

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 16.1-340.1 and 37.2-809 of the Code of Virginia and to amend the*  
 3 *Code of Virginia by adding sections numbered 16.1-340.1:1 and 37.2-809.1, relating to facility of*  
 4 *temporary detention.*

5 [H 293]

6 Approved

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

8 **1. That §§ 16.1-340.1 and 37.2-809 of the Code of Virginia are amended and reenacted and that**  
 9 **the Code of Virginia is amended by adding sections numbered 16.1-340.1:1 and 37.2-809.1 as**  
 10 **follows:**

11 **§ 16.1-340.1. Involuntary temporary detention; issuance and execution of order.**

12 A. A magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if  
 13 the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including  
 14 the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile  
 15 and domestic relations district court, or upon his own motion and only after an evaluation conducted  
 16 in-person or by means of a two-way electronic video and audio communication system as authorized in  
 17 § 16.1-345.1 by an employee or designee of the local community services board to determine whether  
 18 the minor meets the criteria for temporary detention, a temporary detention order if it appears from all  
 19 evidence readily available, including any recommendation from a physician or clinical psychologist  
 20 treating the person, that (i) because of mental illness, the minor (a) presents a serious danger to himself  
 21 or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a  
 22 developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant  
 23 impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in  
 24 need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed  
 25 treatment. The magistrate shall also consider the recommendations of the minor's parents and of any  
 26 treating or examining physician licensed in Virginia if available either verbally or in writing prior to  
 27 rendering a decision. To the extent possible, the petition shall contain the information required by  
 28 § 16.1-339.1. Any temporary detention order entered pursuant to this section shall be effective until such  
 29 time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is  
 30 located conducts a hearing pursuant to subsection B of § 16.1-341. Any temporary detention order  
 31 entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection  
 32 B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by  
 33 law.

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

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

46 D. An employee or designee of the community services board shall determine the facility of  
 47 temporary detention *in accordance with the provisions of § 16.1-340.1:1* for all minors detained pursuant  
 48 to this section. ~~The facility of temporary detention shall be one that has been approved pursuant to~~  
 49 ~~regulations of the Board of Behavioral Health and Developmental Services.~~ The facility shall be  
 50 identified on the preadmission screening report and indicated on the temporary detention order. *Subject*  
 51 *to the provisions of § 16.1-340.1:1, if a facility of temporary detention cannot be identified by the time*  
 52 *of the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall be detained*  
 53 *in a state facility for the treatment of minors with mental illness and such facility shall be indicated on*  
 54 *the temporary detention order.* Except for minors who are detained for a criminal offense by a juvenile  
 55 and domestic relations district court and who require hospitalization in accordance with this article, the  
 56

57 minor shall not be detained in a jail or other place of confinement for persons charged with criminal  
58 offenses and shall remain in the custody of law enforcement until the minor is either detained within a  
59 secure facility or custody has been accepted by the appropriate personnel designated by the facility  
60 identified in the temporary detention order.

61 E. Any facility caring for a minor placed with it pursuant to a temporary detention order is  
62 authorized to provide emergency medical and psychiatric services within its capabilities when the facility  
63 determines that the services are in the best interests of the minor within its care. The costs incurred as a  
64 result of the hearings and by the facility in providing services during the period of temporary detention  
65 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the  
66 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance  
67 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by  
68 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

69 F. The employee or designee of the local community services board who is conducting the evaluation  
70 pursuant to this section shall determine, prior to the issuance of the temporary detention order, the  
71 insurance status of the minor. Where coverage by a third party payor exists, the facility seeking  
72 reimbursement under this section shall first seek reimbursement from the third party payor. The  
73 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances  
74 covered by the third party payor have been received.

75 G. The duration of temporary detention shall be sufficient to allow for completion of the examination  
76 required by § 16.1-342, preparation of the preadmission screening report required by § 16.1-340.4, and  
77 initiation of mental health treatment to stabilize the minor's psychiatric condition to avoid involuntary  
78 commitment where possible, but shall not exceed 96 hours prior to a hearing. If the 96-hour period  
79 herein specified terminates on a Saturday, Sunday, or legal holiday, the minor may be detained, as  
80 herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal  
81 holiday. The minor may be released, pursuant to § 16.1-340.3, before the 96-hour period herein specified  
82 has run.

83 H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter  
84 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office  
85 of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of  
86 the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the  
87 petition is filed. However, a magistrate must again obtain the advice of an employee or designee of the  
88 local community services board prior to issuing a subsequent order upon the original petition. Any  
89 petition for which no temporary detention order or other process in connection therewith is served on  
90 the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned  
91 to the office of the clerk of the issuing court.

92 I. For purposes of this section a healthcare provider or an employee or designee of the local  
93 community services board shall not be required to encrypt any email containing information or medical  
94 records provided to a magistrate unless there is reason to believe that a third party will attempt to  
95 intercept the email.

96 J. The employee or designee of the local community services board who is conducting the evaluation  
97 pursuant to this section shall, if he recommends that the minor should not be subject to a temporary  
98 detention order, inform the petitioner and an on-site treating physician of his recommendation.

99 K. Each community services board shall provide to each juvenile and domestic relations district court  
100 and magistrate's office within its service area a list of employees and designees who are available to  
101 perform the evaluations required herein.

102 **§ 16.1-340.1:1. Facility of temporary detention.**

103 A. *In each case in which an employee or designee of the local community services board is required*  
104 *to make an evaluation of a minor pursuant to subsection B, G, or H of § 16.1-340, an employee or*  
105 *designee of the local community services board shall, upon being notified of the need for such*  
106 *evaluation, contact the state facility for the area in which the community services board is located and*  
107 *notify the state facility that the minor will be transported to the facility upon issuance of a temporary*  
108 *detention order if no other facility of temporary detention can be identified by the time of the expiration*  
109 *of the period of emergency custody pursuant to § 16.1-340. Upon completion of the evaluation, the*  
110 *employee or designee of the local community services board shall convey to the state facility information*  
111 *about the minor necessary to allow the state facility to determine the services the minor will require*  
112 *upon admission.*

113 B. *A state facility may, following the notice in accordance with subsection A, conduct a search for*  
114 *an alternative facility that is able and willing to provide temporary detention and appropriate care to*  
115 *the minor, which may include another state facility if the state facility notified in accordance with*  
116 *subsection A is unable to provide temporary detention and appropriate care for the minor. Under no*  
117 *circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for temporary*

118 *detention pursuant to § 16.1-340.1 unless an alternative facility that is able to provide temporary*  
 119 *detention and appropriate care agrees to accept the minor for temporary detention, and the minor shall*  
 120 *not during the duration of the temporary detention order be released from the custody of the community*  
 121 *services board except for purposes of transporting the minor to the state facility or alternative facility in*  
 122 *accordance with the provisions of § 16.1-340.2. If an alternative facility is identified and agrees to*  
 123 *accept the minor for temporary detention, the state facility shall notify the community services board,*  
 124 *and an employee or designee of the community services board shall designate the alternative facility on*  
 125 *the prescreening report.*

126 *C. The facility of temporary detention designated in accordance with this section shall be one that*  
 127 *has been approved pursuant to regulations of the State Board of Behavioral Health and Developmental*  
 128 *Services.*

129 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

130 A. For the purposes of this section:

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

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

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

144 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
 145 upon his own motion and only after an evaluation conducted in-person or by means of a two-way  
 146 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a  
 147 designee of the local community services board to determine whether the person meets the criteria for  
 148 temporary detention, a temporary detention order if it appears from all evidence readily available,  
 149 including any recommendation from a physician or clinical psychologist treating the person, that the  
 150 person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental  
 151 illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
 152 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if  
 153 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide  
 154 for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to  
 155 volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider  
 156 the recommendations of any treating or examining physician licensed in Virginia if available either  
 157 verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to  
 158 this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection  
 159 shall not preclude any other disclosures as required or permitted by law.

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

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

172 E. An employee or a designee of the local community services board shall determine the facility of  
 173 temporary detention *in accordance with the provisions of § 37.2-809.1* for all individuals detained  
 174 pursuant to this section. ~~The facility of temporary detention shall be one that has been approved~~  
 175 ~~pursuant to regulations of the Board.~~ The facility shall be identified on the preadmission screening report  
 176 and indicated on the temporary detention order. *Subject to the provisions of § 37.2-809.1, if a facility of*  
 177 *temporary detention cannot be identified by the time of the expiration of the period of emergency*  
 178 *custody pursuant to § 37.2-808, the individual shall be detained in a state facility for the treatment of*

179 *individuals with mental illness and such facility shall be indicated on the temporary detention order.*  
180 Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A  
181 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons  
182 charged with criminal offenses and shall remain in the custody of law enforcement until the person is  
183 either detained within a secure facility or custody has been accepted by the appropriate personnel  
184 designated by the facility identified in the temporary detention order.

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

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

199 H. The duration of temporary detention shall be sufficient to allow for completion of the examination  
200 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and  
201 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary  
202 commitment where possible, but shall not exceed 48 hours prior to a hearing. If the 48-hour period  
203 herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as  
204 herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal  
205 holiday. The person may be released, pursuant to § 37.2-813, before the 48-hour period herein specified  
206 has run.

207 I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter  
208 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office  
209 of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of  
210 the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the  
211 petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of  
212 the local community services board prior to issuing a subsequent order upon the original petition. Any  
213 petition for which no temporary detention order or other process in connection therewith is served on  
214 the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned  
215 to the office of the clerk of the issuing court.

216 J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a  
217 magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose  
218 of performing the duties established by this section. Each community services board shall provide to  
219 each general district court and magistrate's office within its service area a list of its employees and  
220 designees who are available to perform the evaluations required herein.

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

225 L. The employee or designee of the community services board who is conducting the evaluation  
226 pursuant to this section shall, if he recommends that the person should not be subject to a temporary  
227 detention order, inform the petitioner and an onsite treating physician of his recommendation.

228 **§ 37.2-809.1. Facility of temporary detention.**

229 A. *In each case in which an employee or designee of the local community services board as defined*  
230 *in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of*  
231 *§ 37.2-808, an employee or designee of the local community services board shall, upon being notified of*  
232 *the need for such evaluation, contact the state facility for the area in which the community services*  
233 *board is located and notify the state facility that the individual will be transported to the facility upon*  
234 *issuance of a temporary detention order if no other facility of temporary detention can be identified by*  
235 *the time of the expiration of the period of emergency custody pursuant to § 37.2-808. Upon completion*  
236 *of the evaluation, the employee or designee of the local community services board shall convey to the*  
237 *state facility information about the individual necessary to allow the state facility to determine the*  
238 *services the individual will require upon admission.*

239 B. *A state facility may, following the notice in accordance with subsection A, conduct a search for*

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

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

254 **2. That the Department of Behavioral Health and Developmental Services shall submit an annual**  
255 **report on or before June 30 of each year on the implementation of this act to the Governor and**  
256 **the Chairmen of the House Appropriations and Senate Finance Committees. The report shall**  
257 **include the number of notifications of individuals in need of facility services by the community**  
258 **services boards, the number of alternative facilities contacted by community services boards and**  
259 **state facilities, the number of temporary detentions provided by state facilities and alternative**  
260 **facilities, the length of stay in state facilities and alternative facilities, and the cost of the**  
261 **detentions in state facilities and alternative facilities.**