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HOUSE BILL NO. 574

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on February 20, 2014)

(Patron Prior to Substitute—Delegate Yost)

A BILL to amend and reenact §§ 37.2-805, 37.2-813, 37.2-815, 37.2-817, 37.2-817.2, 37.2-817.3, and 37.2-817.4 of the Code of Virginia, relating to mandatory outpatient treatment.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-805, 37.2-813, 37.2-815, 37.2-817, 37.2-817.2, 37.2-817.3, and 37.2-817.4 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-805. Voluntary admission.

Any state facility shall admit any person requesting admission who has been (i) screened by the community services board or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located, (ii) examined by a physician on the staff of the state facility, and (iii) deemed by the board or authority and the state facility physician to be in need of treatment, training, or habilitation in a state facility. Upon motion of the treating physician, a family member or personal representative of the person, or the community services board serving the county or city where the facility is located, the county or city where the person resides, or the county or city where the person receives treatment, a hearing shall be held prior to the release date of any person who has been the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814 to determine whether such person should be ordered to mandatory outpatient treatment pursuant to subsection D of § 37.2-817 upon his release if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (a) the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814 or (b) involuntarily admitted pursuant to § 37.2-817. A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a mandatory outpatient treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday.

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

Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819, the district court judge or special justice may release the person on his personal recognizance or bond set by the district court judge or special justice if it appears from all evidence readily available that the person does not meet the commitment criteria specified in subsection D of § 37.2-817. The director of any facility in which the person is detained may release the person prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that the person would not meet the commitment criteria specified in subsection D of § 37.2-817 if released.

§ 37.2-815. Commitment hearing for involuntary admission; examination required.

A. Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination of the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not available, a mental health professional who (i) is licensed in Virginia through the Department of Health Professions as a clinical social worker, professional counselor, marriage and family therapist, psychiatric nurse practitioner, or clinical nurse specialist, (ii) is qualified in the assessment of mental illness, and (iii) has completed a certification program approved by the Department. The examiner chosen shall be able to provide an independent clinical evaluation of the person and recommendations for his placement, care, and treatment. The examiner shall (a) not be related by blood or marriage to the person, (b) not be responsible for treating the person, (c) have no financial interest in the admission or treatment of the person, (d) have no investment interest in the facility detaining or admitting the person under this chapter, and (e) except for employees of state hospitals, the U.S. Department of Veterans Affairs, and community service boards, not be employed by the facility. For purposes of this section, the term "investment interest" shall be as defined in § 37.2-809.

B. The examination conducted pursuant to this section shall be a comprehensive evaluation of the person conducted in-person or, if that is not practicable, by two-way electronic video and audio communication system as authorized in § 37.2-804.1. Translation or interpreter services shall be provided during the evaluation where necessary. The examination shall consist of (i) a clinical assessment that includes a mental status examination; determination of current use of psychotropic and other medications; a medical and psychiatric history; a substance use, abuse, or dependency determination; and

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60 a determination of the likelihood that, as a result of mental illness, the person will, in the near future,  
61 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic  
62 human needs; (ii) a substance abuse screening, when indicated; (iii) a risk assessment that includes an  
63 evaluation of the likelihood that, as a result of mental illness, the person will, in the near future, cause  
64 serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or  
65 threatening harm and other relevant information, if any; (iv) an assessment of the person's capacity to  
66 consent to treatment, including his ability to maintain and communicate choice, understand relevant  
67 information, and comprehend the situation and its consequences; (v) a review of the temporary detention  
68 facility's records for the person, including the treating physician's evaluation, any collateral information,  
69 reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes; (vi) a  
70 discussion of treatment preferences expressed by the person or contained in a document provided by the  
71 person in support of recovery; (vii) an assessment of whether the person meets the criteria for an order  
72 authorizing discharge to mandatory outpatient treatment following a period of inpatient treatment  
73 pursuant to subsection ~~C~~ E of § 37.2-817; (viii) an assessment of alternatives to involuntary inpatient  
74 treatment; and (ix) recommendations for the placement, care, and treatment of the person.

75 C. All such examinations shall be conducted in private. The judge or special justice shall summons  
76 the examiner who shall certify that he has personally examined the person and state whether he has  
77 probable cause to believe that the person (i) has a mental illness and there is a substantial likelihood  
78 that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to  
79 himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other  
80 relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself  
81 from harm or to provide for his basic human needs, and (ii) requires involuntary inpatient treatment. The  
82 judge or special justice shall not render any decision on the petition until the examiner has presented his  
83 report. The examiner may report orally at the hearing, but he shall provide a written report of his  
84 examination prior to the hearing. The examiner's written certification may be accepted into evidence  
85 unless objected to by the person or his attorney, in which case the examiner shall attend in person or by  
86 electronic communication. When the examiner attends the hearing in person or by electronic  
87 communication, the examiner shall not be excluded from the hearing pursuant to an order of  
88 sequestration of witnesses.

89 **§ 37.2-817. Involuntary admission and mandatory outpatient treatment orders.**

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

99 B. Any employee or designee of the local community services board, as defined in § 37.2-809,  
100 representing the community services board that prepared the preadmission screening report shall attend  
101 the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through  
102 a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.  
103 Where a hearing is held outside of the service area of the community services board that prepared the  
104 preadmission screening report, and it is not practicable for a representative of the board to attend or  
105 participate in the hearing, arrangements shall be made by the board for an employee or designee of the  
106 board serving the area in which the hearing is held to attend or participate on behalf of the board that  
107 prepared the preadmission screening report. The employee or designee of the local community services  
108 board, as defined in § 37.2-809, representing the community services board that prepared the  
109 preadmission screening report or attending or participating on behalf of the board that prepared the  
110 preadmission screening report shall not be excluded from the hearing pursuant to an order of  
111 sequestration of witnesses. The community services board that prepared the preadmission screening  
112 report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send  
113 the preadmission screening report through certified mail, personal delivery, facsimile with return receipt  
114 acknowledged, or other electronic means to the community services board attending the hearing. Where  
115 a community services board attends the hearing on behalf of the community services board that prepared  
116 the preadmission screening report, the attending community services board shall inform the community  
117 services board that prepared the preadmission screening report of the disposition of the matter upon the  
118 conclusion of the hearing. In addition, the attending community services board shall transmit the  
119 disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other  
120 electronic means.

121 At least 12 hours prior to the hearing, the court shall provide to the community services board that

122 prepared the preadmission screening report the time and location of the hearing. If the representative of  
123 the community services board will be present by telephonic means, the court shall provide the telephone  
124 number to the board.

125 C. After observing the person and considering (i) the recommendations of any treating or examining  
126 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any  
127 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records  
128 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have  
129 been admitted, including whether the person recently has been found unrestorably incompetent to stand  
130 trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by  
131 clear and convincing evidence that (a) the person has a mental illness and there is a substantial  
132 likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious  
133 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening  
134 harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to  
135 protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive  
136 treatment alternatives to involuntary inpatient treatment, pursuant to subsection D G, that would offer an  
137 opportunity for the improvement of the person's condition have been investigated and determined to be  
138 inappropriate, the judge or special justice shall by written order and specific findings so certify and  
139 order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30  
140 days from the date of the court order. Such involuntary admission shall be to a facility designated by  
141 the community services board that serves the county or city in which the person was examined as  
142 provided in § 37.2-816. If the community services board does not designate a facility at the commitment  
143 hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner.

144 Upon the expiration of an order for involuntary admission, the person shall be released unless he is  
145 involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed  
146 180 days from the date of the subsequent court order, or such person makes application for treatment on  
147 a voluntary basis as provided for in § 37.2-805 or is ordered to mandatory outpatient treatment pursuant  
148 to subsection D.

149 D. Upon motion of the treating physician, a family member or personal representative of the person,  
150 or the community services board serving the county or city where the facility is located, the county or  
151 city where the person resides, or the county or city where the person receives treatment, a hearing shall  
152 be held prior to the release date of any involuntarily admitted person to determine whether such person  
153 should be ordered to mandatory outpatient treatment pursuant to subsection D upon his release if such  
154 person, on at least two previous occasions within 36 months preceding the date of the hearing, has been  
155 (A) involuntarily admitted pursuant to this section or (B) the subject of a temporary detention order and  
156 voluntarily admitted himself in accordance with subsection B of § 37.2-814. A district court judge or  
157 special justice shall hold the hearing within 72 hours after receiving the motion for a mandatory  
158 outpatient treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or legal  
159 holiday, the hearing shall be held by the close of business on the next day that is not a Saturday,  
160 Sunday, or legal holiday.

161 *If the judge or special justice further finds by clear and convincing evidence that (i) the person has  
162 a history of lack of compliance with treatment for mental illness and as a result of such noncompliance,  
163 on at least two previous occasions within 36 months preceding the date of the hearing, has been (a)  
164 involuntarily admitted pursuant to this section or (b) the subject of a temporary detention order and  
165 voluntarily admitted himself in accordance with subsection B of § 37.2-814; (ii) in view of the person's  
166 treatment history and current behavior, the person is in need of mandatory outpatient treatment  
167 following inpatient treatment in order to prevent a relapse or deterioration that would be likely to result  
168 in the person meeting the criteria for involuntary inpatient treatment; (iii) as a result of mental illness,  
169 the person is unlikely to voluntarily participate in outpatient treatment unless the court enters an order  
170 authorizing discharge to mandatory outpatient treatment following inpatient treatment; (iv) the person  
171 has agreed to abide by his discharge plan and has the ability to do so; (v) the ordered treatment will be  
172 delivered on an outpatient basis by the community services board or designated provider to the person;  
173 and (vi) the person is likely to benefit from mandatory outpatient treatment; the judge or special justice  
174 shall by written order and specific findings so certify and order that the person be admitted  
175 involuntarily to mandatory outpatient treatment. When considering whether the person has a history of  
176 lack of compliance with treatment for mental illness as required by clause (i) of this subsection, the  
177 judge or special justice may consider any relevant hearsay evidence, any medical records available, or  
178 any other available information that the judge or special justice deems relevant to the determination.*

179 *The duration of mandatory outpatient treatment shall be determined by the court based on  
180 recommendations of the community services board, but shall not exceed 90 days. A comprehensive  
181 mandatory outpatient treatment plan shall be filed in accordance with subsection J. Upon expiration of  
182 the order for mandatory outpatient treatment, the person shall be released unless the order is continued*

183 *in accordance with § 37.2-817.4.*

184 ~~¶~~ E. In the order for involuntary admission, the judge or special justice may authorize the treating  
185 physician to discharge the person to mandatory outpatient treatment under a discharge plan developed  
186 pursuant to subsection ~~¶~~ F, if the judge or special justice further finds by clear and convincing  
187 evidence that (i) the person has a history of lack of compliance with treatment for mental illness ~~that at~~  
188 ~~least twice within the past 36 months has resulted in the person being subject to an order for involuntary~~  
189 ~~admission pursuant to subsection ¶ and as a result of such noncompliance, on at least two previous~~  
190 ~~occasions within 36 months preceding the date of the hearing, has been (a) involuntarily admitted~~  
191 ~~pursuant to this section or (b) the subject of a temporary detention order and voluntarily admitted~~  
192 ~~himself in accordance with subsection B of § 37.2-814; (ii) in view of the person's treatment history and~~  
193 ~~current behavior, the person is in need of mandatory outpatient treatment following inpatient treatment~~  
194 ~~in order to prevent a relapse or deterioration that would be likely to result in the person meeting the~~  
195 ~~criteria for involuntary inpatient treatment; (iii) as a result of mental illness, the person is unlikely to~~  
196 ~~voluntarily participate in outpatient treatment unless the court enters an order authorizing discharge to~~  
197 ~~mandatory outpatient treatment following inpatient treatment; and (iv) the person is likely to benefit~~  
198 ~~from mandatory outpatient treatment. When considering whether the person has a history of lack of~~  
199 ~~compliance with treatment for mental illness as required by clause (i) of this subsection, the judge or~~  
200 ~~special justice may consider any relevant hearsay evidence, any medical records available, or any other~~  
201 ~~available information that the judge or special justice deems relevant to the determination.~~

202 The duration of mandatory outpatient treatment shall be determined by the court based on  
203 recommendations of the community services board, but shall not exceed 90 days. Upon expiration of the  
204 order for mandatory outpatient treatment, the person shall be released unless the order is continued in  
205 accordance with § 37.2-817.4.

206 ~~¶~~ F. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as  
207 authorized pursuant to subsection ~~¶~~ E, the treating physician shall determine, based upon his  
208 professional judgment, that (i) the person (a) in view of the person's treatment history and current  
209 behavior, no longer needs inpatient hospitalization, (b) requires mandatory outpatient treatment at the  
210 time of discharge to prevent relapse or deterioration of his condition that would likely result in his  
211 meeting the criteria for involuntary inpatient treatment, and (c) has agreed to abide by his discharge plan  
212 and has the ability to do so; and (ii) the ordered treatment will be delivered on an outpatient basis by  
213 the community services board or designated provider to the person. In no event shall the treating  
214 physician discharge a person to mandatory outpatient treatment under a discharge plan as authorized  
215 pursuant to subsection ~~¶~~ E if the person meets the criteria for involuntary commitment set forth in  
216 subsection C. The discharge plan developed by the treating physician and facility staff in conjunction  
217 with the community services board and the person shall serve as and shall contain all the components of  
218 the comprehensive mandatory outpatient treatment plan set forth in subsection ~~¶~~ J, and no initial  
219 mandatory outpatient treatment plan set forth in subsection ~~¶~~ I shall be required. The discharge plan  
220 shall be submitted to the court for approval and, upon approval by the court, shall be filed and  
221 incorporated into the order entered pursuant to subsection ~~¶~~ E. The discharge plan shall be provided to  
222 the person by the community services board at the time of the person's discharge from the inpatient  
223 facility. The community services board where the person resides upon discharge shall monitor the  
224 person's compliance with the discharge plan and report any material noncompliance to the court in  
225 accordance with § 37.2-817.1.

226 ~~¶~~ G. After observing the person and considering (i) the recommendations of any treating or  
227 examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person,  
228 (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health  
229 records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may  
230 have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the  
231 person has a mental illness and that there exists a substantial likelihood that, as a result of mental  
232 illness, the person will, in the near future, (1) cause serious physical harm to himself or others as  
233 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if  
234 any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide  
235 for his basic human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would  
236 offer an opportunity for improvement of his condition have been investigated and are determined to be  
237 appropriate; (c) the person has agreed to abide by his treatment plan and has the ability to do so; and  
238 (d) the ordered treatment will be delivered on an outpatient basis by the community services board or  
239 designated provider to the person, the judge or special justice shall by written order and specific findings  
240 so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less  
241 restrictive alternatives shall not be determined to be appropriate unless the services are actually available  
242 in the community.

243 ~~¶~~ H. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a  
244 hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11

245 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of  
 246 the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of  
 247 any kind in the provision of the medication. The community services board that serves the county or  
 248 city in which the person resides shall recommend a specific course of treatment and programs for the  
 249 provision of mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be  
 250 determined by the court based on recommendations of the community services board, but shall not  
 251 exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be  
 252 released from the requirements of the order unless the order is continued in accordance with  
 253 § 37.2-817.4.

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

262 ~~G.~~ J. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for  
 263 mandatory outpatient treatment has been entered pursuant to subsection D or G, the community services  
 264 board where the person resides that is responsible for monitoring compliance with the order shall file a  
 265 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment  
 266 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided  
 267 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)  
 268 certify that the services are the most appropriate and least restrictive treatment available for the person,  
 269 (iv) certify that each provider has complied and continues to comply with applicable provisions of the  
 270 Department's licensing regulations, (v) be developed with the fullest possible involvement and  
 271 participation of the person and his family, with the person's consent, and reflect his preferences to the  
 272 greatest extent possible to support his recovery and self-determination, (vi) specify the particular  
 273 conditions with which the person shall be required to comply, and (vii) describe how the community  
 274 services board shall monitor the person's compliance with the plan and report any material  
 275 noncompliance with the plan. The community services board shall submit the comprehensive mandatory  
 276 outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive  
 277 mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of  
 278 mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with  
 279 the court for review and attached to any order for mandatory outpatient treatment.

280 ~~H.~~ K. If the community services board responsible for developing the comprehensive mandatory  
 281 outpatient treatment plan determines that the services necessary for the treatment of the person's mental  
 282 illness are not available or cannot be provided to the person in accordance with the order for mandatory  
 283 outpatient treatment, it shall notify the court within five business days of the entry of the order for  
 284 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special  
 285 justice, after notice to the person, the person's attorney, and the community services board responsible  
 286 for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to  
 287 § 37.2-817.2.

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

294 ~~J.~~ M. The court may transfer jurisdiction of the case to the district court where the person resides at  
 295 any time after the entry of the mandatory outpatient treatment order. The community services board  
 296 responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan  
 297 shall remain responsible for monitoring the person's compliance with the plan until the community  
 298 services board serving the locality to which jurisdiction of the case has been transferred acknowledges  
 299 the transfer and receipt of the order to the clerk of the court on a form established by the Office of the  
 300 Executive Secretary of the Supreme Court and provided by the court for this purpose. *The community*  
 301 *services board serving the locality to which jurisdiction of the case has been transferred shall*  
 302 *acknowledge the transfer and receipt of the order within five business days.*

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

**306 § 37.2-817.2. Court review of mandatory outpatient treatment plan or discharge plan.**

**307** A. The district court judge or special justice shall hold a hearing within five days after receiving the  
**308** petition for review of the mandatory outpatient treatment plan or discharge plan; however, if the fifth  
**309** day is a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the  
**310** next day that is not a Saturday, Sunday, or legal holiday. If the person is being detained under a  
**311** temporary detention order, the hearing shall be scheduled within the same time frame provided for a  
**312** commitment hearing under § 37.2-814. The clerk shall provide notice of the hearing to the person, the  
**313** community services board, all treatment providers listed in the comprehensive mandatory outpatient  
**314** treatment order or discharge plan, and the original petitioner for the person's involuntary treatment. If  
**315** the person is not represented by counsel, the court shall appoint an attorney to represent the person in  
**316** this hearing and any subsequent hearings under §§ 37.2-817.3 and 37.2-817.4, giving consideration to  
**317** appointing the attorney who represented the person at the proceeding that resulted in the issuance of the  
**318** mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment  
**319** following inpatient treatment. The same judge or special justice that presided over the hearing resulting  
**320** in the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient  
**321** treatment following inpatient treatment need not preside at the noncompliance hearing or any subsequent  
**322** hearings. The community services board shall offer to arrange the person's transportation to the hearing  
**323** if the person is not detained and has no other source of transportation.

**324** B. If requested by the person, the community services board, a treatment provider listed in the  
**325** comprehensive mandatory outpatient treatment plan or discharge plan, or the original petitioner for the  
**326** person's involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who  
**327** shall personally examine the person and certify to the court whether or not he has probable cause to  
**328** believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient  
**329** treatment as specified in subsections C, ~~C1, C2,~~ and D, E, F, or G of § 37.2-817. The examination shall  
**330** include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into  
**331** evidence without the appearance of the examiner at the hearing if not objected to by the person or his  
**332** attorney. If the person is not detained in an inpatient facility, the community services board shall arrange  
**333** for the person to be examined at a convenient location and time. The community services board shall  
**334** offer to arrange for the person's transportation to the examination, if the person has no other source of  
**335** transportation and resides within the service area or an adjacent service area of the community services  
**336** board. If the person refuses or fails to appear, the community services board shall notify the court, or a  
**337** magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination  
**338** order and *capias* directing the primary law-enforcement agency in the jurisdiction where the person  
**339** resides to transport the person to the examination. The person shall remain in custody until a temporary  
**340** detention order is issued or until the person is released, but in no event shall the period exceed four  
**341** hours.

**342** C. If the person fails to appear for the hearing, the court shall, after consideration of any evidence  
**343** from the person, from the community services board, or from any treatment provider identified in the  
**344** mandatory outpatient treatment plan or discharge plan regarding why the person failed to appear at the  
**345** hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order  
**346** pursuant to § 37.2-808, or (iii) issue a temporary detention order pursuant to § 37.2-809.

**347** D. After hearing the evidence regarding the person's material noncompliance with the mandatory  
**348** outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following  
**349** inpatient treatment and the person's current condition, and any other relevant information referenced in  
**350** subsection C of § 37.2-817, the judge or special justice shall make one of the following dispositions:

**351** 1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary  
**352** admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order  
**353** the person's involuntary admission to a facility designated by the community services board for a period  
**354** of treatment not to exceed 30 days;

**355** 2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment  
**356** specified in ~~subsection C1, C2, or~~ subsections D, E, F, or G of § 37.2-817, and that a continued period  
**357** of mandatory outpatient treatment appears warranted, the judge or special justice shall renew the order  
**358** for mandatory outpatient treatment, making any necessary modifications that are acceptable to the  
**359** community services board or treatment provider responsible for the person's treatment. In determining  
**360** the appropriateness of outpatient treatment, the court may consider the person's material noncompliance  
**361** with the previous mandatory treatment order; or

**362** 3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall  
**363** rescind the order for mandatory outpatient treatment or order authorizing discharge to mandatory  
**364** outpatient treatment following inpatient treatment.

**365** Upon entry of an order for involuntary inpatient admission, transportation shall be provided in  
**366** accordance with § 37.2-829.

**367 § 37.2-817.3. Rescission of mandatory outpatient treatment order.**

368 A. If the community services board determines at any time prior to the expiration of the mandatory  
 369 outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following  
 370 inpatient treatment that the person has complied with the order and no longer meets the criteria for  
 371 involuntary treatment, or that continued mandatory outpatient treatment is no longer necessary for any  
 372 other reason, it shall file a petition to rescind the order with the court that entered the order or to which  
 373 venue has been transferred. If the court agrees with the community services board's determination, the  
 374 court shall rescind the order. Otherwise, the court shall schedule a hearing and provide notice of the  
 375 hearing in accordance with subsection A of § 37.2-817.2.

376 B. At any time after 30 days from entry of the mandatory outpatient treatment order or from the  
 377 discharge of the person from involuntary inpatient treatment pursuant to an order authorizing discharge  
 378 to mandatory outpatient treatment following inpatient treatment, the person may petition the court to  
 379 rescind the order on the grounds that he no longer meets the criteria for mandatory outpatient treatment  
 380 as specified in subsection ~~C~~ or D, E, or G of § 37.2-817. The court shall schedule a hearing and  
 381 provide notice of the hearing in accordance with subsection A of § 37.2-817.2. The community services  
 382 board required to monitor the person's compliance with the mandatory outpatient treatment order or  
 383 order authorizing discharge to mandatory outpatient treatment following inpatient treatment shall provide  
 384 a preadmission screening report as required in § 37.2-816. After observing the person, and considering  
 385 the person's current condition, any material noncompliance with the mandatory outpatient treatment order  
 386 or order authorizing discharge to mandatory outpatient treatment following inpatient treatment on the  
 387 part of the person, and any other relevant evidence referred to in subsection C of § 37.2-817, shall make  
 388 one of the dispositions specified in subsection D of § 37.2-817.2. The person may not file a petition to  
 389 rescind the order more than once during a 90-day period.

390 **§ 37.2-817.4. Continuation of mandatory outpatient treatment order.**

391 A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order or  
 392 order authorizing discharge to mandatory outpatient treatment following inpatient treatment, the  
 393 community services board that is required to monitor the person's compliance with the order, the treating  
 394 physician, or other responsible person may petition the court to continue the order for a period not to  
 395 exceed 180 days.

396 B. If the person who is the subject of the order and the monitoring community services board, if it  
 397 did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate  
 398 order without further hearing. If either the person or the monitoring community services board does not  
 399 join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance with  
 400 subsection A of § 37.2-817.2.

401 C. Upon receipt of the petition, the court shall appoint an examiner who shall personally examine the  
 402 person pursuant to subsection B of § 37.2-815. The community services board required to monitor the  
 403 person's compliance with the mandatory outpatient treatment order or order authorizing discharge to  
 404 mandatory outpatient treatment following inpatient treatment shall provide a preadmission screening  
 405 report as required in § 37.2-816.

406 D. If, after observing the person, reviewing the preadmission screening report and considering the  
 407 appointed examiner's certification and any other relevant evidence, including any relevant evidence  
 408 referenced in subsection D, E, or G of § 37.2-817, the court shall make one of the dispositions specified  
 409 in subsection D of § 37.2-817.2. If the court finds that a continued period of mandatory outpatient  
 410 treatment is warranted, it may continue the order for a period not to exceed 180 days. Any order of  
 411 mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is  
 412 filed shall remain in effect until the disposition of the hearing.