

SENATE BILL NO. 34

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health

on _____)

(Patron Prior to Substitute--Senator Locke)

A BILL to amend and reenact §§ 37.2-800, 37.2-804.2, 37.2-805, 37.2-808 through 37.2-810, 37.2-813, 37.2-814, 37.2-816, 37.2-817, and 37.2-1104 of the Code of Virginia, relating to temporary detention; certified evaluators; report.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-800, 37.2-804.2, 37.2-805, 37.2-808 through 37.2-810, 37.2-813, 37.2-814, 37.2-816, 37.2-817, and 37.2-1104 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-800. Applicability of chapter.

For the purposes of this chapter, whenever the term mental illness appears, it shall include substance abuse. Whenever the term responsible person appears, it shall include a family member as that term is defined in § 37.2-100, a community services board or behavioral health authority, any treating physician of the person, a certified evaluator as defined in § 37.2-809, or a law-enforcement officer. Whenever the term community services board or board appears, it shall include behavioral health authority.

§ 37.2-804.2. Disclosure of records.

Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to this chapter shall, upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to § 37.2-815, the community services board or its designee or a certified evaluator, as defined in § 37.2-809, performing any evaluation, preadmission screening, or monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant to this chapter. Any health care

27 provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently evaluating or
28 providing services to a person who is the subject of proceedings pursuant to this chapter shall disclose
29 information that may be necessary for the treatment of such person to any other health care provider or
30 other provider evaluating or providing services to or monitoring the treatment of the person. Health records
31 disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the
32 person, or the public from physical injury or to address the health care needs of the person. Information
33 disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or
34 retained.

35 Any health care provider providing services to a person who is the subject of proceedings under
36 this chapter shall (i) inform the person that his family member or personal representative, including any
37 agent named in an advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-
38 2981 et seq.), will be notified of information that is directly relevant to such individual's involvement with
39 the person's health care, which may include the person's location and general condition, in accordance
40 with subdivision D 34 of § 32.1-127.1:03, and (ii) make a reasonable effort to so notify the person's family
41 member or personal representative, unless the provider has actual knowledge that the family member or
42 personal representative is currently prohibited by court order from contacting the person. No health care
43 provider shall be required to notify a person's family member or personal representative pursuant to this
44 section if the health care provider has actual knowledge that such notice has been provided.

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

49 **§ 37.2-805. Voluntary admission.**

50 Any state facility shall admit any person requesting admission who has been (i) screened by the
51 community services board or behavioral health authority that serves the county or city where the person
52 resides or, if impractical, where the person is located, or a certified evaluator, as defined in § 37.2-809, (ii)
53 examined by a physician on the staff of the state facility, and (iii) deemed by the board ~~or~~, authority, or

54 certified evaluator and the state facility physician to be in need of treatment, training, or habilitation in a
55 state facility. Upon motion of the treating physician, a family member or personal representative of the
56 person, or the community services board serving the county or city where the facility is located, the county
57 or city where the person resides, or the county or city where the person receives treatment, a hearing shall
58 be held prior to the release date of any person who has been the subject of a temporary detention order
59 and voluntarily admitted himself in accordance with subsection B of § 37.2-814 to determine whether
60 such person should be ordered to mandatory outpatient treatment pursuant to subsection D of § 37.2-
61 817.01, except that such 36-month period shall not include any time during which the person was receiving
62 inpatient psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing,
63 upon his release if such person, on at least two previous occasions within 36 months preceding the date of
64 the hearing, has been (a) the subject of a temporary detention order and voluntarily admitted himself in
65 accordance with subsection B of § 37.2-814 or (b) involuntarily admitted pursuant to § 37.2-817. A district
66 court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a
67 mandatory outpatient treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or
68 legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday,
69 Sunday, or legal holiday.

70 **§ 37.2-808. Emergency custody; issuance and execution of order.**

71 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating
72 physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody
73 order when he has probable cause to believe that any person (i) has a mental illness and that there exists a
74 substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious
75 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening
76 harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect
77 himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment,
78 and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any
79 emergency custody order entered pursuant to this section shall provide for the disclosure of medical

80 records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or
81 permitted by law.

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

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

96 C. The magistrate or court issuing an emergency custody order shall specify the primary law-
97 enforcement agency and jurisdiction to execute the emergency custody order and provide transportation.
98 However, the magistrate or court shall authorize transportation by an alternative transportation provider
99 in accordance with this section, whenever an alternative transportation provider is identified to the
100 magistrate or court, which may be a person, facility, or agency, including a family member or friend of
101 the person who is the subject of the order, a representative of the community services board, or a certified
102 evaluator, or other transportation provider with personnel trained to provide transportation in a safe
103 manner, upon determining, following consideration of information provided by the petitioner; the
104 community services board or its designee or a certified evaluator; the local law-enforcement agency, if
105 any; the person's treating physician, if any; or other persons who are available and have knowledge of the
106 person, and, when the magistrate or court deems appropriate, the proposed alternative transportation

107 provider, either in person or via two-way electronic video and audio or telephone communication system,
108 that the proposed alternative transportation provider is available to provide transportation, willing to
109 provide transportation, and able to provide transportation in a safe manner.

110 When transportation is ordered to be provided by an alternative transportation provider, the
111 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take
112 the person into custody, and to transfer custody of the person to the alternative transportation provider
113 identified in the order. In such cases, a copy of the emergency custody order shall accompany the person
114 being transported pursuant to this section at all times and shall be delivered by the alternative
115 transportation provider to the community services board or its designee or certified evaluator responsible
116 for conducting the evaluation. The community services board or its designee or certified evaluator
117 conducting the evaluation shall return a copy of the emergency custody order to the court designated by
118 the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of
119 an order to a law-enforcement officer or alternative transportation provider and return of an order to the
120 court may be accomplished electronically or by facsimile.

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

126 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
127 the magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by
128 the community services board or certified evaluator that designated the person to perform the evaluation
129 required in subsection B to execute the order and, in cases in which transportation is ordered to be provided
130 by the primary law-enforcement agency, provide transportation. If the community services board serves
131 more than one jurisdiction, the magistrate or court shall designate the primary law-enforcement agency
132 from the particular jurisdiction within the community services board's service area where the person who
133 is the subject of the emergency custody order was taken into custody or, if the person has not yet been

134 taken into custody, the primary law-enforcement agency from the jurisdiction where the person is
135 presently located to execute the order and provide transportation.

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

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

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

157 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be
158 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits
159 of the county, city, or town in which he serves may take such person into custody and transport him to an
160 appropriate location to assess the need for hospitalization or treatment without prior authorization when

161 the law-enforcement officer determines (i) that the person has revoked consent to be transported to a
162 facility for the purpose of assessment or evaluation, and (ii) based upon his observations, that probable
163 cause exists to believe that the person meets the criteria for emergency custody as stated in this section.
164 The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the
165 person into custody.

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

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

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

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

188 other appropriate facility in which the person is detained shall notify the nearest community services board
189 or certified evaluator, and the designee of the community services board or certified evaluator shall, as
190 soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to §
191 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary
192 detention pursuant to § 37.2-809.

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

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

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

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

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

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

214 S. For purposes of this section:

215 "Certified evaluator" means the same as that term is defined in § 37.2-809.

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

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

219 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

220 A. For the purposes of this section:

221 "Certified evaluator" means (i) an individual with an educational attainment of a master's or
222 doctoral degree with an associated professional license or (ii) a licensed professional counselor, licensed
223 clinical social worker, licensed marriage and family therapist, licensed clinical psychologist, or
224 psychiatrist; or (iii) other licensed psychiatric nurse practitioner, psychiatric physician assistant,
225 psychiatric clinical nurse specialist, doctor of medicine, or doctor of osteopathy. A certified evaluator shall
226 (a) be employed or contracted by a hospital with a psychiatric emergency department in Planning District
227 21; (b) be skilled in the assessment and treatment of mental illness; (c) have completed a training and
228 certification program approved by the Department; (d) have received a prescreener orientation
229 presentation developed by the Virginia Association of Community Services Boards; (e) be able to provide
230 an independent examination of the person; (f) not be related by blood or marriage to the person being
231 evaluated; (g) have no financial interest in the admission, treatment, or denial of admission of the person
232 being evaluated; (h) have no investment interest in the facility detaining or admitting the person under this
233 article; and (i) is only permitted to conduct in-person evaluations on site at participating hospitals.

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

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

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

247 "Psychiatric emergency department" means a facility that (i) is a separate and secure environment
248 operating under the authority of a hospital with emergency department services licensed by the
249 Department of Health, (ii) provides immediate access to psychiatric and psychological care, (iii) is
250 adjacent to a facility licensed by the Department, and (iv) provides medical care, case management,
251 discharge planning, and bridge psychiatric services post-discharge as needed.

252 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician,
253 or upon his own motion and only after an evaluation conducted in-person or by means of a two-way
254 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a
255 designee of the local community services board or after an in-person evaluation conducted by a certified
256 evaluator to determine whether the person meets the criteria for temporary detention, a temporary
257 detention order if it appears from all evidence readily available, including any recommendation from a
258 physician, clinical psychologist, clinical social worker, or licensed professional counselor treating the
259 person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result
260 of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others
261 as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information,
262 if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for
263 his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling to volunteer or
264 incapable of volunteering for hospitalization or treatment. The magistrate shall also consider, if available,
265 (a) information provided by the person who initiated emergency custody and (b) the recommendations of
266 any treating or examining physician licensed in Virginia either verbally or in writing prior to rendering a
267 decision. Any temporary detention order entered pursuant to this section shall provide for the disclosure

268 of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as
269 required or permitted by law.

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

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

284 E. An employee or a designee of the local community services board or a certified evaluator shall
285 determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all
286 persons detained pursuant to this section. An employee or designee of the local community services board
287 or a certified evaluator may change the facility of temporary detention and may designate an alternative
288 facility for temporary detention at any point during the period of temporary detention if it is determined
289 that the alternative facility is a more appropriate facility for temporary detention of the person given the
290 specific security, medical, or behavioral health needs of the person. In cases in which the facility of
291 temporary detention is changed following transfer of custody to an initial facility of temporary custody,
292 transportation of the person to the alternative facility of temporary detention shall be provided in
293 accordance with the provisions of § 37.2-810. The initial facility of temporary detention shall be identified
294 on the preadmission screening report and indicated on the temporary detention order; however, if an

295 employee or designee of the local community services board or the certified evaluator designates an
296 alternative facility, that employee or designee or certified evaluator shall provide written notice forthwith,
297 on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the
298 issuing court of the name and address of the alternative facility. Subject to the provisions of § 37.2-809.1,
299 if a facility of temporary detention cannot be identified by the time of the expiration of the period of
300 emergency custody pursuant to § 37.2-808, the person shall be detained in a state facility for the treatment
301 of persons with mental illness and such facility shall be indicated on the temporary detention order. Except
302 as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of §
303 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged
304 with criminal offenses. Except as provided in § 37.2-811 for inmates requiring hospitalization in
305 accordance with subdivision A 2 of § 19.2-169.6 or in subsection C of § 37.2-813 for persons prior to
306 transfer to the facility of temporary detention, the person shall remain in the custody of law enforcement
307 until either (i) the person is detained within a secure facility or (ii) custody has been accepted by the
308 appropriate personnel designated by either the initial facility of temporary detention identified in the
309 temporary detention order or by the alternative facility of temporary detention designated by the employee
310 or designee of the local community services board or the certified evaluator pursuant to this subsection.
311 The person detained or in custody pursuant to this section shall be given a written summary of the
312 temporary detention procedures and the statutory protections associated with those procedures.

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

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

327 H. The duration of temporary detention shall be sufficient to allow for completion of the
328 examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-
329 816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid
330 involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour
331 period herein specified terminates on a Saturday, Sunday, legal holiday, or, if the individual has been
332 admitted to a facility of temporary detention, day or part of a day on which the clerk's office is lawfully
333 closed, the person may be detained, as herein provided, until the close of business on the next day that is
334 not a Saturday, Sunday, legal holiday, or, if the individual has been admitted to a facility of temporary
335 detention, day or part of a day on which the clerk's office is lawfully closed. The person may be released,
336 pursuant to § 37.2-813, before the 72-hour period herein specified has run.

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

346 J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a
347 magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of

348 performing the duties established by this section. Each community services board shall provide to each
349 general district court and magistrate's office within its service area a list of its employees and designees
350 who are available to perform the evaluations required herein. The employer of any certified evaluator shall
351 provide to each general district court and magistrate's office within its service area a list of its employees
352 and designees who are available to perform the evaluations required herein.

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

357 L. If the employee or designee of the community services board or the certified evaluator who is
358 conducting the evaluation pursuant to this section recommends that the person should not be subject to a
359 temporary detention order, such employee or designee or certified evaluator shall (i) inform the petitioner,
360 the person who initiated emergency custody if such person is present, and an onsite treating physician of
361 his recommendation; (ii) promptly inform such person who initiated emergency custody that the
362 community services board or certified evaluator will facilitate communication between the person and the
363 magistrate if the person disagrees with recommendations of the employee or designee of the community
364 services board or certified evaluator who conducted the evaluation and the person who initiated emergency
365 custody so requests; and (iii) upon prompt request made by the person who initiated emergency custody,
366 arrange for such person who initiated emergency custody to communicate with the magistrate as soon as
367 is practicable and prior to the expiration of the period of emergency custody. The magistrate shall consider
368 any information provided by the person who initiated emergency custody and any recommendations of
369 the treating or examining physician and the employee or designee of the community services board or
370 certified evaluator who conducted the evaluation and consider such information and recommendations in
371 accordance with subsection B in making his determination to issue a temporary detention order. The
372 person who is the subject of emergency custody shall remain in the custody of law enforcement or a
373 designee of law enforcement and shall not be released from emergency custody until communication with

374 the magistrate pursuant to this subsection has concluded and the magistrate has made a determination
375 regarding issuance of a temporary detention order.

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

379 N. In any case in which a person subject to an evaluation pursuant to this section is receiving
380 services in a hospital emergency department, the treating physician or his designee and the employee or
381 designee of the local community services board or certified evaluator shall disclose to each other relevant
382 information pertaining to the individual's treatment in the emergency department.

383 **§ 37.2-809.1. Facility of temporary detention.**

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

395 B. A state facility may, following the notice in accordance with subsection A, conduct a search for
396 an alternative facility that is able and willing to provide temporary detention and appropriate care to the
397 individual, which may include another state facility if the state facility notified in accordance with
398 subsection A is unable to provide temporary detention and appropriate care for the individual. Under no
399 circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary
400 detention pursuant to § 37.2-809 unless an alternative facility that is able to provide temporary detention

401 and appropriate care agrees to accept the individual for temporary detention and the individual shall not
402 during the duration of the temporary detention order be released from custody except for purposes of
403 transporting the individual to the state facility or alternative facility in accordance with the provisions of
404 § 37.2-810. If an alternative facility is identified and agrees to accept the individual for temporary
405 detention, the state facility shall notify the community services board or certified evaluator, and an
406 employee or designee of the community services board or certified evaluator shall designate the alternative
407 facility on the prescreening report.

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

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

413 **§ 37.2-810. Transportation of person in the temporary detention process.**

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

422 B. The magistrate issuing the temporary detention order shall (i) specify the law-enforcement
423 agency to execute the order and (ii) designate a transportation provider. In determining the transportation
424 provider, the magistrate shall consider any request to authorize transportation by an alternative
425 transportation provider in accordance with this section, whenever an alternative transportation provider is
426 identified to the magistrate, which may be a person, facility, or agency, including a family member or
427 friend of the person who is the subject of the temporary detention order, a representative of the community

428 services board, a certified evaluator, an employee of or person providing services pursuant to a contract
429 with the Department, or other transportation provider with personnel trained to provide transportation in
430 a safe manner. Upon determining, following consideration of information provided by the petitioner; the
431 community services board or its designee; the certified evaluator; the local law-enforcement agency, if
432 any; the person's treating physician, if any; or other persons who are available and have knowledge of the
433 person, and, when the magistrate deems appropriate, the proposed alternative transportation provider,
434 either in person or via two-way electronic video and audio or telephone communication system, that an
435 alternative transportation provider is available to provide transportation, willing to provide transportation,
436 and able to provide transportation in a safe manner, the magistrate shall designate such alternative
437 transportation provider to provide transportation of the person. If no alternative transportation provider is
438 available to provide transportation, willing to provide transportation, and able to provide transportation in
439 a safe manner, the magistrate shall designate the primary law-enforcement agency and jurisdiction
440 designated to execute the temporary detention order to provide transportation of the person.

441 When transportation is ordered to be provided by an alternative transportation provider, the
442 magistrate shall order the specified law-enforcement agency to execute the order, to take the person into
443 custody, and to transfer custody of the person to the alternative transportation provider identified in the
444 order. The primary law-enforcement agency may transfer custody of the person to the alternative
445 transportation provider immediately upon execution of the temporary detention order based on the
446 availability of alternative transportation providers. The alternative transportation provider shall maintain
447 custody of the person from the time custody is transferred to the alternative transportation provider by the
448 primary law-enforcement agency until such time as custody of the person is transferred to the temporary
449 detention facility, including during any period prior to the initiation of transportation of the person from
450 the facility to which he was transported pursuant to § 37.2-808 and while transportation is being provided
451 pursuant to this section.

452 In such cases, a copy of the temporary detention order shall accompany the person being
453 transported pursuant to this section at all times and shall be delivered by the alternative transportation
454 provider to the temporary detention facility. The temporary detention facility shall return a copy of the

455 temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of
456 an order to a law-enforcement officer or alternative transportation provider and return of an order to the
457 court may be accomplished electronically or by facsimile.

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

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

473 D. In cases in which an alternative facility of temporary detention is identified and the law-
474 enforcement agency or alternative transportation provider identified to provide transportation in
475 accordance with subsection B continues to have custody of the person, the local law-enforcement agency
476 or alternative transportation provider shall transport the person to the alternative facility of temporary
477 detention identified by the employee or designee of the community services board or certified evaluator.
478 In cases in which an alternative facility of temporary detention is identified and custody of the person has
479 been transferred from the law-enforcement agency or alternative transportation provider that provided
480 transportation in accordance with subsection B to the initial facility of temporary detention, the employee
481 or designee of the community services board or certified evaluator shall request, and a magistrate may

482 enter an order specifying, an alternative transportation provider or, if no alternative transportation provider
483 is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency
484 for the jurisdiction in which the person resides or, if the nearest boundary of the jurisdiction in which the
485 person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is
486 located, the law-enforcement agency of the jurisdiction in which the person is located, to provide
487 transportation.

488 E. The magistrate may change the transportation provider specified in a temporary detention order
489 at any time prior to the initiation of transportation of a person who is the subject of a temporary detention
490 order pursuant to this section. If the designated transportation provider is changed by the magistrate at any
491 time after the temporary detention order has been executed but prior to the initiation of transportation, the
492 transportation provider having custody of the person shall transfer custody of the person to the
493 transportation provider subsequently specified to provide transportation. For the purposes of this
494 subsection, "transportation provider" includes both a law-enforcement agency and an alternative
495 transportation provider.

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

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

503 H. For purposes of this section:

504 "Certified evaluator" means the same as that term is defined in § 37.2-809.

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

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

508 **§ 37.2-813. Release of person prior to commitment hearing for involuntary admission.**

509 A. Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819, the district court judge or
510 special justice may release the person on his personal recognizance or bond set by the district court judge
511 or special justice if it appears from all evidence readily available that the person does not meet the
512 commitment criteria specified in subsection C of § 37.2-817.

513 B. The director of any facility in which the person is detained, as long as such director is not the
514 person's certified evaluator, may release the person prior to a hearing as authorized in §§ 37.2-814 through
515 37.2-819 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist
516 treating the person, that the person would not meet the commitment criteria specified in subsection C of
517 § 37.2-817 if released.

518 C. For any person under a temporary detention order pursuant to § 37.2-809, prior to transport to
519 the facility of temporary detention, the director of the facility in which the person is located, as long as
520 such director is not the person's certified evaluator, may release the person if an employee or a designee
521 of the local community services board or certified evaluator, as those terms are defined in § 37.2-809, in
522 consultation with the person's treating physician, (i) conducts an evaluation of the person, (ii) determines
523 that the person no longer meets the commitment criteria specified in subsection C of § 37.2-817, (iii)
524 authorizes the release of the person, and (iv) provides a discharge plan.

525 D. For the purposes of this section, "certified evaluator" means the same as that term is defined in
526 § 37.2-809.

527 **§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to**
528 **counsel; rights of petitioner.**

529 A. The commitment hearing for involuntary admission shall be held after a sufficient period of
530 time has passed to allow for completion of the examination required by § 37.2-815, preparation of the
531 preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize
532 the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held
533 within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809; however,
534 if the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which

535 the court is lawfully closed, the person may be detained, as herein provided, until the close of business on
536 the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

537 B. At the commencement of the commitment hearing, the district court judge or special justice
538 shall inform the person whose involuntary admission is being sought of his right to apply for voluntary
539 admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an opportunity
540 for voluntary admission. The district court judge or special justice shall advise the person whose
541 involuntary admission is being sought that if the person chooses to be voluntarily admitted pursuant to §
542 37.2-805, such person will be prohibited from possessing, purchasing, or transporting a firearm pursuant
543 to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then willing and capable of
544 seeking voluntary admission for inpatient treatment. In determining whether a person is capable of
545 consenting to voluntary admission, the judge or special justice may consider evidence regarding the
546 person's past compliance or noncompliance with treatment. If the judge or special justice finds that the
547 person is capable and willingly accepts voluntary admission for inpatient treatment, the judge or special
548 justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed
549 72 hours. After such minimum period of treatment, the person shall give the facility 48 hours' notice prior
550 to leaving the facility. During this notice period, the person shall not be discharged except as provided in
551 § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided
552 in § 37.2-829 and the requirement for preadmission screening by a community services board or certified
553 evaluator as provided in § 37.2-805.

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

560 D. A written explanation of the involuntary admission process and the statutory protections
561 associated with the process shall be given to the person, and its contents shall be explained by an attorney

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

568 E. To the extent possible, during or before the commitment hearing, the attorney for the person
569 whose involuntary admission is sought shall interview his client, the petitioner, the examiner described in
570 § 37.2-815, the community services board staff or certified evaluator, and any other material witnesses.
571 He also shall examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on
572 his client's behalf, and otherwise actively represent his client in the proceedings. A health care provider
573 shall disclose or make available all such reports, treatment information, and records concerning his client
574 to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the
575 extent possible.

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

581 G. For the purposes of this section, "certified evaluator" means the same as that term is defined in
582 § 37.2-809.

583 **§ 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.**

584 The district court judge or special justice shall require a preadmission screening report from the
585 community services board that serves the county or city where the person resides or, if impractical, where
586 the person is located or from the certified evaluator as defined in § 37.2-809. The report shall be admitted
587 as evidence of the facts stated therein and shall state (i) whether the person has a mental illness and whether
588 there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future,

589 (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting,
590 or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of
591 capacity to protect himself from harm or to provide for his basic human needs, (ii) whether the person is
592 in need of involuntary inpatient treatment, (iii) whether there is no less restrictive alternative to inpatient
593 treatment, and (iv) the recommendations for that person's placement, care, and treatment including, where
594 appropriate, recommendations for mandatory outpatient treatment. The board or the certified evaluator
595 shall provide the preadmission screening report to the court prior to the hearing, and the report shall be
596 admitted into evidence and made part of the record of the case. In the case of a person who has been
597 sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist
598 or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person has
599 mental illness and should be involuntarily admitted without requesting a preadmission screening report
600 from the community services board.

601 **§ 37.2-817. Involuntary admission.**

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

612 B. Any employee or designee of the local community services board, as defined in § 37.2-809,
613 representing the community services board or certified evaluator that prepared the preadmission screening
614 report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in
615 the hearing through a two-way electronic video and audio or telephonic communication system as

616 authorized in § 37.2-804.1. Where a hearing is held outside of the service area of the community services
617 board that prepared the preadmission screening report, and it is not practicable for a representative of the
618 community services board that prepared the preadmission screening report to attend or participate in the
619 hearing, arrangements shall be made by the community services board that prepared the preadmission
620 screening report for an employee or designee of the community services board serving the area in which
621 the hearing is held to attend or participate on behalf of the community services board that prepared the
622 preadmission screening report. The employee or designee of the local community services board, as
623 defined in § 37.2-809, representing the community services board that prepared the preadmission
624 screening report or attending or participating on behalf of the community services board that prepared the
625 preadmission screening report or the certified evaluator shall not be excluded from the hearing pursuant
626 to an order of sequestration of witnesses. The community services board that prepared the preadmission
627 screening report or the certified evaluator shall remain responsible for the person subject to the hearing
628 and, prior to the hearing, shall send the preadmission screening report through certified mail, personal
629 delivery, facsimile with return receipt acknowledged, or other electronic means with documented
630 acknowledgment of receipt to the community services board attending the hearing. Where a community
631 services board attends the hearing on behalf of the community services board that prepared the
632 preadmission screening report, the attending community services board shall inform the community
633 services board that prepared the preadmission screening report of the disposition of the matter upon the
634 conclusion of the hearing. In addition, the attending community services board shall transmit the
635 disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other
636 electronic means with documented acknowledgment of receipt.

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

643 screening report, the community services board that prepared the preadmission screening report shall
644 promptly communicate the time and location of the hearing and, if the representative of the community
645 services board attending on behalf of the community services board that prepared the preadmission
646 screening report will be present by telephonic means, the telephone number to the attending community
647 services board.

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

670 § 37.2-805, or (C) he is ordered to mandatory outpatient treatment following a period of inpatient treatment
671 pursuant to § 37.2-817.01.

672 D. For the purposes of this section, "certified evaluator" means the same as that term is defined in
673 § 37.2-809.

674 **§ 37.2-1104. Temporary detention in hospital for testing, observation, or treatment.**

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

684 B. When a mental or physical condition to be treated appears to be a result of intoxication, a
685 licensed physician who has attempted to obtain informed consent of an adult person for treatment of such
686 mental or physical condition appearing to be a result of intoxication may seek an order from the magistrate
687 or court in the jurisdiction where the respondent is located authorizing temporary detention of the adult
688 person in a hospital emergency department or other appropriate facility for testing, observation, or
689 treatment upon a finding that (i) probable cause exists to believe the person's intoxication has rendered the
690 person incapable of making or communicating an informed decision regarding treatment and (ii) the
691 medical standard of care calls for observation, testing, or treatment within the next 24 hours to prevent
692 injury, disability, death, or other harm to the person or another person resulting from such intoxication.

693 C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless
694 extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion
695 of authorized testing, observation, or treatment, the physician determines that a person subject to an order
696 under this subsection has become capable of making and communicating an informed decision, the

697 physician shall rely on the person's decision on whether to consent to further testing, observation, or
698 treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the
699 physician learns of an objection by a member of the person's immediate family to the testing, observation,
700 or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining
701 whether to issue, modify, or terminate the order.

702 D. A court or, if the court is unavailable or pursuant to subsection B, a magistrate serving the
703 jurisdiction may issue an order authorizing temporary detention for testing, observation, or treatment for
704 a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if such
705 person meets the criteria set forth in subsection A or B. In any case in which an order for temporary
706 detention for testing, observation, or treatment is issued for a person who is also the subject of an
707 emergency custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate facility
708 in which the person is detained for testing, observation, or treatment shall notify the nearest community
709 services board when such testing, observation, or treatment is complete, and the designee of the
710 community services board or certified evaluator, as defined in § 37.2-809, shall, as soon as is practicable
711 and prior to the expiration of the order for temporary detention issued pursuant to subsection A or B,
712 conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant
713 to § 37.2-809.

714 **2. That at the end of each calendar year, participating hospitals with psychiatric emergency**
715 **departments in Planning District 21 shall report to the Chairmen of the Senate Committee on**
716 **Education and Health, the House Committee on Health and Human Services, and the Behavioral**
717 **Health Commission and the Commissioner of the Department of Behavioral Health and**
718 **Developmental Services the following information: (i) the length of time between when a person**
719 **who is the subject of an emergency custody order pursuant to § 37.2-808 of the Code of Virginia, as**
720 **amended by this act, arrives at the psychiatric emergency department of a participating hospital**
721 **and when the temporary detention order evaluation is completed and (ii) the number of (a)**
722 **admissions, (b) psychiatric emergency department visits, (c) temporary detention order evaluations**
723 **completed, (d) temporary detention orders executed, (e) individuals under temporary detention**

724 admitted to the participating hospital, and (f) individuals transferred from the psychiatric
725 emergency department of the participating hospital to a state facility.

726 3. That participating hospital with psychiatric emergency departments in Planning District 21 shall
727 report monthly to the Commissioner of the Department of Behavioral Health and Developmental
728 Services the number of (i) crisis evaluations conducted each month; (ii) temporary detention orders
729 executed as a result of such evaluations and the percentage of evaluations such temporary detention
730 orders represent; (iii) reportable events associated with such temporary detention orders and the
731 percentage of temporary detention orders that such reportable events represent; (iv) reportable
732 events (a) involving loss of custody, (b) with and without an emergency custody order, (c) with a
733 temporary detention order executed subsequently, (d) in which the individual subsequently became
734 engaged in outpatient treatment, (e) in which the individual did not become engaged in treatment
735 services, and (f) involving medical treatment; and (v) other events.

736 4. That pursuant to the provisions of this act, a certified evaluator shall conduct the temporary
737 detention order evaluation in lieu of an employee or designee of the local community services board
738 if the person subject to the temporary detention order evaluation is located in a hospital with a
739 psychiatric emergency department in Planning District 21.

740 5. That the provisions of this act shall expire on July 1, 2026.

741 #