

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act to amend and reenact §§ 16.1-340, 16.1-340.1, 16.1-345.4, 19.2-169.6, 19.2-182.9, 37.2-808, 37.2-809, 37.2-814, and 37.2-817.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-340.1:1, 37.2-308.1, and 37.2-809.1, relating to emergency custody and temporary detention; duration; facility of temporary detention; acute psychiatric bed registry.

[§ 260]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-340, 16.1-340.1, 16.1-345.4, 19.2-169.6, 19.2-182.9, 37.2-808, 37.2-809, 37.2-814, and 37.2-817.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-340.1:1, 37.2-308.1, and 37.2-809.1 as follows:

§ 16.1-340. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion, an emergency custody order when he has probable cause to believe that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law. To the extent possible, the petition shall contain the information required by § 16.1-339.1.

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

B. Any minor for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether he meets the criteria for temporary detention pursuant to § 16.1-340.1 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board serving the area in which the minor is located who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, in cases in which the emergency custody order is based upon a finding that the minor who is the subject of the order has a mental illness and that, as a result of mental illness, the minor is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the

57 magistrate shall order the specified primary law-enforcement agency to execute the order, to take the
58 minor into custody, and to transfer custody of the minor to the alternative transportation provider
59 identified in the order. In such cases, a copy of the emergency custody order shall accompany the minor
60 being transported pursuant to this section at all times and shall be delivered by the alternative
61 transportation provider to the community services board or its designee responsible for conducting the
62 evaluation. The community services board or its designee conducting the evaluation shall return a copy
63 of the emergency custody order to the court designated by the magistrate as soon as is practicable.
64 Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an
65 order to the court may be accomplished electronically or by facsimile.

66 Transportation under this section shall include transportation to a medical facility as may be
67 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in
68 accordance with state and federal law. Transportation under this section shall include transportation to a
69 medical facility for a medical evaluation if a physician at the hospital in which the minor subject to the
70 emergency custody order may be detained requires a medical evaluation prior to admission.

71 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
72 the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the
73 community services board that designated the person to perform the evaluation required in subsection B
74 to execute the order and, in cases in which transportation is ordered to be provided by the primary
75 law-enforcement agency, provide transportation. If the community services board serves more than one
76 jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular
77 jurisdiction within the community services board's service area where the minor who is the subject of
78 the emergency custody order was taken into custody or, if the minor has not yet been taken into
79 custody, the primary law-enforcement agency from the jurisdiction where the minor is presently located
80 to execute the order and provide transportation.

81 E. The law-enforcement agency or alternative transportation provider providing transportation
82 pursuant to this section may transfer custody of the minor to the facility or location to which the minor
83 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is
84 licensed to provide the level of security necessary to protect both the minor and others from harm, (ii) is
85 actually capable of providing the level of security necessary to protect the minor and others from harm,
86 and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an
87 agreement or memorandum of understanding with the law-enforcement agency setting forth the terms
88 and conditions under which it will accept a transfer of custody, provided, however, that the facility or
89 location may not require the law-enforcement agency to pay any fees or costs for the transfer of
90 custody.

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

94 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
95 probable cause to believe that a minor meets the criteria for emergency custody as stated in this section
96 may take that minor into custody and transport that minor to an appropriate location to assess the need
97 for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
98 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
99 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for
100 the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
101 custody shall not exceed ~~four~~ eight hours from the time the law-enforcement officer takes the minor into
102 custody. ~~However, upon a finding by a magistrate that good cause exists to grant an extension, the~~
103 ~~magistrate shall issue an order extending the period of emergency custody one time for an additional~~
104 ~~period not to exceed two hours. Good cause for an extension includes the need for additional time to~~
105 ~~allow (i) the community services board to identify a suitable facility in which the minor can be~~
106 ~~temporarily detained pursuant to § 16.1-340.1 or (ii) a medical evaluation of the person to be completed~~
107 ~~if necessary.~~

108 H. A law-enforcement officer who is transporting a minor who has voluntarily consented to be
109 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial
110 limits of the county, city, or town in which he serves may take such minor into custody and transport
111 him to an appropriate location to assess the need for hospitalization or treatment without prior
112 authorization when the law-enforcement officer determines (i) that the minor has revoked consent to be
113 transported to a facility for the purpose of assessment or evaluation and (ii) based upon his observations,
114 that probable cause exists to believe that the minor meets the criteria for emergency custody as stated in
115 this section. The period of custody shall not exceed ~~four~~ eight hours from the time the law-enforcement
116 officer takes the minor into custody. ~~However, upon a finding by a magistrate that good cause exists to~~
117 ~~grant an extension, the magistrate shall issue an order extending the period of emergency custody one~~

118 time for an additional period not to exceed two hours. Good cause for an extension includes the need
 119 for additional time to allow (a) the community services board to identify a suitable facility in which the
 120 minor can be temporarily detained pursuant to § 16.1-340.1 or (b) a medical evaluation of the person to
 121 be completed if necessary.

122 I. A representative of the primary law-enforcement agency specified to execute an emergency custody
 123 order or a representative of the law-enforcement agency employing a law-enforcement officer who takes
 124 a person into custody pursuant to subsection G or H shall notify the community services board
 125 responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after
 126 execution of the emergency custody order or after the person has been taken into custody pursuant to
 127 subsection G or H.

128 J. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from
 129 obtaining emergency medical treatment or further medical evaluation at any time for a minor in his
 130 custody as provided in this section.

131 ~~J. K.~~ The minor shall remain in custody until a temporary detention order is issued, until the minor is
 132 released, or until the emergency custody order expires. An emergency custody order shall be valid for a
 133 period not to exceed ~~four~~ eight hours from the time of execution. ~~However, upon a finding by a~~
 134 ~~magistrate that good cause exists to grant an extension, the magistrate shall extend the emergency~~
 135 ~~custody order one time for a second period not to exceed two hours. Good cause for an extension~~
 136 ~~includes the need for additional time to allow (i) the community services board to identify a suitable~~
 137 ~~facility in which the minor can be temporarily detained pursuant to § 16.1-340.1 or (ii) a medical~~
 138 ~~evaluation of the person to be completed if necessary. Any family member, as defined in § 37.2-100,~~
 139 ~~employee or designee of the community services board, treating physician, or law-enforcement officer~~
 140 ~~may request the two-hour extension.~~

141 ~~K. L.~~ If an emergency custody order is not executed within ~~six~~ eight hours of its issuance, the order
 142 shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such
 143 office is not open, to any magistrate serving the jurisdiction of the issuing court.

144 ~~L. M.~~ In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K,
 145 if the minor is detained in a state facility pursuant to subsection D of § 16.1-340.1, the state facility and
 146 an employee or designee of the community services board may, for an additional four hours, continue to
 147 attempt to identify an alternative facility that is able and willing to provide temporary detention and
 148 appropriate care to the minor.

149 N. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical
 150 screening and assessment services provided to minors with mental illnesses while in emergency custody.

151 **§ 16.1-340.1. Involuntary temporary detention; issuance and execution of order.**

152 A. A magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if
 153 the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including
 154 the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile
 155 and domestic relations district court, or upon his own motion and only after an evaluation conducted
 156 in-person or by means of a two-way electronic video and audio communication system as authorized in
 157 § 16.1-345.1 by an employee or designee of the local community services board to determine whether
 158 the minor meets the criteria for temporary detention, a temporary detention order if it appears from all
 159 evidence readily available, including any recommendation from a physician or clinical psychologist
 160 treating the person, that (i) because of mental illness, the minor (a) presents a serious danger to himself
 161 or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts
 162 or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a
 163 developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant
 164 impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in
 165 need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed
 166 treatment. The magistrate shall also consider the recommendations of the minor's parents and of any
 167 treating or examining physician licensed in Virginia if available either verbally or in writing prior to
 168 rendering a decision. To the extent possible, the petition shall contain the information required by
 169 § 16.1-339.1. Any temporary detention order entered pursuant to this section shall be effective until such
 170 time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is
 171 located conducts a hearing pursuant to subsection B of § 16.1-341. Any temporary detention order
 172 entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection
 173 B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by
 174 law.

175 B. When considering whether there is probable cause to issue a temporary detention order, the
 176 magistrate may, in addition to the petition, consider (i) the recommendations of any treating or
 177 examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor,
 178 (iii) any past mental health treatment of the minor, (iv) any relevant hearsay evidence, (v) any medical

179 records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the
180 affidavit, and (vii) any other information available that the magistrate considers relevant to the
181 determination of whether probable cause exists to issue a temporary detention order.

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

187 D. An employee or designee of the community services board shall determine the facility of
188 temporary detention *in accordance with the provisions of § 16.1-340.1:1* for all minors detained pursuant
189 to this section. ~~The facility of temporary detention shall be one that has been approved pursuant to~~
190 ~~regulations of the Board of Behavioral Health and Developmental Services.~~ The facility shall be
191 identified on the preadmission screening report and indicated on the temporary detention order. *Subject*
192 *to the provisions of § 16.1-340.1:1, if a facility of temporary detention cannot be identified by the time*
193 *of the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall be detained*
194 *in a state facility for the treatment of minors with mental illness and such facility shall be indicated on*
195 *the temporary detention order.* Except for minors who are detained for a criminal offense by a juvenile
196 and domestic relations district court and who require hospitalization in accordance with this article, the
197 minor shall not be detained in a jail or other place of confinement for persons charged with criminal
198 offenses and shall remain in the custody of law enforcement until the minor is either detained within a
199 secure facility or custody has been accepted by the appropriate personnel designated by the facility
200 identified in the temporary detention order.

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

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

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

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

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

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

239 K. Each community services board shall provide to each juvenile and domestic relations district court

240 and magistrate's office within its service area a list of employees and designees who are available to
241 perform the evaluations required herein.

242 **§ 16.1-340.1.1. Facility of temporary detention.**

243 *A. In each case in which an employee or designee of the local community services board is required*
244 *to make an evaluation of a minor pursuant to subsection B, G, or H of § 16.1-340, an employee or*
245 *designee of the local community services board shall, upon being notified of the need for such*
246 *evaluation, contact the state facility for the area in which the community services board is located and*
247 *notify the state facility that the minor will be transported to the facility upon issuance of a temporary*
248 *detention order if no other facility of temporary detention can be identified by the time of the expiration*
249 *of the period of emergency custody pursuant to § 16.1-340. Upon completion of the evaluation, the*
250 *employee or designee of the local community services board shall convey to the state facility information*
251 *about the minor necessary to allow the state facility to determine the services the minor will require*
252 *upon admission.*

253 *B. A state facility may, following the notice in accordance with subsection A, conduct a search for*
254 *an alternative facility that is able and willing to provide temporary detention and appropriate care to*
255 *the minor, which may include another state facility if the state facility notified in accordance with*
256 *subsection A is unable to provide temporary detention and appropriate care for the minor. Under no*
257 *circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for temporary*
258 *detention pursuant to § 16.1-340.1 unless an alternative facility that is able to provide temporary*
259 *detention and appropriate care agrees to accept the minor for temporary detention, and the minor shall*
260 *not during the duration of the temporary detention order be released from the custody of the community*
261 *services board except for purposes of transporting the minor to the state facility or alternative facility in*
262 *accordance with the provisions of § 16.1-340.2. If an alternative facility is identified and agrees to*
263 *accept the minor for temporary detention, the state facility shall notify the community services board,*
264 *and an employee or designee of the community services board shall designate the alternative facility on*
265 *the prescreening report.*

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

269 **§ 16.1-345.4. Court review of mandatory outpatient treatment plan.**

270 *A. The juvenile and domestic relations district court judge shall hold a hearing within 15 days after*
271 *receiving the motion for review of the mandatory outpatient treatment plan; however, if the fifteenth day*
272 *is a Saturday, Sunday, or legal holiday, or day on which the court is lawfully closed, the hearing shall*
273 *be held on the next day that is not a Saturday, Sunday, or legal holiday, or day on which the court is*
274 *lawfully closed. If the minor is being detained under a temporary detention order, the hearing shall be*
275 *scheduled within the same time frame provided for a commitment hearing under § 16.1-341. The clerk*
276 *shall provide notice of the hearing to the minor, his parents, the community services board, all treatment*
277 *providers listed in the comprehensive mandatory outpatient treatment order, and the original petitioner*
278 *for the minor's involuntary treatment. If the minor is not represented by counsel, the judge shall appoint*
279 *an attorney to represent the minor in this hearing and any subsequent hearings under § 16.1-345.5,*
280 *giving consideration to appointing the attorney who represented the minor at the proceeding that resulted*
281 *in the issuance of the mandatory outpatient treatment order. The judge shall also appoint a guardian ad*
282 *littem for the minor. The community services board shall offer to arrange the minor's transportation to*
283 *the hearing if the minor is not detained and has no other source of transportation.*

284 *B. If requested by the minor's parents, the community services board, a treatment provider listed in*
285 *the comprehensive mandatory outpatient treatment plan, or the original petitioner for the minor's*
286 *involuntary treatment, the juvenile and domestic relations district court judge may order an evaluation*
287 *and appoint a qualified evaluator in accordance with § 16.1-342 who shall personally examine the minor*
288 *and certify to the court whether or not he has probable cause to believe that the minor meets the criteria*
289 *for involuntary inpatient treatment or mandatory outpatient treatment as specified in § 16.1-345 and*
290 *subsection A of § 16.1-345.2. The evaluator's report may be admitted into evidence without the*
291 *appearance of the evaluator at the hearing if not objected to by the minor or his attorney. If the minor is*
292 *not detained in an inpatient facility, the community services board shall arrange for the minor to be*
293 *examined at a convenient location and time. The community services board shall offer to arrange for the*
294 *minor's transportation to the examination, if the minor has no other source of transportation. If the minor*
295 *refuses or fails to appear, the community services board shall notify the court, and the court shall issue*
296 *a mandatory examination order and a civil show cause summons. The return date for the civil show*
297 *cause summons shall be set on a date prior to the review hearing scheduled pursuant to subsection A,*
298 *and the examination of the minor shall be conducted immediately after the hearing thereon, but in no*
299 *event shall the period for the examination exceed ~~four~~ eight hours.*

300 *C. If the minor fails to appear for the hearing, the juvenile and domestic relations district court judge*

301 shall, after consideration of any evidence from the minor, from his parents, from the community services
 302 board, or from any treatment provider identified in the mandatory outpatient treatment plan regarding
 303 why the minor failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A,
 304 (ii) issue an emergency custody order pursuant to § 16.1-340, or (iii) issue a temporary detention order
 305 pursuant to § 16.1-340.1.

306 D. After hearing the evidence regarding the minor's material noncompliance with the mandatory
 307 outpatient treatment order and the minor's current condition, and any other relevant information
 308 referenced in § 16.1-345 and subsection A of § 16.1-345.2, the juvenile and domestic relations district
 309 court judge may make one of the following dispositions:

310 1. Upon finding by clear and convincing evidence that the minor meets the criteria for involuntary
 311 admission and treatment specified in § 16.1-345, the judge shall order the minor's involuntary admission
 312 to a facility designated by the community services board for a period of treatment not to exceed 30
 313 days;

314 2. Upon finding that the minor continues to meet the criteria for mandatory outpatient treatment
 315 specified in subsection A of § 16.1-345.2, and that a continued period of mandatory outpatient treatment
 316 appears warranted, the judge may renew the order for mandatory outpatient treatment, making any
 317 necessary modifications that are acceptable to the community services board or treatment provider
 318 responsible for the minor's treatment. In determining the appropriateness of outpatient treatment, the
 319 court may consider the minor's material noncompliance with the previous mandatory treatment order; or

320 3. Upon finding that neither of the above dispositions is appropriate, the judge may rescind the order
 321 for mandatory outpatient treatment.

322 Upon entry of an order for involuntary inpatient admission, transportation shall be provided in
 323 accordance with § 16.1-345.

324 E. For the purposes of this section, "juvenile and domestic relations district court judge" shall not
 325 include a special justice as authorized by § 37.2-803.

326 **§ 19.2-169.6. Inpatient psychiatric hospital admission from local correctional facility.**

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

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

357 2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to
 358 believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result
 359 of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others
 360 as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information,
 361 if any; and (iii) the inmate requires treatment in a hospital rather than a local correctional facility, and

362 the magistrate issues a temporary detention order for the inmate. Prior to the filing of the petition, the
 363 person having custody shall arrange for an evaluation of the inmate conducted in-person or by means of
 364 a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an
 365 employee or designee of the local community services board or behavioral health authority who is
 366 skilled in the assessment and treatment of mental illness and who has completed a certification program
 367 approved by the Department as provided in § 37.2-809. After considering the evaluation of the employee
 368 or designee of the local community services board or behavioral health authority, and any other
 369 information presented, and finding that probable cause exists to meet the criteria, the magistrate may
 370 issue a temporary detention order in accordance with the applicable procedures specified in §§ 37.2-809
 371 through 37.2-813. The person having custody over the inmate shall notify the court having jurisdiction
 372 over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention pursuant to a
 373 temporary detention order or as soon thereafter as is reasonable.

374 Upon detention pursuant to this subdivision, a hearing shall be held either (a) before the court having
 375 jurisdiction over the inmate's case or (b) before a district court judge or a special justice, as defined in
 376 § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate
 377 shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within ~~48-hour~~ 72 hours
 378 of execution of the temporary detention order issued pursuant to this subdivision. If the ~~48-hour~~ 72-hour
 379 period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the
 380 inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal
 381 holiday, or day on which the court is lawfully closed. Any employee or designee of the local
 382 community services board or behavioral health authority, as defined in § 37.2-809, representing the
 383 board or authority that prepared the preadmission screening report shall attend the hearing in person or,
 384 if physical attendance is not practicable, shall participate in the hearing through a two-way electronic
 385 video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside
 386 the service area of the community services board or behavioral health authority that prepared the
 387 preadmission screening report, and it is not practicable for a representative of the board or authority to
 388 attend or participate in the hearing, arrangements shall be made by the board or authority for an
 389 employee or designee of the board or authority serving the area in which the hearing is held to attend or
 390 participate on behalf of the board or authority that prepared the preadmission screening report. The
 391 judge or special justice conducting the hearing may order the inmate hospitalized if, after considering
 392 the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in
 393 accordance with § 37.2-816, and any other available information as specified in subsection C of
 394 § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there
 395 exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future,
 396 cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
 397 threatening harm and other relevant information, if any; and (3) the inmate requires treatment in a
 398 hospital rather than a local correctional facility. The examiner appointed pursuant to § 37.2-815, if not
 399 physically present at the hearing, shall be available whenever possible for questioning during the hearing
 400 through a two-way electronic video and audio or telephonic communication system as authorized in
 401 § 37.2-804.1. The examination and the preadmission screening report shall be admitted into evidence at
 402 the hearing.

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

406 C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the
 407 court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the
 408 inmate's competency to stand trial and his mental state at the time of the offense pursuant to
 409 §§ 19.2-169.1 and 19.2-169.5.

410 D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court
 411 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
 412 § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the
 413 provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a
 414 court other than the court which has jurisdiction over his criminal case, the facility at which the inmate
 415 is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in
 416 the criminal case, if the case is still pending.

417 E. Hospitalization may be extended in accordance with subsection D for periods of 60 days for
 418 inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such
 419 hospitalization act to delay trial, as long as the inmate remains competent to stand trial. Hospitalization
 420 may be extended in accordance with subsection D for periods of 180 days for an inmate who has been
 421 convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the
 422 custody of a local correctional facility after sentencing, but in no event may such hospitalization be

423 continued beyond the date upon which his sentence would have expired had he received the maximum
 424 sentence for the crime charged. Any inmate who has not completed service of his sentence upon
 425 discharge from the hospital shall serve the remainder of his sentence.

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

430 G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an
 431 inmate who is the subject of a proceeding under this section, upon request, shall disclose to a
 432 magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed
 433 pursuant to § 37.2-815, the community service board or behavioral health authority preparing the
 434 preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional
 435 facility any and all information that is necessary and appropriate to enable each of them to perform his
 436 duties under this section. These health care providers and other service providers shall disclose to one
 437 another health records and information where necessary to provide care and treatment to the inmate and
 438 to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local
 439 correctional facility shall be limited to information necessary to protect the sheriff or administrator of the
 440 local correctional facility and his employees, the inmate, or the public from physical injury or to address
 441 the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used
 442 for any other purpose, disclosed to others, or retained.

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

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

450 **§ 19.2-182.9. Emergency custody of conditionally released acquittee.**

451 When exigent circumstances do not permit compliance with revocation procedures set forth in
 452 § 19.2-182.8, any district court judge or a special justice, as defined in § 37.2-100, or a magistrate may
 453 issue an emergency custody order, upon the sworn petition of any responsible person or upon his own
 454 motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the
 455 conditions of his release or is no longer a proper subject for conditional release and (ii) requires
 456 inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial
 457 district to be taken into custody and transported to a convenient location where a person designated by
 458 the community services board or behavioral health authority who is skilled in the diagnosis and
 459 treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization.
 460 A law-enforcement officer who, based on his observation or the reliable reports of others, has probable
 461 cause to believe that any acquittee on conditional release has violated the conditions of his release and is
 462 no longer a proper subject for conditional release and requires emergency evaluation to assess the need
 463 for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate
 464 location to assess the need for hospitalization without prior judicial authorization. The evaluation shall
 465 be conducted immediately. The acquittee shall remain in custody until a temporary detention order is
 466 issued or until he is released, but in no event shall the period of custody exceed ~~four~~ eight hours.
 467 However, upon a finding by a district court judge, special justice as defined in § 37.2-100, or magistrate
 468 that good cause exists to grant an extension, the district court judge, special justice, or magistrate shall
 469 extend the emergency custody order, or shall issue an order extending the period of emergency custody,
 470 one time for an additional period not to exceed two hours. Good cause for an extension includes the
 471 need for additional time to allow (a) the community services board to identify a suitable facility in
 472 which the person can be temporarily detained pursuant to this section or (b) a medical evaluation of the
 473 person to be completed if necessary. If it appears from all evidence readily available ~~(i)~~ (a) that the
 474 acquittee has violated the conditions of his release or is no longer a proper subject for conditional
 475 release and ~~(ii)~~ (b) that he requires emergency evaluation to assess the need for inpatient hospitalization,
 476 the district court judge or a special justice, as defined in § 37.2-100, or magistrate, upon the advice of
 477 such person skilled in the diagnosis and treatment of mental illness, may issue a temporary detention
 478 order authorizing the executing officer to place the acquittee in an appropriate institution for a period
 479 not to exceed ~~48~~ 72 hours prior to a hearing. If the ~~48-hour~~ 72-hour period terminates on a Saturday,
 480 Sunday, legal holiday, or day on which the court is lawfully closed, the acquittee may be detained until
 481 the next day which is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully
 482 closed.

483 The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall

484 have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a
 485 psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled
 486 in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At
 487 the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present
 488 at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the
 489 right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the
 490 court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee
 491 (i) has violated the conditions of his release or is no longer a proper subject for conditional release
 492 and (ii) has mental illness or intellectual disability and is in need of inpatient hospitalization, the
 493 court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner.

494 When an acquittee on conditional release pursuant to this chapter is taken into emergency custody,
 495 detained, or hospitalized, such action shall be considered to have been taken pursuant to this section,
 496 notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody,
 497 detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law
 498 other than those applicable to insanity acqutees pursuant to this chapter shall not render the detention
 499 or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not
 500 recognized at the time of emergency custody or detention, at the time his status as such is verified, the
 501 provisions applicable to such persons shall be applied and the court hearing the matter shall notify the
 502 committing court of the proceedings.

503 **§ 37.2-308.1. Acute psychiatric bed registry.**

504 *A. The Department shall develop and administer a web-based acute psychiatric bed registry to*
 505 *collect, aggregate, and display information about available acute beds in public and private inpatient*
 506 *psychiatric facilities and public and private residential crisis stabilization units to facilitate the*
 507 *identification and designation of facilities for the temporary detention and treatment of individuals who*
 508 *meet the criteria for temporary detention pursuant to § 37.2-809.*

509 *B. The acute psychiatric bed registry created pursuant to subsection A shall:*

510 *1. Include descriptive information for every public and private inpatient psychiatric facility and every*
 511 *public and private residential crisis stabilization unit in the Commonwealth, including contact*
 512 *information for the facility or unit;*

513 *2. Provide real-time information about the number of beds available at each facility or unit and, for*
 514 *each available bed, the type of patient that may be admitted, the level of security provided, and any*
 515 *other information that may be necessary to allow employees or designees of community services boards*
 516 *and employees of inpatient psychiatric facilities or public and private residential crisis stabilization units*
 517 *to identify appropriate facilities for detention and treatment of individuals who meet the criteria for*
 518 *temporary detention; and*

519 *3. Allow employees and designees of community services boards, employees of inpatient psychiatric*
 520 *facilities or public and private residential crisis stabilization units, and health care providers as defined*
 521 *in § 8.01-581.1 working in an emergency room of a hospital or clinic or other facility rendering*
 522 *emergency medical care to perform searches of the registry to identify available beds that are*
 523 *appropriate for the detention and treatment of individuals who meet the criteria for temporary detention.*

524 *C. Every state facility, community services board, behavioral health authority, and private inpatient*
 525 *provider licensed by the Department shall participate in the acute psychiatric bed registry established*
 526 *pursuant to subsection A and shall designate such employees as may be necessary to submit information*
 527 *for inclusion in the acute psychiatric bed registry and serve as a point of contact for addressing*
 528 *requests for information related to data reported to the acute psychiatric bed registry.*

529 *D. The Commissioner may enter into a contract with a private entity for the development and*
 530 *administration of the acute psychiatric bed registry established pursuant to subsection A.*

531 **§ 37.2-808. Emergency custody; issuance and execution of order.**

532 *A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician,*
 533 *or upon his own motion, an emergency custody order when he has probable cause to believe that any*
 534 *person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental*
 535 *illness, the person will, in the near future, (a) cause serious physical harm to himself or others as*
 536 *evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if*
 537 *any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide*
 538 *for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to*
 539 *volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order*
 540 *entered pursuant to this section shall provide for the disclosure of medical records pursuant to*
 541 *§ 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.*

542 *When considering whether there is probable cause to issue an emergency custody order, the*
 543 *magistrate may, in addition to the petition, consider (1) the recommendations of any treating or*
 544 *examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person,*

545 (3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical
546 records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the
547 affidavit, and (7) any other information available that the magistrate considers relevant to the
548 determination of whether probable cause exists to issue an emergency custody order.

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

555 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement
556 agency and jurisdiction to execute the emergency custody order and provide transportation. However, in
557 cases in which the emergency custody order is based upon a finding that the person who is the subject
558 of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental
559 illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect
560 himself from harm or to provide for his basic human needs but there is no substantial likelihood that the
561 person will cause serious physical harm to himself or others as evidenced by recent behavior causing,
562 attempting, or threatening harm and other relevant information, the magistrate shall consider any request
563 to authorize transportation by an alternative transportation provider in accordance with this section,
564 whenever an alternative transportation provider is identified to the magistrate, which may be a person,
565 facility, or agency, including a family member or friend of the person who is the subject of the order, a
566 representative of the community services board, or other transportation provider with personnel trained
567 to provide transportation in a safe manner, upon determining, following consideration of information
568 provided by the petitioner; the community services board or its designee; the local law-enforcement
569 agency, if any; the person's treating physician, if any; or other persons who are available and have
570 knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative
571 transportation provider, either in person or via two-way electronic video and audio or telephone
572 communication system, that the proposed alternative transportation provider is available to provide
573 transportation, willing to provide transportation, and able to provide transportation in a safe manner.
574 When transportation is ordered to be provided by an alternative transportation provider, the magistrate
575 shall order the specified primary law-enforcement agency to execute the order, to take the person into
576 custody, and to transfer custody of the person to the alternative transportation provider identified in the
577 order. In such cases, a copy of the emergency custody order shall accompany the person being
578 transported pursuant to this section at all times and shall be delivered by the alternative transportation
579 provider to the community services board or its designee responsible for conducting the evaluation. The
580 community services board or its designee conducting the evaluation shall return a copy of the
581 emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of
582 an order to a law-enforcement officer or alternative transportation provider and return of an order to the
583 court may be accomplished electronically or by facsimile.

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

589 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
590 the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the
591 community services board that designated the person to perform the evaluation required in subsection B
592 to execute the order and, in cases in which transportation is ordered to be provided by the primary
593 law-enforcement agency, provide transportation. If the community services board serves more than one
594 jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular
595 jurisdiction within the community services board's service area where the person who is the subject of
596 the emergency custody order was taken into custody or, if the person has not yet been taken into
597 custody, the primary law-enforcement agency from the jurisdiction where the person is presently located
598 to execute the order and provide transportation.

599 E. The law-enforcement agency or alternative transportation provider providing transportation
600 pursuant to this section may transfer custody of the person to the facility or location to which the person
601 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is
602 licensed to provide the level of security necessary to protect both the person and others from harm, (ii)
603 is actually capable of providing the level of security necessary to protect the person and others from
604 harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered
605 into an agreement or memorandum of understanding with the law-enforcement agency setting forth the

606 terms and conditions under which it will accept a transfer of custody, provided, however, that the
607 facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer
608 of custody.

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

612 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
613 probable cause to believe that a person meets the criteria for emergency custody as stated in this section
614 may take that person into custody and transport that person to an appropriate location to assess the need
615 for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
616 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
617 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for
618 the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
619 custody shall not exceed ~~four~~ *eight* hours from the time the law-enforcement officer takes the person
620 into custody. ~~However, upon a finding by a magistrate that good cause exists to grant an extension, the~~
621 ~~magistrate shall issue an order extending the period of emergency custody one time for an additional~~
622 ~~period not to exceed two hours. Good cause for an extension includes the need for additional time to~~
623 ~~allow (i) the community services board to identify a suitable facility in which the person can be~~
624 ~~temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if~~
625 ~~necessary.~~

626 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be
627 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial
628 limits of the county, city, or town in which he serves may take such person into custody and transport
629 him to an appropriate location to assess the need for hospitalization or treatment without prior
630 authorization when the law-enforcement officer determines (i) that the person has revoked consent to be
631 transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his
632 observations, that probable cause exists to believe that the person meets the criteria for emergency
633 custody as stated in this section. The period of custody shall not exceed ~~four~~ *eight* hours from the time
634 the law-enforcement officer takes the person into custody. ~~However, upon a finding by a magistrate that~~
635 ~~good cause exists to grant an extension, the magistrate shall issue an order extending the period of~~
636 ~~emergency custody one time for an additional period not to exceed two hours. Good cause for an~~
637 ~~extension includes the need for additional time to allow (a) the community services board to identify a~~
638 ~~suitable facility in which the person can be temporarily detained pursuant to § 37.2-809, or (b) a~~
639 ~~medical evaluation of the person to be completed if necessary.~~

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

643 J. *A representative of the primary law-enforcement agency specified to execute an emergency custody*
644 *order or a representative of the law-enforcement agency employing a law-enforcement officer who takes*
645 *a person into custody pursuant to subsection G or H shall notify the community services board*
646 *responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after*
647 *execution of the emergency custody order or after the person has been taken into custody pursuant to*
648 *subsection G or H.*

649 K. The person shall remain in custody until a temporary detention order is issued, until the person is
650 released, or until the emergency custody order expires. An emergency custody order shall be valid for a
651 period not to exceed ~~four~~ *eight* hours from the time of execution. ~~However, upon a finding by a~~
652 ~~magistrate that good cause exists to grant an extension, the magistrate shall extend the emergency~~
653 ~~custody order one time for a second period not to exceed two hours. Good cause for an extension~~
654 ~~includes the need for additional time to allow (i) the community services board to identify a suitable~~
655 ~~facility in which the person can be temporarily detained pursuant to § 37.2-809 or (ii) a medical~~
656 ~~evaluation of the person to be completed if necessary. Any family member, as defined in § 37.2-100,~~
657 ~~employee or designee of the local community services board as defined in § 37.2-809, treating~~
658 ~~physician, or law-enforcement officer may request the two-hour extension.~~

659 ~~K. L. Any person taken into emergency custody pursuant to this section shall be given a written~~
660 ~~summary of the emergency custody procedures and the statutory protections associated with those~~
661 ~~procedures.~~

662 M. If an emergency custody order is not executed within ~~six~~ *eight* hours of its issuance, the order
663 shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such
664 office is not open, to any magistrate serving the jurisdiction of the issuing court.

665 N. *In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if*
666 *the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and*

667 *an employee or designee of the community services board as defined in § 37.2-809 may, for an*
 668 *additional four hours, continue to attempt to identify an alternative facility that is able and willing to*
 669 *provide temporary detention and appropriate care to the individual.*

670 *L. O. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical*
 671 *screening and assessment services provided to persons with mental illnesses while in emergency custody.*

672 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

673 A. For the purposes of this section:

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

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

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

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

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

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

715 E. An employee or a designee of the local community services board shall determine the facility of
 716 temporary detention *in accordance with the provisions of § 37.2-809.1* for all individuals detained
 717 pursuant to this section. ~~The facility of temporary detention shall be one that has been approved~~
 718 ~~pursuant to regulations of the Board.~~ The facility shall be identified on the preadmission screening report
 719 and indicated on the temporary detention order. *Subject to the provisions of § 37.2-809.1, if a facility of*
 720 *temporary detention cannot be identified by the time of the expiration of the period of emergency*
 721 *custody pursuant to § 37.2-808, the individual shall be detained in a state facility for the treatment of*
 722 *individuals with mental illness and such facility shall be indicated on the temporary detention order.*

723 Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A
 724 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons
 725 charged with criminal offenses and shall remain in the custody of law enforcement until the person is
 726 either detained within a secure facility or custody has been accepted by the appropriate personnel
 727 designated by the facility identified in the temporary detention order. *The person detained or in custody*

728 *pursuant to this section shall be given a written summary of the temporary detention procedures and the*
 729 *statutory protections associated with those procedures.*

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

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

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

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

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

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

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

774 **§ 37.2-809.1. Facility of temporary detention.**

775 A. *In each case in which an employee or designee of the local community services board as defined*
 776 *in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of*
 777 *§ 37.2-808, an employee or designee of the local community services board shall, upon being notified of*
 778 *the need for such evaluation, contact the state facility for the area in which the community services*
 779 *board is located and notify the state facility that the individual will be transported to the facility upon*
 780 *issuance of a temporary detention order if no other facility of temporary detention can be identified by*
 781 *the time of the expiration of the period of emergency custody pursuant to § 37.2-808. Upon completion*
 782 *of the evaluation, the employee or designee of the local community services board shall convey to the*
 783 *state facility information about the individual necessary to allow the state facility to determine the*
 784 *services the individual will require upon admission.*

785 B. *A state facility may, following the notice in accordance with subsection A, conduct a search for*
 786 *an alternative facility that is able and willing to provide temporary detention and appropriate care to*
 787 *the individual, which may include another state facility if the state facility notified in accordance with*
 788 *subsection A is unable to provide temporary detention and appropriate care for the individual. Under no*

879 *circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for*
 790 *temporary detention pursuant to § 37.2-809 unless an alternative facility that is able to provide*
 791 *temporary detention and appropriate care agrees to accept the individual for temporary detention and*
 792 *the individual shall not during the duration of the temporary detention order be released from the*
 793 *custody of the community services board except for purposes of transporting the individual to the state*
 794 *facility or alternative facility in accordance with the provisions of § 37.2-810. If an alternative facility is*
 795 *identified and agrees to accept the individual for temporary detention, the state facility shall notify the*
 796 *community services board, and an employee or designee of the community services board shall*
 797 *designate the alternative facility on the prescreening report.*

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

800 **§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to**
 801 **counsel; rights of petitioner.**

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

811 B. At the commencement of the commitment hearing, the district court judge or special justice shall
 812 inform the person whose involuntary admission is being sought of his right to apply for voluntary
 813 admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an
 814 opportunity for voluntary admission. The district court judge or special justice shall advise the person
 815 whose involuntary admission is being sought that if the person chooses to be voluntarily admitted
 816 pursuant to § 37.2-805, such person will be prohibited from possessing or, purchasing, or transporting a
 817 firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then
 818 willing and capable of seeking voluntary admission for inpatient treatment. In determining whether a
 819 person is capable of consenting to voluntary admission, the judge or special justice may consider
 820 evidence regarding the person's past compliance or noncompliance with treatment. If the judge or special
 821 justice finds that the person is capable and willingly accepts voluntary admission for inpatient treatment,
 822 the judge or special justice shall require him to accept voluntary admission for a minimum period of
 823 treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the
 824 facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be
 825 discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the
 826 transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a
 827 community services board as provided in § 37.2-805.

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

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

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

850 extent possible.

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

856 **§ 37.2-817.2. Court review of mandatory outpatient treatment plan or discharge plan.**

857 A. The district court judge or special justice shall hold a hearing within five days after receiving the
858 petition for review of the mandatory outpatient treatment plan or discharge plan; however, if the fifth
859 day is a Saturday, Sunday, ~~or~~ legal holiday, *or day on which the court is lawfully closed*, the hearing
860 shall be held by the close of business on the next day that is not a Saturday, Sunday, ~~or~~ legal holiday,
861 *or day on which the court is lawfully closed*. If the person is being detained under a temporary detention
862 order, the hearing shall be scheduled within the same time frame provided for a commitment hearing
863 under § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services
864 board, all treatment providers listed in the comprehensive mandatory outpatient treatment order or
865 discharge plan, and the original petitioner for the person's involuntary treatment. If the person is not
866 represented by counsel, the court shall appoint an attorney to represent the person in this hearing and
867 any subsequent hearings under §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the
868 attorney who represented the person at the proceeding that resulted in the issuance of the mandatory
869 outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following
870 inpatient treatment. The same judge or special justice that presided over the hearing resulting in the
871 mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment
872 following inpatient treatment need not preside at the noncompliance hearing or any subsequent hearings.
873 The community services board shall offer to arrange the person's transportation to the hearing if the
874 person is not detained and has no other source of transportation.

875 B. If requested by the person, the community services board, a treatment provider listed in the
876 comprehensive mandatory outpatient treatment plan or discharge plan, or the original petitioner for the
877 person's involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who
878 shall personally examine the person and certify to the court whether or not he has probable cause to
879 believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient
880 treatment as specified in subsections C, C1, C2, and D of § 37.2-817. The examination shall include all
881 applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence
882 without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If
883 the person is not detained in an inpatient facility, the community services board shall arrange for the
884 person to be examined at a convenient location and time. The community services board shall offer to
885 arrange for the person's transportation to the examination, if the person has no other source of
886 transportation and resides within the service area or an adjacent service area of the community services
887 board. If the person refuses or fails to appear, the community services board shall notify the court, or a
888 magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination
889 order and *capias* directing the primary law-enforcement agency in the jurisdiction where the person
890 resides to transport the person to the examination. The person shall remain in custody until a temporary
891 detention order is issued or until the person is released, but in no event shall the period exceed ~~four~~
892 *eight* hours.

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

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

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

906 2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment
907 specified in subsection C1, C2, or D of § 37.2-817, and that a continued period of mandatory outpatient
908 treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient
909 treatment, making any necessary modifications that are acceptable to the community services board or
910 treatment provider responsible for the person's treatment. In determining the appropriateness of

911 outpatient treatment, the court may consider the person's material noncompliance with the previous
912 mandatory treatment order; or

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

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

918 **2. That an emergency exists and the provisions of § 37.2-308.1 as created by this act are in force**
919 **from the passage of this act and that the remaining provisions of this act shall become effective in**
920 **due course except as provided in the third enactment.**

921 **3. That the provisions of this act adding subsection M to § 16.1-340 and subsection N to § 37.2-808**
922 **of the Code of Virginia shall expire on June 30, 2018.**

923 **4. That the Department of Behavioral Health and Developmental Services shall submit an annual**
924 **report on or before June 30 of each year on the implementation of this act to the Governor and**
925 **the Chairmen of the House Appropriations and Senate Finance Committees. The report shall**
926 **include the number of notifications of individuals in need of facility services by the community**
927 **services boards, the number of alternative facilities contacted by community services boards and**
928 **state facilities, the number of temporary detentions provided by state facilities and alternative**
929 **facilities, the length of stay in state facilities and alternative facilities, and the cost of the**
930 **detentions in state facilities and alternative facilities.**

931 **5. That the Governor's Task Force on Improving Mental Health Services and Crisis Response**
932 **created on December 10, 2013, by Executive Order 68 shall identify and examine issues related to**
933 **the use of law enforcement in the involuntary admission process. The task force shall consider**
934 **options to reduce the amount of resources needed to detain individuals during the emergency**
935 **custody order period, including the amount of time spent providing transportation throughout the**
936 **admission process. Such options shall include developing crisis stabilization units in all regions of**
937 **the Commonwealth and contracting for retired officers to provide needed transportation. The task**
938 **force shall report its findings and recommendations to the Governor and the General Assembly by**
939 **October 1, 2014.**