

HOUSE BILL NO. 2339

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Bell)

A BILL to amend and reenact §§ 19.2-169.1, as it is currently effective and as it shall become effective, 37.2-803, 37.2-804, and 37.2-804.2 of the Code of Virginia and to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 11.2, consisting of sections numbered 19.2-182.17 through 19.2-182.23, and by adding in Title 37.2 a chapter numbered 8.1, consisting of sections numbered 37.2-848 through 37.2-851, relating to expedited diversion to court-ordered treatment in lieu of criminal adjudication.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.1, as it is currently effective and as it shall become effective, 37.2-803, 37.2-804, and 37.2-804.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 11.2, consisting of sections numbered 19.2-182.17 through 19.2-182.23, and by adding in Title 37.2 a chapter numbered 8.1, consisting of sections numbered 37.2-848 through 37.2-851, as follows:

§ 19.2-169.1. (Effective until July 1, 2023) Raising question of competency to stand trial or plead; evaluation and determination of competency.

A. Raising competency issue; appointment of evaluators. — If, at any time after the attorney for the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who (i) has performed forensic evaluations; (ii) has successfully completed

27 forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental
28 Services; (iii) has demonstrated to the Commissioner competence to perform forensic evaluations; and
29 (iv) is included on a list of approved evaluators maintained by the Commissioner. In the event the
30 defendant is charged with an offense listed in § 19.2-182.18 and may be eligible for expedited diversion
31 to court-ordered treatment, the court may also order that an evaluation be performed pursuant to Chapter
32 11.2 (§ 19.2-182.17 et seq.).

33 B. Location of evaluation. — The evaluation shall be performed on an outpatient basis at a mental
34 health facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator
35 opines that a hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is in
36 the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-
37 169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of
38 Chapter 8 of Title 37.2.

39 C. Provision of information to evaluators. — The court shall require the attorney for the
40 Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the
41 evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and
42 addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering
43 the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the
44 evaluation request. The court shall require the attorney for the defendant to provide any available
45 psychiatric records and other information that is deemed relevant. The court shall require that information
46 be provided to the evaluator within 96 hours of the issuance of the court order pursuant to this section.

47 D. The competency report. — Upon completion of the evaluation, the evaluators shall promptly
48 submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity
49 to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for
50 treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future. If
51 a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether inpatient
52 or outpatient treatment (community-based or jail-based) is recommended. Outpatient treatment may occur
53 in a local correctional facility or at a location determined by the appropriate community services board or

54 behavioral health authority. In cases where a defendant is likely to remain incompetent for the foreseeable
55 future due to an ongoing and irreversible medical condition, and where prior medical or educational
56 records are available to support the diagnosis, or if the defendant was previously determined to be
57 unrestorably incompetent in the past two years, the report may recommend that the court find the
58 defendant unrestorably incompetent to stand trial and the court may proceed with the disposition of the
59 case in accordance with § 19.2-169.3. In cases where a defendant has been charged with a misdemeanor
60 violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or a misdemeanor violation of § 18.2-
61 119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128 and is incompetent, the report may recommend that the
62 court direct the community services board or behavioral health authority for the jurisdiction in which the
63 defendant is located to (a) conduct an evaluation of the defendant in accordance with subsection B of §
64 37.2-808 to determine whether the defendant meets the criteria for temporary detention and (b) upon
65 determining that the defendant does meet the criteria for temporary detention, file a petition for issuance
66 of an order for temporary detention of the defendant in accordance with § 37.2-809. No statements of the
67 defendant relating to the time period of the alleged offense shall be included in the report. The evaluator
68 shall also send a redacted copy of the report removing references to the defendant's name, date of birth,
69 case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental
70 Services for the purpose of peer review to establish and maintain the list of approved evaluators described
71 in subsection A.

72 E. The competency determination. — After receiving the report described in subsection D, the
73 court shall promptly determine whether the defendant is competent to stand trial. A hearing on the
74 defendant's competency is not required unless one is requested by the attorney for the Commonwealth or
75 the attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be
76 hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent
77 shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The
78 defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right to
79 personally participate in and introduce evidence at the hearing.

80 The fact that the defendant claims to be unable to remember the time period surrounding the
81 alleged offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the
82 charges against him and can assist in his defense. Nor shall the fact that the defendant is under the influence
83 of medication bar a finding of competency if the defendant is able to understand the charges against him
84 and assist in his defense while medicated.

85 F. Finding. — If the court finds the defendant competent to stand trial, the case shall be set for trial
86 or a preliminary hearing. If the court finds the defendant either incompetent but restorable or incompetent
87 for the foreseeable future, the court shall proceed pursuant to § 19.2-169.2.

88 **§ 19.2-169.1. (Effective July 1, 2023) Raising question of competency to stand trial or plead;**
89 **evaluation and determination of competency.**

90 A. Raising competency issue; appointment of evaluators. — If, at any time after the attorney for
91 the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing
92 evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there
93 is probable cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or
94 adult, lacks substantial capacity to understand the proceedings against him or to assist his attorney in his
95 own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist
96 or clinical psychologist who (i) has performed forensic evaluations; (ii) has successfully completed
97 forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental
98 Services; (iii) has demonstrated to the Commissioner competence to perform forensic evaluations; and
99 (iv) is included on a list of approved evaluators maintained by the Commissioner. In the event the
100 defendant is charged with an offense listed in § 19.2-182.18 and may be eligible for expedited diversion
101 to court-ordered treatment, the court may also order that an evaluation be performed pursuant to Chapter
102 11.2 (§ 19.2-182.17 et seq.).

103 B. Location of evaluation. — The evaluation shall be performed on an outpatient basis at a mental
104 health facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator
105 opines that a hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is in
106 the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-

107 169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of
108 Chapter 8 of Title 37.2.

109 C. Provision of information to evaluators. — The court shall require the attorney for the
110 Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the
111 evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and
112 addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering
113 the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the
114 evaluation request. The court shall require the attorney for the defendant to provide any available
115 psychiatric records and other information that is deemed relevant. The court shall require that information
116 be provided to the evaluator within 96 hours of the issuance of the court order pursuant to this section.

117 D. The competency report. — Upon completion of the evaluation, the evaluators shall promptly
118 submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity
119 to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for
120 treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future. If
121 a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether inpatient
122 or outpatient treatment (community-based or jail-based) is recommended. Outpatient treatment may occur
123 in a local correctional facility or at a location determined by the appropriate community services board or
124 behavioral health authority. In cases where a defendant is likely to remain incompetent for the foreseeable
125 future due to an ongoing and irreversible medical condition, and where prior medical or educational
126 records are available to support the diagnosis, or if the defendant was previously determined to be
127 unrestorably incompetent in the past two years, the report may recommend that the court find the
128 defendant unrestorably incompetent to stand trial and the court may proceed with the disposition of the
129 case in accordance with § 19.2-169.3. No statements of the defendant relating to the time period of the
130 alleged offense shall be included in the report. The evaluator shall also send a redacted copy of the report
131 removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the
132 Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to
133 establish and maintain the list of approved evaluators described in subsection A.

134 E. The competency determination. — After receiving the report described in subsection D, the
 135 court shall promptly determine whether the defendant is competent to stand trial. A hearing on the
 136 defendant's competency is not required unless one is requested by the attorney for the Commonwealth or
 137 the attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be
 138 hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent
 139 shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The
 140 defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right to
 141 personally participate in and introduce evidence at the hearing.

142 The fact that the defendant claims to be unable to remember the time period surrounding the
 143 alleged offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the
 144 charges against him and can assist in his defense. Nor shall the fact that the defendant is under the influence
 145 of medication bar a finding of competency if the defendant is able to understand the charges against him
 146 and assist in his defense while medicated.

147 CHAPTER 11.2.

148 EXPEDITED DIVERSION TO COURT-ORDERED TREATMENT IN THE COMMUNITY.

149 § 19.2-182.17. Definitions.

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

151 "Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment
 152 to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community
 153 living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization, provide
 154 normative environments with a high assurance of safety and security for crisis intervention, stabilize
 155 individuals in crisis, and mobilize the resources of the community support system, family members, and
 156 others for ongoing rehabilitation and recovery.

157 "Diversion case manager" means a community services board employee who (i) is a licensed
 158 mental health professional or is registered as a qualified mental health professional, (ii) is skilled in the
 159 assessment and treatment of mental illness, (iii) is able to provide an independent examination of a person

160 who is the subject of a diversion hearing, and (iv) is not related by blood or marriage to the person being
161 evaluated.

162 "Expedited diversion to court-ordered treatment" means a formal procedure as described in this
163 chapter and Chapter 8.1 (§ 37.2-848 et seq.) of Title 37.2 authorizing the transfer from criminal
164 proceedings to civil outpatient commitment of a person with a mental illness who was charged for criminal
165 conduct but found eligible for dismissal of charges with prejudice and commitment to court-ordered
166 outpatient treatment pursuant to this chapter.

167 "Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of
168 residential or outpatient mental health or developmental services facility. When modified by the word
169 "state," "facility" means a state hospital or training center operated by the Department of Behavioral
170 Health and Developmental Services, including the buildings and land associated with such state hospital
171 or training center. When modified by the word "licensed," "facility" means a hospital or institution,
172 including a psychiatric unit of a general hospital that is licensed pursuant to Title 37.2.

173 "Licensed mental health professional" means a physician, licensed clinical psychologist, licensed
174 professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner,
175 licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior
176 analyst, or licensed psychiatric or mental health nurse practitioner.

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

181 "Qualified mental health professional" or "QMHP" means a person who by education and
182 experience is professionally qualified and registered by the Board of Counseling to provide collaborative
183 mental health services for adults or children. No QMHP shall engage in independent or autonomous
184 practice. A QMHP shall provide such services as an employee or independent contractor of the
185 Department or a provider licensed by the Department.

186 Wherever the term "community services board" or "board" appears, it includes the behavioral
187 health authority.

188 **§ 19.2-182.18. Evaluation for expedited diversion to civil court-ordered treatment.**

189 A. A defendant who is charged with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of
190 Chapter 5 of Title 18.2 or a misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-
191 128, who appears to have a mental illness, and whose charged conduct appears to be associated with that
192 mental illness, may be considered for transfer from criminal proceedings to court-ordered treatment
193 pursuant to this chapter.

194 B. Diversion eligibility may be raised by representations to the court or by motion. A defendant
195 may be identified as a candidate by a law-enforcement officer, jail officer, magistrate, pretrial services
196 staff, licensed mental health professional, evaluator appointed pursuant to § 19.2-169.1, defense counsel,
197 attorney for the Commonwealth, or judge. If, at any time after the attorney for the defendant has been
198 retained or appointed and before the end of trial, the court finds that there is probable cause to believe that
199 the defendant is charged with an eligible offense and has a mental illness, and his charged conduct is
200 associated with the mental illness, the court may order that an evaluation be performed by a diversion case
201 manager designated by the local community services board. The judge may consider (i) his observations
202 of the defendant; (ii) available information about the defendant's criminal history and mental health
203 history, if any; (iii) the charge report; (iv) representations made by the party or parties raising the issue;
204 (v) previous evaluations of competence to stand trial and previous findings of unrestorably incompetent
205 to stand trial, if any; (vi) previous orders for expedited diversion to court-ordered treatment pursuant to
206 this chapter; or (vii) any other relevant evidence presented at the time the issue is raised. Upon finding
207 that there is probable cause to believe that the defendant is charged with an eligible offense and has a
208 mental illness, and his charged conduct is associated with the mental illness, the court may order that an
209 evaluation be performed by a diversion case manager designated by the local community services board.
210 The order for evaluation shall give notice of the place, date, and time of the evaluation. Nothing in this
211 chapter shall preclude the court from arraigning the defendant, considering bond, or any other relevant
212 procedures pursuant to this title. The court shall set a date for the criminal hearing, which shall proceed as

213 scheduled unless, prior to the hearing date, the defendant is ordered into expedited diversion to court-
214 ordered treatment as provided pursuant to this chapter.

215 C. The court shall not order evaluation for expedited diversion to court-ordered treatment over the
216 objection of the attorney for the Commonwealth or the objection of a defendant who understands the
217 nature and consequences of his decision, including the possibility of criminal prosecution for the eligible
218 charges.

219 D. The evaluation shall be performed on an outpatient basis at a mental health facility or in a local
220 correctional facility unless the defendant appears to meet criteria for emergency custody or temporary
221 detention pursuant to Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 or is in the custody of the
222 Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-169.2, 19.2-169.6,
223 19.2-182.2, 19.2-182.3, 19.2-182.8, or 19.2-182.9 or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title
224 37.2. A defendant shall not be detained solely for purposes of the diversion evaluation if he would
225 otherwise be released in accordance with Chapter 9 (§ 19.2-119 et seq.). If the person is not incarcerated
226 or receiving treatment in an inpatient facility, the community services board shall arrange for the person
227 to be examined at a convenient location and time. The community services board shall offer to arrange for
228 the person's transportation to the examination if the person has no other source of transportation and
229 resides within the service area or an adjacent service area of the community services board.

230 E. The court shall require the attorney for the Commonwealth to provide to the evaluator appointed
231 under subsection B any information relevant to the evaluation, including (i) a copy of the warrant or
232 indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the
233 defendant, and the judge ordering the evaluation; (iii) information about the alleged crime; (iv) the
234 defendant's criminal history record, if any; and (v) a summary of the reasons for the evaluation request.
235 The court shall require that information be provided to the evaluator within 96 hours of the issuance of
236 the court order pursuant to this section.

237 F. The diversion case manager shall complete an evaluation of the defendant and his service needs
238 within two weeks of the order for evaluation. Upon completion of the evaluation, the diversion case
239 manager shall promptly submit a report in writing to the court and the attorneys of record concerning (i)

240 the defendant's mental illness, if any; (ii) the association, if any, between the defendant's mental illness
241 and his behavior at the time of the alleged offense; (iii) the defendant's treatment needs; (iv) the defendant's
242 risk of future offending in the absence of treatment; and (v) the likelihood that community-based services
243 will reduce the defendant's risk of psychiatric deterioration and future offending. No statements of the
244 defendant relating to the time period of the alleged offense shall be included in the report or admissible in
245 criminal proceedings. If diversion is recommended, the report shall include an expedited diversion to
246 court-ordered treatment plan pursuant to § 37.2-849.

247 **§ 19.2-182.19. Hearing on expedited diversion to court-ordered treatment.**

248 A. Upon receipt of a diversion evaluation report, the court shall schedule the expedited diversion
249 to court-ordered treatment hearing on an expedited basis, giving the matter priority over other civil matters
250 before the court, to determine the appropriate disposition of the defendant. The defendant shall be provided
251 with adequate notice of the hearing and a written explanation of his rights as set forth in subsection D.
252 The attorney for the Commonwealth shall be provided notice of the hearing, and legal counsel experienced
253 in civil commitment practice shall be appointed to represent the defendant at the hearing, which shall be
254 a civil proceeding. The defendant may retain legal counsel of his choosing, who shall promptly notify the
255 court of such representation. Upon such notification, the court shall dismiss court-appointed counsel from
256 the matter.

257 At the hearing, the court may consider (i) the diversion evaluation report, including the expedited
258 diversion to court-ordered treatment plan; (ii) any past actions of the person; (iii) any past mental health
259 treatment of the person; (iv) any health records available; and (v) any other relevant evidence that may
260 have been admitted. The diversion case manager appointed pursuant to subsection B of § 19.2-182.18
261 shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the
262 hearing through a two-way electronic video and audio or telephonic communication system as authorized
263 in § 37.2-804.1. At the conclusion of the hearing, the court shall dismiss the charges with prejudice and
264 order that the defendant be admitted into expedited diversion to court-ordered treatment if it finds by clear
265 and convincing evidence that (a) the defendant has a mental illness, (b) the defendant engaged in the
266 alleged conduct, (c) the criminal conduct was caused by or had a direct and substantial relationship to the

267 defendant's mental illness, (d) there is a significant risk of future offending in the absence of treatment,
268 and (e) there is a reasonable likelihood that community-based services will reduce the defendant's risk of
269 psychiatric deterioration and future offending. If the court finds the defendant not eligible for expedited
270 diversion to court-ordered treatment, the criminal case shall proceed as scheduled and the judge shall
271 recuse himself from any further criminal proceedings on the same matter.

272 In the event the attorney for the Commonwealth and an eligible defendant whose competence to
273 stand trial is not in question agree to expedited diversion to court-ordered treatment as recommended in
274 the evaluation report, the court shall find that the defendant meets the criteria and dismiss the charges with
275 prejudice and order the defendant into expedited diversion to court-ordered treatment. In the event that
276 the court has substantial doubts about the defendant's capacity to make a rational treatment decision or
277 about the defendant's competence to proceed to criminal adjudication, the court may dismiss the charges
278 with prejudice and order the defendant into expedited diversion to court-ordered treatment with or without
279 the defendant's assent. The court shall not dismiss the charges and commit an eligible defendant over the
280 objection of the attorney for the Commonwealth. The court shall not commit an eligible defendant over
281 his objection if the defendant is competent to stand trial and capable of making a rational decision to refuse
282 treatment.

283 The court shall not commit the defendant ordered to expedited diversion to court-ordered treatment
284 to emergency custody, temporary detention, or inpatient treatment unless the defendant meets criteria for
285 such commitment pursuant to Article 4 (§ 37.2-808 et seq.) or 5 (§ 37.2-814 et seq.) of Chapter 8 of Title
286 37.2, in which case the court shall proceed in accordance with § 37.2-808 or 37.2-809 as applicable. In
287 the event the defendant ordered to expedited diversion to court-ordered treatment is committed pursuant
288 to Chapter 8.1 (§ 37.2-848) of Title 37.2, the expedited diversion to court-ordered treatment order shall
289 be suspended until he is determined ready for discharge pursuant to § 37.2-837 or 37.2-838, at which time
290 the expedited diversion to court-ordered treatment plan shall serve as his discharge plan.

291 The duration of expedited diversion to court-ordered treatment shall be determined by the court
292 based on recommendations of the diversion case manager, community services board, and attorney for the
293 Commonwealth but shall not exceed 180 days unless extenuating circumstances exist, in which case the

294 duration shall not exceed one year or the maximum sentence that would be available for the charge,
295 whichever is shorter. In prescribing the terms of the order, including its length, the judge shall consider
296 the impact on the person's opportunities and obligations, including education and employment. The order
297 duration may be reduced, but not extended, and the treatment plan may be modified after jurisdiction is
298 transferred to the civil court in accordance with § 37.2-849.

299 B. The attorney for the Commonwealth shall represent the Commonwealth in all proceedings held
300 pursuant to this chapter. The attorney for the Commonwealth has absolute discretion to decline expedited
301 diversion to court-ordered treatment for any eligible defendant. The attorney for the Commonwealth may
302 stipulate to the findings in the diversion evaluation report.

303 C. For purposes of the civil hearing on expedited diversion to court-ordered treatment, the court
304 shall appoint counsel experienced in civil commitment practice for the defendant unless the defendant
305 requests an opportunity to employ counsel. Before the diversion hearing, the civil counsel for the
306 defendant shall interview his client, the evaluator described in § 37.2-849, the community services board
307 staff, and any other material witnesses. He also shall examine all relevant diagnostic and other reports,
308 present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in
309 the proceedings. The diversion case manager shall disclose the evaluation report to the attorney. A health
310 care provider shall disclose or make available all such reports, treatment information, and records
311 concerning his client to the attorney, upon request. The role of the attorney shall be to represent the wishes
312 of his client, to the extent possible. Defense counsel shall not participate in civil proceedings concerning
313 expedited diversion to court-ordered treatment. In the event the defendant is found not to be eligible for
314 diversion and returned to the criminal process, defense counsel shall proceed in representing the defendant.
315 In the event the defendant is found to be eligible for diversion, defense counsel shall meet with the
316 defendant to confirm that he is not objecting to expedited diversion to court-ordered treatment and
317 formally withdraw from the case.

318 D. A written explanation of the expedited diversion to court-ordered treatment process and the
319 statutory protections associated with the process shall be given to the person, and its contents shall be
320 explained by an attorney experienced in civil commitment practice prior to the diversion hearing. The

321 written explanation shall describe, at a minimum, the person's rights to (i) retain private counsel or be
322 represented by a court-appointed attorney, (ii) present any defenses including independent evaluation and
323 expert testimony or the testimony of other witnesses, (iii) be present during the hearing and testify, (iv)
324 appeal any order for involuntary admission to the circuit court, and (v) have a jury trial on appeal. The
325 judge or special justice shall ascertain whether the person whose involuntary admission is sought has been
326 given the written explanation required herein.

327 **§ 19.2-182.20. Fees and compensation.**

328 Any defense attorney appointed by the criminal court shall be compensated pursuant to § 19.2-
329 163. Any civil counsel appointed by the criminal court shall be compensated pursuant to § 37.2-804.

330 **§ 19.2-182.21. Orders for evaluation or commitment; duties of clerk; copies.**

331 A. Whenever a court orders an evaluation pursuant to this section, the clerk of the court shall
332 provide a copy of the order to the diversion case manager and to the director of the community services
333 board or, if the person is hospitalized, to the director of the hospital as soon as practicable but no later than
334 the close of business on the next business day following entry of the order. The appointed evaluator and
335 the director of the community services board or hospital shall acknowledge receipt of the order to the clerk
336 of the court on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia
337 as soon as practicable but no later than the close of business on the next business day following receipt of
338 the order. The clerk shall also provide a copy of the order to the attorney for the Commonwealth and the
339 Department of Behavioral Health and Developmental Services.

340 B. No person shall be liable for any act or omission relating to the performance of any requirement
341 pursuant to subsection A unless the person was grossly negligent or engaged in willful misconduct.

342 **§ 19.2-182.22. Order of expedited diversion to court-ordered treatment forwarded to Central**
343 **Criminal Records Exchange.**

344 A. The order from a hearing issued pursuant to this chapter for expedited diversion to court-ordered
345 treatment shall be filed by the judge with the clerk of the district court for the county or city where the
346 hearing took place as soon as practicable but no later than the close of business on the next business day
347 following the completion of the hearing.

348 B. Upon receipt of any order from a diversion hearing issued pursuant to this chapter for expedited
349 diversion to court-ordered treatment, the clerk of court shall, as soon as practicable but not later than the
350 close of business on the next following business day, certify and forward a copy of the order to the Central
351 Criminal Records Exchange, on a form provided by the Exchange.

352 C. Except as provided in subdivision A 1 of § 19.2-389, the copy of the forms and orders sent to
353 the Central Criminal Records Exchange pursuant to subsection B shall be kept confidential in a separate
354 file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm. No medical
355 records shall be forwarded to the Central Criminal Records Exchange with any form, order, or certification
356 required by subsection B. The Department of State Police shall forward only a person's eligibility to
357 possess, purchase, or transfer a firearm to the National Instant Criminal Background Check System.

358 **§ 19.2-182.23. Recordings and records.**

359 Except as provided in § 19.2-182.21, the court shall keep its copies of recordings made pursuant
360 to this chapter, relevant medical records, reports, and court documents pertaining to the hearings provided
361 for in this chapter confidential. The person who is the subject of the hearing may, in writing, waive the
362 confidentiality provided herein. In the absence of such waiver, access to the dispositional order only may
363 be provided upon court order. Any person seeking access to the dispositional order may file a written
364 motion setting forth why such access is needed. The court may issue an order to disclose the dispositional
365 order if it finds that such disclosure is in the best interest of the person who is the subject of the hearing
366 or of the public. The Executive Secretary of the Supreme Court of Virginia and anyone acting on his
367 behalf shall be provided access to the court's records upon request. Such recordings, records, reports, and
368 documents shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

369 **§ 37.2-803. Special justices to perform duties of judge.**

370 The chief judge of each judicial circuit may appoint one or more special justices, for the purpose
371 of performing the duties required of a judge by this chapter, Chapter 8.1 (§ 37.2-848 et seq.), Chapter 11
372 (§ 37.2-1100 et seq.), and §§ 16.1-69.28, 16.1-335 through 16.1-348, 19.2-169.6, 19.2-174.1, 19.2-182.9,
373 53.1-40.1, 53.1-40.2, 53.1-40.9, and 53.1-133.04. Each special justice shall be a person licensed to practice
374 law in the Commonwealth or a retired or substitute judge in good standing and shall have all the powers

375 and jurisdiction conferred upon a judge. The special justice shall serve under the supervision and at the
376 pleasure of the chief judge of the judicial circuit for a period of up to six years. The special justice may be
377 reappointed and may serve additional periods of up to six years, at the pleasure of the chief judge. Within
378 six months of appointment, each special justice appointed on or after January 1, 1996, shall complete a
379 minimum training program prescribed by the Executive Secretary of the Supreme Court. Special justices
380 shall collect the fees prescribed in this chapter for their service and shall retain those fees, unless the
381 governing body of the county or city in which the services are performed provides for the payment of an
382 annual salary for the services, in which case the fees shall be collected and paid into the treasury of that
383 county or city.

384 **§ 37.2-804. Fees and expenses.**

385 A. Any special justice, retired judge sitting by designation pursuant to § 16.1-69.35, or any district
386 court substitute judge who presides over hearings pursuant to the provisions of §§ 37.2-809 through 37.2-
387 820, Chapter 8.1 (§ 37.2-848 et seq.), Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, or § 19.2-
388 169.6 shall receive a fee of \$86.25 for each hearing thereunder plus his necessary mileage, parking, tolls,
389 and postage, and \$43.25 for each certification hearing and each order under Chapter 11 (§ 37.2-1100 et
390 seq.) ruling on competency or treatment plus his necessary mileage, parking, tolls, and postage.

391 B. Any physician, psychologist or other mental health professional, or any interpreter, appointed
392 pursuant to § 37.2-802 for persons who are deaf, who is not regularly employed by the Commonwealth
393 and is required to serve as a witness or as an interpreter in any proceeding under this chapter, Chapter 8.1
394 (§ 37.2-848 et seq.), or § 19.2-169.6 shall receive a fee of \$75 and his necessary expenses for each
395 commitment hearing for involuntary admission in which he serves and \$43.25 and necessary expenses for
396 each certification hearing in which he serves.

397 C. Other witnesses regularly summoned before a judge or special justice under the provisions of
398 this chapter or Chapter 8.1 (§ 37.2-848 et seq.) shall receive the compensation for their attendance and
399 mileage that is allowed witnesses summoned to testify before grand juries.

400 D. Every attorney appointed under § 37.2-806-~~07~~, §§ 37.2-809 through 37.2-820, or Chapter 8.1
401 (§ 37.2-848 et seq.) shall receive a fee of \$75 and his necessary expenses for each hearing thereunder and

402 \$43.25 and his necessary expenses for each certification hearing and each proceeding under Chapter 11
403 (§ 37.2-1100 et seq.).

404 E. Except as hereinafter provided, all expenses incurred, including the fees, attendance, and
405 mileage aforesaid, shall be paid by the Commonwealth. When any such fees, costs, and expenses, incurred
406 in connection with an examination or hearing for an admission pursuant to § 37.2-806 ~~or~~ §§ 37.2-809
407 through 37.2-820, or Chapter 8.1 (§ 37.2-848 et seq.) to carry out the provisions of this chapter or in
408 connection with a proceeding under Chapter 8.1 (§ 37.2-848 et seq.), Chapter 11 (§ 37.2-1100 et seq.)₂ or
409 § 19.2-169.6₇, are paid by the Commonwealth, they shall be recoverable by the Commonwealth from the
410 person who is the subject of the examination, hearing, or proceeding or from his estate. Collection or
411 recovery may be undertaken by the Department. When the fees, costs, and expenses are collected or
412 recovered by the Department, they shall be refunded to the Commonwealth. No fees or costs shall be
413 recovered, however, from the person who is the subject of the examination or hearing or his estate when
414 no good cause for his admission exists or when the recovery would create an undue financial hardship.

415 **§ 37.2-804.2. Disclosure of records.**

416 Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is
417 currently providing services to a person who is the subject of proceedings pursuant to this chapter or
418 Chapter 8.1 (§ 37.2-848 et seq.) shall, upon request, disclose to a magistrate, the court, the person's
419 attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to §
420 37.2-815, the community services board or its designee performing any evaluation, preadmission
421 screening, or monitoring duties pursuant to this chapter or Chapter 8.1 (§ 37.2-848 et seq.), or a law-
422 enforcement officer any information that is necessary and appropriate for the performance of his duties
423 pursuant to this chapter. Any health care provider, as defined in § 32.1-127.1:03, or other provider who
424 has provided or is currently evaluating or providing services to a person who is the subject of proceedings
425 pursuant to this chapter or Chapter 8.1 (§ 37.2-848 et seq.) shall disclose information that may be necessary
426 for the treatment of such person to any other health care provider or other provider evaluating or providing
427 services to or monitoring the treatment of the person. Health records disclosed to a law-enforcement
428 officer shall be limited to information necessary to protect the officer, the person, or the public from

429 physical injury or to address the health care needs of the person. Information disclosed to a law-
430 enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

431 Any health care provider providing services to a person who is the subject of proceedings under
432 this chapter or Chapter 8.1 (§ 37.2-848 et seq.) shall (i) inform the person that his family member or
433 personal representative, including any agent named in an advance directive executed in accordance with
434 the Health Care Decisions Act (§ 54.1-2981 et seq.), will be notified of information that is directly relevant
435 to such individual's involvement with the person's health care, which may include the person's location
436 and general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, and (ii) make a reasonable
437 effort to so notify the person's family member or personal representative, unless the provider has actual
438 knowledge that the family member or personal representative is currently prohibited by court order from
439 contacting the person. No health care provider shall be required to notify a person's family member or
440 personal representative pursuant to this section if the health care provider has actual knowledge that such
441 notice has been provided.

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

446 CHAPTER 8.1.

447 EXPEDITED DIVERSION TO COURT-ORDERED TREATMENT IN THE COMMUNITY IN LIEU

448 OF CRIMINAL ADJUDICATION.

449 **§ 37.2-848. Definitions.**

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

451 "Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment
452 to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community
453 living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization, provide
454 normative environments with a high assurance of safety and security for crisis intervention, stabilize

455 individuals in crisis, and mobilize the resources of the community support system, family members, and
456 others for ongoing rehabilitation and recovery.

457 "Diversion case manager" means a community services board employee who (i) is a licensed
458 mental health professional or is registered as a qualified mental health professional, (ii) is skilled in the
459 assessment and treatment of mental illness, (iii) is able to provide an independent examination of a person
460 who is the subject of a diversion hearing, and (iv) is not related by blood or marriage to the person being
461 evaluated.

462 "Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of
463 residential or outpatient mental health or developmental services facility. When modified by the word
464 "state," "facility" means a state hospital or training center operated by the Department of Behavioral
465 Health and Developmental Services, including the buildings and land associated with such state hospital
466 or training center. When modified by the word "licensed," "facility" means a hospital or institution,
467 including a psychiatric unit of a general hospital that is licensed pursuant to Title 37.2.

468 "Licensed mental health professional" means a physician, licensed clinical psychologist, licensed
469 professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner,
470 licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior
471 analyst, or licensed psychiatric or mental health nurse practitioner.

472 "Material nonadherence" means deviation from an expedited diversion to court-ordered treatment
473 plan by a person who is subject to an order for expedited diversion to court-ordered treatment that it is
474 likely to lead to the person's relapse or deterioration and for which the person cannot provide a reasonable
475 explanation. The community services board and service providers identified in the expedited diversion to
476 court-ordered treatment plan shall report any material nonadherence and any material changes in the
477 person's condition to the diversion case manager.

478 "Qualified mental health professional" or "QMHP" means a person who by education and
479 experience is professionally qualified and registered by the Board of Counseling to provide collaborative
480 mental health services for adults or children. No QMHP shall engage in independent or autonomous

481 practice. A QMHP shall provide such services as an employee or independent contractor of the
482 Department or a provider licensed by the Department.

483 Whenever the term "community services board" or "board" appears, it includes the behavioral
484 health authority.

485 **§ 37.2-849. Evaluation of diversion eligibility; treatment needs; development of expedited**
486 **diversion to court-ordered treatment plan.**

487 A. The presiding judge in a criminal case shall require an evaluation of the person who is the
488 subject of the diversion hearing by a diversion case manager designated by the local community services
489 board.

490 B. The evaluation conducted pursuant to this section shall be a comprehensive evaluation of the
491 person conducted in-person or, if that is not practicable, by two-way electronic video and audio
492 communication system as authorized in § 37.2-804.1 and contained in a uniform diversion evaluation
493 report developed by the Department of Behavioral Health and Developmental Services. Translation or
494 interpreter services shall be provided during the evaluation where necessary. The examination shall consist
495 of (i) a clinical assessment that includes a mental status examination; determination of current use of
496 psychotropic and other medications; a medical and psychiatric history; and a substance use, abuse, or
497 dependency determination; (ii) a substance abuse screening, when indicated; (iii) a review of treatment
498 records, criminal records, if any, and records pertaining to the alleged conduct; (iv) an assessment of
499 criminogenic risk factors, using validated assessment tools as appropriate; (v) an assessment of the
500 person's capacity to consent to treatment, including his ability to maintain and communicate choice,
501 understand relevant information, and comprehend the situation and its consequences; (vi) an assessment,
502 using validated assessment tools as appropriate of the person's treatment needs, including housing needs,
503 if any; (vii) a discussion of treatment preferences expressed by the person or contained in a document
504 provided by the person in support of recovery; and (viii) an assessment of whether the person meets the
505 criteria for expedited diversion to court-ordered treatment as set forth in § 19.2-182.18. No statements of
506 the defendant relating to the time period of the alleged offense shall be included in the report.

507 C. All such evaluations shall be conducted in private. The judge shall summons the diversion case
508 manager who shall certify that he has personally examined the person. The judge shall not render any
509 decision until the diversion case manager has presented his report. The diversion case manager may report
510 orally at the diversion hearing, but he shall provide a written report of his examination prior to the hearing.
511 The diversion case manager's written certification may be accepted into evidence unless objected to by
512 the person or his attorney, in which case the diversion case manager shall attend in person or by electronic
513 communication. When the diversion case manager attends the hearing in person or by electronic
514 communication, the diversion case manager shall not be excluded from the hearing pursuant to an order
515 of sequestration of witnesses.

516 D. In the event the diversion case manager recommends expedited diversion to court-ordered
517 treatment, the diversion case manager and community services board shall file an expedited diversion to
518 court-ordered treatment plan with the diversion evaluation report. The diversion case manager shall
519 monitor the person's adherence with the expedited diversion to court-ordered treatment plan. The
520 expedited diversion to court-ordered treatment plan shall (i) identify the specific type, amount, duration,
521 and frequency of each service to be provided to the person; (ii) identify the provider that has agreed to
522 provide each service included in the plan; (iii) certify that the services are the most appropriate and least
523 restrictive treatment available for the person; (iv) certify that each provider has complied and continues to
524 comply with applicable provisions of the Department's licensing regulations; (v) be developed with the
525 fullest possible involvement and participation of the person and his family, with the person's consent, and
526 reflect his preferences to the greatest extent possible to support his recovery and self-determination,
527 including incorporating any preexisting crisis plan or advance directive of the person; (vi) specify the
528 particular conditions to which the person shall be required to adhere; and (vii) describe (a) how the
529 community services board shall monitor the person's progress and adherence to the plan and (b) any
530 conditions, including scheduled meetings or continued adherence to medication, necessary for expedited
531 diversion to court-ordered treatment to be appropriate for the person. The diversion case manager shall
532 submit the expedited diversion to court-ordered treatment plan to the court for approval. Upon approval
533 by the court, the expedited diversion to court-ordered treatment plan shall be filed with the court and

534 incorporated into the order for expedited diversion to court-ordered treatment. A copy of the expedited
535 diversion to court-ordered treatment plan shall be provided to the person by the community services board
536 upon approval of the treatment plan by the court.

537 E. Expedited diversion to court-ordered treatment may include day treatment in a hospital, night
538 treatment in a hospital, crisis stabilization in community facilities, outpatient involuntary treatment with
539 antipsychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of
540 treatment as may be necessary to meet the needs of the person. Expedited diversion to court-ordered
541 treatment shall not include the use of restraints or physical force of any kind in the provision of the
542 medication. The diversion case manager and community services board shall recommend a specific course
543 of treatment and programs for the provision of expedited diversion to court-ordered treatment.

544 F. If the diversion case manager or community services board responsible for developing the
545 expedited diversion to court-ordered treatment plan determine that the services necessary for the treatment
546 of the person's mental illness are not available or cannot be provided to the person in accordance with the
547 order for expedited diversion to court-ordered treatment, he shall petition the court for rescission of the
548 expedited diversion to court-ordered treatment order in accordance with the provisions § 37.2-851.

549 G. Upon entry of any order for expedited diversion to court-ordered treatment, the clerk of the
550 court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to
551 the diversion case manager and community services board required to monitor the person's adherence with
552 the expedited diversion to court-ordered treatment plan. The diversion case manager and community
553 services board shall acknowledge receipt of the order to the clerk of the court on a form established by the
554 Office of the Executive Secretary of the Supreme Court of Virginia and provided by the court for this
555 purpose within five business days.

556 **§ 37.2-850. Monitoring adherence to expedited diversion to court-ordered treatment; court**
557 **review of expedited diversion to court-ordered treatment.**

558 A. The diversion case manager shall monitor the person's adherence to the expedited diversion to
559 court-ordered treatment plan prepared in accordance with § 37.2-849. Such monitoring shall include (i)
560 contacting or making documented efforts to contact the person weekly regarding the expedited diversion

561 to court-ordered treatment plan and any support necessary for the person to adhere to the treatment plan,
562 (ii) contacting the service providers at least once every two weeks to determine if the person is adhering
563 to the comprehensive mandatory outpatient treatment plan, (iii) documenting all such contacts, and (iv)
564 reporting, using a form developed by the Department of Behavioral Health and Developmental Services,
565 to the court every two weeks regarding the person's, the community services board's, and service providers'
566 adherence to the provisions of the expedited diversion to court-ordered treatment plan.

567 B. In the event of material nonadherence, the diversion case manager shall, as soon as practicable,
568 meet with the person, the community services board, and service providers to identify the factors leading
569 to material nonadherence and develop a remediation plan for addressing the factors. The diversion case
570 manager shall report the meeting and remediation plan to the court within five business days. If the person
571 fails or refuses to cooperate with efforts of the diversion case manager, community services board, and
572 service providers to address the material nonadherence, the diversion case manager shall, as soon as
573 practicable, petition for a review hearing pursuant to subsection F, to include a request for reevaluation in
574 accordance with subsection H.

575 C. In the event that a person receiving court-ordered treatment is re-arrested, the diversion case
576 manager shall determine as expeditiously as possible whether the person's behavior amounts to
577 nonadherence to the treatment plan and, if so, shall immediately petition for a review hearing pursuant to
578 this section.

579 D. If the diversion case manager or community services board determines that the deterioration of
580 the condition or behavior of the person is such that there is a substantial likelihood that, as a result of the
581 person's mental illness, the person will, in the near future, (i) cause serious physical harm to himself or
582 others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant
583 information, if any, or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or
584 to provide for his basic human needs, the diversion case manager or community services board shall
585 immediately request that the magistrate issue an emergency custody order pursuant to § 37.2-808 or a
586 temporary detention order pursuant to § 37.2-809. Entry of an emergency custody order, temporary

587 detention order, or involuntary inpatient treatment order shall suspend but not rescind an existing order
588 for expedited diversion to court-ordered treatment.

589 E. The district court judge or special justice shall hold a hearing within five days after receiving
590 the petition for review of the expedited diversion to court-ordered treatment plan; however, if the fifth day
591 is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall be
592 held by the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which
593 the court is lawfully closed. The clerk shall provide notice of the hearing to the person, the diversion case
594 manager, the community services board, and all service providers listed in the expedited diversion to
595 court-ordered treatment order. If the person is not represented by counsel, the court shall appoint an
596 attorney to represent the person in this hearing and any subsequent hearing under this section, giving
597 consideration to appointing the attorney who represented the person at the proceeding that resulted in the
598 issuance of the order for expedited diversion to court-ordered treatment. The same judge that presided
599 over the hearing resulting in the order for expedited diversion to court-ordered treatment need not preside
600 at the nonadherence hearing or any subsequent hearings. The community services board shall offer to
601 arrange the person's transportation to the hearing if the person is not detained and has no other source of
602 transportation.

603 F. Any of the following may petition the court for a hearing pursuant to this subsection: (i) the
604 person who is subject to the order for expedited diversion to court-ordered treatment; (ii) the diversion
605 case manager; (iii) the community services board responsible for monitoring the person's adherence to the
606 order for expedited diversion to court-ordered treatment; (iv) a treatment provider designated in the
607 expedited diversion to court-ordered treatment plan; (v) any health care agent designated in the advance
608 directive of the person who is the subject of the order for expedited diversion to court-ordered treatment;
609 or (vi) if the person who is the subject of the order for expedited diversion to court-ordered treatment has
610 been determined to be incapable of making an informed decision, the person's guardian or other person
611 authorized to make health care decisions for the person pursuant to § 54.1-2986.

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

613 1. Enforce an order for expedited diversion to court-ordered treatment and require the person who
614 is the subject of the order to adhere to the expedited diversion to court-ordered treatment plan, in the case
615 of material nonadherence;

616 2. Modify an order for expedited diversion to court-ordered treatment or an expedited diversion to
617 court-ordered treatment plan due to a change in circumstances, including changes in the condition,
618 behavior, living arrangement, or access to services of the person who is the subject to the order; or

619 3. Rescind an order for expedited diversion to court-ordered treatment.

620 At any time after 30 days from entry of the order for expedited diversion to court-ordered
621 treatment, the person may petition the court to rescind the order. The person shall not file a petition to
622 rescind the order more than once during a 90-day period.

623 H. If requested in a petition filed pursuant to this section, or on the court's own motion, the court
624 may direct the diversion case manager to reevaluate the person as to the considerations listed in subsection
625 B of § 37.2-849. The diversion case manager shall certify to the court whether he has probable cause to
626 believe that (i) the person has treatment needs and poses a risk of future offending in the absence of
627 treatment and (ii) community-based services will reduce the person's risk of psychiatric deterioration and
628 future offending. If the person is not incarcerated or receiving treatment in an inpatient facility, the
629 community services board shall arrange for the person to be examined at a convenient location and time.
630 The community services board shall offer to arrange for the person's transportation to the examination if
631 the person has no other source of transportation and resides within the service area or an adjacent service
632 area of the community services board.

633 If the person refuses or fails to appear for the evaluation, the diversion case manager or community
634 services board shall notify the court, and the court shall issue a mandatory examination order and capias
635 directing the primary law-enforcement agency in the jurisdiction where the person resides to transport the
636 person to the examination. The person shall remain in custody until a temporary detention order is issued
637 or until the person is released, but in no event shall the period exceed eight hours.

638 I. If the person fails to appear for the hearing, the court may, after consideration of any evidence
639 regarding why the person failed to appear at the hearing, (i) dismiss the petition, (ii) issue an emergency

640 custody order pursuant to § 37.2-808, or (iii) reschedule the hearing pursuant to subsection F and issue a
641 subpoena for the person's appearance at the hearing and enter an order for mandatory examination, to be
642 conducted prior to the hearing and in accordance with subsection H.

643 J. After observing the person and considering (i) the recommendations of any treating licensed or
644 qualified mental health professional who is licensed to practice in or registered with the Commonwealth,
645 if available, (ii) the person's adherence with the expedited diversion to court-ordered treatment plan, (iii)
646 any past mental health treatment of the person, (iv) any evaluator's certification, (v) any health records
647 available, (vi) any report from the diversion case manager or the community services board, and (vii) any
648 other relevant evidence that may have been admitted at the hearing, the judge or special justice shall make
649 one of the following dispositions:

650 1. In a hearing on any petition seeking enforcement of an order for expedited diversion to court-
651 ordered treatment, upon finding that continuing court-ordered treatment is warranted, the court shall direct
652 the person to fully adhere to the order for expedited diversion to court-ordered treatment and may make
653 any modifications to such order or the expedited diversion to court-ordered treatment plan that are
654 acceptable to the community services board or treatment provider responsible for the person's treatment.
655 In determining the appropriateness of the outpatient treatment specified in such order and treatment plan,
656 the court may consider the person's material nonadherence to the existing treatment order. The court may
657 proscribe consequences on the person, including reflective exercises such as writing an essay about his
658 nonadherence, increased frequency of status hearings, and increased frequency of reporting to the
659 diversion case manager. Proscribed consequences for nonadherence shall not include contempt of court
660 or criminal sanctions, including incarceration of any duration.

661 2. In a hearing on any petition seeking modification of an order for expedited diversion to court-
662 ordered treatment or the expedited diversion to court-ordered treatment plan, upon a finding that (i) one
663 or more modifications of the order would benefit the person and help prevent relapse or deterioration of
664 the person's condition, (ii) the community services board and the treatment provider responsible for the
665 person's treatment are able to provide services consistent with such modification, and (iii) the person is
666 able to adhere to the modified treatment plan, the court may order such modification of the order for

667 expedited diversion to court-ordered treatment or the expedited diversion to court-ordered treatment plan
668 as the court finds appropriate.

669 3. In a hearing on any petition filed to enforce, modify, or rescind an order for expedited diversion
670 to court-ordered treatment, upon finding that expedited diversion to court-ordered treatment is no longer
671 appropriate, in accordance with the criteria set forth in § 37.2-851, the court may order that the order be
672 rescinded upon the filing of a discharge treatment plan by the diversion case manager pursuant to § 37.2-
673 851.

674 K. If at any time the court finds reasonable ground to believe that the person (i) has repeatedly
675 been in material nonadherence with the expedited diversion to court-ordered treatment plan, (ii) is highly
676 likely to suffer psychiatric deterioration in the near future, and (iii) less restrictive treatment alternatives
677 in the expedited diversion to court-ordered treatment plan have been determined to be inappropriate, it
678 may order an evaluation of the person by an examiner as defined in § 37.2-815. If the court, based on the
679 evaluation and after hearing evidence on the issue, finds by clear and convincing evidence that the person
680 (a) has repeatedly been in material nonadherence with the expedited diversion to court-ordered treatment
681 plan, (b) has a mental illness, (c) is highly likely to suffer psychiatric deterioration in the near future, and
682 (d) less restrictive treatment alternatives in the expedited diversion to court-ordered treatment plan have
683 been determined to be inappropriate, the court may suspend the order for expedited diversion to court-
684 ordered treatment and order the person to be admitted involuntarily to a facility for a period of treatment
685 not to exceed 15 days from the date of the court order.

686 At any hearing pursuant to this section, the person shall be provided with adequate notice of the
687 hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for
688 and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing.
689 The hearing shall be scheduled on an expedited basis and shall be given priority over other civil matters
690 before the court.

691 L. The judge or special justice shall schedule a status hearing every 60 days while the order for
692 expedited diversion to court-ordered treatment remains in effect for the purposes of obtaining information
693 regarding the person's progress and the community services board's and service providers' provision of

694 services. The judge or special justice may schedule additional status hearings upon its own motion, as
695 recommended by the diversion case manager, or in response to the person's nonadherence to the expedited
696 diversion to court-ordered treatment plan. The clerk shall provide notice of the hearing to the person who
697 is the subject of the order, the diversion case manager, and the community services board responsible for
698 monitoring the person's adherence with the plan. The person shall have the right to be represented by
699 counsel at the hearing, and if the person does not have counsel the court shall appoint an attorney to
700 represent the person. However, status hearings may be held without counsel present by mutual consent of
701 the parties. The community services board shall offer to arrange the person's transportation to the hearing
702 if the person is not detained and has no other source of transportation. During a status hearing, the
703 treatment plan may be amended upon mutual agreement of the parties. Contested matters shall not be
704 decided during a status hearing, nor shall any decision regarding enforcement or rescission of the order be
705 entered.

706 M. The court may transfer jurisdiction of the case to the district court where the person resides at
707 any time after the entry of the order for expedited diversion to court-ordered treatment. The diversion case
708 manager and the community services board responsible for monitoring the person's adherence to the
709 treatment plan shall remain responsible for monitoring the person's adherence to the plan until the
710 community services board serving the locality to which jurisdiction of the case has been transferred
711 acknowledges the transfer and receipt of the order to the clerk of the court on a form established by the
712 Office of the Executive Secretary of the Supreme Court of Virginia and provided by the court for this
713 purpose. The community services board serving the locality to which jurisdiction of the case has been
714 transferred shall acknowledge the transfer and receipt of the order within five business days.

715 **§ 37.2-851. Rescission of order for expedited diversion to court-ordered treatment; discharge**
716 **treatment plan upon rescission or expiration of order for expedited diversion to court-ordered**
717 **treatment.**

718 A. If the diversion case manager or community services board determines at any time prior to the
719 expiration of the order for expedited diversion to court-ordered treatment that the person has adhered to
720 the order and no longer meets the criteria for expedited diversion to court-ordered treatment, or that

721 continued expedited diversion to court-ordered treatment is no longer necessary for any other reason, the
722 diversion case manager or community services board shall file a petition to rescind the order. The court
723 shall schedule a review hearing and provide notice of the hearing in accordance with § 37.2-850. The
724 diversion case manager shall prepare, in collaboration with the person, the community services board, and
725 the service providers, a discharge plan in accordance with subsection D, to be submitted to the court before
726 or during the review hearing.

727 B. At any time after 30 days from entry of the order for expedited diversion to court-ordered
728 treatment, the person may petition the court to rescind the order on the grounds that he no longer meets
729 the criteria for expedited diversion to court-ordered treatment as specified in § 19.2-182.18. The court
730 shall schedule a review hearing and provide notice of the hearing in accordance with § 37.2-850. The
731 diversion case manager required to monitor the person's adherence to the treatment order shall provide a
732 reevaluation of the person as described in subsection H § 37.2-850. After observing the person and
733 considering the person's current condition, any material nonadherence to the order for expedited diversion
734 to court-ordered treatment on the part of the person, and any other relevant evidence referred to in
735 subsection K of § 37.2-850, the court shall make one of the dispositions specified in subsection K of §
736 37.2-850. The person may not file a petition to rescind the order more than once during a 90-day period.

737 C. In the event the order for expedited diversion to court-ordered treatment is not rescinded before
738 it is set to expire, the court shall schedule a review hearing prior to that date at which the diversion case
739 manager shall submit a discharge plan in accordance with subsection D. Upon approval by the court, the
740 discharge treatment plan shall be filed with the court and the judge or special justice shall rescind the order
741 for expedited diversion to court-ordered treatment.

742 If the diversion case manager determines that a deterioration of the condition or behavior of the
743 person is such that (i) there is a substantial likelihood that, as a result of the person's mental illness, the
744 person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent
745 behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer
746 serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human
747 needs; (ii) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity

748 for improvement of his condition have been investigated and are determined to be appropriate, as reflected
749 in the initial outpatient treatment plan prepared in accordance with subsection F of § 37.2-817.01; (iii) the
750 person has the ability to adhere to the mandatory outpatient treatment plan; and (iv) the ordered treatment
751 will be delivered on an outpatient basis by the community services board or designated provider to the
752 person, the diversion case manager may petition for the person's commitment to mandatory outpatient
753 treatment in accordance with subsection B of § 37.2-817.01.

754 D. For all individuals for whom the order for expedited diversion to court-ordered treatment may
755 be rescinded, a discharge plan shall be formulated by the diversion case manager in collaboration with the
756 community services board and service providers. The discharge plan shall be prepared with the
757 involvement and participation of the individual receiving services or his representative and must reflect
758 the individual's preferences to the greatest extent possible. The discharge plan shall be contained in a
759 uniform discharge document developed by the Department and used by all state hospitals, training centers,
760 and community services boards or behavioral health authorities and shall identify (i) the services,
761 including mental health, developmental, substance abuse, social, educational, medical, employment,
762 housing, legal, advocacy, transportation, and other services that the individual will require upon discharge
763 into voluntary treatment in the community and (ii) the public or private agencies that have agreed to
764 provide these services. If the individual will be housed in an assisted living facility, as defined in § 63.2-
765 100, the discharge plan shall identify the facility, document its appropriateness for housing and capacity
766 to care for the individual, contain evidence of the facility's agreement to admit and care for the individual,
767 and describe how the community services board or behavioral health authority will monitor the
768 individual's care in the facility. Prior to discharging an individual who has not executed an advance
769 directive, the diversion case manager shall give to the individual a written explanation of the procedures
770 for executing an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.)
771 and an advance directive form, which may be the form set forth in § 54.1-2984.

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