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HOUSE BILL NO. 159

Offered January 12, 2022

Prefiled January 9, 2022

A BILL to amend and reenact §§ 16.1-340, 16.1-340.1, 37.2-808, 37.2-809, and 37.2-829 of the Code of Virginia, relating to emergency custody and temporary detention orders; custody.

Patrons—Byron and Walker

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-340, 16.1-340.1, 37.2-808, 37.2-809, and 37.2-829 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-340. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion, an emergency custody order when he has probable cause to believe that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law. To the extent possible, the petition shall contain the information required by § 16.1-339.1.

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

B. Any minor for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location, *which shall take custody of the minor in accordance with subsection E*, to be evaluated to determine whether he meets the criteria for temporary detention pursuant to § 16.1-340.1 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board serving the area in which the minor is located who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board

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

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

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

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

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

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

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

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

118 J. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from
119 obtaining emergency medical treatment or further medical evaluation at any time for a minor in his
120 custody as provided in this section.

K. The minor shall remain in *the custody of the facility or location to which custody of the minor was transferred pursuant to subsection E* until a temporary detention order is issued, until the minor is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution.

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

M. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if the minor is detained in a state facility pursuant to subsection D of § 16.1-340.1, the state facility and an employee or designee of the community services board may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the minor.

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

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

§ 16.1-340.1. Involuntary temporary detention; issuance and execution of order.

A. A magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 16.1-345.1 by an employee or designee of the local community services board to determine whether the minor meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician, clinical psychologist, or clinical social worker treating the person, that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. The magistrate shall also consider the recommendations of the minor's parents and of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. To the extent possible, the petition shall contain the information required by § 16.1-339.1. Any temporary detention order entered pursuant to this section shall be effective until such time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is located conducts a hearing pursuant to subsection B of § 16.1-341. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law.

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

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

D. An employee or designee of the local community services board shall determine the facility of temporary detention in accordance with the provisions of § 16.1-340.1:1 for all minors detained pursuant to this section. An employee or designee of the local community services board may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the minor given the specific security, medical, or behavioral health needs of the minor. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary detention, transportation of the minor to

the alternative facility of temporary detention shall be provided in accordance with the provisions of § 16.1-340.2. The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board designates an alternative facility, that employee or designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the provisions of § 16.1-340.1:1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall be detained in a state facility for the treatment of minors with mental illness and such facility shall be indicated on the temporary detention order. Except for minors who are detained for a criminal offense by a juvenile and domestic relations district court and who require hospitalization in accordance with this article, the minor shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement *the facility or location to which custody of the minor was transferred pursuant to subsection E of § 16.1-340* until the minor is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by either the initial facility of temporary detention identified in the temporary detention order or by the alternative facility of temporary detention designated by the employee or designee of the local community services board pursuant to this subsection.

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

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

G. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 16.1-342, preparation of the preadmission screening report required by § 16.1-340.4, and initiation of mental health treatment to stabilize the minor's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 96 hours prior to a hearing. If the 96-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the minor may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal holiday. The minor may be released, pursuant to § 16.1-340.3, before the 96-hour period herein specified has run.

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

I. For purposes of this section a healthcare provider or an employee or designee of the local community services board shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

J. The employee or designee of the local community services board who is conducting the evaluation pursuant to this section shall, if he recommends that the minor should not be subject to a temporary detention order, inform the petitioner and an on-site treating physician of his recommendation.

K. Each community services board shall provide to each juvenile and domestic relations district court and magistrate's office within its service area a list of employees and designees who are available to perform the evaluations required herein.

§ 37.2-808. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody order

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

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

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

C. The magistrate or court issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate or court shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate or court, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate or court deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

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

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

305 taken into custody, the primary law-enforcement agency from the jurisdiction where the person is
306 presently located to execute the order and provide transportation.

307 E. The law-enforcement agency or alternative transportation provider providing transportation
308 pursuant to this section may transfer custody of the person to the facility or location to which the person
309 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed
310 to provide the level of security necessary to protect both the person and others from harm; (ii) is
311 actually capable of providing the level of security necessary to protect the person and others from harm;
312 and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an
313 agreement or memorandum of understanding with the law-enforcement agency setting forth the terms
314 and conditions under which it will accept a transfer of custody, provided, however, that the *shall accept*
315 *custody of the person from the law-enforcement agency or alternative transportation provider*
316 *immediately upon completion of transportation and arrival of the person at the facility or location. The*
317 *facility or location may* shall not require the law-enforcement agency to pay any fees or costs for the
318 transfer of custody.

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

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

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

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

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

349 K. The person shall remain ~~in~~ *subject to the emergency custody order* until (i) a temporary detention
350 order is issued in accordance with § 37.2-809.; (ii) an order for temporary detention for observation,
351 testing, or treatment is entered in accordance with § 37.2-1104; ~~ending law enforcement custody;~~ (iii)
352 the person is released; or (iv) the emergency custody order expires. An emergency custody order shall
353 be valid for a period not to exceed eight hours from the time of execution.

354 L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing,
355 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency
356 custody order issued pursuant to this section. In any case in which an order for temporary detention for
357 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody
358 order, the person may be detained by a hospital emergency room or other appropriate facility for testing,
359 observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of
360 an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of
361 testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other
362 appropriate facility in which the person is detained shall notify the nearest community services board,
363 and the designee of the community services board shall, as soon as is practicable and prior to the
364 expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of
365 the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

366 M. Any person taken into emergency custody pursuant to this section shall be given a written

summary of the emergency custody procedures and the statutory protections associated with those procedures.

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

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

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

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

§ 37.2-809. Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section:

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

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

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

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

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

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

E. An employee or a designee of the local community services board shall determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained

428 pursuant to this section. An employee or designee of the local community services board may change
429 the facility of temporary detention and may designate an alternative facility for temporary detention at
430 any point during the period of temporary detention if it is determined that the alternative facility is a
431 more appropriate facility for temporary detention of the individual given the specific security, medical,
432 or behavioral health needs of the person. In cases in which the facility of temporary detention is
433 changed following transfer of custody to an initial facility of temporary custody, transportation of the
434 individual to the alternative facility of temporary detention shall be provided in accordance with the
435 provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the
436 preadmission screening report and indicated on the temporary detention order; however, if an employee
437 or designee of the local community services board designates an alternative facility, that employee or
438 designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the
439 Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative
440 facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be
441 identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the
442 individual shall be detained in a state facility for the treatment of individuals with mental illness and
443 such facility shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for
444 inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall
445 not be detained in a jail or other place of confinement for persons charged with criminal offenses and
446 shall remain in the custody of law enforcement *the facility or location to which custody of the person*
447 *was transferred pursuant to subsection E of § 37.2-808* until the person is either detained within a
448 secure facility or custody has been accepted by the appropriate personnel designated by either the initial
449 facility of temporary detention identified in the temporary detention order or by the alternative facility of
450 temporary detention designated by the employee or designee of the local community services board
451 pursuant to this subsection. The person detained or in custody pursuant to this section shall be given a
452 written summary of the temporary detention procedures and the statutory protections associated with
453 those procedures.

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

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

468 H. The duration of temporary detention shall be sufficient to allow for completion of the examination
469 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and
470 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary
471 commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period
472 herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully
473 closed, the person may be detained, as herein provided, until the close of business on the next day that
474 is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The person may
475 be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

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

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

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

L. If the employee or designee of the community services board who is conducting the evaluation pursuant to this section recommends that the person should not be subject to a temporary detention order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if such person is present, and an onsite treating physician of his recommendation; (ii) promptly inform such person who initiated emergency custody that the community services board will facilitate communication between the person and the magistrate if the person disagrees with recommendations of the employee or designee of the community services board who conducted the evaluation and the person who initiated emergency custody so requests; and (iii) upon prompt request made by the person who initiated emergency custody, arrange for such person who initiated emergency custody to communicate with the magistrate as soon as is practicable and prior to the expiration of the period of emergency custody. The magistrate shall consider any information provided by the person who initiated emergency custody and any recommendations of the treating or examining physician and the employee or designee of the community services board who conducted the evaluation and consider such information and recommendations in accordance with subsection B in making his determination to issue a temporary detention order. The individual who is the subject of emergency custody shall remain in the custody of law enforcement or a designee of law enforcement *the facility or location to which custody of the person was transferred pursuant to subsection E of § 37.2-808* and shall not be released from emergency custody until communication with the magistrate pursuant to this subsection has concluded and the magistrate has made a determination regarding issuance of a temporary detention order.

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

§ 37.2-829. Transportation of person in civil admission process.

When a person has volunteered for admission pursuant to § 37.2-814 or been ordered to be admitted to a facility under §§ 37.2-815 through 37.2-821, the judge or special justice shall determine after consideration of information provided by the person's treating mental health professional and any involved community services board or behavioral health authority staff regarding the person's dangerousness, whether transportation shall be provided by the ~~sheriff~~ *primary law-enforcement agency for the jurisdiction where the person resides* or may be provided by an alternative transportation provider, including a family member or friend of the person, a representative of the community services board, a representative of the facility at which the person was detained pursuant to a temporary detention order, or other alternative transportation provider with personnel trained to provide transportation in a safe manner. If the judge or special justice determines that transportation may be provided by an alternative transportation provider, the judge or special justice may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. If the judge or special justice finds that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the judge or special justice may order transportation by the proposed alternative transportation provider. In all other cases, the judge or special justice shall order transportation by the ~~sheriff of primary law-enforcement agency for the jurisdiction where the person is a resident resides~~ *unless the sheriff's office of that jurisdiction such law-enforcement agency is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where any case in which the sheriff of primary law-enforcement agency for the jurisdiction of in which the person is a resident resides is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of primary law-enforcement agency for the latter jurisdiction in which the proceedings took place* to transport the person.

If the judge or special justice determines that the person requires transportation by ~~the sheriff a primary law-enforcement agency in accordance with this subsection~~, the person may be delivered to the care of ~~the sheriff, as specified in this section, who such primary law-enforcement agency~~, which shall transport the person to the proper facility.

In no event shall transport commence later than six hours after notification to the ~~sheriff primary law-enforcement agency~~ or alternative transportation provider of the judge's or special justice's order.

If any state hospital has become too crowded to admit any ~~such~~ *person who is subject to a temporary detention order*, the Commissioner shall give notice of the fact to all community services

551 boards and shall designate the facility to which ~~sheriffs~~ *a primary law-enforcement agency* or alternative
552 transportation ~~providers~~ *provider* shall transport such persons.

553 If an alternative transportation provider providing transportation of a person becomes unable to
554 continue providing transportation of the person at any time after taking custody of the person, the
555 primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is
556 located at the time he becomes unable to continue providing transportation shall take custody of the
557 person and shall transport the person to the proper facility.

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