

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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*An Act to amend and reenact §§ 19.2-169.6, 19.2-182.9, 37.2-809, 37.2-814, and 37.2-817 of the Code of Virginia, relating to temporary detention; duration; mandatory outpatient treatment.*

[H 574]

Approved

**Be it enacted by the General Assembly of Virginia:**  
**1. That §§ 19.2-169.6, 19.2-182.9, 37.2-809, 37.2-814, and 37.2-817 of the Code of Virginia are amended and reenacted as follows:**

**§ 19.2-169.6. Inpatient psychiatric hospital admission from local correctional facility.**

A. Any inmate of a local correctional facility who is not subject to the provisions of § 19.2-169.2 may be hospitalized for psychiatric treatment at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge if:

1. The court with jurisdiction over the inmate's case, if it is still pending, on the petition of the person having custody over an inmate or on its own motion, holds a hearing at which the inmate is represented by counsel and finds by clear and convincing evidence that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; and (iii) the inmate requires treatment in a hospital rather than the local correctional facility. Prior to making this determination, the court shall consider the examination conducted in accordance with § 37.2-815 and the preadmission screening report prepared in accordance with § 37.2-816 and conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness, who is not providing treatment to the inmate, and who has completed a certification program approved by the Department of Behavioral Health and Developmental Services as provided in § 37.2-809. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report; or

2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; and (iii) the inmate requires treatment in a hospital rather than a local correctional facility, and the magistrate issues a temporary detention order for the inmate. Prior to the filing of the petition, the person having custody shall arrange for an evaluation of the inmate conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809. After considering the evaluation of the employee or designee of the local community services board or behavioral health authority, and any other information presented, and finding that probable cause exists to meet the criteria, the magistrate may issue a temporary detention order in accordance with the applicable procedures specified in §§ 37.2-809 through 37.2-813. The person having custody over the inmate shall notify the court having jurisdiction over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention pursuant to a temporary detention order or as soon thereafter as is reasonable.

57 Upon detention pursuant to this subdivision, a hearing shall be held either (a) before the court having  
58 jurisdiction over the inmate's case or (b) before a district court judge or a special justice, as defined in  
59 § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate  
60 shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within ~~48~~ 72 hours  
61 of execution of the temporary detention order issued pursuant to this subdivision. If the ~~48-hour~~ 72-hour  
62 period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the  
63 inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal  
64 holiday, or day on which the court is lawfully closed. Any employee or designee of the local  
65 community services board or behavioral health authority, as defined in § 37.2-809, representing the  
66 board or authority that prepared the preadmission screening report shall attend the hearing in person or,  
67 if physical attendance is not practicable, shall participate in the hearing through a two-way electronic  
68 video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside  
69 the service area of the community services board or behavioral health authority that prepared the  
70 preadmission screening report, and it is not practicable for a representative of the board or authority to  
71 attend or participate in the hearing, arrangements shall be made by the board or authority for an  
72 employee or designee of the board or authority serving the area in which the hearing is held to attend or  
73 participate on behalf of the board or authority that prepared the preadmission screening report. The  
74 judge or special justice conducting the hearing may order the inmate hospitalized if, after considering  
75 the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in  
76 accordance with § 37.2-816, and any other available information as specified in subsection C of  
77 § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there  
78 exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future,  
79 cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or  
80 threatening harm and other relevant information, if any; and (3) the inmate requires treatment in a  
81 hospital rather than a local correctional facility. The examiner appointed pursuant to § 37.2-815, if not  
82 physically present at the hearing, shall be available whenever possible for questioning during the hearing  
83 through a two-way electronic video and audio or telephonic communication system as authorized in  
84 § 37.2-804.1. The examination and the preadmission screening report shall be admitted into evidence at  
85 the hearing.

86 B. In no event shall an inmate have the right to make application for voluntary admission as may be  
87 otherwise provided in § 37.2-805 or 37.2-814 or be subject to an order for mandatory outpatient  
88 treatment as provided in § 37.2-817.

89 C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the  
90 court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the  
91 inmate's competency to stand trial and his mental state at the time of the offense pursuant to  
92 §§ 19.2-169.1 and 19.2-169.5.

93 D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court  
94 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in  
95 § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the  
96 provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a  
97 court other than the court which has jurisdiction over his criminal case, the facility at which the inmate  
98 is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in  
99 the criminal case, if the case is still pending.

100 E. Hospitalization may be extended in accordance with subsection D for periods of 60 days for  
101 inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such  
102 hospitalization act to delay trial, as long as the inmate remains competent to stand trial. Hospitalization  
103 may be extended in accordance with subsection D for periods of 180 days for an inmate who has been  
104 convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the  
105 custody of a local correctional facility after sentencing, but in no event may such hospitalization be  
106 continued beyond the date upon which his sentence would have expired had he received the maximum  
107 sentence for the crime charged. Any inmate who has not completed service of his sentence upon  
108 discharge from the hospital shall serve the remainder of his sentence.

109 F. For any inmate who has been convicted and not yet sentenced, or who has been convicted of a  
110 crime and is in the custody of a local correctional facility after sentencing, the time the inmate is  
111 confined in a hospital for psychiatric treatment shall be deducted from any term for which he may be  
112 sentenced to any penal institution, reformatory or elsewhere.

113 G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an  
114 inmate who is the subject of a proceeding under this section, upon request, shall disclose to a  
115 magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed  
116 pursuant to § 37.2-815, the community service board or behavioral health authority preparing the  
117 preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional

118 facility any and all information that is necessary and appropriate to enable each of them to perform his  
 119 duties under this section. These health care providers and other service providers shall disclose to one  
 120 another health records and information where necessary to provide care and treatment to the inmate and  
 121 to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local  
 122 correctional facility shall be limited to information necessary to protect the sheriff or administrator of the  
 123 local correctional facility and his employees, the inmate, or the public from physical injury or to address  
 124 the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used  
 125 for any other purpose, disclosed to others, or retained.

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

130 H. Any order entered where an inmate is the subject of proceedings under this section shall provide  
 131 for the disclosure of medical records pursuant to subsection G. This subsection shall not preclude any  
 132 other disclosures as required or permitted by law.

133 **§ 19.2-182.9. Emergency custody of conditionally released acquittee.**

134 When exigent circumstances do not permit compliance with revocation procedures set forth in  
 135 § 19.2-182.8, any district court judge or a special justice, as defined in § 37.2-100, or a magistrate may  
 136 issue an emergency custody order, upon the sworn petition of any responsible person or upon his own  
 137 motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the  
 138 conditions of his release or is no longer a proper subject for conditional release and (ii) requires  
 139 inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial  
 140 district to be taken into custody and transported to a convenient location where a person designated by  
 141 the community services board or behavioral health authority who is skilled in the diagnosis and  
 142 treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization.  
 143 A law-enforcement officer who, based on his observation or the reliable reports of others, has probable  
 144 cause to believe that any acquittee on conditional release has violated the conditions of his release and is  
 145 no longer a proper subject for conditional release and requires emergency evaluation to assess the need  
 146 for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate  
 147 location to assess the need for hospitalization without prior judicial authorization. The evaluation shall  
 148 be conducted immediately. The acquittee shall remain in custody until a temporary detention order is  
 149 issued or until he is released, but in no event shall the period of custody exceed four hours. However,  
 150 upon a finding by a district court judge, special justice as defined in § 37.2-100, or magistrate that good  
 151 cause exists to grant an extension, the district court judge, special justice, or magistrate shall extend the  
 152 emergency custody order, or shall issue an order extending the period of emergency custody, one time  
 153 for an additional period not to exceed two hours. Good cause for an extension includes the need for  
 154 additional time to allow (a) the community services board to identify a suitable facility in which the  
 155 person can be temporarily detained pursuant to this section or (b) a medical evaluation of the person to  
 156 be completed if necessary. If it appears from all evidence readily available (i) (1) that the acquittee has  
 157 violated the conditions of his release or is no longer a proper subject for conditional release and (ii) (2)  
 158 that he requires emergency evaluation to assess the need for inpatient hospitalization, the district court  
 159 judge or a special justice, as defined in § 37.2-100, or magistrate, upon the advice of such person skilled  
 160 in the diagnosis and treatment of mental illness, may issue a temporary detention order authorizing the  
 161 executing officer to place the acquittee in an appropriate institution for a period not to exceed 48 72  
 162 hours prior to a hearing. If the ~~48-hour~~ 72-hour period terminates on a Saturday, Sunday, legal holiday,  
 163 or day on which the court is lawfully closed, the acquittee may be detained until the next day which is  
 164 not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

165 The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall  
 166 have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a  
 167 psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled  
 168 in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At  
 169 the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present  
 170 at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the  
 171 right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the  
 172 court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee  
 173 (i) (A) has violated the conditions of his release or is no longer a proper subject for conditional release  
 174 and (ii) (B) has mental illness or intellectual disability and is in need of inpatient hospitalization, the  
 175 court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner.

176 When an acquittee on conditional release pursuant to this chapter is taken into emergency custody,  
 177 detained, or hospitalized, such action shall be considered to have been taken pursuant to this section,  
 178 notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody,

179 detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law  
180 other than those applicable to insanity acquittees pursuant to this chapter shall not render the detention  
181 or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not  
182 recognized at the time of emergency custody or detention, at the time his status as such is verified, the  
183 provisions applicable to such persons shall be applied and the court hearing the matter shall notify the  
184 committing court of the proceedings.

185 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

186 A. For the purposes of this section:

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

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

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

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

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

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

228 E. An employee or a designee of the local community services board shall determine the facility of  
229 temporary detention for all individuals detained pursuant to this section. The facility of temporary  
230 detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be  
231 identified on the preadmission screening report and indicated on the temporary detention order. Except  
232 as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of  
233 § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged  
234 with criminal offenses and shall remain in the custody of law enforcement until the person is either  
235 detained within a secure facility or custody has been accepted by the appropriate personnel designated  
236 by the facility identified in the temporary detention order.

237 F. Any facility caring for a person placed with it pursuant to a temporary detention order is  
238 authorized to provide emergency medical and psychiatric services within its capabilities when the facility  
239 determines that the services are in the best interests of the person within its care. The costs incurred as a

240 result of the hearings and by the facility in providing services during the period of temporary detention  
 241 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the  
 242 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance  
 243 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by  
 244 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

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

251 H. The duration of temporary detention shall be sufficient to allow for completion of the examination  
 252 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and  
 253 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary  
 254 commitment where possible, but shall not exceed ~~48~~ 72 hours prior to a hearing. If the ~~48-hour~~ 72-hour  
 255 period herein specified terminates on a Saturday, Sunday, ~~or~~ legal holiday, *or day on which the court is*  
 256 *lawfully closed*, the person may be detained, as herein provided, until the close of business on the next  
 257 day that is not a Saturday, Sunday, ~~or~~ legal holiday, *or day on which the court is lawfully closed*. The  
 258 person may be released, pursuant to § 37.2-813, before the ~~48-hour~~ 72-hour period herein specified has  
 259 run.

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

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

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

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

281 **§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to**  
 282 **counsel; rights of petitioner.**

283 A. The commitment hearing for involuntary admission shall be held after a sufficient period of time  
 284 has passed to allow for completion of the examination required by § 37.2-815, preparation of the  
 285 preadmission screening report required by § 37.2-816, and initiation of mental health treatment to  
 286 stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be  
 287 held within ~~48~~ 72 hours of the execution of the temporary detention order as provided for in § 37.2-809;  
 288 however, if the ~~48-hour~~ 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday,  
 289 or day on which the court is lawfully closed, the person may be detained, as herein provided, until the  
 290 close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the  
 291 court is lawfully closed.

292 B. At the commencement of the commitment hearing, the district court judge or special justice shall  
 293 inform the person whose involuntary admission is being sought of his right to apply for voluntary  
 294 admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an  
 295 opportunity for voluntary admission. The district court judge or special justice shall advise the person  
 296 whose involuntary admission is being sought that if the person chooses to be voluntarily admitted  
 297 pursuant to § 37.2-805, such person will be prohibited from possessing ~~or~~, purchasing, *or transporting* a  
 298 firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then  
 299 willing and capable of seeking voluntary admission for inpatient treatment. In determining whether a  
 300 person is capable of consenting to voluntary admission, the judge or special justice may consider

301 evidence regarding the person's past compliance or noncompliance with treatment. If the judge or special  
302 justice finds that the person is capable and willingly accepts voluntary admission for inpatient treatment,  
303 the judge or special justice shall require him to accept voluntary admission for a minimum period of  
304 treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the  
305 facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be  
306 discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the  
307 transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a  
308 community services board as provided in § 37.2-805.

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

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

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

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

337 **§ 37.2-817. Involuntary admission and mandatory outpatient treatment orders.**

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

347 B. Any employee or designee of the local community services board, as defined in § 37.2-809,  
348 representing the community services board that prepared the preadmission screening report shall attend  
349 the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through  
350 a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.  
351 Where a hearing is held outside of the service area of the community services board that prepared the  
352 preadmission screening report, and it is not practicable for a representative of the board to attend or  
353 participate in the hearing, arrangements shall be made by the board for an employee or designee of the  
354 board serving the area in which the hearing is held to attend or participate on behalf of the board that  
355 prepared the preadmission screening report. The employee or designee of the local community services  
356 board, as defined in § 37.2-809, representing the community services board that prepared the  
357 preadmission screening report or attending or participating on behalf of the board that prepared the  
358 preadmission screening report shall not be excluded from the hearing pursuant to an order of  
359 sequestration of witnesses. The community services board that prepared the preadmission screening  
360 report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send  
361 the preadmission screening report through certified mail, personal delivery, facsimile with return receipt

362 acknowledged, or other electronic means to the community services board attending the hearing. Where  
 363 a community services board attends the hearing on behalf of the community services board that prepared  
 364 the preadmission screening report, the attending community services board shall inform the community  
 365 services board that prepared the preadmission screening report of the disposition of the matter upon the  
 366 conclusion of the hearing. In addition, the attending community services board shall transmit the  
 367 disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other  
 368 electronic means.

369 At least 12 hours prior to the hearing, the court shall provide to the community services board that  
 370 prepared the preadmission screening report the time and location of the hearing. If the representative of  
 371 the community services board will be present by telephonic means, the court shall provide the telephone  
 372 number to the board.

373 C. After observing the person and considering (i) the recommendations of any treating or examining  
 374 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any  
 375 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records  
 376 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have  
 377 been admitted, including whether the person recently has been found unrestorably incompetent to stand  
 378 trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by  
 379 clear and convincing evidence that (a) the person has a mental illness and there is a substantial  
 380 likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious  
 381 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening  
 382 harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to  
 383 protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive  
 384 treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an  
 385 opportunity for the improvement of the person's condition have been investigated and determined to be  
 386 inappropriate, the judge or special justice shall by written order and specific findings so certify and  
 387 order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30  
 388 days from the date of the court order. Such involuntary admission shall be to a facility designated by  
 389 the community services board that serves the county or city in which the person was examined as  
 390 provided in § 37.2-816. If the community services board does not designate a facility at the commitment  
 391 hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon  
 392 the expiration of an order for involuntary admission, the person shall be released unless he is  
 393 involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed  
 394 180 days from the date of the subsequent court order, or such person makes application for treatment on  
 395 a voluntary basis as provided for in § 37.2-805 or is ordered to mandatory outpatient treatment pursuant  
 396 to subsection D. Upon motion of the treating physician, a family member or personal representative of  
 397 the person, or the community services board serving the county or city where the facility is located, the  
 398 county or city where the person resides, or the county or city where the person receives treatment, a  
 399 hearing shall be held prior to the release date of any involuntarily admitted person to determine whether  
 400 such person should be ordered to mandatory outpatient treatment pursuant to subsection D upon his  
 401 release if such person, on at least two previous occasions within 36 months preceding the date of the  
 402 hearing, has been (A) involuntarily admitted pursuant to this section or (B) the subject of a temporary  
 403 detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814. A  
 404 district court judge or special justice shall hold the hearing within 72 hours after receiving the motion  
 405 for a mandatory outpatient treatment order; however, if the 72-hour period expires on a Saturday,  
 406 Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a  
 407 Saturday, Sunday, or legal holiday.

408 C1. In the order for involuntary admission, the judge or special justice may authorize the treating  
 409 physician to discharge the person to mandatory outpatient treatment under a discharge plan developed  
 410 pursuant to subsection C2, if the judge or special justice further finds by clear and convincing evidence  
 411 that (i) the person has a history of lack of compliance with treatment for mental illness that at least  
 412 twice within the past 36 months has resulted in the person being subject to an order for involuntary  
 413 admission pursuant to subsection C; (ii) in view of the person's treatment history and current behavior,  
 414 the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent  
 415 a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary  
 416 inpatient treatment; (iii) as a result of mental illness, the person is unlikely to voluntarily participate in  
 417 outpatient treatment unless the court enters an order authorizing discharge to mandatory outpatient  
 418 treatment following inpatient treatment; and (iv) the person is likely to benefit from mandatory  
 419 outpatient treatment. The duration of mandatory outpatient treatment shall be determined by the court  
 420 based on recommendations of the community services board, but shall not exceed 90 days. Upon  
 421 expiration of the order for mandatory outpatient treatment, the person shall be released unless the order  
 422 is continued in accordance with § 37.2-817.4.

423 C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as  
424 authorized pursuant to subsection C1, the treating physician shall determine, based upon his professional  
425 judgment, that (i) the person (a) in view of the person's treatment history and current behavior, no  
426 longer needs inpatient hospitalization, (b) requires mandatory outpatient treatment at the time of  
427 discharge to prevent relapse or deterioration of his condition that would likely result in his meeting the  
428 criteria for involuntary inpatient treatment, and (c) has agreed to abide by his discharge plan and has the  
429 ability to do so; and (ii) the ordered treatment will be delivered on an outpatient basis by the community  
430 services board or designated provider to the person. In no event shall the treating physician discharge a  
431 person to mandatory outpatient treatment under a discharge plan as authorized pursuant to subsection C1  
432 if the person meets the criteria for involuntary commitment set forth in subsection C. The discharge plan  
433 developed by the treating physician and facility staff in conjunction with the community services board  
434 and the person shall serve as and shall contain all the components of the comprehensive mandatory  
435 outpatient treatment plan set forth in subsection G, and no initial mandatory outpatient treatment plan set  
436 forth in subsection F shall be required. The discharge plan shall be submitted to the court for approval  
437 and, upon approval by the court, shall be filed and incorporated into the order entered pursuant to  
438 subsection C1. The discharge plan shall be provided to the person by the community services board at  
439 the time of the person's discharge from the inpatient facility. The community services board where the  
440 person resides upon discharge shall monitor the person's compliance with the discharge plan and report  
441 any material noncompliance to the court in accordance with § 37.2-817.1.

442 D. After observing the person and considering (i) the recommendations of any treating or examining  
443 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any  
444 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records  
445 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have  
446 been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person  
447 has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the  
448 person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by  
449 recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)  
450 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic  
451 human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an  
452 opportunity for improvement of his condition have been investigated and are determined to be  
453 appropriate; (c) the person has agreed to abide by his treatment plan and has the ability to do so; and  
454 (d) the ordered treatment will be delivered on an outpatient basis by the community services board or  
455 designated provider to the person, the judge or special justice shall by written order and specific findings  
456 so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less  
457 restrictive alternatives shall not be determined to be appropriate unless the services are actually available  
458 in the community.

459 E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a  
460 hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11  
461 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of  
462 the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of  
463 any kind in the provision of the medication. The community services board that serves the county or  
464 city in which the person resides shall recommend a specific course of treatment and programs for the  
465 provision of mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be  
466 determined by the court based on recommendations of the community services board, but shall not  
467 exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be  
468 released from the requirements of the order unless the order is continued in accordance with  
469 § 37.2-817.4.

470 F. Any order for mandatory outpatient treatment entered pursuant to subsection D shall include an  
471 initial mandatory outpatient treatment plan developed by the community services board that completed  
472 the preadmission screening report. The plan shall, at a minimum, (i) identify the specific services to be  
473 provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the  
474 arrangements made for the initial in-person appointment or contact with each service provider, and (iv)  
475 include any other relevant information that may be available regarding the mandatory outpatient  
476 treatment ordered. The order shall require the community services board to monitor the implementation  
477 of the mandatory outpatient treatment plan and report any material noncompliance to the court.

478 G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for  
479 mandatory outpatient treatment has been entered pursuant to subsection D, the community services board  
480 where the person resides that is responsible for monitoring compliance with the order shall file a  
481 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment  
482 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided  
483 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)

484 certify that the services are the most appropriate and least restrictive treatment available for the person,  
485 (iv) certify that each provider has complied and continues to comply with applicable provisions of the  
486 Department's licensing regulations, (v) be developed with the fullest possible involvement and  
487 participation of the person and his family, with the person's consent, and reflect his preferences to the  
488 greatest extent possible to support his recovery and self-determination, (vi) specify the particular  
489 conditions with which the person shall be required to comply, and (vii) describe how the community  
490 services board shall monitor the person's compliance with the plan and report any material  
491 noncompliance with the plan. The community services board shall submit the comprehensive mandatory  
492 outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive  
493 mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of  
494 mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with  
495 the court for review and attached to any order for mandatory outpatient treatment.

496 H. If the community services board responsible for developing the comprehensive mandatory  
497 outpatient treatment plan determines that the services necessary for the treatment of the person's mental  
498 illness are not available or cannot be provided to the person in accordance with the order for mandatory  
499 outpatient treatment, it shall notify the court within five business days of the entry of the order for  
500 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special  
501 justice, after notice to the person, the person's attorney, and the community services board responsible  
502 for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to  
503 § 37.2-817.2.

504 I. Upon entry of any order for mandatory outpatient treatment entered pursuant to subsection D, the  
505 clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his  
506 attorney, and to the community services board required to monitor compliance with the plan. The  
507 community services board shall acknowledge receipt of the order to the clerk of the court on a form  
508 established by the Office of the Executive Secretary of the Supreme Court and provided by the court for  
509 this purpose *within five business days*.

510 J. The court may transfer jurisdiction of the case to the district court where the person resides at any  
511 time after the entry of the mandatory outpatient treatment order. The community services board  
512 responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan  
513 shall remain responsible for monitoring the person's compliance with the plan until the community  
514 services board serving the locality to which jurisdiction of the case has been transferred acknowledges  
515 the transfer and receipt of the order to the clerk of the court on a form established by the Office of the  
516 Executive Secretary of the Supreme Court and provided by the court for this purpose. *The community  
517 services board serving the locality to which jurisdiction of the case has been transferred shall  
518 acknowledge the transfer and receipt of the order within five business days.*

519 K. Any order entered pursuant to this section shall provide for the disclosure of medical records  
520 pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or  
521 permitted by law.