrate serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if such person meets the criteria set forth in subsection B. ~~In any case in which an order for temporary detention for~~ *Upon issuance of an order authorizing temporary detention for testing, observation, or treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, the law-enforcement officer or alternative transportation provider designated to provide transportation of the person pursuant to § 37.2-809 shall transport the person and transfer custody of the person to the hospital emergency department or other facility specified in the order authorizing temporary detention for testing, observation, or treatment. Upon completion of testing, observation, or treatment is issued for* of a person who is also the subject of an emergency custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate facility in which the person is detained for testing, observation, or treatment shall notify the nearest community services board when such testing, observation, or treatment is complete, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to subsection B, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809. *If an order for temporary detention is ordered pursuant to § 37.2-809, the law-enforcement agency or alternative transportation provider that initially provided transportation of the person to the hospital emergency department or other appropriate facility for testing, observation, or treatment shall resume custody of the person prior to expiration of the order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 and shall transport the person to the facility designated in the order for temporary detention pursuant to § 37.2-809. No law-enforcement officer or alternative transportation provider shall be required to remain with the person during the period of temporary detention for testing, observation, or treatment pursuant to this section.*