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SENATE BILL NO. 528  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House 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 E. The competency determination. — After receiving the report described in subsection D, the court shall  
60 promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's  
61 competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for  
62 the defendant, or unless the court has reasonable cause to believe the defendant will be hospitalized under

63 § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent shall bear the burden of  
64 proving by a preponderance of the evidence the defendant's incompetency. The defendant shall have the right  
65 to notice of the hearing, the right to counsel at the hearing and the right to personally participate in and  
66 introduce evidence at the hearing.

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

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

75 **§ 19.2-169.2. Disposition when defendant found incompetent.**

76 A. ~~Upon~~ *In any felony case, upon* finding pursuant to subsection E or F of § 19.2-169.1 that the defendant,  
77 including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the  
78 defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds  
79 that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of  
80 Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge.  
81 Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate  
82 community services board or behavioral health authority. Notwithstanding the provisions of § 19.2-178, if the  
83 court orders inpatient hospital treatment, the defendant shall be transferred to and accepted by the hospital  
84 designated by the Commissioner as soon as practicable, but no later than 10 days, from the receipt of the  
85 court order requiring treatment to restore the defendant's competency. If the 10-day period expires on a  
86 Saturday, Sunday, or other legal holiday, the 10 days shall be extended to the next day that is not a Saturday,  
87 Sunday, or legal holiday. Any psychiatric records and other information that have been deemed relevant and  
88 submitted by the attorney for the defendant pursuant to subsection C of § 19.2-169.1 and any reports  
89 submitted pursuant to subsection D of § 19.2-169.1 shall be made available to the director of the community  
90 services board or behavioral health authority or his designee or to the director of the treating inpatient facility  
91 or his designee within 96 hours of the issuance of the court order requiring treatment to restore the  
92 defendant's competency. If the 96-hour period expires on a Saturday, Sunday, or other legal holiday, the 96  
93 hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.

94 B. *When a defendant is charged with misdemeanors only, upon a finding pursuant to subsection E or F of*  
95 *§ 19.2-169.1 that the defendant, including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the*  
96 *court may (i) order that the defendant receive restoration treatment to restore his competency on an*  
97 *outpatient basis in a local correctional facility or at a location determined by the appropriate community*  
98 *services board or behavioral health authority, (ii) order that the defendant receive restoration treatment at*  
99 *an inpatient hospital designated by the Commissioner of Behavioral Health and Developmental Services as*  
100 *appropriate for treatment of persons under criminal charge, (iii) order that the defendant's charges be*  
101 *dismissed and he be placed under an emergency custody order pursuant to § 37.2-808 for evaluation to*  
102 *determine whether he meets the criteria for temporary detention pursuant to § 37.2-809, or (iv) dismiss the*  
103 *charges and release the defendant. Notwithstanding the provisions of § 19.2-178, if the court orders inpatient*  
104 *hospital treatment, the defendant shall be transferred to and accepted by the hospital designated by the*  
105 *Commissioner of Behavioral Health and Developmental Services as soon as practicable, but no later than 10*  
106 *days, from the receipt of the court order requiring treatment to restore the defendant's competency. If the 10-*  
107 *day period expires on a Saturday, Sunday, or other legal holiday, the 10 days shall be extended to the next*  
108 *day that is not a Saturday, Sunday, or legal holiday. Any psychiatric records and other information that have*  
109 *been deemed relevant and submitted by the attorney for the defendant pursuant to subsection C of*  
110 *§ 19.2-169.1 and any reports submitted pursuant to subsection D of § 19.2-169.1 shall be made available to*  
111 *the director of the community services board or behavioral health authority or his designee or to the director*  
112 *of the treating inpatient facility or his designee within 96 hours of the issuance of the court order requiring*  
113 *treatment to restore the defendant's competency. If the 96-hour period expires on a Saturday, Sunday, or*  
114 *other legal holiday, the 96 hours shall be extended to the next day that is not a Saturday, Sunday, or legal*  
115 *holiday.*

116 C. *If, at any time after the defendant is ordered to undergo treatment under subsection A or B, the director*  
117 *of the community services board or behavioral health authority or his designee or the director of the treating*  
118 *inpatient facility or his designee believes the defendant's competency is restored, the director or his designee*  
119 *shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall*  
120 *make a ruling on the defendant's competency according to the procedures specified in subsection E of*  
121 *§ 19.2-169.1.*

122 ~~C. Notwithstanding the provisions of subsection A, in cases in which (i) the defendant has been charged~~  
123 ~~with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or a misdemeanor~~  
124 ~~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~~

125 incompetent pursuant to subsection E or F of § 19.2-169.1; and (iii) the competency report described in  
126 subsection D of § 19.2-169.1 recommends that the defendant be evaluated to determine whether he meets the  
127 criteria for temporary detention pursuant to § 37.2-809, the court may order the community services board or  
128 behavioral health authority serving the jurisdiction in which the defendant is located to (a) conduct an  
129 evaluation of the defendant and (b) if the community services board or behavioral health authority determines  
130 that the defendant meets the criteria for temporary detention, file a petition for issuance of an order for  
131 temporary detention pursuant to § 37.2-809. The community services board or behavioral health authority  
132 shall notify the court, in writing, within 72 hours of the completion of the evaluation and, if appropriate, file a  
133 petition for issuance of an order for temporary detention. Upon receipt of such notice, the court may dismiss  
134 the charges without prejudice against the defendant. However, the court shall not enter an order or dismiss  
135 charges against a defendant pursuant to this subsection if the attorney for the Commonwealth is involved in  
136 the prosecution of the case and the attorney for the Commonwealth does not concur in the motion.

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

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

144 **§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; aggravated murder charge;**  
145 **sexually violent offense charge.**

146 A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A or B of  
147 § 19.2-169.2, the director of the community services board or behavioral health authority or his designee or  
148 the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain  
149 incompetent for the foreseeable future, or if the initial evaluator has found that the defendant has an ongoing  
150 and irreversible medical condition causing him to likely remain incompetent for the foreseeable future or that  
151 the defendant has been found to be unrestorably incompetent in the past two years, he shall send a report to  
152 the court so stating. The report shall also indicate whether, in the opinion of the director of the board,  
153 authority, or inpatient facility or his designee or the evaluator, the defendant should be released, ~~committed~~  
154 *screened for possible commitment* pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2,  
155 committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 in the

156 event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a  
157 competency determination according to the procedures specified in subsection D or E of § 19.2-169.1. If the  
158 court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall  
159 order that he be (i) released, (ii) ~~committed~~ *screened for possible commitment* pursuant to Article 5  
160 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or (iii) certified pursuant to § 37.2-806. However, if the court  
161 finds that the defendant is incompetent and is likely to remain so for the foreseeable future and the defendant  
162 has been charged with a sexually violent offense, as defined in § 37.2-900, he shall be screened pursuant to  
163 the procedures set forth in §§ 37.2-903 and 37.2-904. If the court finds the defendant incompetent but  
164 restorable to competency in the foreseeable future, it may order treatment continued until six months have  
165 elapsed from the date of the defendant's initial admission under subsection A *or B* of § 19.2-169.2.

166 B. At the end of six months from the date of the defendant's initial admission under subsection A *or B* of  
167 § 19.2-169.2 if the defendant remains incompetent in the opinion of the board, authority, or inpatient facility  
168 director or his designee, the director or his designee shall so notify the court and make recommendations  
169 concerning disposition of the defendant as described in subsection A. The court shall hold a hearing  
170 according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the defendant  
171 unrestorably incompetent, shall order one of the dispositions described in subsection A. If the court finds the  
172 defendant incompetent but restorable to competency, it may order continued treatment under subsection A *or*  
173 *B* of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to subsection E of  
174 § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but  
175 restorable to competency in the foreseeable future.

176 C. If any defendant has been charged with a misdemeanor in violation of Article 3 (§ 18.2-95 et seq.) of  
177 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  
178 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  
179 pursuant to subsection ~~A~~ *B* of § 19.2-169.2, and after 45 days has not been restored to competency, the  
180 director of the community ~~service~~ *services* board, behavioral health authority, or ~~the director of the~~ treating  
181 inpatient facility, or any of their designees, shall send a report indicating the defendant's status to the court.  
182 The report shall also indicate whether the defendant should be released or ~~committed~~ *screened for possible*  
183 *commitment* pursuant to § 37.2-817 or 37.2-817.01 or certified pursuant to § 37.2-806. Upon receipt of the  
184 report, if the court determines that the defendant is still incompetent, the court shall order that the defendant  
185 be released, committed, or certified, and may dismiss the charges against the defendant.

186 D. Unless an incompetent defendant is charged with aggravated murder or the charges against an

187 incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent  
188 defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted  
189 and received the maximum sentence for the crime charged, or on the date five years from the date of his  
190 arrest for such charges, whichever is sooner.

191 E. If the court orders an unrestorably incompetent defendant to be screened pursuant to the procedures set  
192 forth in §§ 37.2-903 and 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction  
193 wherein the defendant was charged and the Commissioner of Behavioral Health and Developmental Services  
194 to provide the Director of the Department of Corrections with any information relevant to the review,  
195 including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the defendant's criminal  
196 record, (iii) information about the alleged crime, (iv) a copy of the competency report completed pursuant to  
197 § 19.2-169.1, and (v) a copy of the report prepared by the director of the defendant's community services  
198 board, behavioral health authority, or treating inpatient facility or his designee pursuant to this section. The  
199 court shall further order that the defendant be held in the custody of the Department of Behavioral Health and  
200 Developmental Services for secure confinement and treatment until the Commitment Review Committee's  
201 and Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice  
202 that the Attorney General has declined to file a petition for the commitment of an unrestorably incompetent  
203 defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall  
204 order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of  
205 Title 37.2, or certified pursuant to § 37.2-806.

206 F. In any case when an incompetent defendant is charged with aggravated murder and has been  
207 determined to be unrestorably incompetent, notwithstanding any other provision of this section, the charge  
208 shall not be dismissed and the court having jurisdiction over the aggravated murder case may order that the  
209 defendant receive continued treatment under subsection A of § 19.2-169.2 in a secure facility determined by  
210 the Commissioner of the Department of Behavioral Health and Developmental Services where the defendant  
211 shall remain until further order of the court, provided that (i) a hearing pursuant to subsection E of  
212 § 19.2-169.1 is held at yearly intervals for five years and at biennial intervals thereafter, or at any time that  
213 the director of the treating facility or his designee submits a competency report to the court in accordance  
214 with subsection D of § 19.2-169.1 that the defendant's competency has been restored, (ii) the defendant  
215 remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the  
216 defendant presents a danger to himself or others. No unrestorably incompetent defendant charged with  
217 aggravated murder shall be released except pursuant to a court order.

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

220 **§ 37.2-808. (Expires July 1, 2026) Emergency custody; issuance and execution of order.**

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

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

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

245 C. The magistrate or court issuing an emergency custody order shall specify the primary law-enforcement  
246 agency and jurisdiction to execute the emergency custody order and provide transportation. However, the  
247 magistrate or court shall authorize transportation by an alternative transportation provider in accordance with  
248 this section, whenever an alternative transportation provider is identified to the magistrate or court, which

249 may be a person, facility, or agency, including a family member or friend of the person who is the subject of  
250 the order, a representative of the community services board, or a certified evaluator, or other transportation  
251 provider with personnel trained to provide transportation in a safe manner, upon determining, following  
252 consideration of information provided by the petitioner; the community services board or its designee or a  
253 certified evaluator; the local law-enforcement agency, if any; the person's treating physician, if any; or other  
254 persons who are available and have knowledge of the person, and, when the magistrate or court deems  
255 appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video  
256 and audio or telephone communication system, that the proposed alternative transportation provider is  
257 available to provide transportation, willing to provide transportation, and able to provide transportation in a  
258 safe manner.

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

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

275       D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the  
276 magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by the  
277 community services board or certified evaluator that designated the person to perform the evaluation required

278 in subsection B to execute the order and, in cases in which transportation is ordered to be provided by the  
279 primary law-enforcement agency, provide transportation. If the community services board serves more than  
280 one jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the  
281 particular jurisdiction within the community services board's service area where the person who is the subject  
282 of the emergency custody order was taken into custody or, if the person has not yet been taken into custody,  
283 the primary law-enforcement agency from the jurisdiction where the person is presently located to execute  
284 the order and provide transportation.

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

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

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

305 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be  
306 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of

307 the county, city, or town in which he serves may take such person into custody and transport him to an  
308 appropriate location to assess the need for hospitalization or treatment without prior authorization when the  
309 law-enforcement officer determines (i) that the person has revoked consent to be transported to a facility for  
310 the purpose of assessment or evaluation, and (ii) based upon his observations, that probable cause exists to  
311 believe that the person meets the criteria for emergency custody as stated in this section. The period of  
312 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

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

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

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

331 L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing,  
332 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency  
333 custody order issued pursuant to this section. In any case in which an order for temporary detention for  
334 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody  
335 order, the person may be detained by a hospital emergency room or other appropriate facility for testing,  
336 observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an

337 order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing,  
338 observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility  
339 in which the person is detained shall notify the nearest community services board or certified evaluator, and  
340 the designee of the community services board or certified evaluator shall, as soon as is practicable and prior  
341 to the expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation  
342 of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809. The (i)  
343 certified evaluator conducting the evaluation pursuant to subsection B and § 37.2-809 or (ii) hospital  
344 emergency department and treating physician or other health care provider designated by the physician shall  
345 allow a family member or legal guardian of the individual subject to evaluation who is present, and who may  
346 provide support and supportive decision-making, to be present with the individual unless the individual  
347 objects or the evaluator or treating physician determines that the presence of any such person would create a  
348 medical, clinical, or safety risk to the patient or health care provider or interferes with patient care. No  
349 provision of this section shall delay the process of the patient receiving treatment.

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

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

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

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

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

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

370 S. For purposes of this section:

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

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

373 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to  
374 §§ 15.2-1731 and 15.2-1733, except for the purposes of subsection G.

375 **§ 37.2-808. (Effective July 1, 2026) Emergency custody; issuance and execution of order.**

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

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

394 B. Any person for whom an emergency custody order is issued shall be taken into custody and transported  
395 to a convenient location to be evaluated to determine whether the person meets the criteria for temporary  
396 detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall  
397 be made by a person designated by the community services board who is skilled in the diagnosis and

398 treatment of mental illness and who has completed a certification program approved by the Department.

399 C. The magistrate or court issuing an emergency custody order shall specify the primary law-enforcement  
400 agency and jurisdiction to execute the emergency custody order and provide transportation. However, the  
401 magistrate or court shall authorize transportation by an alternative transportation provider in accordance with  
402 this section, whenever an alternative transportation provider is identified to the magistrate or court, which  
403 may be a person, facility, or agency, including a family member or friend of the person who is the subject of  
404 the order, a representative of the community services board, or other transportation provider with personnel  
405 trained to provide transportation in a safe manner, upon determining, following consideration of information  
406 provided by the petitioner; the community services board or its designee; the local law-enforcement agency,  
407 if any; the person's treating physician, if any; or other persons who are available and have knowledge of the  
408 person, and, when the magistrate or court deems appropriate, the proposed alternative transportation provider,  
409 either in person or via two-way electronic video and audio or telephone communication system, that the  
410 proposed alternative transportation provider is available to provide transportation, willing to provide  
411 transportation, and able to provide transportation in a safe manner.

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

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

427 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the  
428 magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by the  
429 community services board that designated the person to perform the evaluation required in subsection B to  
430 execute the order and, in cases in which transportation is ordered to be provided by the primary law-  
431 enforcement agency, provide transportation. If the community services board serves more than one  
432 jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the particular  
433 jurisdiction within the community services board's service area where the person who is the subject of the  
434 emergency custody order was taken into custody or, if the person has not yet been taken into custody, the  
435 primary law-enforcement agency from the jurisdiction where the person is presently located to execute the  
436 order and provide transportation.

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

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

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

456 hours from the time the law-enforcement officer takes the person into custody.

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

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

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

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

482 L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing,  
483 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency  
484 custody order issued pursuant to this section. In any case in which an order for temporary detention for  
485 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody

486 order, the person may be detained by a hospital emergency room or other appropriate facility for testing,  
487 observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an  
488 order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing,  
489 observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility  
490 in which the person is detained shall notify the nearest community services board, and the designee of the  
491 community services board shall, as soon as is practicable and prior to the expiration of the order for  
492 temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he  
493 meets the criteria for temporary detention pursuant to § 37.2-809. The (i) evaluator conducting the evaluation  
494 pursuant to subsection B and § 37.2-809 or (ii) hospital emergency department and treating physician or other  
495 health care provider designated by the physician shall allow a family member or legal guardian of the  
496 individual subject to evaluation who is present, and who may provide support and supportive  
497 decision-making, to be present with the individual unless the individual objects or the evaluator or treating  
498 physician determines that the presence of any such person would create a medical, clinical, or safety risk to  
499 the patient or health care provider or interferes with patient care. No provision of this section shall delay the  
500 process of the patient receiving treatment.

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

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

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

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

513 Q. An employee or contractor of an entity providing alternative transportation services pursuant to a  
514 contract with the Department who has completed training approved by the Department in the proper and safe  
515 use of restraint may use restraint (i) if restraint is necessary to ensure the safety of the person or others or

516 prevent escape and (ii) if less restrictive techniques have been determined to be ineffective to protect the  
517 person or others from harm or to prevent escape.

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

521 S. For purposes of this section:

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

523 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to  
524 §§ 15.2-1731 and 15.2-1733, except for the purposes of subsection G.

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