

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 19.2-169.3, 19.2-169.6, 37.2-805, 37.2-813, 37.2-815, 37.2-817, as it*
 3 *shall become effective, 37.2-817.1, as it shall become effective, 37.2-817.4, as it shall become*
 4 *effective, and 37.2-821 of the Code of Virginia and the third enactment of Chapter 221 of the Acts of*
 5 *Assembly of 2021, Special Session I; to amend the Code of Virginia by adding a section numbered*
 6 *37.2-817.01; and to repeal § 37.2-817.2, as it shall become effective, of the Code of Virginia,*
 7 *relating to mandatory outpatient treatment.*

8 [H 663]
 9 Approved

10 **Be it enacted by the General Assembly of Virginia:**

11 **1. That §§ 19.2-169.3, 19.2-169.6, 37.2-805, 37.2-813, 37.2-815, 37.2-817, as it shall become effective,**
 12 **37.2-817.1, as it shall become effective, 37.2-817.4, as it shall become effective, and 37.2-821 of the**
 13 **Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding**
 14 **a section numbered 37.2-817.01 as follows:**

15 **§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; aggravated murder charge;**
 16 **sexually violent offense charge.**

17 A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of
 18 § 19.2-169.2, the director of the community services board or behavioral health authority or his designee
 19 or the director of the treating inpatient facility or his designee concludes that the defendant is likely to
 20 remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report
 21 shall also indicate whether, in the board, authority, or inpatient facility director's or his designee's
 22 opinion, the defendant should be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of
 23 Chapter 8 of Title 37.2, committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified
 24 pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent. Upon receipt of the
 25 report, the court shall make a competency determination according to the procedures specified in
 26 subsection E of § 19.2-169.1. If the court finds that the defendant is incompetent and is likely to remain
 27 so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to Article 5
 28 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or (iii) certified pursuant to § 37.2-806. However, if the
 29 court finds that the defendant is incompetent and is likely to remain so for the foreseeable future and the
 30 defendant has been charged with a sexually violent offense, as defined in § 37.2-900, he shall be
 31 screened pursuant to the procedures set forth in §§ 37.2-903 and 37.2-904. If the court finds the
 32 defendant incompetent but restorable to competency in the foreseeable future, it may order treatment
 33 continued until six months have elapsed from the date of the defendant's initial admission under
 34 subsection A of § 19.2-169.2.

35 B. At the end of six months from the date of the defendant's initial admission under subsection A of
 36 § 19.2-169.2 if the defendant remains incompetent in the opinion of the board, authority, or inpatient
 37 facility director or his designee, the director or his designee shall so notify the court and make
 38 recommendations concerning disposition of the defendant as described in subsection A. The court shall
 39 hold a hearing according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the
 40 defendant unrestorably incompetent, shall order one of the dispositions described in subsection A. If the
 41 court finds the defendant incompetent but restorable to competency, it may order continued treatment
 42 under subsection A of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to
 43 subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues
 44 to be incompetent but restorable to competency in the foreseeable future.

45 C. If any defendant has been charged with a misdemeanor in violation of Article 3 (§ 18.2-95 et
 46 seq.) of Chapter 5 of Title 18.2 or Article 5 (§ 18.2-119 et seq.) of Chapter 5 of Title 18.2, other than a
 47 misdemeanor charge pursuant to § 18.2-130 or Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2,
 48 and is being treated pursuant to subsection A of § 19.2-169.2, and after 45 days has not been restored to
 49 competency, the director of the community service board, behavioral health authority, or the director of
 50 the treating inpatient facility, or any of their designees, shall send a report indicating the defendant's
 51 status to the court. The report shall also indicate whether the defendant should be released or committed
 52 pursuant to § 37.2-817 or 37.2-817.01 or certified pursuant to § 37.2-806. Upon receipt of the report, if
 53 the court determines that the defendant is still incompetent, the court shall order that the defendant be
 54 released, committed, or certified, and may dismiss the charges against the defendant.

55 D. Unless an incompetent defendant is charged with aggravated murder or the charges against an
 56 incompetent criminal defendant have been previously dismissed, charges against an unrestorably

57 incompetent defendant shall be dismissed on the date upon which his sentence would have expired had
58 he been convicted and received the maximum sentence for the crime charged, or on the date five years
59 from the date of his arrest for such charges, whichever is sooner.

60 E. If the court orders an unrestorably incompetent defendant to be screened pursuant to the
61 procedures set forth in §§ 37.2-903 and 37.2-904, it shall order the attorney for the Commonwealth in
62 the jurisdiction wherein the defendant was charged and the Commissioner of Behavioral Health and
63 Developmental Services to provide the Director of the Department of Corrections with any information
64 relevant to the review, including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy
65 of the defendant's criminal record, (iii) information about the alleged crime, (iv) a copy of the
66 competency report completed pursuant to § 19.2-169.1, and (v) a copy of the report prepared by the
67 director of the defendant's community services board, behavioral health authority, or treating inpatient
68 facility or his designee pursuant to this section. The court shall further order that the defendant be held
69 in the custody of the Department of Behavioral Health and Developmental Services for secure
70 confinement and treatment until the Commitment Review Committee's and Attorney General's review
71 and any subsequent hearing or trial are completed. If the court receives notice that the Attorney General
72 has declined to file a petition for the commitment of an unrestorably incompetent defendant as a
73 sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall order that the
74 defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2,
75 or certified pursuant to § 37.2-806.

76 F. In any case when an incompetent defendant is charged with aggravated murder and has been
77 determined to be unrestorably incompetent, notwithstanding any other provision of this section, the
78 charge shall not be dismissed and the court having jurisdiction over the aggravated murder case may
79 order that the defendant receive continued treatment under subsection A of § 19.2-169.2 in a secure
80 facility determined by the Commissioner of the Department of Behavioral Health and Developmental
81 Services where the defendant shall remain until further order of the court, provided that (i) a hearing
82 pursuant to subsection E of § 19.2-169.1 is held at yearly intervals for five years and at biennial
83 intervals thereafter, or at any time that the director of the treating facility or his designee submits a
84 competency report to the court in accordance with subsection D of § 19.2-169.1 that the defendant's
85 competency has been restored, (ii) the defendant remains incompetent, (iii) the court finds continued
86 treatment to be medically appropriate, and (iv) the defendant presents a danger to himself or others. No
87 unrestorably incompetent defendant charged with aggravated murder shall be released except pursuant to
88 a court order.

89 G. The attorney for the Commonwealth may bring charges that have been dismissed against the
90 defendant when he is restored to competency.

91 **§ 19.2-169.6. Inpatient psychiatric hospital admission from local correctional facility.**

92 A. Any inmate of a local correctional facility may be hospitalized for psychiatric treatment at a
93 hospital designated by the Commissioner of Behavioral Health and Developmental Services as
94 appropriate for treatment of persons under criminal charge if:

95 1. The court with jurisdiction over the inmate's case, if it is still pending, on the petition of the
96 person having custody over an inmate or on its own motion, holds a hearing at which the inmate is
97 represented by counsel and finds by clear and convincing evidence that (i) the inmate has a mental
98 illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in
99 the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior
100 causing, attempting, or threatening harm and any other relevant information or (b) suffer serious harm
101 due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other
102 relevant information; and (iii) the inmate requires treatment in a hospital rather than the local
103 correctional facility. Prior to making this determination, the court shall consider the examination
104 conducted in accordance with § 37.2-815 and the preadmission screening report prepared in accordance
105 with § 37.2-816 and conducted in-person or by means of a two-way electronic video and audio
106 communication system as authorized in § 37.2-804.1 by an employee or designee of the local
107 community services board or behavioral health authority who is skilled in the assessment and treatment
108 of mental illness, who is not providing treatment to the inmate, and who has completed a certification
109 program approved by the Department of Behavioral Health and Developmental Services as provided in
110 § 37.2-809. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall
111 be available whenever possible for questioning during the hearing through a two-way electronic video
112 and audio or telephonic communication system as authorized in § 37.2-804.1. Any employee or designee
113 of the local community services board or behavioral health authority, as defined in § 37.2-809,
114 representing the board or authority that prepared the preadmission screening report shall attend the
115 hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a
116 two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the
117 hearing is held outside the service area of the community services board or behavioral health authority

118 that prepared the preadmission screening report, and it is not practicable for a representative of the board
 119 or authority to attend or participate in the hearing, arrangements shall be made by the board or authority
 120 for an employee or designee of the board or authority serving the area in which the hearing is held to
 121 attend or participate on behalf of the board or authority that prepared the preadmission screening report;
 122 or

123 2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to
 124 believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result
 125 of a mental illness, the inmate will, in the near future, (a) cause serious physical harm to himself or
 126 others as evidenced by recent behavior causing, attempting, or threatening harm and any other relevant
 127 information or (b) suffer serious harm due to his lack of capacity to protect himself from harm as
 128 evidenced by recent behavior and any other relevant information; and (iii) the inmate requires treatment
 129 in a hospital rather than a local correctional facility, and the magistrate issues a temporary detention
 130 order for the inmate. Prior to the filing of the petition, the person having custody shall arrange for an
 131 evaluation of the inmate conducted in-person or by means of a two-way electronic video and audio
 132 communication system as authorized in § 37.2-804.1 by an employee or designee of the local
 133 community services board or behavioral health authority who is skilled in the assessment and treatment
 134 of mental illness and who has completed a certification program approved by the Department as
 135 provided in § 37.2-809. After considering the evaluation of the employee or designee of the local
 136 community services board or behavioral health authority, and any other information presented, and
 137 finding that probable cause exists to meet the criteria, the magistrate may issue a temporary detention
 138 order in accordance with the applicable procedures specified in §§ 37.2-809 through 37.2-813. A
 139 temporary detention order issued pursuant to this subdivision may be executed by a deputy sheriff or jail
 140 officer, as those terms are defined in § 53.1-1, employed at the local correctional facility where the
 141 inmate is incarcerated. The person having custody over the inmate shall notify the court having
 142 jurisdiction over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention
 143 pursuant to a temporary detention order or as soon thereafter as is reasonable.

144 Upon detention pursuant to this subdivision, a hearing shall be held either before the court having
 145 jurisdiction over the inmate's case or before a district court judge or a special justice, as defined in
 146 § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate
 147 shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within 72 hours of
 148 execution of the temporary detention order issued pursuant to this subdivision. If the 72-hour period
 149 terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the
 150 inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal
 151 holiday, or day on which the court is lawfully closed. Any employee or designee of the local
 152 community services board or behavioral health authority, as defined in § 37.2-809, representing the
 153 board or authority that prepared the preadmission screening report shall attend the hearing in person or,
 154 if physical attendance is not practicable, shall participate in the hearing through a two-way electronic
 155 video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside
 156 the service area of the community services board or behavioral health authority that prepared the
 157 preadmission screening report, and it is not practicable for a representative of the board or authority to
 158 attend or participate in the hearing, arrangements shall be made by the board or authority for an
 159 employee or designee of the board or authority serving the area in which the hearing is held to attend or
 160 participate on behalf of the board or authority that prepared the preadmission screening report. The
 161 judge or special justice conducting the hearing may order the inmate hospitalized if, after considering
 162 the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in
 163 accordance with § 37.2-816, and any other available information as specified in subsection C of
 164 § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there
 165 exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, (a)
 166 cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
 167 threatening harm and any other relevant information or (b) suffer serious harm due to his lack of
 168 capacity to protect himself from harm as evidenced by recent behavior and any other relevant
 169 information; and (3) the inmate requires treatment in a hospital rather than a local correctional facility.
 170 The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be
 171 available whenever possible for questioning during the hearing through a two-way electronic video and
 172 audio or telephonic communication system as authorized in § 37.2-804.1. The examination and the
 173 preadmission screening report shall be admitted into evidence at the hearing.

174 B. In no event shall an inmate have the right to make application for voluntary admission as may be
 175 otherwise provided in § 37.2-805 or 37.2-814 or be subject to an order for mandatory outpatient
 176 treatment as provided in § ~~37.2-817~~ 37.2-817.01.

177 C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the
 178 court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the

179 inmate's competency to stand trial and his mental state at the time of the offense pursuant to
180 §§ 19.2-169.1 and 19.2-169.5.

181 D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court
182 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
183 § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the
184 provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a
185 court other than the court which has jurisdiction over his criminal case, the facility at which the inmate
186 is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in
187 the criminal case, if the case is still pending.

188 E. Hospitalization may be extended in accordance with subsection D for periods of 60 days for
189 inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such
190 hospitalization act to delay trial, as long as the inmate remains competent to stand trial. Hospitalization
191 may be extended in accordance with subsection D for periods of 180 days for an inmate who has been
192 convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the
193 custody of a local correctional facility after sentencing, but in no event may such hospitalization be
194 continued beyond the date upon which his sentence would have expired had he received the maximum
195 sentence for the crime charged. Any inmate who has not completed service of his sentence upon
196 discharge from the hospital shall serve the remainder of his sentence.

197 F. For any inmate who has been convicted and not yet sentenced, or who has been convicted of a
198 crime and is in the custody of a local correctional facility after sentencing, the time the inmate is
199 confined in a hospital for psychiatric treatment shall be deducted from any term for which he may be
200 sentenced to any penal institution, reformatory or elsewhere.

201 G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an
202 inmate who is the subject of a proceeding under this section, upon request, shall disclose to a
203 magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed
204 pursuant to § 37.2-815, the community service board or behavioral health authority preparing the
205 preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional
206 facility any and all information that is necessary and appropriate to enable each of them to perform his
207 duties under this section. These health care providers and other service providers shall disclose to one
208 another health records and information where necessary to provide care and treatment to the inmate and
209 to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local
210 correctional facility shall be limited to information necessary to protect the sheriff or administrator of the
211 local correctional facility and his employees, the inmate, or the public from physical injury or to address
212 the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used
213 for any other purpose, disclosed to others, or retained.

214 Any health care provider disclosing records pursuant to this section shall be immune from civil
215 liability for any harm resulting from the disclosure, including any liability under the federal Health
216 Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person
217 or provider disclosing such records intended the harm or acted in bad faith.

218 H. Any order entered where an inmate is the subject of proceedings under this section shall provide
219 for the disclosure of medical records pursuant to subsection G. This subsection shall not preclude any
220 other disclosures as required or permitted by law.

221 I. If the person having custody over an inmate files a petition pursuant to this section, such person
222 shall ensure that the appropriate community services board or behavioral health authority is advised of
223 the need for a preadmission screening. If the community services board or behavioral health authority
224 does not respond upon being advised of the need for a preadmission screening or fails to complete the
225 preadmission screening, the person having custody over the inmate shall contact the director or other
226 senior management at the community services board or behavioral health authority.

227 J. As used in this section, "person having custody over an inmate" means the sheriff or other person
228 in charge of the local correctional facility where the inmate is incarcerated at the time of the filing of a
229 petition for the psychiatric treatment of the inmate.

230 **§ 37.2-805. Voluntary admission.**

231 Any state facility shall admit any person requesting admission who has been (i) screened by the
232 community services board or behavioral health authority that serves the county or city where the person
233 resides or, if impractical, where the person is located, (ii) examined by a physician on the staff of the
234 state facility, and (iii) deemed by the board or authority and the state facility physician to be in need of
235 treatment, training, or habilitation in a state facility. Upon motion of the treating physician, a family
236 member or personal representative of the person, or the community services board serving the county or
237 city where the facility is located, the county or city where the person resides, or the county or city
238 where the person receives treatment, a hearing shall be held prior to the release date of any person who
239 has been the subject of a temporary detention order and voluntarily admitted himself in accordance with

240 subsection B of § 37.2-814 to determine whether such person should be ordered to mandatory outpatient
 241 treatment pursuant to subsection D of § ~~37.2-817~~ 37.2-817.01, *except that such 36-month period shall*
 242 *not include any time during which the person was receiving inpatient psychiatric treatment or was*
 243 *incarcerated, as established by evidence admitted at the hearing*, upon his release if such person, on at
 244 least two previous occasions within 36 months preceding the date of the hearing, has been (a) the
 245 subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B
 246 of § 37.2-814 or (b) involuntarily admitted pursuant to § 37.2-817. A district court judge or special
 247 justice shall hold the hearing within 72 hours after receiving the motion for a mandatory outpatient
 248 treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the
 249 hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal
 250 holiday.

251 **§ 37.2-813. Release of person prior to commitment hearing for involuntary admission.**

252 Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819, the district court judge or special
 253 justice may release the person on his personal recognizance or bond set by the district court judge or
 254 special justice if it appears from all evidence readily available that the person does not meet the
 255 commitment criteria specified in subsection ~~D~~ C of § 37.2-817. The director of any facility in which the
 256 person is detained may release the person prior to a hearing as authorized in §§ 37.2-814 through
 257 37.2-819 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist
 258 treating the person, that the person would not meet the commitment criteria specified in subsection ~~D~~ C
 259 of § 37.2-817 if released.

260 **§ 37.2-815. Commitment hearing for involuntary admission; examination required.**

261 A. Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination
 262 of the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in
 263 Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of
 264 mental illness or, if such a psychiatrist or psychologist is not available, a mental health professional who
 265 (i) is licensed in Virginia through the Department of Health Professions as a clinical social worker,
 266 professional counselor, marriage and family therapist, psychiatric nurse practitioner, or clinical nurse
 267 specialist, (ii) is qualified in the assessment of mental illness, and (iii) has completed a certification
 268 program approved by the Department. The examiner chosen shall be able to provide an independent
 269 clinical evaluation of the person and recommendations for his placement, care, and treatment. The
 270 examiner shall (a) not be related by blood or marriage to the person, (b) not be responsible for treating
 271 the person, (c) have no financial interest in the admission or treatment of the person, (d) have no
 272 investment interest in the facility detaining or admitting the person under this chapter, and (e) except for
 273 employees of state hospitals, the U.S. Department of Veterans Affairs, and community service boards,
 274 not be employed by the facility. For purposes of this section, the term "investment interest" shall be as
 275 defined in § 37.2-809.

276 B. The examination conducted pursuant to this section shall be a comprehensive evaluation of the
 277 person conducted in-person or, if that is not practicable, by two-way electronic video and audio
 278 communication system as authorized in § 37.2-804.1. Translation or interpreter services shall be provided
 279 during the evaluation where necessary. The examination shall consist of (i) a clinical assessment that
 280 includes a mental status examination; determination of current use of psychotropic and other
 281 medications; a medical and psychiatric history; a substance use, abuse, or dependency determination; and
 282 a determination of the likelihood that, as a result of mental illness, the person will, in the near future,
 283 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic
 284 human needs; (ii) a substance abuse screening, when indicated; (iii) a risk assessment that includes an
 285 evaluation of the likelihood that, as a result of mental illness, the person will, in the near future, cause
 286 serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
 287 threatening harm and other relevant information, if any; (iv) an assessment of the person's capacity to
 288 consent to treatment, including his ability to maintain and communicate choice, understand relevant
 289 information, and comprehend the situation and its consequences; (v) a review of the temporary detention
 290 facility's records for the person, including the treating physician's evaluation, any collateral information,
 291 reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes; (vi) a
 292 discussion of treatment preferences expressed by the person or contained in a document provided by the
 293 person in support of recovery; (vii) an assessment of whether the person meets the criteria for an order
 294 authorizing discharge to mandatory outpatient treatment following a period of inpatient treatment
 295 pursuant to subsection ~~C~~ C of § ~~37.2-817~~ 37.2-817.01; (viii) an assessment of alternatives to
 296 involuntary inpatient treatment; and (ix) recommendations for the placement, care, and treatment of the
 297 person.

298 C. All such examinations shall be conducted in private. The judge or special justice shall summons
 299 the examiner who shall certify that he has personally examined the person and state whether he has
 300 probable cause to believe that the person (i) has a mental illness and there is a substantial likelihood

301 that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to
 302 himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other
 303 relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself
 304 from harm or to provide for his basic human needs, and (ii) requires involuntary inpatient treatment. The
 305 judge or special justice shall not render any decision on the petition until the examiner has presented his
 306 report. The examiner may report orally at the hearing, but he shall provide a written report of his
 307 examination prior to the hearing. The examiner's written certification may be accepted into evidence
 308 unless objected to by the person or his attorney, in which case the examiner shall attend in person or by
 309 electronic communication. When the examiner attends the hearing in person or by electronic
 310 communication, the examiner shall not be excluded from the hearing pursuant to an order of
 311 sequestration of witnesses.

312 **§ 37.2-817. (Effective July 1, 2022) Involuntary admission.**

313 A. The district court judge or special justice shall render a decision on the petition for involuntary
 314 admission after the appointed examiner has presented the report required by § 37.2-815, and after the
 315 community services board that serves the county or city where the person resides or, if impractical,
 316 where the person is located has presented a preadmission screening report with recommendations for that
 317 person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may
 318 constitute sufficient evidence upon which the district court judge or special justice may base his
 319 decision. The examiner, if not physically present at the hearing, and the treating physician at the facility
 320 of temporary detention shall be available whenever possible for questioning during the hearing through a
 321 two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.

322 B. Any employee or designee of the local community services board, as defined in § 37.2-809,
 323 representing the community services board that prepared the preadmission screening report shall attend
 324 the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through
 325 a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.
 326 Where a hearing is held outside of the service area of the community services board that prepared the
 327 preadmission screening report, and it is not practicable for a representative of the community services
 328 board that prepared the preadmission screening report to attend or participate in the hearing,
 329 arrangements shall be made by the community services board that prepared the preadmission screening
 330 report for an employee or designee of the community services board serving the area in which the
 331 hearing is held to attend or participate on behalf of the community services board that prepared the
 332 preadmission screening report. The employee or designee of the local community services board, as
 333 defined in § 37.2-809, representing the community services board that prepared the preadmission
 334 screening report or attending or participating on behalf of the community services board that prepared
 335 the preadmission screening report shall not be excluded from the hearing pursuant to an order of
 336 sequestration of witnesses. The community services board that prepared the preadmission screening
 337 report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send
 338 the preadmission screening report through certified mail, personal delivery, facsimile with return receipt
 339 acknowledged, or other electronic means with documented acknowledgment of receipt to the community
 340 services board attending the hearing. Where a community services board attends the hearing on behalf of
 341 the community services board that prepared the preadmission screening report, the attending community
 342 services board shall inform the community services board that prepared the preadmission screening
 343 report of the disposition of the matter upon the conclusion of the hearing. In addition, the attending
 344 community services board shall transmit the disposition through certified mail, personal delivery,
 345 facsimile with return receipt acknowledged, or other electronic means with documented acknowledgment
 346 of receipt.

347 At least 12 hours prior to the hearing, the court shall provide to the community services board that
 348 prepared the preadmission screening report the time and location of the hearing. If the representative of
 349 the community services board that prepared the preadmission screening report will be present by
 350 telephonic means, the court shall provide the telephone number to the community services board. If a
 351 representative of a community services board will be attending the hearing on behalf of the community
 352 services board that prepared the preadmission screening report, the community services board that
 353 prepared the preadmission screening report shall promptly communicate the time and location of the
 354 hearing and, if the representative of the community services board attending on behalf of the community
 355 services board that prepared the preadmission screening report will be present by telephonic means, the
 356 telephone number to the attending community services board.

357 C. After observing the person and considering (i) the recommendations of any treating or examining
 358 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any
 359 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records
 360 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have
 361 been admitted, including whether the person recently has been found unrestorably incompetent to stand

362 trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by
 363 clear and convincing evidence that (a) the person has a mental illness and there is a substantial
 364 likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious
 365 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening
 366 harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to
 367 protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive
 368 treatment alternatives to involuntary inpatient treatment that would offer an opportunity for the
 369 improvement of the person's condition have been investigated and determined to be inappropriate, the
 370 judge or special justice shall by written order and specific findings so certify and order that the person
 371 be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the date of
 372 the court order. Such involuntary admission shall be to a facility designated by the community services
 373 board that serves the county or city in which the person was examined as provided in § 37.2-816. If the
 374 community services board does not designate a facility at the commitment hearing, the person shall be
 375 involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for
 376 involuntary admission, the person shall be released unless (A) he is involuntarily admitted by further
 377 petition and order of a court, which shall be for a period not to exceed 180 days from the date of the
 378 subsequent court order, (B) he makes application for treatment on a voluntary basis as provided for in
 379 § 37.2-805, or (C) he is ordered to mandatory outpatient treatment following a period of inpatient
 380 treatment pursuant to § 37.2-817.01. At any time prior to the discharge of a person who has been
 381 involuntarily admitted pursuant to this subsection, the person, the person's treating physician, a family
 382 member or personal representative of the person, or the community services board serving the county or
 383 city where the facility is located, the county or city where the person resides, or the county or city
 384 where the person will receive treatment following discharge may file a motion with the court for a
 385 hearing to determine whether such person should be ordered to mandatory outpatient treatment following
 386 a period of inpatient treatment pursuant to subsection C1 or D upon discharge if such person, on at least
 387 two previous occasions within 36 months preceding the date of the hearing, has been (I) involuntarily
 388 admitted pursuant to this section or (II) the subject of a temporary detention order and voluntarily
 389 admitted himself in accordance with subsection B of § 37.2-814, except that such 36-month period shall
 390 not include any time during which the person was receiving inpatient psychiatric treatment or was
 391 incarcerated, as established by evidence admitted at the hearing. A district court judge or special justice
 392 shall hold the hearing within 72 hours after receiving the motion for a hearing to determine whether the
 393 person should be ordered to mandatory outpatient treatment following a period of involuntary inpatient
 394 treatment; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing
 395 shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday.
 396 The district court judge or special justice may enter an order for a period of mandatory outpatient
 397 treatment following a period of involuntary inpatient treatment upon finding that the person meets the
 398 criteria set forth in subsection C1.

399 C1. In an order for involuntary admission pursuant to subsection C, the judge or special justice may
 400 also order that, upon discharge from inpatient treatment, the person adhere to a comprehensive
 401 mandatory outpatient treatment plan, if the judge or special justice further finds by clear and convincing
 402 evidence that (i) the person has a history of lack of adherence to treatment for mental illness that has, at
 403 least twice within the past 36 months, resulted in the person being subject to an order for involuntary
 404 admission pursuant to subsection C or being subject to a temporary detention order and then voluntarily
 405 admitting himself in accordance with subsection B of § 37.2-814, except that such 36-month period shall
 406 not include any time during which the person was receiving inpatient psychiatric treatment or was
 407 incarcerated, as established by evidence admitted at the hearing; (ii) in view of the person's treatment
 408 history and current behavior, the person is in need of mandatory outpatient treatment following inpatient
 409 treatment in order to prevent a relapse or deterioration that would be likely to result in the person
 410 meeting the criteria for involuntary inpatient treatment; (iii) the person has the ability to adhere to the
 411 comprehensive mandatory outpatient treatment plan; and (iv) the person is likely to benefit from
 412 mandatory outpatient treatment. The duration of the period of inpatient treatment shall be determined by
 413 the court and the maximum period of inpatient treatment shall not exceed 30 days. The duration of
 414 mandatory outpatient treatment shall be determined by the court based on recommendations of the
 415 community services board and the maximum period of mandatory outpatient treatment shall not exceed
 416 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall
 417 consider the impact on the person's opportunities and obligations, including education and employment.
 418 The period of mandatory outpatient treatment shall begin upon discharge of the person from involuntary
 419 inpatient treatment, either upon expiration of the 30-day period or pursuant to § 37.2-837 or 37.2-838.
 420 The treating physician and facility staff shall develop the comprehensive mandatory outpatient treatment
 421 plan in conjunction with the community services board and the person. The comprehensive mandatory
 422 outpatient treatment plan shall include all of the components described in, and shall be filed with the

423 court and incorporated into, the order for mandatory outpatient treatment following a period of
424 involuntary inpatient treatment in accordance with subsection G. The community services board where
425 the person resides upon discharge shall monitor the person's progress and adherence to the
426 comprehensive mandatory outpatient treatment plan. Upon expiration of the order for mandatory
427 outpatient treatment following a period of involuntary inpatient treatment, the person shall be released
428 unless the order is continued in accordance with § 37.2-817.4.

429 D. After observing the person and considering (i) the recommendations of any treating or examining
430 physician or psychologist licensed in Virginia, if available; (ii) any past actions of the person; (iii) any
431 past mental health treatment of the person; (iv) any examiner's certification; (v) any health records
432 available; (vi) the preadmission screening report; and (vii) any other relevant evidence that may have
433 been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person
434 has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the
435 person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by
436 recent behavior causing, attempting, or threatening harm and other relevant information, if any; or (2)
437 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic
438 human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an
439 opportunity for improvement of his condition have been investigated and are determined to be
440 appropriate, as reflected in the initial outpatient treatment plan prepared in accordance with subsection F;
441 (c) the person has the ability to adhere to the mandatory outpatient treatment plan; and (d) the ordered
442 treatment will be delivered on an outpatient basis by the community services board or designated
443 provider to the person, the judge or special justice shall by written order and specific findings so certify
444 and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive
445 alternatives shall not be determined to be appropriate unless the services are actually available in the
446 community. The duration of mandatory outpatient treatment shall be determined by the court based on
447 recommendations of the community services board but shall not exceed 180 days; in prescribing the
448 terms of the order, including its length, the judge or special justice shall consider the impact on the
449 person's opportunities and obligations, including education and employment. Upon expiration of an order
450 for mandatory outpatient treatment, the person shall be released from the requirements of the order
451 unless the order is continued in accordance with § 37.2-817.4.

452 E. Mandatory outpatient treatment may include day treatment in a hospital; night treatment in a
453 hospital; outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11
454 (§ 37.2-1100 et seq.); or other appropriate course of treatment as may be necessary to meet the needs of
455 the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of
456 any kind in the provision of the medication. The community services board that serves the county or
457 city in which the person resides shall recommend a specific course of treatment and programs for the
458 provision of mandatory outpatient treatment.

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

468 G. Prior to discharging a person to mandatory outpatient treatment in accordance with an order for
469 mandatory outpatient treatment following a period of involuntary inpatient treatment entered pursuant to
470 subsection C1 or no later than five days, excluding Saturdays, Sundays, or legal holidays, after an order
471 for mandatory outpatient treatment has been entered pursuant to subsection D, the community services
472 board where the person resides that is responsible for monitoring the person's progress and adherence to
473 the comprehensive mandatory outpatient treatment plan shall file a comprehensive mandatory outpatient
474 treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific
475 type, amount, duration, and frequency of each service to be provided to the person; (ii) identify the
476 provider that has agreed to provide each service included in the plan; (iii) certify that the services are
477 the most appropriate and least restrictive treatment available for the person; (iv) certify that each
478 provider has complied and continues to comply with applicable provisions of the Department's licensing
479 regulations; (v) be developed with the fullest possible involvement and participation of the person and
480 his family, with the person's consent, and reflect his preferences to the greatest extent possible to
481 support his recovery and self-determination, including incorporating any preexisting crisis plan or
482 advance directive of the person; (vi) specify the particular conditions to which the person shall be
483 required to adhere; and (vii) describe (a) how the community services board shall monitor the person's

484 progress and adherence to the plan and (b) any conditions, including scheduled meetings or continued
 485 adherence to medication, necessary for mandatory outpatient treatment to be appropriate for the person.
 486 The community services board shall submit the comprehensive mandatory outpatient treatment plan to
 487 the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment
 488 plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment
 489 entered pursuant to subsection C1 or D, as appropriate. A copy of the comprehensive mandatory
 490 outpatient treatment plan shall be provided to the person by the community services board upon
 491 approval of the comprehensive mandatory outpatient treatment plan by the court.

492 H. If the community services board responsible for developing a comprehensive mandatory outpatient
 493 treatment plan pursuant to subsection C1 or D determines that the services necessary for the treatment of
 494 the person's mental illness are not available or cannot be provided to the person in accordance with the
 495 order for mandatory outpatient treatment, it shall petition the court for rescission of the mandatory
 496 outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary
 497 inpatient treatment in accordance with the provisions of § 37.2-817.2.

498 I. Upon entry of any order for mandatory outpatient treatment following a period of involuntary
 499 inpatient treatment pursuant to subsection C1 or mandatory outpatient treatment entered pursuant to
 500 subsection D, the clerk of the court shall provide a copy of the order to the person who is the subject of
 501 the order, to his attorney, and to the community services board required to monitor the person's progress
 502 and adherence to the comprehensive mandatory outpatient treatment plan. The community services board
 503 shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of
 504 the Executive Secretary of the Supreme Court and provided by the court for this purpose within five
 505 business days.

506 J. The court may transfer jurisdiction of the case to the district court where the person resides at any
 507 time after the entry of the mandatory outpatient treatment order. The community services board
 508 responsible for monitoring the person's progress and adherence to the comprehensive mandatory
 509 outpatient treatment plan shall remain responsible for monitoring the person's progress and adherence to
 510 the plan until the community services board serving the locality to which jurisdiction of the case has
 511 been transferred acknowledges the transfer and receipt of the order to the clerk of the court on a form
 512 established by the Office of the Executive Secretary of the Supreme Court and provided by the court for
 513 this purpose. The community services board serving the locality to which jurisdiction of the case has
 514 been transferred shall acknowledge the transfer and receipt of the order within five business days.

515 K. Any order entered pursuant to this section shall provide for the disclosure of medical records
 516 pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or
 517 permitted by law.

518 **§ 37.2-817.01. Mandatory outpatient treatment.**

519 A. Prior to ordering involuntary admission pursuant to § 37.2-817, a judge or special justice shall
 520 investigate and determine whether (i) mandatory outpatient treatment is appropriate as a less restrictive
 521 alternative to admission pursuant to subsection B or (ii) mandatory outpatient treatment following a
 522 period of inpatient treatment is appropriate pursuant to subsection C.

523 B. After observing the person and considering (i) the recommendations of any treating or examining
 524 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any
 525 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records
 526 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have
 527 been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person
 528 has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the
 529 person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by
 530 recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)
 531 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic
 532 human needs, (b) less restrictive alternatives to involuntary inpatient treatment that would offer an
 533 opportunity for improvement of his condition have been investigated and are determined to be
 534 appropriate, as reflected in the initial outpatient treatment plan prepared in accordance with subsection
 535 F, (c) the person has the ability to adhere to the mandatory outpatient treatment plan, and (d) the
 536 ordered treatment will be delivered on an outpatient basis by the community services board or
 537 designated provider to the person, the judge or special justice shall by written order and specific
 538 findings so certify and order that the person be admitted involuntarily to mandatory outpatient
 539 treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are
 540 actually available in the community. The duration of mandatory outpatient treatment shall be determined
 541 by the court based on recommendations of the community services board but shall not exceed 180 days;
 542 in prescribing the terms of the order, including its length, the judge or special justice shall consider the
 543 impact on the person's opportunities and obligations, including education and employment. Upon
 544 expiration of an order for mandatory outpatient treatment, the person shall be released from the

545 requirements of the order unless the order is continued in accordance with § 37.2-817.4.

546 C. Upon finding by clear and convincing evidence that, in addition to the findings described in
547 subsection C of § 37.2-817, (i) the person has a history of lack of adherence to treatment for mental
548 illness that has, at least twice within the past 36 months, resulted in the person being subject to an
549 order for involuntary admission pursuant to subsection C of § 37.2-817 or being subject to a temporary
550 detention order and then voluntarily admitting himself in accordance with subsection B of § 37.2-814,
551 except that such 36-month period shall not include any time during which the person was receiving
552 inpatient psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing,
553 (ii) in view of the person's treatment history and current behavior, the person is in need of mandatory
554 outpatient treatment following inpatient treatment in order to prevent a relapse or deterioration that
555 would be likely to result in the person meeting the criteria for involuntary inpatient treatment, (iii) the
556 person has the ability to adhere to the comprehensive mandatory outpatient treatment plan, and (iv) the
557 person is likely to benefit from mandatory outpatient treatment, the judge or special justice may order
558 that, upon discharge from inpatient treatment, the person adhere to a comprehensive mandatory
559 outpatient treatment plan.

560 The period of mandatory outpatient treatment shall begin upon discharge of the person from
561 involuntary inpatient treatment, either upon expiration of the order for inpatient treatment pursuant to
562 subsection C of § 37.2-817 or pursuant to § 37.2-837 or 37.2-838. The duration of mandatory outpatient
563 treatment shall be determined by the court on the basis of recommendations of the community services
564 board, and the maximum period of mandatory outpatient treatment shall not exceed 180 days; in
565 prescribing the terms of the order, including its length, the judge or special justice shall consider the
566 impact on the person's opportunities and obligations, including education and employment.

567 The treating physician and facility staff shall develop the comprehensive mandatory outpatient
568 treatment plan in conjunction with the community services board and the person. The comprehensive
569 mandatory outpatient treatment plan shall include all of the components described in, and shall be filed
570 with the court and incorporated into, the order for mandatory outpatient treatment following a period of
571 involuntary inpatient treatment in accordance with subsection G. The community services board where
572 the person resides upon discharge shall monitor the person's progress and adherence to the
573 comprehensive mandatory outpatient treatment plan. Upon expiration of the order for mandatory
574 outpatient treatment following a period of involuntary inpatient treatment, the person shall be released
575 unless the order is continued in accordance with § 37.2-817.4.

576 D. At any time prior to the discharge of a person who has been involuntarily admitted pursuant to
577 subsection C of § 37.2-817, the person, the person's treating physician, a family member or personal
578 representative of the person, or the community services board serving the county or city where the
579 facility is located, the county or city where the person resides, or the county or city where the person
580 will receive treatment following discharge may file a motion with the court for a hearing to determine
581 whether such person should be ordered to mandatory outpatient treatment following a period of
582 inpatient treatment upon discharge if such person, on at least two previous occasions within 36 months
583 preceding the date of the hearing, has been (i) involuntarily admitted pursuant to subsection C of
584 § 37.2-817 or (ii) the subject of a temporary detention order and voluntarily admitted himself in
585 accordance with subsection B of § 37.2-814, except that such 36-month period shall not include any
586 time during which the person was receiving inpatient psychiatric treatment or was incarcerated, as
587 established by evidence admitted at the hearing. A district court judge or special justice shall hold the
588 hearing within 72 hours after receiving the motion for a hearing to determine whether the person should
589 be ordered to mandatory outpatient treatment following a period of involuntary inpatient treatment;
590 however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall be
591 held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday. The
592 district court judge or special justice may enter an order for a period of mandatory outpatient treatment
593 following a period of involuntary inpatient treatment upon finding that the person meets the criteria set
594 forth in subsection C.

595 E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a
596 hospital, outpatient involuntary treatment with antipsychotic medication pursuant to Chapter 11
597 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of
598 the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of
599 any kind in the provision of the medication. The community services board that serves the county or city
600 in which the person resides shall recommend a specific course of treatment and programs for the
601 provision of mandatory outpatient treatment.

602 F. Any order for mandatory outpatient treatment entered pursuant to subsection B shall include an
603 initial mandatory outpatient treatment plan developed by the community services board that completed
604 the preadmission screening report. The plan shall, at a minimum, (i) identify the specific services to be
605 provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the

606 arrangements made for the initial in-person appointment or contact with each service provider, and (iv)
 607 include any other relevant information that may be available regarding the mandatory outpatient
 608 treatment ordered. The order shall require the community services board to monitor the implementation
 609 of the mandatory outpatient treatment plan and the person's progress and adherence to the initial
 610 mandatory outpatient treatment plan.

611 G. The community services board where the person resides that is responsible for monitoring the
 612 person's progress and adherence to the comprehensive mandatory outpatient treatment plan shall file a
 613 comprehensive mandatory outpatient treatment plan no later than five days, excluding Saturdays,
 614 Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered pursuant
 615 to subsection B. The community services board where the person resides that is responsible for
 616 monitoring the person's progress and adherence to the comprehensive mandatory outpatient treatment
 617 plan shall file a comprehensive mandatory outpatient treatment plan prior to discharging a person to
 618 mandatory outpatient treatment pursuant to subsection C or D. The comprehensive mandatory outpatient
 619 treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be
 620 provided to the person; (ii) identify the provider that has agreed to provide each service included in the
 621 plan; (iii) certify that the services are the most appropriate and least restrictive treatment available for
 622 the person; (iv) certify that each provider has complied and continues to comply with applicable
 623 provisions of the Department's licensing regulations; (v) be developed with the fullest possible
 624 involvement and participation of the person and his family, with the person's consent, and reflect his
 625 preferences to the greatest extent possible to support his recovery and self-determination, including
 626 incorporating any preexisting crisis plan or advance directive of the person; (vi) specify the particular
 627 conditions to which the person shall be required to adhere; and (vii) describe (a) how the community
 628 services board shall monitor the person's progress and adherence to the plan and (b) any conditions,
 629 including scheduled meetings or continued adherence to medication, necessary for mandatory outpatient
 630 treatment to be appropriate for the person. The community services board shall submit the
 631 comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the
 632 court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and
 633 incorporated into the order of mandatory outpatient treatment entered pursuant to subsection B, C, or
 634 D, as appropriate. A copy of the comprehensive mandatory outpatient treatment plan shall be provided
 635 to the person by the community services board upon approval of the comprehensive mandatory
 636 outpatient treatment plan by the court.

637 H. If the community services board responsible for developing a comprehensive mandatory outpatient
 638 treatment plan pursuant to subsection B, C, or D determines that the services necessary for the
 639 treatment of the person's mental illness are not available or cannot be provided to the person in
 640 accordance with the order for mandatory outpatient treatment, it shall petition the court for rescission
 641 of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a
 642 period of involuntary inpatient treatment in accordance with the provisions of subsection D of
 643 § 37.2-817.1.

644 I. Upon entry of any order for mandatory outpatient treatment pursuant to subsection B or
 645 mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to
 646 subsection C or D, the clerk of the court shall provide a copy of the order to the person who is the
 647 subject of the order, to his attorney, and to the community services board required to monitor the
 648 person's progress and adherence to the comprehensive mandatory outpatient treatment plan. The
 649 community services board shall acknowledge receipt of the order to the clerk of the court on a form
 650 established by the Office of the Executive Secretary of the Supreme Court and provided by the court for
 651 this purpose within five business days.

652 J. The court may transfer jurisdiction of the case to the district court where the person resides at
 653 any time after the entry of the mandatory outpatient treatment order. The community services board
 654 responsible for monitoring the person's progress and adherence to the comprehensive mandatory
 655 outpatient treatment plan shall remain responsible for monitoring the person's progress and adherence
 656 to the plan until the community services board serving the locality to which jurisdiction of the case has
 657 been transferred acknowledges the transfer and receipt of the order to the clerk of the court on a form
 658 established by the Office of the Executive Secretary of the Supreme Court and provided by the court for
 659 this purpose. The community services board serving the locality to which jurisdiction of the case has
 660 been transferred shall acknowledge the transfer and receipt of the order within five business days.

661 K. Any order entered pursuant to this section shall provide for the disclosure of medical records
 662 pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or
 663 permitted by law.

664 **§ 37.2-817.1. (Effective July 1, 2022) Monitoring and court review of mandatory outpatient**
 665 **treatment.**

666 A. As used in this section, "material nonadherence" means deviation from a comprehensive

667 mandatory outpatient treatment plan by a person who is subject to an order for mandatory outpatient
668 treatment following a period of involuntary inpatient treatment pursuant to subsection ~~C~~ C or D of §
669 ~~37.2-817~~ 37.2-817.01 or an order for mandatory outpatient treatment pursuant to subsection ~~B~~ B of §
670 ~~37.2-817~~ 37.2-817.01 that it is likely to lead to the person's relapse or deterioration and for which the
671 person cannot provide a reasonable explanation.

672 B. The community services board where the person resides shall monitor the person's progress and
673 adherence to the comprehensive mandatory outpatient treatment plan prepared in accordance with §
674 ~~37.2-817~~ 37.2-817.01. Such monitoring shall include (i) contacting or making documented efforts to
675 contact the person regarding the comprehensive mandatory outpatient treatment plan and any support
676 necessary for the person to adhere to the comprehensive mandatory outpatient treatment plan, (ii)
677 contacting the service providers to determine if the person is adhering to the comprehensive mandatory
678 outpatient treatment plan and, in the event of material nonadherence, if the person fails or refuses to
679 cooperate with efforts of the community services board or providers of services identified in the
680 comprehensive mandatory outpatient treatment plan to address the factors leading to the person's
681 material nonadherence, petitioning for a review hearing pursuant to ~~§ 37.2-817.2~~ this section. Service
682 providers identified in the comprehensive mandatory outpatient treatment plan shall report any material
683 nonadherence and any material changes in the person's condition to the community services board. Any
684 finding of material nonadherence shall be based upon a totality of the circumstances.

685 C. The community services board responsible for monitoring the person's progress and adherence to
686 the comprehensive mandatory outpatient treatment plan shall report monthly, in writing, to the court
687 regarding the person's and the community services board's compliance with the provisions of the
688 comprehensive mandatory outpatient treatment plan. If the community services board determines that the
689 deterioration of the condition or behavior of a person who is subject to an order for mandatory
690 outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection ~~C~~ C or
691 D of § 37.2-817.01 or a mandatory outpatient treatment order pursuant to subsection ~~B~~ B of ~~§ 37.2-817~~
692 § 37.2-817.01 is such that there is a substantial likelihood that, as a result of the person's mental illness,
693 the person will, in the near future, (i) cause serious physical harm to himself or others as evidenced by
694 recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (ii)
695 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic
696 human needs, it shall immediately request that the magistrate issue an emergency custody order pursuant
697 to § 37.2-808 or a temporary detention order pursuant to § 37.2-809. Entry of an emergency custody
698 order, temporary detention order, or involuntary inpatient treatment order shall suspend but not rescind
699 an existing order for mandatory outpatient treatment following a period of involuntary inpatient
700 treatment pursuant to subsection ~~C~~ C or D of ~~§ 37.2-817~~ § 37.2-817.01 or a mandatory outpatient
701 treatment order pursuant to subsection ~~B~~ B of ~~§ 37.2-817~~ § 37.2-817.01.

702 D. *The district court judge or special justice shall hold a hearing within five days after receiving the*
703 *petition for review of the comprehensive mandatory outpatient treatment plan; however, if the fifth day*
704 *is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall be*
705 *held by the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on*
706 *which the court is lawfully closed. The clerk shall provide notice of the hearing to the person, the*
707 *community services board, all treatment providers listed in the comprehensive mandatory outpatient*
708 *treatment order or discharge plan, and the original petitioner for the person's involuntary treatment. If*
709 *the person is not represented by counsel, the court shall appoint an attorney to represent the person in*
710 *this hearing and any subsequent hearing under this section or § 37.2-817.4, giving consideration to*
711 *appointing the attorney who represented the person at the proceeding that resulted in the issuance of*
712 *the mandatory outpatient treatment order or order for mandatory outpatient treatment following a*
713 *period of involuntary inpatient treatment. The same judge or special justice that presided over the*
714 *hearing resulting in the mandatory outpatient treatment order or order for mandatory outpatient*
715 *treatment following a period of involuntary inpatient treatment need not preside at the nonadherence*
716 *hearing or any subsequent hearings. The community services board shall offer to arrange the person's*
717 *transportation to the hearing if the person is not detained and has no other source of transportation.*

718 *Any of the following may petition the court for a hearing pursuant to this subsection: (i) the person*
719 *who is subject to the mandatory outpatient treatment order or order for mandatory outpatient treatment*
720 *following a period of involuntary inpatient treatment; (ii) the community services board responsible for*
721 *monitoring the person's progress and adherence to the mandatory outpatient treatment order or order*
722 *for mandatory outpatient treatment following a period of involuntary inpatient treatment; (iii) a*
723 *treatment provider designated in the comprehensive mandatory outpatient treatment plan; (iv) the person*
724 *who originally filed the petition that resulted in the entry of the mandatory outpatient treatment order or*
725 *order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (v) any*
726 *health care agent designated in the advance directive of the person who is the subject of the mandatory*
727 *outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary*

728 inpatient treatment; or (vi) if the person who is the subject of the mandatory outpatient treatment order
 729 or order for mandatory outpatient treatment following a period of involuntary inpatient treatment has
 730 been determined to be incapable of making an informed decision, the person's guardian or other person
 731 authorized to make health care decisions for the person pursuant to § 54.1-2986.

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

733 1. Enforce a mandatory outpatient treatment order or order for mandatory outpatient treatment
 734 following a period of involuntary inpatient treatment and require the person who is the subject of the
 735 order to adhere to the comprehensive mandatory outpatient treatment plan, in the case of material
 736 nonadherence;

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

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

743 At any time after 30 days from entry of the mandatory outpatient treatment order pursuant to
 744 subsection B of § 37.2-817.01 or from the discharge of the person from involuntary inpatient treatment
 745 pursuant to an order under subsection C or D of § 37.2-817.01, the person may petition the court to
 746 rescind the order. The person shall not file a petition to rescind the order more than once during a
 747 90-day period.

748 E. If requested in a petition filed pursuant to subsection D or on the court's own motion, the court
 749 may appoint an examiner in accordance with § 37.2-815 who shall personally examine the person on or
 750 before the date of the review, as directed by the court, and certify to the court whether or not he has
 751 probable cause to believe that the person meets the criteria for mandatory outpatient treatment as
 752 specified in subsection B, C, or D of § 37.2-817.01, as may be applicable. The examination shall include
 753 all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into
 754 evidence without the appearance of the examiner at the hearing if not objected to by the person or his
 755 attorney. If the person is not incarcerated or receiving treatment in an inpatient facility, the community
 756 services board shall arrange for the person to be examined at a convenient location and time. The
 757 community services board shall offer to arrange for the person's transportation to the examination if the
 758 person has no other source of transportation and resides within the service area or an adjacent service
 759 area of the community services board. If the person refuses or fails to appear, the community services
 760 board shall notify the court, or a magistrate if the court is not available, and the court or magistrate
 761 shall issue a mandatory examination order and *capias* directing the primary law-enforcement agency in
 762 the jurisdiction where the person resides to transport the person to the examination. The person shall
 763 remain in custody until a temporary detention order is issued or until the person is released, but in no
 764 event shall the period exceed eight hours.

765 F. If the person fails to appear for the hearing, the court may, after consideration of any evidence
 766 regarding why the person failed to appear at the hearing, (i) dismiss the petition, (ii) issue an
 767 emergency custody order pursuant to § 37.2-808, or (iii) reschedule the hearing pursuant to subsection
 768 D and issue a subpoena for the person's appearance at the hearing and enter an order for mandatory
 769 examination, to be conducted prior to the hearing and in accordance with subsection E.

770 G. After observing the person and considering (i) the recommendations of any treating or examining
 771 physician or psychologist licensed to practice in the Commonwealth, if available, (ii) the person's
 772 adherence to the comprehensive mandatory outpatient treatment plan, (iii) any past mental health
 773 treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) any
 774 report from the community services board, and (vii) any other relevant evidence that may have been
 775 admitted at the hearing, the judge or special justice shall make one of the following dispositions:

776 1. In a hearing on any petition seeking enforcement of a mandatory outpatient treatment order, upon
 777 finding that continuing mandatory outpatient treatment is warranted, the court shall direct the person to
 778 fully comply with the mandatory outpatient treatment order or order for mandatory outpatient treatment
 779 following a period of involuntary inpatient treatment and may make any modifications to such order or
 780 the comprehensive mandatory outpatient treatment plan that are acceptable to the community services
 781 board or treatment provider responsible for the person's treatment. In determining the appropriateness
 782 of the outpatient treatment specified in such order and the comprehensive mandatory outpatient
 783 treatment plan, the court may consider the person's material nonadherence to the existing mandatory
 784 treatment order.

785 2. In a hearing on any petition seeking modification of a mandatory outpatient treatment order or
 786 order for mandatory outpatient treatment following a period of involuntary inpatient treatment, upon a
 787 finding that (i) one or more modifications of the order would benefit the person and help prevent
 788 relapse or deterioration of the person's condition, (ii) the community services board and the treatment

789 provider responsible for the person's treatment are able to provide services consistent with such
 790 modification, and (iii) the person is able to adhere to the modified comprehensive mandatory outpatient
 791 treatment plan, the court may order such modification of the mandatory outpatient treatment order or
 792 order for mandatory outpatient treatment following a period of involuntary inpatient treatment or the
 793 comprehensive mandatory outpatient treatment plan as the court finds appropriate.

794 3. In a hearing on any petition filed to enforce, modify, or rescind a mandatory outpatient treatment
 795 order, upon finding that mandatory outpatient treatment is no longer appropriate, the court may rescind
 796 the order.

797 H. The judge or special justice may schedule periodic status hearings for the purpose of obtaining
 798 information regarding the person's progress while the mandatory outpatient treatment order or order for
 799 mandatory outpatient treatment following a period of involuntary inpatient treatment remains in effect.
 800 The clerk shall provide notice of the hearing to the person who is the subject of the order and the
 801 community services board responsible for monitoring the person's condition and adherence to the plan.
 802 The person shall have the right to be represented by counsel at the hearing, and if the person does not
 803 have counsel the court shall appoint an attorney to represent the person. However, status hearings may
 804 be held without counsel present by mutual consent of the parties. The community services board shall
 805 offer to arrange the person's transportation to the hearing if the person is not detained and has no
 806 other source of transportation. During a status hearing, the treatment plan may be amended upon
 807 mutual agreement of the parties. Contested matters shall not be decided during a status hearing, nor
 808 shall any decision regarding enforcement, rescission, or renewal of the order be entered.

809 **§ 37.2-817.4. (Effective July 1, 2022) Continuation of mandatory outpatient treatment order.**

810 A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order or
 811 order for mandatory outpatient treatment following a period of involuntary inpatient treatment, any
 812 person or entity that may file a petition for review of a mandatory outpatient treatment order or order
 813 for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to
 814 subsection A D of § ~~37.2-817.2~~ 37.2-817.1 may petition the court to continue the order for a period not
 815 to exceed 180 days.

816 B. If the person who is the subject of the order and the monitoring community services board, if it
 817 did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate
 818 order without further hearing. If either the person or the monitoring community services board does not
 819 join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance with
 820 subsection A D of § ~~37.2-817.2~~ 37.2-817.1.

821 C. Upon receipt of a contested petition for continuation, the court shall appoint an examiner who
 822 shall personally examine the person pursuant to subsection B E of § ~~37.2-817.2~~ 37.2-817.1. The
 823 community services board required to monitor the person's adherence to the mandatory outpatient
 824 treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient
 825 treatment shall provide a report addressing whether the person continues to meet the criteria for being
 826 subject to a mandatory outpatient treatment order pursuant to subsection D B of § ~~37.2-817~~ 37.2-817.01
 827 or order for mandatory outpatient treatment following a period of involuntary inpatient treatment
 828 pursuant to subsection C A C or D of § ~~37.2-817~~ 37.2-817.01, as may be appropriate.

829 D. If, after observing the person, reviewing the report of the community services board provided
 830 pursuant to subsection C and considering the appointed examiner's certification and any other relevant
 831 evidence submitted at the hearing, the court finds that the person continues to meet the criteria for
 832 mandatory outpatient treatment pursuant to subsection C A B, C, or D of § ~~37.2-817~~ 37.2-817.01, it may
 833 continue the order for a period not to exceed 180 days; in prescribing the terms of the order, including
 834 its length, the judge or special justice shall consider the impact on the person's opportunities and
 835 obligations, including education and employment. Any order of mandatory outpatient treatment that is in
 836 effect at the time a petition for continuation of the order is filed shall remain in effect until the
 837 disposition of the hearing.

838 **§ 37.2-821. Appeal of involuntary admission or certification order.**

839 A. Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient
 840 treatment pursuant to §§ 37.2-814 through 37.2-819 or certified as eligible for admission pursuant to
 841 § 37.2-806 shall have the right to appeal the order to the circuit court in the jurisdiction where he was
 842 involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to
 843 which he was admitted is located. Choice of venue shall rest with such person. The court may transfer
 844 the case upon a finding that the other forum is more convenient. The clerk of the court from which an
 845 appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the
 846 circuit court shall provide written notification of the appeal to the petitioner in the case in accordance
 847 with procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required, and the appeal
 848 shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in
 849 § 37.2-804.

850 B. An appeal shall be filed within 10 days from the date of the order and shall be given priority over
 851 all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241
 852 regarding the time within which the court shall set criminal cases for trial. A petition for or the
 853 pendency of an appeal shall not suspend any order unless so ordered by a judge or special justice;
 854 however, a person may be released after a petition for or during the pendency of an appeal pursuant to
 855 § 37.2-837 or 37.2-838. If the person is released during the pendency of an appeal, the appeal shall be
 856 in accordance with the provisions set forth in §§ 37.2-844 and 37.2-846.

857 C. The appeal shall be heard de novo in accordance with the provisions set forth in §§ 37.2-802,
 858 37.2-804, 37.2-804.1, 37.2-804.2, and 37.2-805 and (i) § 37.2-806 or (ii) §§ 37.2-814 through 37.2-819,
 859 except that the court in its discretion may rely upon the evaluation report in the commitment hearing
 860 from which the appeal is taken instead of requiring a new evaluation pursuant to § 37.2-815. Any order
 861 of the circuit court shall not extend the period of involuntary admission or mandatory outpatient
 862 treatment set forth in the order appealed from.

863 D. An order continuing the involuntary *inpatient* admission shall be entered only if the criteria in
 864 § 37.2-817 are met at the time the appeal is heard. *An order continuing mandatory outpatient treatment*
 865 *shall be entered only if the criteria set forth in § 37.2-817.01 are met at the time the appeal is heard.*

866 E. Upon a finding by the court that the appellant no longer meets the criteria for involuntary
 867 admission or mandatory outpatient treatment, the court shall not dismiss the Commonwealth's petition
 868 but shall reverse the order of the district court.

869 F. The person so admitted or certified shall be entitled to trial by jury. Seven persons from a panel
 870 of 13 shall constitute a jury.

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

874 **2. That § 37.2-817.2, as it shall become effective, of the Code of Virginia is repealed.**

875 **3. That the provisions of the first and second enactments of this act shall become effective on**
 876 **October 1, 2022.**

877 **4. That the third enactment of Chapter 221 of the Acts of Assembly of 2021, Special Session I,**
 878 **is amended and reenacted as follows:**

879 **3. That the provisions of this act shall become effective on October 1, 2022.**