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**SENATE BILL NO. 819**

Offered January 8, 2025

Prefiled December 31, 2024

A *BILL to amend and reenact §§ 37.2-808, 37.2-809, 37.2-813, as they are currently effective and as they shall become effective, 37.2-815, 37.2-816 and 37.2-817, as they are currently effective and as they shall become effective, and 37.2-1104 of the Code of Virginia, relating to referrals to community-based outpatient stabilization programs for voluntary treatment.*

Patron—Favola

Referred to Committee on Rehabilitation and Social Services

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

**1. That §§ 37.2-808, 37.2-809, 37.2-813, as they are currently effective and as they shall become effective, 37.2-815, 37.2-816 and 37.2-817, as they are currently effective and as they shall become effective, and 37.2-1104 of the Code of Virginia are amended and reenacted as follows:**

**§ 37.2-808. (Expires July 1, 2026) Emergency custody; issuance and execution of order.**

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, or the court may pursuant to § 19.2-271.6, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (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 or the court considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any person 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 the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board or a certified evaluator 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 or court issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate or court shall authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate or court, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or a certified evaluator, 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 or a certified evaluator; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate or court 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 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community

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59 services board or its designee or certified evaluator responsible for conducting the evaluation. The  
60 community services board or its designee or certified evaluator conducting the evaluation shall return a copy  
61 of the emergency custody order to the court designated by the magistrate or the court that issued the  
62 emergency custody order as soon as is practicable. Delivery of an order to a law-enforcement officer or  
63 alternative transportation provider and return of an order to the court may be accomplished electronically or  
64 by facsimile.

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

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

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

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

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

100 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be  
101 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of  
102 the county, city, or town in which he serves may take such person into custody and transport him to an  
103 appropriate location to assess the need for hospitalization or treatment without prior authorization when the  
104 law-enforcement officer determines (i) that the person has revoked consent to be transported to a facility for  
105 the purpose of assessment or evaluation, and (ii) based upon his observations, that probable cause exists to  
106 believe that the person meets the criteria for emergency custody as stated in this section. The period of  
107 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

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

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

117 K. The person shall remain in custody until (i) a temporary detention order is issued in accordance with §  
118 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in accordance  
119 with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the emergency custody

120 order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time  
 121 of execution. *For any person who has received an evaluation or treatment while in emergency custody and*  
 122 *for whom no temporary detention order is issued, the evaluator or treating health care professional shall*  
 123 *consider, prior to the person's release or the expiration of the emergency custody order, whether referral of*  
 124 *the person to a community-based outpatient stabilization program for voluntary treatment is appropriate.*

125 L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing,  
 126 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency  
 127 custody order issued pursuant to this section. In any case in which an order for temporary detention for  
 128 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody  
 129 order, the person may be detained by a hospital emergency room or other appropriate facility for testing,  
 130 observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an  
 131 order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing,  
 132 observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility  
 133 in which the person is detained shall notify the nearest community services board or certified evaluator, and  
 134 the designee of the community services board or certified evaluator shall, as soon as is practicable and prior  
 135 to the expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation  
 136 of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809. The (i)  
 137 certified evaluator conducting the evaluation pursuant to subsection B and § 37.2-809 or (ii) hospital  
 138 emergency department and treating physician or other health care provider designated by the physician shall  
 139 allow a family member or legal guardian of the individual subject to evaluation who is present, and who may  
 140 provide support and supportive decision-making, to be present with the individual unless the individual  
 141 objects or the evaluator or treating physician determines that the presence of any such person would create a  
 142 medical, clinical, or safety risk to the patient or health care provider or interferes with patient care. No  
 143 provision of this section shall delay the process of the patient receiving treatment.

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

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

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

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

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

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

164 S. For purposes of this section:

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

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

167 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to §§  
 168 15.2-1731 and 15.2-1733, except for the purposes of subsection G.

169 **§ 37.2-808. (Effective July 1, 2026) Emergency custody; issuance and execution of order.**

170 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
 171 upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody order when he  
 172 has probable cause to believe that any person (i) has a mental illness and that there exists a substantial  
 173 likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm  
 174 to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other  
 175 relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from  
 176 harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is  
 177 unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody  
 178 order entered pursuant to this section shall provide for the disclosure of medical records pursuant to §  
 179 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

180 When considering whether there is probable cause to issue an emergency custody order, the magistrate

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

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

192 C. The magistrate or court issuing an emergency custody order shall specify the primary law-enforcement  
193 agency and jurisdiction to execute the emergency custody order and provide transportation. However, the  
194 magistrate or court shall authorize transportation by an alternative transportation provider in accordance with  
195 this section, whenever an alternative transportation provider is identified to the magistrate or court, which  
196 may be a person, facility, or agency, including a family member or friend of the person who is the subject of  
197 the order, a representative of the community services board, or other transportation provider with personnel  
198 trained to provide transportation in a safe manner, upon determining, following consideration of information  
199 provided by the petitioner; the community services board or its designee; the local law-enforcement agency,  
200 if any; the person's treating physician, if any; or other persons who are available and have knowledge of the  
201 person, and, when the magistrate or court deems appropriate, the proposed alternative transportation provider,  
202 either in person or via two-way electronic video and audio or telephone communication system, that the  
203 proposed alternative transportation provider is available to provide transportation, willing to provide  
204 transportation, and able to provide transportation in a safe manner.

205 When transportation is ordered to be provided by an alternative transportation provider, the magistrate or  
206 court shall order the specified primary law-enforcement agency to execute the order, to take the person into  
207 custody, and to transfer custody of the person to the alternative transportation provider identified in the order.  
208 In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant  
209 to this section at all times and shall be delivered by the alternative transportation provider to the community  
210 services board or its designee responsible for conducting the evaluation. The community services board or its  
211 designee conducting the evaluation shall return a copy of the emergency custody order to the court designated  
212 by the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of  
213 an order to a law-enforcement officer or alternative transportation provider and return of an order to the court  
214 may be accomplished electronically or by facsimile.

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

220 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the  
221 magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by the  
222 community services board that designated the person to perform the evaluation required in subsection B to  
223 execute the order and, in cases in which transportation is ordered to be provided by the primary law-  
224 enforcement agency, provide transportation. If the community services board serves more than one  
225 jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the particular  
226 jurisdiction within the community services board's service area where the person who is the subject of the  
227 emergency custody order was taken into custody or, if the person has not yet been taken into custody, the  
228 primary law-enforcement agency from the jurisdiction where the person is presently located to execute the  
229 order and provide transportation.

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

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

242 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has

243 probable cause to believe that a person meets the criteria for emergency custody as stated in this section may  
 244 take that person into custody and transport that person to an appropriate location to assess the need for  
 245 hospitalization or treatment without prior authorization. A law-enforcement officer who takes a person into  
 246 custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the territorial limits of  
 247 the county, city, or town in which he serves to any point in the Commonwealth for the purpose of obtaining  
 248 the assessment. Such evaluation shall be conducted immediately. The period of custody shall not exceed eight  
 249 hours from the time the law-enforcement officer takes the person into custody.

250 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be  
 251 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of  
 252 the county, city, or town in which he serves may take such person into custody and transport him to an  
 253 appropriate location to assess the need for hospitalization or treatment without prior authorization when the  
 254 law-enforcement officer determines (i) that the person has revoked consent to be transported to a facility for  
 255 the purpose of assessment or evaluation, and (ii) based upon his observations, that probable cause exists to  
 256 believe that the person meets the criteria for emergency custody as stated in this section. The period of  
 257 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

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

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

266 K. The person shall remain in custody until (i) a temporary detention order is issued in accordance with §  
 267 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in accordance  
 268 with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the emergency custody  
 269 order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time  
 270 of execution. *For any person who has received an evaluation or treatment while in emergency custody and  
 271 for whom no temporary detention order is issued, the evaluator or treating health care professional shall  
 272 consider, prior to the person's release or the expiration of the emergency custody order, whether referral of  
 273 the person to a community-based outpatient stabilization program for voluntary treatment is appropriate.*

274 L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing,  
 275 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency  
 276 custody order issued pursuant to this section. In any case in which an order for temporary detention for  
 277 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody  
 278 order, the person may be detained by a hospital emergency room or other appropriate facility for testing,  
 279 observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an  
 280 order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing,  
 281 observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility  
 282 in which the person is detained shall notify the nearest community services board, and the designee of the  
 283 community services board shall, as soon as is practicable and prior to the expiration of the order for  
 284 temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he  
 285 meets the criteria for temporary detention pursuant to § 37.2-809. The (i) evaluator conducting the evaluation  
 286 pursuant to subsection B and § 37.2-809 or (ii) hospital emergency department and treating physician or other  
 287 health care provider designated by the physician shall allow a family member or legal guardian of the  
 288 individual subject to evaluation who is present, and who may provide support and supportive  
 289 decision-making, to be present with the individual unless the individual objects or the evaluator or treating  
 290 physician determines that the presence of any such person would create a medical, clinical, or safety risk to  
 291 the patient or health care provider or interferes with patient care. No provision of this section shall delay the  
 292 process of the patient receiving treatment.

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

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

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

303 P. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical screening

304 and assessment services provided to persons with mental illnesses while in emergency custody.

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

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

313 S. For purposes of this section:

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

315 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to §§  
316 15.2-1731 and 15.2-1733, except for the purposes of subsection G.

317 **§ 37.2-809. (Expires July 1, 2026) Involuntary temporary detention; issuance and execution of**  
318 **order.**

319 A. For the purposes of this section:

320 "Certified evaluator" means (i) an individual with an educational attainment of a master's or doctoral  
321 degree with an associated professional license; (ii) a licensed professional counselor, licensed clinical social  
322 worker, licensed marriage and family therapist, licensed clinical psychologist, or psychiatrist; or (iii) a  
323 licensed psychiatric nurse practitioner, psychiatric physician assistant, psychiatric clinical nurse specialist,  
324 doctor of medicine, or doctor of osteopathy, who are not emergency department providers. A certified  
325 evaluator shall (a) be employed or contracted by a hospital with a psychiatric emergency department in the  
326 City of Hampton and such hospital shall be responsible for all costs associated with the hiring, training, and  
327 supervision of the certified evaluators, including salary, fringe benefits, and overhead costs; (b) be skilled in  
328 the assessment and treatment of mental illness; (c) have completed a training and certification program  
329 approved by the Department; (d) have received a prescreener orientation presentation developed by the  
330 Department in consultation with the Virginia Association of Community Services Boards, which shall  
331 include information on determining the least restrictive treatment available for the person being evaluated  
332 pursuant to subsection G of § 37.2-817.01; (e) be able to provide an independent examination of the person;  
333 (f) not be related by blood or marriage to the person being evaluated; (g) have no financial interest in the  
334 admission, treatment, or denial of admission of the person being evaluated; (h) have no investment interest in  
335 the facility detaining or admitting the person under this article; (i) only be permitted to conduct in-person  
336 evaluations on site at participating hospitals; and (j) only be permitted to conduct a temporary detention order  
337 evaluation in lieu of an employee or designee of the local community services board if the person subject to  
338 the temporary detention order evaluation is located in a hospital with a psychiatric emergency department in  
339 the City of Hampton.

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

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

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

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

357 B. 1. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
358 upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic  
359 video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the  
360 local community services board or after an in-person evaluation conducted by a certified evaluator to  
361 determine whether the person meets the criteria for temporary detention, a temporary detention order if it  
362 appears from all evidence readily available, including any recommendation from a physician, clinical  
363 psychologist, clinical social worker, or licensed professional counselor treating the person, that the person (i)  
364 has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person

365 will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior  
 366 causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due  
 367 to his lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) is in need of  
 368 hospitalization or treatment; and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization  
 369 or treatment. The magistrate shall also consider, if available, (a) information provided by the person who  
 370 initiated emergency custody and (b) the recommendations of any treating or examining physician licensed in  
 371 Virginia either verbally or in writing prior to rendering a decision. Any temporary detention order entered  
 372 pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This  
 373 subsection shall not preclude any other disclosures as required or permitted by law.

374 2. *If the magistrate finds that the person does not meet the criteria for temporary detention and the*  
 375 *employee or designee of the community services board or the certified evaluator has recommended that*  
 376 *referral to a community-based outpatient stabilization program for voluntary treatment would be*  
 377 *appropriate, the magistrate shall order that the person be provided with such referral.*

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

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

390 E. An employee or a designee of the local community services board or a certified evaluator shall  
 391 determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all  
 392 persons detained pursuant to this section. An employee or designee of the local community services board or  
 393 a certified evaluator may change the facility of temporary detention and may designate an alternative facility  
 394 for temporary detention at any point during the period of temporary detention if it is determined that the  
 395 alternative facility is a more appropriate facility for temporary detention of the person given the specific  
 396 security, medical, or behavioral health needs of the person. In cases in which the facility of temporary  
 397 detention is changed following transfer of custody to an initial facility of temporary custody, transportation of  
 398 the person to the alternative facility of temporary detention shall be provided in accordance with the  
 399 provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the preadmission  
 400 screening report and indicated on the temporary detention order; however, if an employee or designee of the  
 401 local community services board or the certified evaluator designates an alternative facility, that employee or  
 402 designee or certified evaluator shall provide written notice forthwith, on a form developed by the Executive  
 403 Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the  
 404 alternative facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be  
 405 identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the person  
 406 shall be detained in a state facility for the treatment of persons with mental illness and such facility shall be  
 407 indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring  
 408 hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail  
 409 or other place of confinement for persons charged with criminal offenses. Except as provided in § 37.2-811  
 410 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6 or in subsection C of  
 411 § 37.2-813 for persons prior to transfer to the facility of temporary detention, the person shall remain in the  
 412 custody of law enforcement until either (i) the person is detained within a secure facility or (ii) custody has  
 413 been accepted by the appropriate personnel designated by either the initial facility of temporary detention  
 414 identified in the temporary detention order or by the alternative facility of temporary detention designated by  
 415 the employee or designee of the local community services board or the certified evaluator pursuant to this  
 416 subsection. The person detained or in custody pursuant to this section shall be given a written summary of the  
 417 temporary detention procedures and the statutory protections associated with those procedures.

418 F. 1. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized  
 419 to provide emergency medical and psychiatric services within its capabilities when the facility determines  
 420 that the services are in the best interests of the person within its care. The costs incurred as a result of the  
 421 hearings and by the facility in providing services during the period of temporary detention shall be paid and  
 422 recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this  
 423 section shall be established by the State Board of Medical Assistance Services based on reasonable criteria.  
 424 The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of  
 425 inpatient care for temporary detention.

426 2. Participating hospitals with psychiatric emergency departments in the City of Hampton shall report at

427 the end of each calendar year to the Chairmen of the Senate Committees on Education and Health and  
428 Finance and Appropriations, the House Committees on Appropriations and Health and Human Services, and  
429 the Behavioral Health Commission and the Commissioner of Behavioral Health and Developmental Services  
430 the following information: (i) the length of time between when a person who is the subject of an emergency  
431 custody order pursuant to § 37.2-808 arrives at the psychiatric emergency department of a participating  
432 hospital and when the temporary detention order evaluation is completed and (ii) the number of (a)  
433 admissions, (b) psychiatric emergency department visits, (c) temporary detention order evaluations  
434 completed, (d) temporary detention orders executed, (e) individuals under temporary detention admitted to  
435 the participating hospital, and (f) individuals transferred from the psychiatric emergency department of the  
436 participating hospital to a state facility.

437 3. Participating hospitals with psychiatric emergency departments in the City of Hampton shall report  
438 monthly to the Commissioner of Behavioral Health and Developmental Services the number of (i) crisis  
439 evaluations conducted each month; (ii) temporary detention orders executed as a result of such evaluations  
440 and the percentage of evaluations such temporary detention orders represent by payor type; (iii) reportable  
441 events associated with such temporary detention orders and the percentage of temporary detention orders that  
442 such reportable events represent; (iv) reportable events (a) involving loss of custody, (b) with and without an  
443 emergency custody order, (c) with a temporary detention order executed subsequently, (d) in which the  
444 individual subsequently became engaged in outpatient treatment, (e) in which the individual did not become  
445 engaged in treatment services, and (f) involving medical treatment; and (v) other events. Such participating  
446 hospitals shall include in their monthly report the facility where each patient, classified by payor type, is  
447 placed for any temporary detention order that is executed based on their evaluation.

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

454 H. The duration of temporary detention shall be sufficient to allow for completion of the examination  
455 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and  
456 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary  
457 commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period herein  
458 specified terminates on a Saturday, Sunday, legal holiday, or, if the individual has been admitted to a facility  
459 of temporary detention, day or part of a day on which the clerk's office is lawfully closed, the person may be  
460 detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal  
461 holiday, or, if the individual has been admitted to a facility of temporary detention, day or part of a day on  
462 which the clerk's office is lawfully closed. The person may be released, pursuant to § 37.2-813, before the  
463 72-hour period herein specified has run.

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

473 J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a magistrate,  
474 as provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing the  
475 duties established by this section. Each community services board shall provide to each general district court  
476 and magistrate's office within its service area a list of its employees and designees who are available to  
477 perform the evaluations required herein. The employer of any certified evaluator shall provide to each general  
478 district court and magistrate's office within its service area a list of its employees and designees who are  
479 available to perform the evaluations required herein.

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

484 L. If the employee or designee of the community services board or the certified evaluator who is  
485 conducting the evaluation pursuant to this section recommends that the person should not be subject to a  
486 temporary detention order, such employee or designee or certified evaluator shall (i) inform the petitioner, the  
487 person who initiated emergency custody if such person is present, and an onsite treating physician of his



488 recommendation; (ii) promptly inform such person who initiated emergency custody that the community  
 489 services board or certified evaluator will facilitate communication between the person and the magistrate if  
 490 the person disagrees with recommendations of the employee or designee of the community services board or  
 491 certified evaluator who conducted the evaluation and the person who initiated emergency custody so  
 492 requests; ~~and~~ (iii) upon prompt request made by the person who initiated emergency custody, arrange for  
 493 such person who initiated emergency custody to communicate with the magistrate as soon as is practicable  
 494 and prior to the expiration of the period of emergency custody; *and (iv) make a recommendation to the*  
 495 *magistrate as to whether referral of the person to a community-based outpatient stabilization program for*  
 496 *voluntary treatment is appropriate.* The magistrate shall consider any information provided by the person  
 497 who initiated emergency custody and any recommendations of the treating or examining physician and the  
 498 employee or designee of the community services board or certified evaluator who conducted the evaluation  
 499 and consider such information and recommendations in accordance with subsection B in making his  
 500 determination to issue a temporary detention order. The person who is the subject of emergency custody shall  
 501 remain in the custody of law enforcement or a designee of law enforcement and shall not be released from  
 502 emergency custody until communication with the magistrate pursuant to this subsection has concluded and  
 503 the magistrate has made a determination regarding issuance of a temporary detention order.

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

507 N. In any case in which a person subject to an evaluation pursuant to this section is receiving services in a  
 508 hospital emergency department, the treating physician or his designee and the employee or designee of the  
 509 local community services board or certified evaluator shall disclose to each other relevant information  
 510 pertaining to the individual's treatment in the emergency department. The (i) certified evaluator conducting  
 511 the evaluation pursuant to subsection B of § 37.2-808 and the provisions of this section or (ii) hospital  
 512 emergency department and treating physician or other health care provider designated by the physician shall  
 513 allow a family member or legal guardian of the individual subject to evaluation who is present, and who may  
 514 provide support and supportive decision-making, to be present with the individual unless the individual  
 515 objects or the evaluator or treating physician determines that the presence of any such person would create a  
 516 medical, clinical, or safety risk to the patient or health care provider or interferes with patient care. No  
 517 provision of this section shall delay the process of the patient receiving treatment.

518 **§ 37.2-809. (Effective July 1, 2026) Involuntary temporary detention; issuance and execution of**  
 519 **order.**

520 A. For the purposes of this section:

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

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

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

533 B. 1. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
 534 upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic  
 535 video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the  
 536 local community services board to determine whether the person meets the criteria for temporary detention, a  
 537 temporary detention order if it appears from all evidence readily available, including any recommendation  
 538 from a physician, clinical psychologist, clinical social worker, or licensed professional counselor treating the  
 539 person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of  
 540 mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
 541 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any,  
 542 or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic  
 543 human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling to volunteer or incapable of  
 544 volunteering for hospitalization or treatment. The magistrate shall also consider, if available, (a) information  
 545 provided by the person who initiated emergency custody and (b) the recommendations of any treating or  
 546 examining physician licensed in Virginia either verbally or in writing prior to rendering a decision. Any  
 547 temporary detention order entered pursuant to this section shall provide for the disclosure of medical records  
 548 pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by

549 law.

550 2. *If the magistrate finds that the person does not meet the criteria for temporary detention and the*  
551 *employee or designee of the community services board or the certified evaluator has recommended that ref*  
552 *erral to a community-based outpatient stabilization program for voluntary treatment would be appropriate,*  
553 *the magistrate shall order that the person be provided with such referral.*

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

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

566 E. An employee or a designee of the local community services board shall determine the facility of  
567 temporary detention in accordance with the provisions of § 37.2-809.1 for all persons detained pursuant to  
568 this section. An employee or designee of the local community services board may change the facility of  
569 temporary detention and may designate an alternative facility for temporary detention at any point during the  
570 period of temporary detention if it is determined that the alternative facility is a more appropriate facility for  
571 temporary detention of the person given the specific security, medical, or behavioral health needs of the  
572 person. In cases in which the facility of temporary detention is changed following transfer of custody to an  
573 initial facility of temporary custody, transportation of the person to the alternative facility of temporary  
574 detention shall be provided in accordance with the provisions of § 37.2-810. The initial facility of temporary  
575 detention shall be identified on the preadmission screening report and indicated on the temporary detention  
576 order; however, if an employee or designee of the local community services board designates an alternative  
577 facility, that employee or designee shall provide written notice forthwith, on a form developed by the  
578 Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and  
579 address of the alternative facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary  
580 detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to §  
581 37.2-808, the person shall be detained in a state facility for the treatment of persons with mental illness and  
582 such facility shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for  
583 inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be  
584 detained in a jail or other place of confinement for persons charged with criminal offenses. Except as  
585 provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of §  
586 19.2-169.6 or in subsection C of § 37.2-813 for persons prior to transfer to the facility of temporary detention,  
587 the person shall remain in the custody of law enforcement until either (i) the person is detained within a  
588 secure facility or (ii) custody has been accepted by the appropriate personnel designated by either the initial  
589 facility of temporary detention identified in the temporary detention order or by the alternative facility of  
590 temporary detention designated by the employee or designee of the local community services board pursuant  
591 to this subsection. The person detained or in custody pursuant to this section shall be given a written  
592 summary of the temporary detention procedures and the statutory protections associated with those  
593 procedures.

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

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

608 H. The duration of temporary detention shall be sufficient to allow for completion of the examination  
609 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and

610 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary  
 611 commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period herein  
 612 specified terminates on a Saturday, Sunday, legal holiday, or, if the individual has been admitted to a facility  
 613 of temporary detention, day or part of a day on which the clerk's office is lawfully closed, the person may be  
 614 detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal  
 615 holiday, or, if the individual has been admitted to a facility of temporary detention, day or part of a day on  
 616 which the clerk's office is lawfully closed. The person may be released, pursuant to § 37.2-813, before the  
 617 72-hour period herein specified has run.

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

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

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

636 L. If the employee or designee of the community services board who is conducting the evaluation  
 637 pursuant to this section recommends that the person should not be subject to a temporary detention order,  
 638 such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if such  
 639 person is present, and an onsite treating physician of his recommendation; (ii) promptly inform such person  
 640 who initiated emergency custody that the community services board will facilitate communication between  
 641 the person and the magistrate if the person disagrees with recommendations of the employee or designee of  
 642 the community services board who conducted the evaluation and the person who initiated emergency custody  
 643 so requests; ~~and~~ (iii) upon prompt request made by the person who initiated emergency custody, arrange for  
 644 such person who initiated emergency custody to communicate with the magistrate as soon as is practicable  
 645 and prior to the expiration of the period of emergency custody; *and (iv) make a recommendation to the*  
 646 *magistrate as to whether referral of the person to a community-based outpatient stabilization program for*  
 647 *voluntary treatment is appropriate.* The magistrate shall consider any information provided by the person  
 648 who initiated emergency custody and any recommendations of the treating or examining physician and the  
 649 employee or designee of the community services board who conducted the evaluation and consider such  
 650 information and recommendations in accordance with subsection B in making his determination to issue a  
 651 temporary detention order. The person who is the subject of emergency custody shall remain in the custody  
 652 of law enforcement or a designee of law enforcement and shall not be released from emergency custody until  
 653 communication with the magistrate pursuant to this subsection has concluded and the magistrate has made a  
 654 determination regarding issuance of a temporary detention order.

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

658 N. In any case in which a person subject to an evaluation pursuant to this section is receiving services in a  
 659 hospital emergency department, the treating physician or his designee and the employee or designee of the  
 660 local community services board shall disclose to each other relevant information pertaining to the individual's  
 661 treatment in the emergency department. The (i) evaluator conducting the evaluation pursuant to subsection B  
 662 of § 37.2-808 and the provisions of this section or (ii) hospital emergency department and treating physician  
 663 or other health care provider designated by the physician shall allow a family member or legal guardian of the  
 664 individual subject to evaluation who is present, and who may provide support and supportive  
 665 decision-making, to be present with the individual unless the individual objects or the evaluator or treating  
 666 physician determines that the presence of any such person would create a medical, clinical, or safety risk to  
 667 the patient or health care provider or interferes with patient care. No provision of this section shall delay the  
 668 process of the patient receiving treatment.

669 **§ 37.2-813. (Expires July 1, 2026) Release of person prior to commitment hearing for involuntary**  
 670 **admission.**

671 A. Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819, the district court judge or special

672 justice may release the person on his personal recognizance or bond set by the district court judge or special  
673 justice if it appears from all evidence readily available that the person does not meet the commitment criteria  
674 specified in subsection C of § 37.2-817.

675 B. The director of any facility in which the person is detained, as long as such director is not the person's  
676 certified evaluator, may release the person prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 if  
677 it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person,  
678 that the person would not meet the commitment criteria specified in subsection C of § 37.2-817 if released.  
679 *Prior to the person's release under this subsection, the director shall consider, based on the evaluation*  
680 *conducted by the psychiatrist or clinical psychologist treating the person, whether referral of the person to a*  
681 *community-based outpatient stabilization program for voluntary treatment is appropriate.*

682 C. For any person under a temporary detention order pursuant to § 37.2-809, prior to transport to the  
683 facility of temporary detention, the director of the facility in which the person is located, as long as such  
684 director is not the person's certified evaluator, may release the person if an employee or a designee of the  
685 local community services board or certified evaluator, as those terms are defined in § 37.2-809, in  
686 consultation with the person's treating physician, (i) conducts an evaluation of the person, (ii) determines that  
687 the person no longer meets the commitment criteria specified in subsection C of § 37.2-817, (iii) authorizes  
688 the release of the person, and (iv) provides a discharge plan. *The director and the person's treating physician*  
689 *shall consider referral to a community-based outpatient stabilization program for voluntary treatment in*  
690 *forming the person's discharge plan under this subsection.*

691 D. For the purposes of this section, "certified evaluator" means the same as that term is defined in §  
692 37.2-809.

693 **§ 37.2-813. (Effective July 1, 2026) Release of person prior to commitment hearing for involuntary**  
694 **admission.**

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

699 B. The director of any facility in which the person is detained may release the person prior to a hearing as  
700 authorized in §§ 37.2-814 through 37.2-819 if it appears, based on an evaluation conducted by the  
701 psychiatrist or clinical psychologist treating the person, that the person would not meet the commitment  
702 criteria specified in subsection C of § 37.2-817 if released. *Prior to the person's release under this subsection,*  
703 *the director shall consider, based on an evaluation conducted by the psychiatrist or clinical psychologist*  
704 *treating the person, whether referral of the person to a community-based outpatient stabilization program for*  
705 *voluntary treatment is appropriate.*

706 C. For any person under a temporary detention order pursuant to § 37.2-809, prior to transport to the  
707 facility of temporary detention, the director of the facility in which the person is located may release the  
708 person if an employee or a designee of the local community services board, as those terms are defined in §  
709 37.2-809, in consultation with the person's treating physician, (i) conducts an evaluation of the person, (ii)  
710 determines that the person no longer meets the commitment criteria specified in subsection C of § 37.2-817,  
711 (iii) authorizes the release of the person, and (iv) provides a discharge plan. *The director and the person's*  
712 *treating physician shall consider referral to a community-based outpatient stabilization program for*  
713 *voluntary treatment in forming the person's discharge plan under this subsection.*

714 **§ 37.2-815. Commitment hearing for involuntary admission; examination required.**

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

729 B. The examination conducted pursuant to this section shall be a comprehensive evaluation of the person  
730 conducted in-person or, if that is not practicable, by two-way electronic video and audio communication  
731 system as authorized in § 37.2-804.1. Translation or interpreter services shall be provided during the  
732 evaluation where necessary. The examination shall consist of (i) a clinical assessment that includes a mental

733 status examination; determination of current use of psychotropic and other medications; a medical and  
 734 psychiatric history; a substance use, abuse, or dependency determination; and a determination of the  
 735 likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his  
 736 lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) a substance abuse  
 737 screening, when indicated; (iii) a risk assessment that includes an evaluation of the likelihood that, as a result  
 738 of mental illness, the person will, in the near future, cause serious physical harm to himself or others as  
 739 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any;  
 740 (iv) an assessment of the person's capacity to consent to treatment, including his ability to maintain and  
 741 communicate choice, understand relevant information, and comprehend the situation and its consequences;  
 742 (v) a review of the temporary detention facility's records for the person, including the treating physician's  
 743 evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all  
 744 admission forms and nurses' notes; (vi) a discussion of treatment preferences expressed by the person or  
 745 contained in a document provided by the person in support of recovery; (vii) an assessment of whether the  
 746 person meets the criteria for an order authorizing discharge to mandatory outpatient treatment following a  
 747 period of inpatient treatment pursuant to subsection C of § 37.2-817.01; (viii) an assessment of alternatives to  
 748 involuntary inpatient treatment; ~~and~~ (ix) recommendations for the placement, care, and treatment of the  
 749 person; *and (x) if the person is found not to meet the involuntary admission criteria, a recommendation as to*  
 750 *whether referral of the person to a community-based outpatient stabilization program for voluntary treatment*  
 751 *would be appropriate.*

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

765 **§ 37.2-816. (Expires July 1, 2026) Commitment hearing for involuntary admission; preadmission**  
 766 **screening report.**

767 The district court judge or special justice shall require a preadmission screening report from the  
 768 community services board that serves the county or city where the person resides or, if impractical, where the  
 769 person is located or from the certified evaluator as defined in § 37.2-809. The report shall be admitted as  
 770 evidence of the facts stated therein and shall state (i) whether the person has a mental illness and whether  
 771 there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a)  
 772 cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or  
 773 threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity  
 774 to protect himself from harm or to provide for his basic human needs; (ii) whether the person is in need of  
 775 involuntary inpatient treatment; (iii) whether there is no less restrictive alternative to inpatient treatment; ~~and~~  
 776 ; (iv) the recommendations for that person's placement, care, and treatment including, where appropriate,  
 777 recommendations for mandatory outpatient treatment; *and (v) if the person is found not to meet the*  
 778 *involuntary admission criteria, a recommendation as to whether referral of the person to a community-based*  
 779 *outpatient stabilization program for voluntary treatment would be appropriate.* The board or the certified  
 780 evaluator shall provide the preadmission screening report to the court prior to the hearing, and the report shall  
 781 be admitted into evidence and made part of the record of the case. In the case of a person who has been  
 782 sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or  
 783 clinical psychologist, the judge or special justice may proceed to adjudicate whether the person has mental  
 784 illness and should be involuntarily admitted without requesting a preadmission screening report from the  
 785 community services board.

786 **§ 37.2-816. (Effective July 1, 2026) Commitment hearing for involuntary admission; preadmission**  
 787 **screening report.**

788 The district court judge or special justice shall require a preadmission screening report from the  
 789 community services board that serves the county or city where the person resides or, if impractical, where the  
 790 person is located. The report shall be admitted as evidence of the facts stated therein and shall state (i)  
 791 whether the person has a mental illness and whether there exists a substantial likelihood that, as a result of  
 792 mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
 793 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any,

794 or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic  
795 human needs; (ii) whether the person is in need of involuntary inpatient treatment; (iii) whether there is no  
796 less restrictive alternative to inpatient treatment; ~~and~~; (iv) the recommendations for that person's placement,  
797 care, and treatment including, where appropriate, recommendations for mandatory outpatient treatment; *and*  
798 *(v) if the person is found not to meet the involuntary admission criteria, a recommendation as to whether*  
799 *referral of the person to a community-based outpatient stabilization program for voluntary treatment would*  
800 *be appropriate.* The board shall provide the preadmission screening report to the court prior to the hearing,  
801 and the report shall be admitted into evidence and made part of the record of the case. In the case of a person  
802 who has been sentenced and committed to the Department of Corrections and who has been examined by a  
803 psychiatrist or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person  
804 has mental illness and should be involuntarily admitted without requesting a preadmission screening report  
805 from the community services board.

806 **§ 37.2-817. (Expires July 1, 2026) Involuntary admission.**

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

816 B. Any employee or designee of the local community services board, as defined in § 37.2-809,  
817 representing the community services board or certified evaluator that prepared the preadmission screening  
818 report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the  
819 hearing through a two-way electronic video and audio or telephonic communication system as authorized in §  
820 37.2-804.1. Where a hearing is held outside of the service area of the community services board that prepared  
821 the preadmission screening report, and it is not practicable for a representative of the community services  
822 board that prepared the preadmission screening report to attend or participate in the hearing, arrangements  
823 shall be made by the community services board that prepared the preadmission screening report for an  
824 employee or designee of the community services board serving the area in which the hearing is held to attend  
825 or participate on behalf of the community services board that prepared the preadmission screening report. The  
826 employee or designee of the local community services board, as defined in § 37.2-809, representing the  
827 community services board that prepared the preadmission screening report or attending or participating on  
828 behalf of the community services board that prepared the preadmission screening report or the certified  
829 evaluator shall not be excluded from the hearing pursuant to an order of sequestration of witnesses. The  
830 community services board that prepared the preadmission screening report or the certified evaluator shall  
831 remain responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission  
832 screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or  
833 other electronic means with documented acknowledgment of receipt to the community services board  
834 attending the hearing. Where a community services board attends the hearing on behalf of the community  
835 services board that prepared the preadmission screening report, the attending community services board shall  
836 inform the community services board that prepared the preadmission screening report of the disposition of the  
837 matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit  
838 the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other  
839 electronic means with documented acknowledgment of receipt.

840 At least 12 hours prior to the hearing, the court shall provide to the community services board or certified  
841 evaluator that prepared the preadmission screening report the time and location of the hearing. If the  
842 representative of the community services board or certified evaluator that prepared the preadmission  
843 screening report will be present by telephonic means, the court shall provide the telephone number to the  
844 community services board or certified evaluator. If a representative of a community services board will be  
845 attending the hearing on behalf of the community services board that prepared the preadmission screening  
846 report, the community services board that prepared the preadmission screening report shall promptly  
847 communicate the time and location of the hearing and, if the representative of the community services board  
848 attending on behalf of the community services board that prepared the preadmission screening report will be  
849 present by telephonic means, the telephone number to the attending community services board.

850 C. After observing the person and considering (i) the recommendations of any treating or examining  
851 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past  
852 mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi)  
853 the preadmission screening report, and (vii) any other relevant evidence that may have been admitted,  
854 including whether the person recently has been found unrestorably incompetent to stand trial after a hearing

855 held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by clear and convincing  
 856 evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental  
 857 illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced  
 858 by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)  
 859 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human  
 860 needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment that would  
 861 offer an opportunity for the improvement of the person's condition have been investigated and determined to  
 862 be inappropriate, the judge or special justice shall by written order and specific findings so certify and order  
 863 that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the  
 864 date of the court order. Such involuntary admission shall be to a facility designated by the community  
 865 services board that serves the county or city in which the person was examined or by the certified evaluator as  
 866 provided in § 37.2-816. If the community services board or the certified evaluator does not designate a  
 867 facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the  
 868 Commissioner. Upon the expiration of an order for involuntary admission, the person shall be released unless  
 869 (A) he is involuntarily admitted by further petition and order of a court, which shall be for a period not to  
 870 exceed 180 days from the date of the subsequent court order, (B) he makes application for treatment on a  
 871 voluntary basis as provided for in § 37.2-805, or (C) he is ordered to mandatory outpatient treatment  
 872 following a period of inpatient treatment pursuant to § 37.2-817.01.

873 *D. If the judge or special justice finds that the person does not meet the criteria for involuntary admission*  
 874 *and the preadmission screening report indicates that referral to a community-based outpatient stabilization*  
 875 *program for voluntary treatment would be appropriate, the judge or special justice shall order that the*  
 876 *person be provided with such referral.*

877 *E. For the purposes of this section, "certified evaluator" means the same as that term is defined in §*  
 878 *37.2-809.*

879 **§ 37.2-817. (Effective July 1, 2026) Involuntary admission.**

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

889 B. Any employee or designee of the local community services board, as defined in § 37.2-809,  
 890 representing the community services board that prepared the preadmission screening report shall attend the  
 891 hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a  
 892 two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.  
 893 Where a hearing is held outside of the service area of the community services board that prepared the  
 894 preadmission screening report, and it is not practicable for a representative of the community services board  
 895 that prepared the preadmission screening report to attend or participate in the hearing, arrangements shall be  
 896 made by the community services board that prepared the preadmission screening report for an employee or  
 897 designee of the community services board serving the area in which the hearing is held to attend or  
 898 participate on behalf of the community services board that prepared the preadmission screening report. The  
 899 employee or designee of the local community services board, as defined in § 37.2-809, representing the  
 900 community services board that prepared the preadmission screening report or attending or participating on  
 901 behalf of the community services board that prepared the preadmission screening report shall not be excluded  
 902 from the hearing pursuant to an order of sequestration of witnesses. The community services board that  
 903 prepared the preadmission screening report shall remain responsible for the person subject to the hearing and,  
 904 prior to the hearing, shall send the preadmission screening report through certified mail, personal delivery,  
 905 facsimile with return receipt acknowledged, or other electronic means with documented acknowledgment of  
 906 receipt to the community services board attending the hearing. Where a community services board attends the  
 907 hearing on behalf of the community services board that prepared the preadmission screening report, the  
 908 attending community services board shall inform the community services board that prepared the  
 909 preadmission screening report of the disposition of the matter upon the conclusion of the hearing. In addition,  
 910 the attending community services board shall transmit the disposition through certified mail, personal  
 911 delivery, facsimile with return receipt acknowledged, or other electronic means with documented  
 912 acknowledgment of receipt.

913 At least 12 hours prior to the hearing, the court shall provide to the community services board that  
 914 prepared the preadmission screening report the time and location of the hearing. If the representative of the  
 915 community services board that prepared the preadmission screening report will be present by telephonic

916 means, the court shall provide the telephone number to the community services board. If a representative of a  
917 community services board will be attending the hearing on behalf of the community services board that  
918 prepared the preadmission screening report, the community services board that prepared the preadmission  
919 screening report shall promptly communicate the time and location of the hearing and, if the representative of  
920 the community services board attending on behalf of the community services board that prepared the  
921 preadmission screening report will be present by telephonic means, the telephone number to the attending  
922 community services board.

923 C. After observing the person and considering (i) the recommendations of any treating or examining  
924 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past  
925 mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi)  
926 the preadmission screening report, and (vii) any other relevant evidence that may have been admitted,  
927 including whether the person recently has been found unrestorably incompetent to stand trial after a hearing  
928 held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by clear and convincing  
929 evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental  
930 illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced  
931 by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)  
932 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human  
933 needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment that would  
934 offer an opportunity for the improvement of the person's condition have been investigated and determined to  
935 be inappropriate, the judge or special justice shall by written order and specific findings so certify and order  
936 that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the  
937 date of the court order. Such involuntary admission shall be to a facility designated by the community  
938 services board that serves the county or city in which the person was examined as provided in § 37.2-816. If  
939 the community services board does not designate a facility at the commitment hearing, the person shall be  
940 involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for  
941 involuntary admission, the person shall be released unless (A) he is involuntarily admitted by further petition  
942 and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court  
943 order, (B) he makes application for treatment on a voluntary basis as provided for in § 37.2-805, or (C) he is  
944 ordered to mandatory outpatient treatment following a period of inpatient treatment pursuant to § 37.2-817.01  
945 .

946 *D. If the judge or special justice finds that the person does not meet the criteria for involuntary admission*  
947 *and the preadmission screening report indicates that referral to a community-based outpatient stabilization*  
948 *program for voluntary treatment would be appropriate, the judge or special justice shall order that the*  
949 *person be provided with such referral.*

950 **§ 37.2-1104. Temporary detention in hospital for testing, observation, or treatment.**

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

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

969 C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless extended  
970 by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized  
971 testing, observation, or treatment, the physician determines that a person subject to an order under this  
972 subsection has become capable of making and communicating an informed decision, the physician shall rely  
973 on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance  
974 of an order under this subsection or during its period of effectiveness, the physician learns of an objection by  
975 a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the  
976 court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate



977 the order.

978 D. (Expires July 1, 2026) A court or, if the court is unavailable or pursuant to subsection B, a magistrate  
979 serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or  
980 treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if  
981 such person meets the criteria set forth in subsection A or B. In any case in which an order for temporary  
982 detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency  
983 custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate facility in which the  
984 person is detained for testing, observation, or treatment shall notify the nearest community services board  
985 when such testing, observation, or treatment is complete, and the designee of the community services board  
986 or certified evaluator, as defined in § 37.2-809, shall, as soon as is practicable and prior to the expiration of  
987 the order for temporary detention issued pursuant to subsection A or B, conduct an evaluation of the person to  
988 determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

989 D. (Effective July 1, 2026) A court or, if the court is unavailable or pursuant to subsection B, a magistrate  
990 serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or  
991 treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if  
992 such person meets the criteria set forth in subsection A or B. In any case in which an order for temporary  
993 detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency  
994 custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate facility in which the  
995 person is detained for testing, observation, or treatment shall notify the nearest community services board  
996 when such testing, observation, or treatment is complete, and the designee of the community services board  
997 shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant  
998 to subsection A or B, conduct an evaluation of the person to determine if he meets the criteria for temporary  
999 detention pursuant to § 37.2-809.

1000 *E. For any person who has received testing, observation, or treatment while under a temporary detention*  
1001 *order pursuant to this section, if the person does not meet criteria for a temporary detention order pursuant*  
1002 *to § 37.2-809, the evaluator or treating health care professional shall consider, prior to the person's release*  
1003 *or the expiration of the temporary detention order pursuant to this section, whether referral of the person to a*  
1004 *community-based outpatient stabilization program for voluntary treatment is appropriate.*