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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 February 16, 2026)

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

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

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

If the defendant is charged with felony and misdemeanor charges, the court shall dismiss the

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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 inpatient or outpatient*
62 *restoration treatment in a local correctional facility or at a location determined by the appropriate*
63 *community services board or behavioral health authority pursuant to § 19.2-169.2, (b) dismiss the charges*
64 *and place the individual under an emergency custody order pursuant to § 37.2-808, or (c) dismiss the*
65 *charges against the 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 inpatient*
104 *or 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 *caus* 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 or 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.

518 **2. That the provisions of this act shall become effective on July 1, 2027.**