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SENATE BILL NO. 528  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee for Courts of Justice  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Senator Stanley)

*A BILL to amend and reenact §§ 19.2-169.1, 19.2-169.2, 19.2-169.3, and 37.2-808, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to competency treatment in misdemeanor proceedings.*

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

**1. That §§ 19.2-169.1, 19.2-169.2, 19.2-169.3, and 37.2-808, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted as follows:**

**§ 19.2-169.1. Raising question of competency to stand trial or plead; evaluation and determination of competency.**

A. Raising competency issue; appointment of evaluators. — If, at any time after the attorney for the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who (i) has performed forensic evaluations; (ii) has successfully completed forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental Services; (iii) has demonstrated to the Commissioner competence to perform forensic evaluations; and (iv) is included on a list of approved evaluators maintained by the Commissioner.

B. Location of evaluation. — The evaluation shall be performed on an outpatient basis at a mental health facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator opines that a hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2.

C. Provision of information to evaluators. — The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and addresses of the

32 attorney for the Commonwealth, the attorney for the defendant, and the judge ordering the evaluation; (iii)  
33 information about the alleged crime; and (iv) a summary of the reasons for the evaluation request. The court  
34 shall require the attorney for the defendant to provide any available psychiatric records and other information  
35 that is deemed relevant. The court shall require that information be provided to the evaluator within 96 hours  
36 of the issuance of the court order pursuant to this section.

37 D. The competency report. — Upon completion of the evaluation, the evaluators shall promptly submit a  
38 report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to understand  
39 the proceedings against him; (ii) the defendant's ability to assist his attorney; *and* (iii) the defendant's need for  
40 treatment in the event he is found incompetent but restorable or incompetent for the foreseeable future; ~~and~~  
41 ~~(iv) if the defendant has been charged with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of~~  
42 ~~Chapter 5 of Title 18.2 or a misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128,~~  
43 ~~whether the defendant should be evaluated to determine whether he meets the criteria for temporary detention~~  
44 ~~pursuant to § 37.2-809 in the event he is found incompetent but restorable or incompetent for the foreseeable~~  
45 ~~future.~~

46 If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether  
47 inpatient or outpatient treatment (community-based or jail-based) is recommended. Outpatient treatment may  
48 occur in a local correctional facility or at a location determined by the appropriate community services board  
49 or behavioral health authority. In cases where a defendant is likely to remain incompetent for the foreseeable  
50 future due to an ongoing and irreversible medical condition, and where prior medical or educational records  
51 are available to support the diagnosis, or if the defendant was previously determined to be unrestorably  
52 incompetent in the past two years, the report may recommend that the court find the defendant unrestorably  
53 incompetent to stand trial and the court may proceed with the disposition of the case in accordance with  
54 § 19.2-169.3. No statements of the defendant relating to the time period of the alleged offense shall be  
55 included in the report. The evaluator shall also send a redacted copy of the report removing references to the  
56 defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral  
57 Health and Developmental Services for the purpose of peer review to establish and maintain the list of  
58 approved evaluators described in subsection A.

59 *If the defendant is charged with felony and misdemeanor charges, the court shall dismiss the*  
60 *misdemeanor charges and restoration treatment may continue on the felony charges. However, if the*  
61 *defendant is charged with only misdemeanor charges, the court may (a) order outpatient restoration*  
62 *treatment in a local correctional facility or at a location determined by the appropriate community services*

63 board or behavioral health authority pursuant to § 19.2-169.2, (b) dismiss the charges and place the  
64 individual under an emergency custody order pursuant to § 37.2-808, or (c) dismiss the charges against the  
65 defendant.

66 E. The competency determination. — After receiving the report described in subsection D, the court shall  
67 promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's  
68 competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for  
69 the defendant, or unless the court has reasonable cause to believe the defendant will be hospitalized under  
70 § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent shall bear the burden of  
71 proving by a preponderance of the evidence the defendant's incompetency. The defendant shall have the right  
72 to notice of the hearing, the right to counsel at the hearing and the right to personally participate in and  
73 introduce evidence at the hearing.

74 The fact that the defendant claims to be unable to remember the time period surrounding the alleged  
75 offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the charges  
76 against him and can assist in his defense. Nor shall the fact that the defendant is under the influence of  
77 medication bar a finding of competency if the defendant is able to understand the charges against him and  
78 assist in his defense while medicated.

79 F. Finding. — If the court finds the defendant competent to stand trial, the case shall be set for trial or a  
80 preliminary hearing. If the court finds the defendant either incompetent but restorable or incompetent for the  
81 foreseeable future, the court shall proceed pursuant to § 19.2-169.2.

82 **§ 19.2-169.2. Disposition when defendant found incompetent.**

83 A. ~~Upon~~ *In any felony case, upon* finding pursuant to subsection E or F of § 19.2-169.1 that the defendant,  
84 including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the  
85 defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds  
86 that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of  
87 Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge.  
88 Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate  
89 community services board or behavioral health authority. Notwithstanding the provisions of § 19.2-178, if the  
90 court orders inpatient hospital treatment, the defendant shall be transferred to and accepted by the hospital  
91 designated by the Commissioner as soon as practicable, but no later than 10 days, from the receipt of the  
92 court order requiring treatment to restore the defendant's competency. If the 10-day period expires on a  
93 Saturday, Sunday, or other legal holiday, the 10 days shall be extended to the next day that is not a Saturday,

94 Sunday, or legal holiday. Any psychiatric records and other information that have been deemed relevant and  
95 submitted by the attorney for the defendant pursuant to subsection C of § 19.2-169.1 and any reports  
96 submitted pursuant to subsection D of § 19.2-169.1 shall be made available to the director of the community  
97 services board or behavioral health authority or his designee or to the director of the treating inpatient facility  
98 or his designee within 96 hours of the issuance of the court order requiring treatment to restore the  
99 defendant's competency. If the 96-hour period expires on a Saturday, Sunday, or other legal holiday, the 96  
100 hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.

101 *B. When a defendant is charged with misdemeanors only, upon a finding pursuant to subsection E or F of*  
102 *§ 19.2-169.1 that the defendant, including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the*  
103 *court may (i) order that the defendant receive restoration treatment to restore his competency on an*  
104 *outpatient basis in a local correctional facility or at a location determined by the appropriate community*  
105 *services board or behavioral health authority, (ii) order that the defendant's charges be dismissed and he be*  
106 *placed under an emergency custody order pursuant to § 37.2-808 for evaluation to determine whether he*  
107 *meets the criteria for temporary detention pursuant to § 37.2-809, or (iii) dismiss the charge and release the*  
108 *defendant.*

109 *C. If, at any time after the defendant is ordered to undergo treatment under subsection A or B, the director*  
110 *of the community services board or behavioral health authority or his designee or the director of the treating*  
111 *inpatient facility or his designee believes the defendant's competency is restored, the director or his designee*  
112 *shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall*  
113 *make a ruling on the defendant's competency according to the procedures specified in subsection E of*  
114 *§ 19.2-169.1.*

115 *C. Notwithstanding the provisions of subsection A, in cases in which (i) the defendant has been charged*  
116 *with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or a misdemeanor*  
117 *violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128; (ii) the defendant has been found to be*  
118 *incompetent pursuant to subsection E or F of § 19.2-169.1; and (iii) the competency report described in*  
119 *subsection D of § 19.2-169.1 recommends that the defendant be evaluated to determine whether he meets the*  
120 *criteria for temporary detention pursuant to § 37.2-809, the court may order the community services board or*  
121 *behavioral health authority serving the jurisdiction in which the defendant is located to (a) conduct an*  
122 *evaluation of the defendant and (b) if the community services board or behavioral health authority determines*  
123 *that the defendant meets the criteria for temporary detention, file a petition for issuance of an order for*  
124 *temporary detention pursuant to § 37.2-809. The community services board or behavioral health authority*

125 shall notify the court, in writing, within 72 hours of the completion of the evaluation and, if appropriate, file a  
126 petition for issuance of an order for temporary detention. Upon receipt of such notice, the court may dismiss  
127 the charges without prejudice against the defendant. However, the court shall not enter an order or dismiss  
128 charges against a defendant pursuant to this subsection if the attorney for the Commonwealth is involved in  
129 the prosecution of the case and the attorney for the Commonwealth does not concur in the motion.

130 D. If a defendant for whom an evaluation has been ordered pursuant to subsection C fails or refuses to  
131 appear for the evaluation, the community services board or behavioral health authority shall notify the court  
132 and the court shall issue a mandatory examination order and capias directing the primary law-enforcement  
133 agency for the jurisdiction in which the defendant resides to transport the defendant to the location designated  
134 by the community services board or behavioral health authority for examination.

135 E. The clerk of the court shall certify and forward forthwith to the Central Criminal Records Exchange, on  
136 a form provided by the Exchange, a copy of an order for treatment issued pursuant to subsection A or B.

137 **§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; aggravated murder charge;**  
138 **sexually violent offense charge.**

139 A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A or B of  
140 § 19.2-169.2, the director of the community services board or behavioral health authority or his designee or  
141 the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain  
142 incompetent for the foreseeable future, or if the initial evaluator has found that the defendant has an ongoing  
143 and irreversible medical condition causing him to likely remain incompetent for the foreseeable future or that  
144 the defendant has been found to be unrestorably incompetent in the past two years, he shall send a report to  
145 the court so stating. The report shall also indicate whether, in the opinion of the director of the board,  
146 authority, or inpatient facility or his designee or the evaluator, the defendant should be released, ~~committed~~  
147 *screened for possible commitment* pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2,  
148 committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 in the  
149 event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a  
150 competency determination according to the procedures specified in subsection D or E of § 19.2-169.1. If the  
151 court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall  
152 order that he be (i) released, (ii) ~~committed~~ *screened for possible commitment* pursuant to Article 5  
153 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or (iii) certified pursuant to § 37.2-806. However, if the court  
154 finds that the defendant is incompetent and is likely to remain so for the foreseeable future and the defendant  
155 has been charged with a sexually violent offense, as defined in § 37.2-900, he shall be screened pursuant to

156 the procedures set forth in §§ 37.2-903 and 37.2-904. If the court finds the defendant incompetent but  
157 restorable to competency in the foreseeable future, it may order treatment continued until six months have  
158 elapsed from the date of the defendant's initial admission under subsection A *or* B of § 19.2-169.2.

159 B. At the end of six months from the date of the defendant's initial admission under subsection A *or* B of  
160 § 19.2-169.2 if the defendant remains incompetent in the opinion of the board, authority, or inpatient facility  
161 director or his designee, the director or his designee shall so notify the court and make recommendations  
162 concerning disposition of the defendant as described in subsection A. The court shall hold a hearing  
163 according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the defendant  
164 unrestorably incompetent, shall order one of the dispositions described in subsection A. If the court finds the  
165 defendant incompetent but restorable to competency, it may order continued treatment under subsection A *or*  
166 B of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to subsection E of  
167 § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but  
168 restorable to competency in the foreseeable future.

169 C. If any defendant has been charged with a misdemeanor in violation of Article 3 (§ 18.2-95 et seq.) of  
170 Chapter 5 of Title 18.2 or Article 5 (§ 18.2-119 et seq.) of Chapter 5 of Title 18.2, other than a misdemeanor  
171 charge pursuant to § 18.2-130 or Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, and is being treated  
172 pursuant to subsection A *B* of § 19.2-169.2, and after 45 days has not been restored to competency, the  
173 director of the community service board; *or* behavioral health authority; ~~or the director of the treating~~  
174 ~~inpatient facility, or any of their designees, his designee~~ shall send a report indicating the defendant's status to  
175 the court. The report shall also indicate whether the defendant should be released or ~~committed~~ *screened for*  
176 *possible commitment* pursuant to § 37.2-817 or 37.2-817.01 or certified pursuant to § 37.2-806. Upon receipt  
177 of the report, if the court determines that the defendant is still incompetent, the court shall order that the  
178 defendant be released, committed, or certified, and may dismiss the charges against the defendant.

179 D. Unless an incompetent defendant is charged with aggravated murder or the charges against an  
180 incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent  
181 defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted  
182 and received the maximum sentence for the crime charged, or on the date five years from the date of his  
183 arrest for such charges, whichever is sooner.

184 E. If the court orders an unrestorably incompetent defendant to be screened pursuant to the procedures set  
185 forth in §§ 37.2-903 and 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction  
186 wherein the defendant was charged and the Commissioner of Behavioral Health and Developmental Services

187 to provide the Director of the Department of Corrections with any information relevant to the review,  
188 including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the defendant's criminal  
189 record, (iii) information about the alleged crime, (iv) a copy of the competency report completed pursuant to  
190 § 19.2-169.1, and (v) a copy of the report prepared by the director of the defendant's community services  
191 board, behavioral health authority, or treating inpatient facility or his designee pursuant to this section. The  
192 court shall further order that the defendant be held in the custody of the Department of Behavioral Health and  
193 Developmental Services for secure confinement and treatment until the Commitment Review Committee's  
194 and Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice  
195 that the Attorney General has declined to file a petition for the commitment of an unrestorably incompetent  
196 defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall  
197 order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of  
198 Title 37.2, or certified pursuant to § 37.2-806.

199 F. In any case when an incompetent defendant is charged with aggravated murder and has been  
200 determined to be unrestorably incompetent, notwithstanding any other provision of this section, the charge  
201 shall not be dismissed and the court having jurisdiction over the aggravated murder case may order that the  
202 defendant receive continued treatment under subsection A of § 19.2-169.2 in a secure facility determined by  
203 the Commissioner of the Department of Behavioral Health and Developmental Services where the defendant  
204 shall remain until further order of the court, provided that (i) a hearing pursuant to subsection E of  
205 § 19.2-169.1 is held at yearly intervals for five years and at biennial intervals thereafter, or at any time that  
206 the director of the treating facility or his designee submits a competency report to the court in accordance  
207 with subsection D of § 19.2-169.1 that the defendant's competency has been restored, (ii) the defendant  
208 remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the  
209 defendant presents a danger to himself or others. No unrestorably incompetent defendant charged with  
210 aggravated murder shall be released except pursuant to a court order.

211 G. The attorney for the Commonwealth may bring charges that have been dismissed against the defendant  
212 when he is restored to competency.

213 **§ 37.2-808. (Expires July 1, 2026) Emergency custody; issuance and execution of order.**

214 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
215 upon his own motion, or a court may issue pursuant to § 19.2-271.6 *or, in the case of an incompetent*  
216 *misdemeanant, pursuant to subsection D of § 19.2-169.1 and subsection B of § 19.2-169.2*, an emergency  
217 custody order when he has probable cause to believe that any person (i) has a mental illness and that there

218 exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause  
219 serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening  
220 harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect  
221 himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and  
222 (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency  
223 custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to  
224 § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

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

238 C. The magistrate or court issuing an emergency custody order shall specify the primary law-enforcement  
239 agency and jurisdiction to execute the emergency custody order and provide transportation. However, the  
240 magistrate or court shall authorize transportation by an alternative transportation provider in accordance with  
241 this section, whenever an alternative transportation provider is identified to the magistrate or court, which  
242 may be a person, facility, or agency, including a family member or friend of the person who is the subject of  
243 the order, a representative of the community services board, or a certified evaluator, or other transportation  
244 provider with personnel trained to provide transportation in a safe manner, upon determining, following  
245 consideration of information provided by the petitioner; the community services board or its designee or a  
246 certified evaluator; the local law-enforcement agency, if any; the person's treating physician, if any; or other  
247 persons who are available and have knowledge of the person, and, when the magistrate or court deems

248 appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video  
249 and audio or telephone communication system, that the proposed alternative transportation provider is  
250 available to provide transportation, willing to provide transportation, and able to provide transportation in a  
251 safe manner.

252 When transportation is ordered to be provided by an alternative transportation provider, the magistrate or  
253 court shall order the specified primary law-enforcement agency to execute the order, to take the person into  
254 custody, and to transfer custody of the person to the alternative transportation provider identified in the order.  
255 In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant  
256 to this section at all times and shall be delivered by the alternative transportation provider to the community  
257 services board or its designee or certified evaluator responsible for conducting the evaluation. The  
258 community services board or its designee or certified evaluator conducting the evaluation shall return a copy  
259 of the emergency custody order to the court designated by the magistrate or the court that issued the  
260 emergency custody order as soon as is practicable. Delivery of an order to a law-enforcement officer or  
261 alternative transportation provider and return of an order to the court may be accomplished electronically or  
262 by facsimile.

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

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

277 the order and provide transportation.

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

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

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

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

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

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

315 K. The person shall remain in custody until (i) a temporary detention order is issued in accordance with  
316 § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in  
317 accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the  
318 emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight  
319 hours from the time of execution. For any person who has received an evaluation or treatment while in  
320 emergency custody and for whom no temporary detention order is issued, the evaluator or treating health care  
321 professional shall consider, prior to the person's release or the expiration of the emergency custody order,  
322 whether referral of the person to a community-based outpatient stabilization program for voluntary treatment  
323 is appropriate.

324 L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing,  
325 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency  
326 custody order issued pursuant to this section. In any case in which an order for temporary detention for  
327 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody  
328 order, the person may be detained by a hospital emergency room or other appropriate facility for testing,  
329 observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an  
330 order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing,  
331 observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility  
332 in which the person is detained shall notify the nearest community services board or certified evaluator, and  
333 the designee of the community services board or certified evaluator shall, as soon as is practicable and prior  
334 to the expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation  
335 of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809. The (i)  
336 certified evaluator conducting the evaluation pursuant to subsection B and § 37.2-809 or (ii) hospital

337 emergency department and treating physician or other health care provider designated by the physician shall  
338 allow a family member or legal guardian of the individual subject to evaluation who is present, and who may  
339 provide support and supportive decision-making, to be present with the individual unless the individual  
340 objects or the evaluator or treating physician determines that the presence of any such person would create a  
341 medical, clinical, or safety risk to the patient or health care provider or interferes with patient care. No  
342 provision of this section shall delay the process of the patient receiving treatment.

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

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

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

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

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

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

363 S. For purposes of this section:

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

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

366 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to

367 §§ 15.2-1731 and 15.2-1733, except for the purposes of subsection G.

368 **§ 37.2-808. (Effective July 1, 2026) Emergency custody; issuance and execution of order.**

369 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
370 upon his own motion, or a court may issue pursuant to § 19.2-271.6 *or, in the case of an incompetent*  
371 *misdemeanant, pursuant to subsection D of § 19.2-169.1 and subsection B of § 19.2-169.2*, an emergency  
372 custody order when he has probable cause to believe that any person (i) has a mental illness and that there  
373 exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause  
374 serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening  
375 harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect  
376 himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and  
377 (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency  
378 custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to  
379 § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

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

392 C. The magistrate or court issuing an emergency custody order shall specify the primary law-enforcement  
393 agency and jurisdiction to execute the emergency custody order and provide transportation. However, the  
394 magistrate or court shall authorize transportation by an alternative transportation provider in accordance with  
395 this section, whenever an alternative transportation provider is identified to the magistrate or court, which  
396 may be a person, facility, or agency, including a family member or friend of the person who is the subject of  
397 the order, a representative of the community services board, or other transportation provider with personnel

398 trained to provide transportation in a safe manner, upon determining, following consideration of information  
399 provided by the petitioner; the community services board or its designee; the local law-enforcement agency,  
400 if any; the person's treating physician, if any; or other persons who are available and have knowledge of the  
401 person, and, when the magistrate or court deems appropriate, the proposed alternative transportation provider,  
402 either in person or via two-way electronic video and audio or telephone communication system, that the  
403 proposed alternative transportation provider is available to provide transportation, willing to provide  
404 transportation, and able to provide transportation in a safe manner.

405 When transportation is ordered to be provided by an alternative transportation provider, the magistrate or  
406 court shall order the specified primary law-enforcement agency to execute the order, to take the person into  
407 custody, and to transfer custody of the person to the alternative transportation provider identified in the order.  
408 In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant  
409 to this section at all times and shall be delivered by the alternative transportation provider to the community  
410 services board or its designee responsible for conducting the evaluation. The community services board or its  
411 designee conducting the evaluation shall return a copy of the emergency custody order to the court designated  
412 by the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of  
413 an order to a law-enforcement officer or alternative transportation provider and return of an order to the court  
414 may be accomplished electronically or by facsimile.

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

420 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the  
421 magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by the  
422 community services board that designated the person to perform the evaluation required in subsection B to  
423 execute the order and, in cases in which transportation is ordered to be provided by the primary law-  
424 enforcement agency, provide transportation. If the community services board serves more than one  
425 jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the particular  
426 jurisdiction within the community services board's service area where the person who is the subject of the

427 emergency custody order was taken into custody or, if the person has not yet been taken into custody, the  
428 primary law-enforcement agency from the jurisdiction where the person is presently located to execute the  
429 order and provide transportation.

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

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

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

450 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be  
451 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of  
452 the county, city, or town in which he serves may take such person into custody and transport him to an  
453 appropriate location to assess the need for hospitalization or treatment without prior authorization when the  
454 law-enforcement officer determines (i) that the person has revoked consent to be transported to a facility for  
455 the purpose of assessment or evaluation, and (ii) based upon his observations, that probable cause exists to

456 believe that the person meets the criteria for emergency custody as stated in this section. The period of  
457 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

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

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

466 K. The person shall remain in custody until (i) a temporary detention order is issued in accordance with  
467 § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in  
468 accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the  
469 emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight  
470 hours from the time of execution. For any person who has received an evaluation or treatment while in  
471 emergency custody and for whom no temporary detention order is issued, the evaluator or treating health care  
472 professional shall consider, prior to the person's release or the expiration of the emergency custody order,  
473 whether referral of the person to a community-based outpatient stabilization program for voluntary treatment  
474 is appropriate.

475 L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing,  
476 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency  
477 custody order issued pursuant to this section. In any case in which an order for temporary detention for  
478 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody  
479 order, the person may be detained by a hospital emergency room or other appropriate facility for testing,  
480 observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an  
481 order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing,  
482 observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility  
483 in which the person is detained shall notify the nearest community services board, and the designee of the  
484 community services board shall, as soon as is practicable and prior to the expiration of the order for  
485 temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he

486 meets the criteria for temporary detention pursuant to § 37.2-809. The (i) evaluator conducting the evaluation  
487 pursuant to subsection B and § 37.2-809 or (ii) hospital emergency department and treating physician or other  
488 health care provider designated by the physician shall allow a family member or legal guardian of the  
489 individual subject to evaluation who is present, and who may provide support and supportive  
490 decision-making, to be present with the individual unless the individual objects or the evaluator or treating  
491 physician determines that the presence of any such person would create a medical, clinical, or safety risk to  
492 the patient or health care provider or interferes with patient care. No provision of this section shall delay the  
493 process of the patient receiving treatment.

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

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

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

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

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

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

514 S. For purposes of this section:

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

**516** "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to  
**517** §§ 15.2-1731 and 15.2-1733, except for the purposes of subsection G.