

SENATE BILL NO. 268

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on _____)

(Patrons Prior to Substitute--Senators Favola, Peake [SB 176], Hanger [SB 650], and Deeds [SB 682])

A BILL to amend and reenact §§ 37.2-808, 37.2-809, 37.2-809.1, and 37.2-810 of the Code of Virginia, relating to emergency custody and temporary detention; transportation; transfer of custody; alternative custody.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-808, 37.2-809, 37.2-809.1, and 37.2-810 of the Code of Virginia are amended and reenacted as follows:

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

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

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, or the court may pursuant to § 19.2-271.6, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available,

27 (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant
28 hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is
29 unavailable and it so states in the affidavit, and (7) any other information available that the magistrate or
30 the court considers relevant to the determination of whether probable cause exists to issue an emergency
31 custody order.

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

38 C. The magistrate or court issuing an emergency custody order shall (i) specify the primary law-
39 enforcement agency and jurisdiction to execute the emergency custody order and ~~provide~~ (ii) designate a
40 transportation provider. In determining the transportation provider, the magistrate or court shall
41 ~~consider any request to authorize transportation by an~~ all options for alternative transportation provider in
42 accordance with this section, ~~whenever an alternative transportation provider is identified to the magistrate~~
43 ~~or court~~, which may be a person, facility, or agency, including a family member or friend of the person
44 who is the subject of the order, a representative of the community services board, an employee of or person
45 providing services pursuant to a contract with the Department, or other transportation provider with
46 personnel trained to provide transportation in a safe manner, ~~upon~~ Upon determining, following
47 consideration of information provided by the petitioner; the community services board or its designee; the
48 local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are
49 available and have knowledge of the person, and, when the magistrate or court deems appropriate, the
50 proposed alternative transportation provider, either in person or via two-way electronic video and audio
51 or telephone communication system, that ~~the proposed~~ an alternative transportation provider is available
52 to provide transportation, willing to provide transportation, and able to provide transportation in a safe
53 manner, the magistrate shall designate such alternative transportation provider to provide transportation

54 of the person. If no alternative transportation provider is available to provide transportation, willing to
55 provide transportation, and able to provide transportation in a safe manner, the magistrate or court shall
56 designate the primary law-enforcement agency and jurisdiction designated to execute the emergency
57 custody order to provide transportation of the person.

58 When transportation is ordered to be provided by an alternative transportation provider, the
59 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take
60 the person into custody, and to transfer custody of the person to the alternative transportation provider
61 identified in the order. The primary law-enforcement agency may transfer custody of the person to the
62 alternative transportation provider immediately upon execution of the emergency custody order. The
63 alternative transportation provider shall maintain custody of the person from the time custody is
64 transferred to the alternative transportation provider by the primary law-enforcement agency until such
65 time as an evaluation is conducted and custody of the person is transferred pursuant to a temporary
66 detention order or the person is released upon a determination that the person does not meet the criteria
67 for temporary detention, including during any period prior to the initiation of transportation of the person
68 and while transportation is being provided.

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

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

81 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
82 the magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by
83 the community services board that designated the person to perform the evaluation required in subsection
84 B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-
85 enforcement agency, provide transportation. If the community services board serves more than one
86 jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the
87 particular jurisdiction within the community services board's service area where the person who is the
88 subject of the emergency custody order was taken into custody or, if the person has not yet been taken
89 into custody, the primary law-enforcement agency from the jurisdiction where the person is presently
90 located to execute the order and provide transportation.

91 E. The law-enforcement agency or alternative transportation provider providing transportation
92 pursuant to this section may transfer custody of the person to the facility or location to which the person
93 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed
94 to provide the level of security necessary to protect both the person and others from harm, (ii) is actually
95 capable of providing the level of security necessary to protect the person and others from harm, and (iii)
96 in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement
97 or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions
98 under which it will accept a transfer of custody, provided, however, that the facility or location may not
99 require the law-enforcement agency to pay any fees or costs for the transfer of custody.

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

103 G. A law-enforcement officer who, based upon his observation or the reliable reports of others,
104 has probable cause to believe that a person meets the criteria for emergency custody as stated in this
105 section may take that person into custody and transport that person to an appropriate location to assess the
106 need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
107 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the

108 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the
109 purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
110 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into
111 custody.

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

121 I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider
122 from obtaining emergency medical treatment or further medical evaluation at any time for a person in his
123 custody as provided in this section.

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

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

135 L. Nothing in this section shall preclude the issuance of an order for temporary detention for
136 testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an
137 emergency custody order issued pursuant to this section. In any case in which an order for temporary
138 detention for testing, observation, or treatment is issued for a person who is also the subject of an
139 emergency custody order, the person may be detained by a hospital emergency room or other appropriate
140 facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the
141 court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon
142 completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or
143 other appropriate facility in which the person is detained shall notify the nearest community services
144 board, and the designee of the community services board shall, as soon as is practicable and prior to the
145 expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of
146 the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

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

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

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

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

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

163 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

164 A. For the purposes of this section:

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

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

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

178 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician,
179 or upon his own motion and only after an evaluation conducted in-person or by means of a two-way
180 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a
181 designee of the local community services board to determine whether the person meets the criteria for
182 temporary detention, a temporary detention order if it appears from all evidence readily available,
183 including any recommendation from a physician, clinical psychologist, or clinical social worker treating
184 the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a
185 result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or
186 others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant

187 information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or
188 to provide for his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling
189 to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also
190 consider, if available, (a) information provided by the person who initiated emergency custody and (b) the
191 recommendations of any treating or examining physician licensed in Virginia either verbally or in writing
192 prior to rendering a decision. Any temporary detention order entered pursuant to this section shall provide
193 for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other
194 disclosures as required or permitted by law.

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

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

207 E. An employee or a designee of the local community services board shall determine the facility
208 of temporary detention in accordance with the provisions of § 37.2-809.1 for all ~~individuals~~ persons
209 detained pursuant to this section. An employee or designee of the local community services board may
210 change the facility of temporary detention and may designate an alternative facility for temporary
211 detention at any point during the period of temporary detention if it is determined that the alternative
212 facility is a more appropriate facility for temporary detention of the ~~individual~~ person given the specific
213 security, medical, or behavioral health needs of the person. In cases in which the facility of temporary

214 detention is changed following transfer of custody to an initial facility of temporary custody, transportation
215 of the ~~individual~~ person to the alternative facility of temporary detention shall be provided in accordance
216 with the provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the
217 preadmission screening report and indicated on the temporary detention order; however, if an employee
218 or designee of the local community services board designates an alternative facility, that employee or
219 designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the
220 Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative
221 facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified
222 by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the ~~individual~~
223 person shall be detained in a state facility for the treatment of ~~individuals~~ persons with mental illness and
224 such facility shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for
225 inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not
226 be detained in a jail or other place of confinement for persons charged with criminal offenses ~~and~~. Except
227 as provided in subsection G and in § 37.2-811 for inmates requiring hospitalization in accordance with
228 subdivision A 2 of § 19.2-169.6, the person shall remain in the custody of law enforcement until (i) the
229 person is either detained within a secure facility ~~or~~ (ii) custody has been accepted by the appropriate
230 personnel designated by either the initial facility of temporary detention identified in the temporary
231 detention order or by the alternative facility of temporary detention designated by the employee or
232 designee of the local community services board pursuant to this subsection, or (iii) custody has been
233 accepted by an employee or designee of the state facility indicated on the temporary detention order
234 pursuant to subsection F. The person detained or in custody pursuant to this section shall be given a written
235 summary of the temporary detention procedures and the statutory protections associated with those
236 procedures.

237 F. If the facility indicated on the temporary detention order pursuant to subsection E is a state
238 facility, no bed for the person is immediately available at such state facility, and an employee or designee
239 of such state facility is available to take custody, such employee or designee of the state facility may
240 assume custody of the person wherever the person is located. The employee or designee of the state facility

241 who takes custody of a person pursuant to this subsection shall maintain custody of the person and shall
242 transport the person to the state facility or to an alternative facility of temporary detention, if an alternative
243 facility of temporary detention is designated in accordance with subsection E. Such transportation may
244 include transportation of the person to a medical facility for medical evaluation prior to admission to the
245 state facility or alternative facility of temporary detention if such medical evaluation is required by a
246 physician at the admitting facility. Transportation to an alternative facility of temporary detention
247 designated in accordance with subsection E by an employee or designee of a state facility that was
248 identified as the initial facility of temporary detention on a temporary detention order shall be in
249 accordance with subsection D of § 37.2-810.

250 If no employee or designee of the state facility indicated on the temporary detention order pursuant
251 to subsection E is available to take custody of a person who is subject to a temporary detention order
252 pursuant to this subsection, such person shall remain in law-enforcement custody until custody is
253 transferred to the state facility or an alternative facility of temporary detention. For the purposes of this
254 section, an employee or designee of the state facility indicated on the temporary detention order pursuant
255 to subsection E shall be deemed unavailable to assume custody of a person who is the subject of a
256 temporary custody order if all state funds for alternative custody have been expended.

257 G. A person who is subject to an order authorizing treatment issued in accordance with § 53.1-
258 133.04 shall remain in law-enforcement custody at all times prior to admission to the facility designated
259 for treatment of the person pursuant to such order.

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

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

274 ~~H-J.~~ The duration of temporary detention shall be sufficient to allow for completion of the
275 examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-
276 816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid
277 involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour
278 period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is
279 lawfully closed, the person may be detained, as herein provided, until the close of business on the next
280 day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The person
281 may be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

282 ~~I-K.~~ If a temporary detention order is not executed within 24 hours of its issuance, or within a
283 shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the
284 office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction
285 of the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the
286 petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of the
287 local community services board prior to issuing a subsequent order upon the original petition. Any petition
288 for which no temporary detention order or other process in connection therewith is served on the subject
289 of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of
290 the clerk of the issuing court.

291 ~~J-L.~~ The Executive Secretary of the Supreme Court of Virginia shall establish and require that a
292 magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of
293 performing the duties established by this section. Each community services board shall provide to each

294 general district court and magistrate's office within its service area a list of its employees and designees
295 who are available to perform the evaluations required herein.

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

300 ~~L-N.~~ If the employee or designee of the community services board who is conducting the
301 evaluation pursuant to this section recommends that the person should not be subject to a temporary
302 detention order, such employee or designee shall (i) inform the petitioner, the person who initiated
303 emergency custody if such person is present, and an onsite treating physician of his recommendation; (ii)
304 promptly inform such person who initiated emergency custody that the community services board will
305 facilitate communication between the person and the magistrate if the person disagrees with
306 recommendations of the employee or designee of the community services board who conducted the
307 evaluation and the person who initiated emergency custody so requests; and (iii) upon prompt request
308 made by the person who initiated emergency custody, arrange for such person who initiated emergency
309 custody to communicate with the magistrate as soon as is practicable and prior to the expiration of the
310 period of emergency custody. The magistrate shall consider any information provided by the person who
311 initiated emergency custody and any recommendations of the treating or examining physician and the
312 employee or designee of the community services board who conducted the evaluation and consider such
313 information and recommendations in accordance with subsection B in making his determination to issue
314 a temporary detention order. ~~The individual~~ person who is the subject of emergency custody shall remain
315 in the custody of law enforcement or a designee of law enforcement and shall not be released from
316 emergency custody until communication with the magistrate pursuant to this subsection has concluded
317 and the magistrate has made a determination regarding issuance of a temporary detention order.

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

321 **§ 37.2-809.1. Facility of temporary detention.**

322 A. In each case in which an employee or designee of the local community services board as defined
323 in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of §
324 37.2-808, an employee or designee of the local community services board shall, upon being notified of
325 the need for such evaluation, contact the state facility for the area in which the community services board
326 is located and notify the state facility that the individual will be transported to the facility upon issuance
327 of a temporary detention order if no other facility of temporary detention can be identified by the time of
328 the expiration of the period of emergency custody pursuant to § 37.2-808. Upon completion of the
329 evaluation, the employee or designee of the local community services board shall convey to the state
330 facility information about the individual necessary to allow the state facility to determine the services the
331 individual will require upon admission.

332 B. A state facility may, following the notice in accordance with subsection A, conduct a search for
333 an alternative facility that is able and willing to provide temporary detention and appropriate care to the
334 individual, which may include another state facility if the state facility notified in accordance with
335 subsection A is unable to provide temporary detention and appropriate care for the individual. Under no
336 circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary
337 detention pursuant to § 37.2-809 unless an alternative facility that is able to provide temporary detention
338 and appropriate care agrees to accept the individual for temporary detention and the individual shall not
339 during the duration of the temporary detention order be released from custody except for purposes of
340 transporting the individual to the state facility or alternative facility in accordance with the provisions of
341 § 37.2-810. If an alternative facility is identified and agrees to accept the individual for temporary
342 detention, the state facility shall notify the community services board, and an employee or designee of the
343 community services board shall designate the alternative facility on the prescreening report.

344 C. A state facility may conduct a search for an alternative facility that is able and willing to provide
345 temporary detention and appropriate care to the individual in accordance with subsection B if the
346 individual is in the custody of an employee or designee of the state facility pursuant to subsection F of §
347 37.2-809.

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

350 **§ 37.2-810. Transportation of person in the temporary detention process.**

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

359 B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency
360 to execute the order and provide transportation. However, the magistrate shall consider any request to
361 authorize transportation by an alternative transportation provider in accordance with this section,
362 whenever an alternative transportation provider is identified to the magistrate, which may be a person,
363 facility, or agency, including a family member or friend of the person who is the subject of the temporary
364 detention order, a representative of the community services board, an employee of or person providing
365 services pursuant to a contract with the Department, or other transportation provider with personnel trained
366 to provide transportation in a safe manner upon determining, following consideration of information
367 provided by the petitioner; the community services board or its designee; the local law-enforcement
368 agency, if any; the person's treating physician, if any; or other persons who are available and have
369 knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative
370 transportation provider, either in person or via two-way electronic video and audio or telephone
371 communication system, that the proposed alternative transportation provider is available to provide
372 transportation, willing to provide transportation, and able to provide transportation in a safe manner.

373 When transportation is ordered to be provided by an alternative transportation provider, the
374 magistrate shall order the specified law-enforcement agency to execute the order, to take the person into

375 custody, and to transfer custody of the person to the alternative transportation provider identified in the
376 order. The primary law-enforcement agency may transfer custody of the person to the alternative
377 transportation provider immediately upon execution of the temporary detention order. The alternative
378 transportation provider shall maintain custody of the person from the time custody is transferred to the
379 alternative transportation provider by the primary law-enforcement agency until such time as custody of
380 the person is transferred to the temporary detention facility, including during any period prior to the
381 initiation of transportation of the person from the facility to which he was transported pursuant to § 37.2-
382 808 and while transportation is being provided pursuant to this section.

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

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

395 C. If an alternative transportation provider providing transportation of a person who is the subject
396 of a temporary detention order becomes unable to continue providing transportation of the person at any
397 time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which
398 the alternative transportation provider is located at the time he becomes unable to continue providing
399 transportation shall take custody of the person and shall transport the person to the facility of temporary
400 detention. In such cases, a copy of the temporary detention order shall accompany the person being

401 transported and shall be delivered to and returned by the temporary detention facility in accordance with
402 the provisions of subsection B.

403 D. In cases in which an alternative facility of temporary detention is identified and the law-
404 enforcement agency or alternative transportation provider identified to provide transportation in
405 accordance with subsection B continues to have custody of the person, the local law-enforcement agency
406 or alternative transportation provider shall transport the person to the alternative facility of temporary
407 detention identified by the employee or designee of the community services board. In cases in which an
408 alternative facility of temporary detention is identified and custody of the person has been transferred from
409 the law-enforcement agency or alternative transportation provider that provided transportation in
410 accordance with subsection B to the initial facility of temporary detention, the employee or designee of
411 the community services board shall request, and a magistrate may enter an order specifying, an alternative
412 transportation provider or, if no alternative transportation provider is available, willing, and able to provide
413 transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person
414 resides or, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles
415 from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency
416 of the jurisdiction in which the person is located, to provide transportation.

417 E. The magistrate may change the transportation provider specified in a temporary detention order
418 at any time prior to the initiation of transportation of a person who is the subject of a temporary detention
419 order pursuant to this section. If the designated transportation provider is changed by the magistrate at any
420 time after the temporary detention order has been executed but prior to the initiation of transportation, the
421 transportation provider having custody of the person shall transfer custody of the person to the
422 transportation provider subsequently specified to provide transportation. For the purposes of this
423 subsection, "transportation provider" includes both a law-enforcement agency and an alternative
424 transportation provider.

425 F. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the
426 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing

427 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into
428 agreements to facilitate the execution of temporary detention orders and provide transportation.

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

432 **2. That the Department of Behavioral Health and Developmental Services shall amend its existing**
433 **contract for the provision of alternative transportation of a person who is subject to an emergency**
434 **custody or temporary detention order or enter into new contracts for alternative transportation of**
435 **a person who is subject to an emergency custody or temporary detention order to ensure sufficient**
436 **availability of alternative transportation providers to retain sufficient licensed security staff to take**
437 **custody of and provide transportation for persons for whom alternative transportation is ordered**
438 **immediately upon execution of an emergency custody or temporary detention order, as provided in**
439 **this act.**

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