

24104584D

**HOUSE BILL NO. 608**

Offered January 10, 2024

Prefiled January 9, 2024

*A BILL to amend and reenact §§ 37.2-100, 37.2-800, 37.2-804.2, 37.2-808 through 37.2-810, 37.2-814, 37.2-816, 37.2-817, and 37.2-1104 of the Code of Virginia, relating to temporary detention; certified evaluators; report.*

---

 Patron—Price
 

---

Referred to Committee on Health and Human Services

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

**1. That §§ 37.2-100, 37.2-800, 37.2-804.2, 37.2-808 through 37.2-810, 37.2-814, 37.2-816, 37.2-817, and 37.2-1104 of the Code of Virginia are amended and reenacted as follows:**

**§ 37.2-100. Definitions.**

As used in this title, unless the context requires a different meaning:

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the individual;
4. Misuse or misappropriation of the individual's assets, goods, or property;
5. Use of excessive force when placing an individual in physical or mechanical restraint;
6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or his individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with his individualized services plan.

"Administrative policy community services board" or "administrative policy board" means the public body organized in accordance with the provisions of Chapter 5 (§ 37.2-500 et seq.) that is appointed by and accountable to the governing body of each city and county that established it to set policy for and administer the provision of mental health, developmental, and substance abuse services. The "administrative policy community services board" or "administrative policy board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. Mental health, developmental, and substance abuse services are provided through local government staff or through contracts with other organizations and providers.

"Behavioral health authority" or "authority" means a public body and a body corporate and politic organized in accordance with the provisions of Chapter 6 (§ 37.2-600 et seq.) that is appointed by and accountable to the governing body of the city or county that established it for the provision of mental health, developmental, and substance abuse services. "Behavioral health authority" or "authority" also includes the organization that provides these services through its own staff or through contracts with other organizations and providers.

"Behavioral health services" means the full range of mental health and substance abuse services.

"Board" means the State Board of Behavioral Health and Developmental Services.

"Commissioner" means the Commissioner of Behavioral Health and Developmental Services.

"Community services board" means the public body established pursuant to § 37.2-501 that provides mental health, developmental, and substance abuse services within each city and county that established it; the term "community services board" shall include administrative policy community services boards, operating community services boards, and local government departments with policy-advisory community services boards.

"Department" means the Department of Behavioral Health and Developmental Services.

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the

INTRODUCED

HB608

59 following areas of major life activity: self-care, receptive and expressive language, learning, mobility,  
60 self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the  
61 individual's need for a combination and sequence of special interdisciplinary or generic services,  
62 individualized supports, or other forms of assistance that are of lifelong or extended duration and are  
63 individually planned and coordinated. An individual from birth to age nine, inclusive, who has a  
64 substantial developmental delay or specific congenital or acquired condition may be considered to have a  
65 developmental disability without meeting three or more of the criteria described in clauses (i) through  
66 (v) if the individual, without services and supports, has a high probability of meeting those criteria later  
67 in life.

68 "Developmental services" means planned, individualized, and person-centered services and supports  
69 provided to individuals with developmental disabilities for the purpose of enabling these individuals to  
70 increase their self-determination and independence, obtain employment, participate fully in all aspects of  
71 community life, advocate for themselves, and achieve their fullest potential to the greatest extent  
72 possible.

73 "Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of  
74 residential or outpatient mental health or developmental services facility. When modified by the word  
75 "state," "facility" means a state hospital or training center operated by the Department, including the  
76 buildings and land associated with it.

77 "Family member" means an immediate family member of an individual receiving services or the  
78 principal caregiver of that individual. A principal caregiver is a person who acts in the place of an  
79 immediate family member, including other relatives and foster care providers, but does not have a  
80 proprietary interest in the care of the individual receiving services.

81 "Hospital," when not modified by the words "state" or "licensed," means a state hospital and a  
82 licensed hospital that provides care and treatment for persons with mental illness.

83 "Individual receiving services" or "individual" means a current direct recipient of public or private  
84 mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and  
85 includes the terms "consumer," "patient," "resident," "recipient," or "client."

86 "Intellectual disability" means a disability, originating before the age of 18 years, characterized  
87 concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a  
88 standardized measure of intellectual functioning, administered in conformity with accepted professional  
89 practice, that is at least two standard deviations below the mean and (ii) significant limitations in  
90 adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

91 "Licensed hospital" means a hospital or institution, including a psychiatric unit of a general hospital,  
92 that is licensed pursuant to the provisions of this title.

93 "Mental health services" means planned individualized interventions intended to reduce or ameliorate  
94 mental illness or the effects of mental illness through care, treatment, counseling, rehabilitation, medical  
95 or psychiatric care, or other supports provided to individuals with mental illness for the purpose of  
96 enabling these individuals to increase their self-determination and independence, obtain remunerative  
97 employment, participate fully in all aspects of community life, advocate for themselves, and achieve  
98 their fullest potential to the greatest extent possible.

99 "Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that  
100 significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life  
101 necessities and requires care and treatment for the health, safety, or recovery of the individual or for the  
102 safety of others.

103 "Neglect" means failure by a person or a program or facility operated, licensed, or funded by the  
104 Department, excluding those operated by the Department of Corrections, responsible for providing  
105 services to do so, including nourishment, treatment, care, goods, or services necessary to the health,  
106 safety, or welfare of an individual receiving care or treatment for mental illness, developmental  
107 disabilities, or substance abuse.

108 "Operating community services board" or "operating board" means the public body organized in  
109 accordance with the provisions of Chapter 5 (§ 37.2-500 et seq.) that is appointed by and accountable to  
110 the governing body of each city and county that established it for the direct provision of mental health,  
111 developmental, and substance abuse services. The "operating community services board" or "operating  
112 board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers  
113 and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. "Operating community services  
114 board" or "operating board" also includes the organization that provides such services, through its own  
115 staff or through contracts with other organizations and providers.

116 "Performance contract" means the annual agreement negotiated and entered into by a community  
117 services board or behavioral health authority with the Department through which it provides state and  
118 federal funds appropriated for mental health, developmental, and substance abuse services to that  
119 community services board or behavioral health authority.

120 "Policy-advisory community services board" or "policy-advisory board" means the public body

organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body of each city or county that established it to provide advice on policy matters to the local government department that provides mental health, developmental, and substance abuse services pursuant to subsection A of § 37.2-504 and § 37.2-505. The "policy-advisory community services board" or "policy-advisory board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection B of § 37.2-504.

*"Psychiatric emergency department" means an emergency department of a hospital licensed by the Department of Health that is physically attached to a hospital with adult and adolescent inpatient psychiatric beds and adult detoxification beds licensed by the Department of Behavioral Health and Developmental Services.*

"Service area" means the city or county or combination of cities and counties or counties or cities that is served by a community services board or behavioral health authority or the cities and counties that are served by a state facility.

"Special justice" means a person appointed by a chief judge of a judicial circuit for the purpose of performing the duties of a judge pursuant to § 37.2-803.

"State hospital" means a hospital, psychiatric institute, or other institution operated by the Department that provides care and treatment for persons with mental illness.

"Substance abuse" means the use of drugs, enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Training center" means a facility operated by the Department that provides training, habilitation, or other individually focused supports to persons with intellectual disability.

#### **§ 37.2-800. Applicability of chapter.**

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

#### **§ 37.2-804.2. Disclosure of records.**

Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to this chapter shall, upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to § 37.2-815, the community services board or its designee or a *certified evaluator* performing any evaluation, preadmission screening, or monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant to this chapter. Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently evaluating or providing services to a person who is the subject of proceedings pursuant to this chapter shall disclose information that may be necessary for the treatment of such person to any other health care provider or other provider evaluating or providing services to or monitoring the treatment of the person. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider providing services to a person who is the subject of proceedings under this chapter shall (i) inform the person that his family member or personal representative, including any agent named in an advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.), will be notified of information that is directly relevant to such individual's involvement with the person's health care, which may include the person's location and general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, and (ii) make a reasonable effort to so notify the person's family member or personal representative, unless the provider has actual knowledge that the family member or personal representative is currently prohibited by court order from contacting the person. No health care provider shall be required to notify a person's family member or personal representative pursuant to this section if the health care provider has actual knowledge that such notice has been provided.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health

182 Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person  
183 or provider disclosing such records intended the harm or acted in bad faith.

184 **§ 37.2-808. Emergency custody; issuance and execution of order.**

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

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

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

210 C. The magistrate or court issuing an emergency custody order shall specify the primary  
211 law-enforcement agency and jurisdiction to execute the emergency custody order and provide  
212 transportation. However, the magistrate or court shall authorize transportation by an alternative  
213 transportation provider in accordance with this section, whenever an alternative transportation provider is  
214 identified to the magistrate or court, which may be a person, facility, or agency, including a family  
215 member or friend of the person who is the subject of the order, a representative of the community  
216 services board, *or a certified evaluator*, or other transportation provider with personnel trained to  
217 provide transportation in a safe manner, upon determining, following consideration of information  
218 provided by the petitioner; the community services board or its designee *or a certified evaluator*; the  
219 local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are  
220 available and have knowledge of the person, and, when the magistrate or court deems appropriate, the  
221 proposed alternative transportation provider, either in person or via two-way electronic video and audio  
222 or telephone communication system, that the proposed alternative transportation provider is available to  
223 provide transportation, willing to provide transportation, and able to provide transportation in a safe  
224 manner.

225 When transportation is ordered to be provided by an alternative transportation provider, the  
226 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to  
227 take the person into custody, and to transfer custody of the person to the alternative transportation  
228 provider identified in the order. In such cases, a copy of the emergency custody order shall accompany  
229 the person being transported pursuant to this section at all times and shall be delivered by the alternative  
230 transportation provider to the community services board or its designee *or certified evaluator* responsible  
231 for conducting the evaluation. The community services board or its designee *or certified evaluator*  
232 conducting the evaluation shall return a copy of the emergency custody order to the court designated by  
233 the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of  
234 an order to a law-enforcement officer or alternative transportation provider and return of an order to the  
235 court may be accomplished electronically or by facsimile.

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

241 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,  
242 the magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by  
243 the community services board *or certified evaluator* 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.

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

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

L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency custody order issued pursuant to this section. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order, the person may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility in which the person is detained shall notify the nearest community services board or

305 *certified evaluator*, and the designee of the community services board *or certified evaluator* shall, as  
306 soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to  
307 § 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary  
308 detention pursuant to § 37.2-809.

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

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

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

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

322 Q. An employee or contractor of an entity providing alternative transportation services pursuant to a  
323 contract with the Department who has completed training approved by the Department in the proper and  
324 safe use of restraint may use restraint (i) if restraint is necessary to ensure the safety of the person or  
325 others or prevent escape and (ii) if less restrictive techniques have been determined to be ineffective to  
326 protect the person or others from harm or to prevent escape.

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

330 S. For purposes of this section:

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

332 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to  
333 §§ 15.2-1731 and 15.2-1733, except for the purposes of subsection G.

334 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

335 A. For the purposes of this section:

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

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

354 "Employee" means an employee of the local community services board who is skilled in the  
355 assessment and treatment of mental illness and has completed a certification program approved by the  
356 Department.

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

360 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
361 upon his own motion and only after an evaluation conducted in-person or by means of a two-way  
362 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a  
363 designee of the local community services board *or a certified evaluator* to determine whether the person  
364 meets the criteria for temporary detention, a temporary detention order if it appears from all evidence  
365 readily available, including any recommendation from a physician, clinical psychologist, clinical social  
366 worker, or licensed professional counselor treating the person, that the person (i) has a mental illness

and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider, if available, (a) information provided by the person who initiated emergency custody and (b) the recommendations of any treating or examining physician licensed in Virginia either verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

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

E. An employee or a designee of the local community services board *or a certified evaluator* shall determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all persons detained pursuant to this section. An employee or designee of the local community services board *or a certified evaluator* may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the person given the specific security, medical, or behavioral health needs of the person. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary custody, transportation of the person to the alternative facility of temporary detention shall be provided in accordance with the provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board *or the certified evaluator* designates an alternative facility, that employee or designee *or certified evaluator* shall provide written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the person shall be detained in a state facility for the treatment of persons with mental illness and such facility shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6 or in subsection C of § 37.2-813 for persons prior to transfer to the facility of temporary detention, the person shall remain in the custody of law enforcement until either (i) the person is detained within a secure facility or (ii) custody has been accepted by the appropriate personnel designated by either the initial facility of temporary detention identified in the temporary detention order or by the alternative facility of temporary detention designated by the employee or designee of the local community services board *or the certified evaluator* pursuant to this subsection. The person detained or in custody pursuant to this section shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures.

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

428 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by  
429 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

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

436 H. The duration of temporary detention shall be sufficient to allow for completion of the examination  
437 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and  
438 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary  
439 commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period  
440 herein specified terminates on a Saturday, Sunday, legal holiday, or, if the individual has been admitted  
441 to a facility of temporary detention, day or part of a day on which the clerk's office is lawfully closed,  
442 the person may be detained, as herein provided, until the close of business on the next day that is not a  
443 Saturday, Sunday, legal holiday, or, if the individual has been admitted to a facility of temporary  
444 detention, day or part of a day on which the clerk's office is lawfully closed. The person may be  
445 released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

446 I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter  
447 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office  
448 of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of  
449 the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the  
450 petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of  
451 the local community services board *or a certified evaluator* prior to issuing a subsequent order upon the  
452 original petition. Any petition for which no temporary detention order or other process in connection  
453 therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void  
454 and shall be returned to the office of the clerk of the issuing court.

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

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

466 L. If the employee or designee of the community services board *or the certified evaluator* who is  
467 conducting the evaluation pursuant to this section recommends that the person should not be subject to a  
468 temporary detention order, such employee or designee *or certified evaluator* shall (i) inform the  
469 petitioner, the person who initiated emergency custody if such person is present, and an onsite treating  
470 physician of his recommendation; (ii) promptly inform such person who initiated emergency custody that  
471 the community services board *or certified evaluator* will facilitate communication between the person  
472 and the magistrate if the person disagrees with recommendations of the employee or designee of the  
473 community services board *or certified evaluator* who conducted the evaluation and the person who  
474 initiated emergency custody so requests; and (iii) upon prompt request made by the person who initiated  
475 emergency custody, arrange for such person who initiated emergency custody to communicate with the  
476 magistrate as soon as is practicable and prior to the expiration of the period of emergency custody. The  
477 magistrate shall consider any information provided by the person who initiated emergency custody and  
478 any recommendations of the treating or examining physician and the employee or designee of the  
479 community services board *or certified evaluator* who conducted the evaluation and consider such  
480 information and recommendations in accordance with subsection B in making his determination to issue  
481 a temporary detention order. The person who is the subject of emergency custody shall remain in the  
482 custody of law enforcement or a designee of law enforcement and shall not be released from emergency  
483 custody until communication with the magistrate pursuant to this subsection has concluded and the  
484 magistrate has made a determination regarding issuance of a temporary detention order.

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

488 N. In any case in which a person subject to an evaluation pursuant to this section is receiving  
489 services in a hospital emergency department, the treating physician or his designee and the employee or



designee of the local community services board *or certified evaluator* shall disclose to each other relevant information pertaining to the individual's treatment in the emergency department.

**§ 37.2-809.1. Facility of temporary detention.**

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

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

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

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

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

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

B. The magistrate issuing the temporary detention order shall (i) specify the law-enforcement agency to execute the order and (ii) designate a transportation provider. In determining the transportation provider, the magistrate shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the temporary detention order, a representative of the community services board, *a certified evaluator*, an employee of or person providing services pursuant to a contract with the Department, or other transportation provider with personnel trained to provide transportation in a safe manner. Upon determining, following consideration of information provided by the petitioner; the community services board or its designee; *the certified evaluator*; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that an alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall designate such alternative transportation provider to provide transportation of the person. If no alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall designate the primary law-enforcement agency and jurisdiction designated to execute the temporary detention order to provide transportation of the person.

551 When transportation is ordered to be provided by an alternative transportation provider, the  
552 magistrate shall order the specified law-enforcement agency to execute the order, to take the person into  
553 custody, and to transfer custody of the person to the alternative transportation provider identified in the  
554 order. The primary law-enforcement agency may transfer custody of the person to the alternative  
555 transportation provider immediately upon execution of the temporary detention order based on the  
556 availability of alternative transportation providers. The alternative transportation provider shall maintain  
557 custody of the person from the time custody is transferred to the alternative transportation provider by  
558 the primary law-enforcement agency until such time as custody of the person is transferred to the  
559 temporary detention facility, including during any period prior to the initiation of transportation of the  
560 person from the facility to which he was transported pursuant to § 37.2-808 and while transportation is  
561 being provided pursuant to this section.

562 In such cases, a copy of the temporary detention order shall accompany the person being transported  
563 pursuant to this section at all times and shall be delivered by the alternative transportation provider to  
564 the temporary detention facility. The temporary detention facility shall return a copy of the temporary  
565 detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order  
566 to a law-enforcement officer or alternative transportation provider and return of an order to the court  
567 may be accomplished electronically or by facsimile.

568 The order may include transportation of the person to such other medical facility as may be  
569 necessary to obtain further medical evaluation or treatment prior to placement as required by a physician  
570 at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or  
571 alternative transportation provider from obtaining emergency medical treatment or further medical  
572 evaluation at any time for a person in his custody as provided in this section. Such medical evaluation  
573 or treatment shall be conducted immediately in accordance with state and federal law.

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

583 D. In cases in which an alternative facility of temporary detention is identified and the  
584 law-enforcement agency or alternative transportation provider identified to provide transportation in  
585 accordance with subsection B continues to have custody of the person, the local law-enforcement agency  
586 or alternative transportation provider shall transport the person to the alternative facility of temporary  
587 detention identified by the employee or designee of the community services board *or certified evaluator*.  
588 In cases in which an alternative facility of temporary detention is identified and custody of the person  
589 has been transferred from the law-enforcement agency or alternative transportation provider that  
590 provided transportation in accordance with subsection B to the initial facility of temporary detention, the  
591 employee or designee of the community services board *or certified evaluator* shall request, and a  
592 magistrate may enter an order specifying, an alternative transportation provider or, if no alternative  
593 transportation provider is available, willing, and able to provide transportation in a safe manner, the  
594 local law-enforcement agency for the jurisdiction in which the person resides or, if the nearest boundary  
595 of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the  
596 jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the  
597 person is located, to provide transportation.

598 E. The magistrate may change the transportation provider specified in a temporary detention order at  
599 any time prior to the initiation of transportation of a person who is the subject of a temporary detention  
600 order pursuant to this section. If the designated transportation provider is changed by the magistrate at  
601 any time after the temporary detention order has been executed but prior to the initiation of  
602 transportation, the transportation provider having custody of the person shall transfer custody of the  
603 person to the transportation provider subsequently specified to provide transportation. For the purposes  
604 of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative  
605 transportation provider.

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

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

H. For purposes of this section:

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

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

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

A. The commitment hearing for involuntary admission shall be held after a sufficient period of time has passed to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, 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.

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

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

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

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

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

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

The district court judge or special justice shall require a preadmission screening report from the community services board that serves the county or city where the person resides or, if impractical, where the person is located *or from the certified evaluator*. The report shall be admitted as evidence of the facts stated therein and shall state (i) whether the person has a mental illness and whether there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) whether the person is in need of involuntary inpatient treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the recommendations for that person's placement, care, and treatment including, where appropriate, recommendations for mandatory outpatient treatment. The board *or the certified evaluator* shall provide the preadmission screening report to the court prior to the hearing, and the report shall be admitted into evidence and made part of the record of the case. In the case of a person who has been sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person has mental illness and should be involuntarily admitted without requesting a preadmission screening report from the community services board.

**§ 37.2-817. Involuntary admission.**

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

B. Any employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board *or certified evaluator* that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Where a hearing is held outside of the service area of the community services board that prepared the preadmission screening report, and it is not practicable for a representative of the community services board that prepared the preadmission screening report to attend or participate in the hearing, arrangements shall be made by the community services board that prepared the preadmission screening report for an employee or designee of the community services board serving the area in which the hearing is held to attend or participate on behalf of the community services board that prepared the preadmission screening report. The employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board that prepared the preadmission screening report or attending or participating on behalf of the community services board that prepared the preadmission screening report *or the certified evaluator* shall not be excluded from the hearing pursuant to an order of sequestration of witnesses. The community services board that prepared the preadmission screening report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means with documented acknowledgment of receipt to the community services board attending the hearing. Where a community services board attends the hearing on behalf of the community services board that prepared the preadmission screening report, the attending community services board shall inform the community services board that prepared the preadmission screening report of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means with documented acknowledgment of receipt.

At least 12 hours prior to the hearing, the court shall provide to the community services board *or certified evaluator* that prepared the preadmission screening report the time and location of the hearing. If the representative of the community services board *or certified evaluator* that prepared the preadmission screening report will be present by telephonic means, the court shall provide the telephone number to the community services board *or certified evaluator*. If a representative of a community services board will be attending the hearing on behalf of the community services board that prepared the preadmission screening report, the community services board that prepared the preadmission screening report shall promptly communicate the time and location of the hearing and, if the representative of the community services board attending on behalf of the community services board that prepared the

preadmission screening report will be present by telephonic means, the telephone number to the attending community services board.

C. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, including whether the person recently has been found unrestorably incompetent to stand trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment that would offer an opportunity for the improvement of the person's condition have been investigated and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board that serves the county or city in which the person was examined *or by the certified evaluator* as provided in § 37.2-816. If the community services board *or the certified evaluator* does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the person shall be released unless (A) he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order, (B) he makes application for treatment on a voluntary basis as provided for in § 37.2-805, or (C) he is ordered to mandatory outpatient treatment following a period of inpatient treatment pursuant to § 37.2-817.01.

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

A. 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, including intoxication 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.

B. When a mental or physical condition to be treated appears to be a result of intoxication, a licensed physician who has attempted to obtain informed consent of an adult person for treatment of such mental or physical condition appearing to be a result of intoxication may seek an order from the magistrate or court in the jurisdiction where the respondent is located 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's intoxication has rendered the person incapable of making or communicating an informed decision regarding treatment 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 or another person resulting from such intoxication.

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 or pursuant to subsection B, 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 A or B. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate

797 facility in which the person is detained for testing, observation, or treatment shall notify the nearest  
798 community services board when such testing, observation, or treatment is complete, and the designee of  
799 the community services board *or certified evaluator* shall, as soon as is practicable and prior to the  
800 expiration of the order for temporary detention issued pursuant to subsection A or B, conduct an  
801 evaluation of the person to determine if he meets the criteria for temporary detention pursuant to  
802 § 37.2-809.

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

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

814 4. That the provisions of this act shall expire on July 1, 2026.