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SENATE BILL NO. 819

Senate Amendments in [ ] - February 3, 2025

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 Prior to Engrossment—Senator 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 services board or its designee or certified evaluator responsible for conducting the evaluation. The

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

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

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

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

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

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

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

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

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

116 K. The person shall remain in custody until (i) a temporary detention order is issued in accordance with §  
117 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in accordance  
118 with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the emergency custody  
119 order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time

120 of execution. *For any person who has received an evaluation or treatment while in emergency custody and*  
 121 *for whom no temporary detention order is issued, the evaluator or treating health care professional shall*  
 122 *consider, prior to the person's release or the expiration of the emergency custody order, whether referral of*  
 123 *the person to a community-based outpatient stabilization program for voluntary treatment is appropriate.*

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

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

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

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

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

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

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

163 S. For purposes of this section:

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

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

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

168 **§ 37.2-808. (Effective July 1, 2026) Emergency custody; issuance and execution of order.**

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

179 When considering whether there is probable cause to issue an emergency custody order, the magistrate  
 180 may, in addition to the petition, or the court may pursuant to § 19.2-271.6, consider (1) the recommendations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

312 S. For purposes of this section:

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

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

316 **§ 37.2-809. (Expires July 1, 2026) Involuntary temporary detention; issuance and execution of**  
317 **order.**

318 A. For the purposes of this section:

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

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

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

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

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

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

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

373 2. *If the magistrate finds that the person does not meet the criteria for temporary detention and the*  
 374 *employee or designee of the community services board or the certified evaluator has recommended that*  
 375 *referral to a community-based outpatient stabilization program for voluntary treatment would be*  
 376 *appropriate, the [ ~~magistrate shall order that the person be provided~~ employee or designee of the community*  
 377 *services board or the certified evaluator shall provide the person ] 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~~ provide a referral to ] the person to a community-based outpatient  
 496 stabilization program for voluntary treatment [ ~~is if~~ ] appropriate. The magistrate shall consider any  
 497 information provided by the person who initiated emergency custody and any recommendations of the  
 498 treating or examining physician and the employee or designee of the community services board or certified  
 499 evaluator who conducted the evaluation and consider such information and recommendations in accordance  
 500 with subsection B in making his determination to issue a temporary detention order. The person who is the  
 501 subject of emergency custody shall remain in the custody of law enforcement or a designee of law  
 502 enforcement and shall not be released from emergency custody until communication with the magistrate  
 503 pursuant to this subsection has concluded and the magistrate has made a determination regarding issuance of  
 504 a temporary detention order.

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

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

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

521 A. For the purposes of this section:

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

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

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

534 B. 1. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
 535 upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic  
 536 video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the  
 537 local community services board to determine whether the person meets the criteria for temporary detention, a  
 538 temporary detention order if it appears from all evidence readily available, including any recommendation  
 539 from a physician, clinical psychologist, clinical social worker, or licensed professional counselor treating the  
 540 person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of  
 541 mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
 542 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any,  
 543 or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic  
 544 human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling to volunteer or incapable of  
 545 volunteering for hospitalization or treatment. The magistrate shall also consider, if available, (a) information  
 546 provided by the person who initiated emergency custody and (b) the recommendations of any treating or

547 examining physician licensed in Virginia either verbally or in writing prior to rendering a decision. Any  
548 temporary detention order entered pursuant to this section shall provide for the disclosure of medical records  
549 pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by  
550 law.

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

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

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

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

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

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

608 facility only for the balance of costs remaining after the allowances covered by the third party payor have  
609 been received.

610 H. The duration of temporary detention shall be sufficient to allow for completion of the examination  
611 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and  
612 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary  
613 commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period herein  
614 specified terminates on a Saturday, Sunday, legal holiday, or, if the individual has been admitted to a facility  
615 of temporary detention, day or part of a day on which the clerk's office is lawfully closed, the person may be  
616 detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal  
617 holiday, or, if the individual has been admitted to a facility of temporary detention, day or part of a day on  
618 which the clerk's office is lawfully closed. The person may be released, pursuant to § 37.2-813, before the  
619 72-hour period herein specified has run.

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

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

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

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

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

661 N. In any case in which a person subject to an evaluation pursuant to this section is receiving services in a  
662 hospital emergency department, the treating physician or his designee and the employee or designee of the  
663 local community services board shall disclose to each other relevant information pertaining to the individual's  
664 treatment in the emergency department. The (i) evaluator conducting the evaluation pursuant to subsection B  
665 of § 37.2-808 and the provisions of this section or (ii) hospital emergency department and treating physician  
666 or other health care provider designated by the physician shall allow a family member or legal guardian of the  
667 individual subject to evaluation who is present, and who may provide support and supportive  
668 decision-making, to be present with the individual unless the individual objects or the evaluator or treating

669 physician determines that the presence of any such person would create a medical, clinical, or safety risk to  
 670 the patient or health care provider or interferes with patient care. No provision of this section shall delay the  
 671 process of the patient receiving treatment.

672 **§ 37.2-813. (Expires July 1, 2026) Release of person prior to commitment hearing for involuntary**  
 673 **admission.**

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

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

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

694 D. For the purposes of this section, "certified evaluator" means the same as that term is defined in §  
 695 37.2-809.

696 **§ 37.2-813. (Effective July 1, 2026) Release of person prior to commitment hearing for involuntary**  
 697 **admission.**

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

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

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

717 **§ 37.2-815. Commitment hearing for involuntary admission; examination required.**

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

730 Affairs, and community service boards, not be employed by the facility. For purposes of this section, the term  
731 "investment interest" shall be as defined in § 37.2-809.

732 B. The examination conducted pursuant to this section shall be a comprehensive evaluation of the person  
733 conducted in-person or, if that is not practicable, by two-way electronic video and audio communication  
734 system as authorized in § 37.2-804.1. Translation or interpreter services shall be provided during the  
735 evaluation where necessary. The examination shall consist of (i) a clinical assessment that includes a mental  
736 status examination; determination of current use of psychotropic and other medications; a medical and  
737 psychiatric history; a substance use, abuse, or dependency determination; and a determination of the  
738 likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his  
739 lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) a substance abuse  
740 screening, when indicated; (iii) a risk assessment that includes an evaluation of the likelihood that, as a result  
741 of mental illness, the person will, in the near future, cause serious physical harm to himself or others as  
742 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any;  
743 (iv) an assessment of the person's capacity to consent to treatment, including his ability to maintain and  
744 communicate choice, understand relevant information, and comprehend the situation and its consequences;  
745 (v) a review of the temporary detention facility's records for the person, including the treating physician's  
746 evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all  
747 admission forms and nurses' notes; (vi) a discussion of treatment preferences expressed by the person or  
748 contained in a document provided by the person in support of recovery; (vii) an assessment of whether the  
749 person meets the criteria for an order authorizing discharge to mandatory outpatient treatment following a  
750 period of inpatient treatment pursuant to subsection C of § 37.2-817.01; (viii) an assessment of alternatives to  
751 involuntary inpatient treatment; ~~and~~ (ix) recommendations for the placement, care, and treatment of the  
752 person; *and (x) if the person is found not to meet the involuntary admission criteria, a recommendation as to  
753 whether referral of the person to a community-based outpatient stabilization program for voluntary treatment  
754 would be appropriate.*

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

768 **§ 37.2-816. (Expires July 1, 2026) Commitment hearing for involuntary admission; preadmission**  
769 **screening report.**

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

789 **§ 37.2-816. (Effective July 1, 2026) Commitment hearing for involuntary admission; preadmission**  
790 **screening report.**

791 The district court judge or special justice shall require a preadmission screening report from the

792 community services board that serves the county or city where the person resides or, if impractical, where the  
793 person is located. The report shall be admitted as evidence of the facts stated therein and shall state (i)  
794 whether the person has a mental illness and whether there exists a substantial likelihood that, as a result of  
795 mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
796 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any,  
797 or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic  
798 human needs; (ii) whether the person is in need of involuntary inpatient treatment; (iii) whether there is no  
799 less restrictive alternative to inpatient treatment; ~~and~~; (iv) the recommendations for that person's placement,  
800 care, and treatment including, where appropriate, recommendations for mandatory outpatient treatment; *and*  
801 *(v) if the person is found not to meet the involuntary admission criteria, a recommendation as to whether*  
802 *referral of the person to a community-based outpatient stabilization program for voluntary treatment would*  
803 *be appropriate.* The board shall provide the preadmission screening report to the court prior to the hearing,  
804 and the report shall be admitted into evidence and made part of the record of the case. In the case of a person  
805 who has been sentenced and committed to the Department of Corrections and who has been examined by a  
806 psychiatrist or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person  
807 has mental illness and should be involuntarily admitted without requesting a preadmission screening report  
808 from the community services board.

809 **§ 37.2-817. (Expires July 1, 2026) Involuntary admission.**

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

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

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

853 C. After observing the person and considering (i) the recommendations of any treating or examining

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

876 *D. If the judge or special justice finds that the person does not meet the criteria for involuntary admission*  
 877 *and the preadmission screening report indicates that referral to a community-based outpatient stabilization*  
 878 *program for voluntary treatment would be appropriate, the [ judge or special justice shall order that the*  
 879 *person be provided board or certified evaluator that prepared the preadmission screening report shall*  
 880 *provide the person ] with such referral.*

881 *E. For the purposes of this section, "certified evaluator" means the same as that term is defined in §*  
 882 *37.2-809.*

883 **§ 37.2-817. (Effective July 1, 2026) Involuntary admission.**

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

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

915 delivery, facsimile with return receipt acknowledged, or other electronic means with documented  
916 acknowledgment of receipt.

917 At least 12 hours prior to the hearing, the court shall provide to the community services board that  
918 prepared the preadmission screening report the time and location of the hearing. If the representative of the  
919 community services board that prepared the preadmission screening report will be present by telephonic  
920 means, the court shall provide the telephone number to the community services board. If a representative of a  
921 community services board will be attending the hearing on behalf of the community services board that  
922 prepared the preadmission screening report, the community services board that prepared the preadmission  
923 screening report shall promptly communicate the time and location of the hearing and, if the representative of  
924 the community services board attending on behalf of the community services board that prepared the  
925 preadmission screening report will be present by telephonic means, the telephone number to the attending  
926 community services board.

927 C. After observing the person and considering (i) the recommendations of any treating or examining  
928 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past  
929 mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi)  
930 the preadmission screening report, and (vii) any other relevant evidence that may have been admitted,  
931 including whether the person recently has been found unrestorably incompetent to stand trial after a hearing  
932 held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by clear and convincing  
933 evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental  
934 illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced  
935 by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)  
936 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human  
937 needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment that would  
938 offer an opportunity for the improvement of the person's condition have been investigated and determined to  
939 be inappropriate, the judge or special justice shall by written order and specific findings so certify and order  
940 that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the  
941 date of the court order. Such involuntary admission shall be to a facility designated by the community  
942 services board that serves the county or city in which the person was examined as provided in § 37.2-816. If  
943 the community services board does not designate a facility at the commitment hearing, the person shall be  
944 involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for  
945 involuntary admission, the person shall be released unless (A) he is involuntarily admitted by further petition  
946 and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court  
947 order, (B) he makes application for treatment on a voluntary basis as provided for in § 37.2-805, or (C) he is  
948 ordered to mandatory outpatient treatment following a period of inpatient treatment pursuant to § 37.2-817.01  
949 .

950 *D. If the judge or special justice finds that the person does not meet the criteria for involuntary admission*  
951 *and the preadmission screening report indicates that referral to a community-based outpatient stabilization*  
952 *program for voluntary treatment would be appropriate, the [ judge or special justice shall order that the*  
953 *person be provided board or certified evaluator that prepared the preadmission screening report shall*  
954 *provide the person ] with such referral.*

955 **§ 37.2-1104. Temporary detention in hospital for testing, observation, or treatment.**

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

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

974 C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless extended  
975 by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized



976 testing, observation, or treatment, the physician determines that a person subject to an order under this  
977 subsection has become capable of making and communicating an informed decision, the physician shall rely  
978 on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance  
979 of an order under this subsection or during its period of effectiveness, the physician learns of an objection by  
980 a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the  
981 court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate  
982 the order.

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

994 D. (Effective July 1, 2026) A court or, if the court is unavailable or pursuant to subsection B, a magistrate  
995 serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or  
996 treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if  
997 such person meets the criteria set forth in subsection A or B. In any case in which an order for temporary  
998 detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency  
999 custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate facility in which the  
1000 person is detained for testing, observation, or treatment shall notify the nearest community services board  
1001 when such testing, observation, or treatment is complete, and the designee of the community services board  
1002 shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant  
1003 to subsection A or B, conduct an evaluation of the person to determine if he meets the criteria for temporary  
1004 detention pursuant to § 37.2-809.

1005 *E. For any person who has received testing, observation, or treatment while under a temporary detention*  
1006 *order pursuant to this section, if the person does not meet criteria for a temporary detention order pursuant*  
1007 *to § 37.2-809, the evaluator or treating health care professional shall consider, prior to the person's release*  
1008 *or the expiration of the temporary detention order pursuant to this section, whether referral of the person to a*  
1009 *community-based outpatient stabilization program for voluntary treatment is appropriate.*

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