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HOUSE BILL NO. 163

Offered January 12, 2022

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A BILL to amend and reenact §§ 16.1-340, 16.1-340.1, 16.1-340.1:1, 16.1-340.2, 37.2-808, 37.2-809, 37.2-809.1, 37.2-810, 37.2-829, and 37.2-1104 of the Code of Virginia, relating to emergency custody and temporary detention; transportation and custody.

Patron—Ransone

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-340, 16.1-340.1, 16.1-340.1:1, 16.1-340.2, 37.2-808, 37.2-809, 37.2-809.1, 37.2-810, 37.2-829, and 37.2-1104 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 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 of the minor. Such emergency~~
66 ~~medical evaluation~~ shall be conducted ~~or emergency medical treatment provided~~ immediately in
67 accordance with state and federal law. Transportation under this section shall ~~also~~ include transportation
68 to a medical facility for a medical evaluation if a physician at the hospital in which the minor subject to
69 the emergency custody order may be detained requires a medical evaluation prior to admission. *The*
70 *provision of emergency medical evaluation or treatment or medical evaluation necessary for admission*
71 *to a hospital shall not toll the running of the period of emergency custody.*

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

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

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

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

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

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

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

custody as provided in this section. *The provision of emergency medical treatment or further medical evaluation shall not toll the running of the period of emergency custody.*

K. The minor shall remain in custody 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. *An emergency custody order shall not be extended, and no successive emergency custody order for the person shall be entered. If no temporary detention order is issued in accordance with § 16.1-340.1 prior to the expiration of the period of emergency custody pursuant to subsection G or H, the minor shall be released to the custody of his parent or guardian.*

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 irreparable 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~~

182 of temporary detention and may designate an alternative facility for temporary detention at any point
183 during the period of temporary detention if it is determined that the alternative facility is a more
184 appropriate facility for temporary detention of the minor given the specific security, medical, or
185 behavioral health needs of the minor. In cases in which the facility of temporary detention is changed
186 following transfer of custody to an initial facility of temporary detention, transportation of the minor to
187 the alternative facility of temporary detention shall be provided in accordance with the provisions of
188 § 16.1-340.2. The initial facility of temporary detention shall be identified on the preadmission screening
189 report and indicated on the temporary detention order; however, if an employee or designee of the local
190 community services board designates an alternative facility, that employee or designee shall provide
191 written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of
192 Virginia, to the clerk of the issuing court of the name and address of the alternative facility. *The*
193 *magistrate shall not issue a temporary detention order until a facility of temporary detention that is*
194 *ready and able to accept the minor upon issuance of the order has been identified. Such facility shall*
195 *accept custody of the minor immediately upon completion of transportation and arrival of the minor at*
196 *the facility and prior to the expiration of the eight-hour period of emergency custody specified in*
197 *subsections G, H, and K of § 16.1-340.*

198 Subject to the provisions of § 16.1-340.1:1, if a facility of temporary detention *that is ready and able*
199 *to accept custody of the minor upon issuance of the temporary detention order* cannot be identified by
200 the time of the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall be
201 detained in a state facility for the treatment of minors with mental illness and such facility shall be
202 indicated on the temporary detention order. *The state facility shall accept custody of the minor*
203 *immediately upon completion of transportation and arrival of the minor at the facility, and prior to the*
204 *expiration of the eight-hour period of emergency custody specified in subsections G, H, and K of*
205 *§ 16.1-340.*

206 *An employee or designee of the local community services board may change the facility of temporary*
207 *detention and may designate an alternative facility for temporary detention at any point during the*
208 *period of temporary detention if it is determined that the alternative facility is a more appropriate*
209 *facility for temporary detention of the minor given the specific security, medical, or behavioral health*
210 *needs of the minor. In cases in which the facility of temporary detention is changed following transfer of*
211 *custody to an initial facility of temporary detention, transportation of the minor to the alternative facility*
212 *of temporary detention shall be provided in accordance with the provisions of § 16.1-340.2. The initial*
213 *facility of temporary detention shall be identified on the preadmission screening report and indicated on*
214 *the temporary detention order; however, if an employee or designee of the local community services*
215 *board designates an alternative facility, that employee or designee shall provide written notice forthwith,*
216 *on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the*
217 *issuing court of the name and address of the alternative facility.*

218 Except for minors who are detained for a criminal offense by a juvenile and domestic relations
219 district court and who require hospitalization in accordance with this article, the minor shall not be
220 detained in a jail or other place of confinement for persons charged with criminal offenses and shall
221 remain in the custody of law enforcement until the minor is either detained within a secure facility or
222 custody has been accepted by the appropriate personnel designated by either the initial facility of
223 temporary detention identified in the temporary detention order or by the alternative facility of
224 temporary detention designated by the employee or designee of the local community services board
225 pursuant to this subsection.

226 *If a facility of temporary detention or state facility fails or refuses to immediately accept custody of a*
227 *minor upon completion of transportation and arrival of the minor at such facility, the temporary*
228 *detention order shall be deemed void, and the minor shall be released to the custody of his parent or*
229 *guardian.*

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

238 F. The employee or designee of the local community services board who is conducting the evaluation
239 pursuant to this section shall determine, prior to the issuance of the temporary detention order, the
240 insurance status of the minor. Where coverage by a third party payor exists, the facility seeking
241 reimbursement under this section shall first seek reimbursement from the third party payor. The
242 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances
243 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 period of temporary detention shall begin upon acceptance of custody of the minor by the facility of temporary detention.* 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, *provided that the initial order remains unexecuted.* 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~~ *health care* 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.

§ 16.1-340.1:1. Facility of temporary detention.

A. In each case in which an employee or designee of the local community services board is required to make an evaluation of a minor pursuant to subsection B, G, or H of § 16.1-340, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the minor will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 16.1-340. Upon completion of the evaluation, the employee or designee of the local community services board shall convey to the state facility information about the minor necessary to allow the state facility to determine the services the minor will require upon admission.

B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to *take custody of the minor immediately upon completion of transportation and arrival of the minor at the facility and* provide temporary detention and appropriate care to the minor, which may include another state facility if the state facility notified in accordance with subsection A is unable to *take custody of the minor immediately upon completion of transportation and arrival of the minor at the facility and* provide temporary detention and appropriate care for the minor. Under no circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for temporary detention pursuant to § 16.1-340.1 *immediately upon completion of transportation and arrival of the minor at the facility* unless an alternative facility that is able to *take custody of the minor immediately upon completion of transportation and arrival of the minor at the facility* and provide temporary detention and appropriate care ~~agrees to accept the minor for temporary detention, and the~~ *has been identified.* The minor shall not during the duration of the temporary detention order be released from custody *of the facility* except for purposes of transporting the minor to the state facility or alternative facility in accordance with the provisions of § 16.1-340.2. If an alternative facility is identified and agrees to accept the minor for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the State Board of Behavioral Health and Developmental Services.

D. *The minor shall not be held in the custody of law enforcement during any portion of the period of temporary detention, except that the minor may be held in the custody of law enforcement for the*

305 *purpose of transporting the minor pursuant to § 16.1-340.2.*

306 **§ 16.1-340.2. Transportation of minor in the temporary detention process.**

307 A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
308 the magistrate shall specify in the temporary detention order the law-enforcement agency of the
309 jurisdiction in which the minor resides to execute the order and, in cases in which transportation is
310 ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the
311 nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest
312 boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the
313 jurisdiction in which the minor is located shall execute the order and provide transportation.

314 B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to
315 execute the order and provide transportation. However, the magistrate may authorize transportation by an
316 alternative transportation provider, including a parent, family member, or friend of the minor who is the
317 subject of the temporary detention order, a representative of the community services board, or other
318 transportation provider with personnel trained to provide transportation in a safe manner upon
319 determining, following consideration of information provided by the petitioner; the community services
320 board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or
321 other persons who are available and have knowledge of the minor, and, when the magistrate deems
322 appropriate, the proposed alternative transportation provider, either in person or via two-way electronic
323 video and audio or telephone communication system, that the proposed alternative transportation
324 provider is available to provide transportation, willing to provide transportation, and able to provide
325 transportation in a safe manner. When transportation is ordered to be provided by an alternative
326 transportation provider, the magistrate shall order the specified primary law-enforcement agency to
327 execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative
328 transportation provider identified in the order.

329 In such cases any case in which a magistrate authorizes transportation of a minor subject to a
330 temporary detention order by an alternative transportation provider, a copy of the temporary detention
331 order shall accompany the minor being transported pursuant to this section at all times and shall be
332 delivered by the alternative transportation provider to the temporary detention facility. The temporary
333 detention facility shall return a copy of the temporary detention order to the court designated by the
334 magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative
335 transportation provider and return of an order to the court may be accomplished electronically or by
336 facsimile.

337 The order may include transportation of the minor to such other medical facility as may be necessary
338 to obtain further medical evaluation or treatment prior to placement as required by a physician at the
339 admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or
340 alternative transportation provider from obtaining emergency medical treatment or further medical
341 evaluation at any time for a minor in his custody as provided in this section. Such medical evaluation or
342 treatment shall be conducted immediately in accordance with state and federal law. *The provision of*
343 *emergency medical treatment or further medical evaluation shall not toll the running of the period of*
344 *temporary detention.*

345 C. If an alternative transportation provider providing transportation of a minor who is the subject of a
346 temporary detention order becomes unable to continue providing transportation of the minor at any time
347 after taking custody of the minor, the primary law-enforcement agency for the jurisdiction in which the
348 alternative transportation provider is located at the time he becomes unable to continue providing
349 transportation shall take custody of the minor and shall transport the minor to the facility of temporary
350 detention. In such cases, (i) a copy of the temporary detention order shall accompany the minor being
351 transported and shall be delivered to and returned by the temporary detention facility in accordance with
352 the provisions of subsection B and (ii) if the alternative transportation provider originally authorized to
353 provide transportation is a person other than the minor's parent, the alternative transportation provider
354 shall notify the minor's parent (a) that the primary law-enforcement agency for the jurisdiction in which
355 he is located has taken custody of the minor and is transporting the minor to the facility of temporary
356 detention and (b) of the name of the law-enforcement officer providing transportation of the minor.

357 D. In cases in which an alternative facility of temporary detention is identified and the
358 law-enforcement agency or alternative transportation provider identified to provide transportation in
359 accordance with subsection B continues to have custody of the minor, the local law-enforcement agency
360 or alternative transportation provider shall transport the minor to the alternative facility of temporary
361 detention identified by the employee or designee of the local community services board. In cases in
362 which an alternative facility of temporary detention is identified and custody of the minor has been
363 transferred from the law-enforcement agency or alternative transportation provider that provided
364 transportation in accordance with subsection B to the initial facility of temporary detention, the
365 employee or designee of the local community services board shall request, and a magistrate may enter
366 an order specifying, an alternative transportation provider or, if no alternative transportation provider is

available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the minor resides or, if the nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor is located, to provide transportation. *The alternative facility of temporary detention shall accept custody of the minor immediately upon completion of transportation and arrival of the minor at the facility, and the period during which the minor is in the custody of law enforcement shall not exceed the amount of time necessary to complete transportation of the minor. If the alternative facility of temporary detention fails to accept custody of the minor immediately upon completion of transportation and arrival of the minor at the facility, the temporary detention order shall be void and the minor shall be released to the custody of his parent or guardian.*

E. The magistrate may change the transportation provider specified in a temporary detention order at any time prior to the initiation of transportation of a minor who is the subject of a temporary detention order pursuant to this section. If the designated transportation provider is changed by the magistrate at any time after the temporary detention order has been executed but prior to the initiation of transportation, the transportation provider having custody of the minor shall transfer custody of the minor to the transportation provider subsequently specified to provide transportation. For the purposes of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative transportation provider.

F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

G. 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.

§ 37.2-808. 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 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 (i) specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and ~~provide~~ (ii) ~~designate a transportation provider. However, In determining the transportation provider, the magistrate or court shall consider any request to authorize transportation by an all options for 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.~~ 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 an~~ alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, ~~the magistrate or court shall designate such alternative transportation provider to provide transportation of the person. If no alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate or court shall designate the primary law-enforcement agency and jurisdiction designated to execute the emergency custody order to provider transportation of the person.~~

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 *such* medical facility as may be necessary to obtain emergency medical evaluation or treatment ~~that of the person. Such emergency medical evaluation shall be conducted or emergency medical treatment provided~~ immediately in accordance with state and federal law. Transportation under this section shall *also* 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. ~~The provision of emergency medical evaluation or treatment or medical evaluation necessary for admission to a hospital shall not toll the running of the period of emergency custody.~~

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

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

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

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

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

I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. *The provision of emergency medical treatment or medical evaluation shall not toll the running of the period of emergency custody.*

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

K. The person shall remain in custody until (i) a temporary detention order is issued in accordance with § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) 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. *An emergency custody order shall not be extended, and no successive emergency custody orders shall be entered. If no temporary detention is issued in accordance with § 37.2-809 or order for temporary detention for observation, testing, or treatment is issued in accordance with § 37.2-1104 prior to the expiration of the eight-hour period of emergency custody pursuant to subsection G or H, the person shall be released from custody and returned to the jurisdiction in which he was located when the emergency custody order was executed.*

L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency custody order issued pursuant to this section. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order, the law-enforcement officer or alternative transportation provider shall transport the person and transfer custody of the person to the hospital emergency department or other appropriate facility specified in the order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104. A person who is subject to an order for temporary custody for testing, observation, or treatment pursuant to § 37.2-1104 may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility in which the person is detained shall notify the nearest community services board, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809. *If an order for temporary detention is ordered pursuant to § 37.2-809, the law-enforcement agency or alternative transportation provider that initially provided transportation of the person to the hospital emergency department or other appropriate facility for testing, observation, or treatment shall resume custody of the person prior to expiration of the order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 and shall transport the person to the facility designated in the order for temporary detention pursuant to § 37.2-809. No law-enforcement officer or alternative transportation provider shall be required to remain with the person during the period of temporary detention for testing, observation, or treatment pursuant to § 37.2-1104.*

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

551 an employee or designee of the community services board as defined in § 37.2-809 may, for an
552 additional four hours, continue to attempt to identify an alternative facility that is able and willing to
553 provide temporary detention and appropriate care to the individual.

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

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

559 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

560 A. For the purposes of this section:

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

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

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

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

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

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

603 E. An employee or a designee of the local community services board shall determine the facility of
604 temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained
605 pursuant to this section. ~~An employee or designee of the local community services board may change~~
606 ~~the facility of temporary detention and may designate an alternative facility for temporary detention at~~
607 ~~any point during the period of temporary detention if it is determined that the alternative facility is a~~
608 ~~more appropriate facility for temporary detention of the individual given the specific security, medical,~~
609 ~~or behavioral health needs of the person. In cases in which the facility of temporary detention is~~
610 ~~changed following transfer of custody to an initial facility of temporary custody, transportation of the~~
611 ~~individual to the alternative facility of temporary detention shall be provided in accordance with the~~
612 ~~provisions of § 37.2-810. 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. *The magistrate shall not issue a temporary detention order until a facility of temporary detention that is ready and able to accept the person upon issuance of the order has been identified. Such facility shall accept custody of the person immediately upon completion of transportation and arrival of the person at the facility and prior to the expiration of the eight-hour period specified in subsections G, H, and K of § 37.2-808.*

Subject to the provisions of § 37.2-809.1, if a facility of temporary detention *that is ready and able to accept custody of the person upon issuance of the temporary detention order* cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the individual shall be detained in a state facility for the treatment of individuals with mental illness and such facility shall be indicated on the temporary detention order. *The state facility shall accept custody of the person immediately upon completion of transportation and arrival of the person at the state facility and prior to the expiration of the eight-hour period specified in subsections G, H, and K of § 37.2-808.*

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 individual given the specific security, medical, or behavioral health needs of the person. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary custody, transportation of the individual to the alternative facility of temporary detention shall be provided in accordance with the provisions of § 37.2-810. 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.

Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person 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 until the person 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.

If a facility of temporary detention, including a state facility, fails or refuses to accept custody of the person immediately upon completion of transportation and arrival of the person at such facility, the temporary detention order shall be deemed void, and the person shall be released from custody and returned to the jurisdiction in which he was located when the emergency custody order was executed pursuant to § 37.2-808.

The person detained or in custody pursuant to this section shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures.

F. Any facility caring for a person 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 person 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.

G. The employee or the 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 person. 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.

H. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully

674 closed, the person may be detained, as herein provided, until the close of business on the next day that
675 is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. *The period of*
676 *temporary detention shall begin upon acceptance of custody of the person by the facility of temporary*
677 *detention.* The person may be released, pursuant to § 37.2-813, before the 72-hour period herein
678 specified has run.

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

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

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

697 L. If the employee or designee of the community services board who is conducting the evaluation
698 pursuant to this section recommends that the person should not be subject to a temporary detention
699 order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency
700 custody if such person is present, and an onsite treating physician of his recommendation; (ii) promptly
701 inform such person who initiated emergency custody that the community services board will facilitate
702 communication between the person and the magistrate if the person disagrees with recommendations of
703 the employee or designee of the community services board who conducted the evaluation and the person
704 who initiated emergency custody so requests; and (iii) upon prompt request made by the person who
705 initiated emergency custody, arrange for such person who initiated emergency custody to communicate
706 with the magistrate as soon as is practicable and prior to the expiration of the period of emergency
707 custody. The magistrate shall consider any information provided by the person who initiated emergency
708 custody and any recommendations of the treating or examining physician and the employee or designee
709 of the community services board who conducted the evaluation and consider such information and
710 recommendations in accordance with subsection B in making his determination to issue a temporary
711 detention order. The individual who is the subject of emergency custody shall remain in the custody of
712 law enforcement or a designee of law enforcement and shall not be released from emergency custody
713 until communication with the magistrate pursuant to this subsection has concluded and the magistrate
714 has made a determination regarding issuance of a temporary detention order. *However, in no case shall*
715 *the individual remain in the custody of law enforcement for a period longer than the period of*
716 *emergency custody specified in § 37.2-808.*

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

720 **§ 37.2-809.1. Facility of temporary detention.**

721 A. In each case in which an employee or designee of the local community services board as defined
722 in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of
723 § 37.2-808, an employee or designee of the local community services board shall, upon being notified of
724 the need for such evaluation, contact the state facility for the area in which the community services
725 board is located and notify the state facility that the individual will be transported to the facility upon
726 issuance of a temporary detention order if no other facility of temporary detention can be identified by
727 the time of the expiration of the period of emergency custody pursuant to § 37.2-808. Upon completion
728 of the evaluation, the employee or designee of the local community services board shall convey to the
729 state facility information about the individual necessary to allow the state facility to determine the
730 services the individual will require upon admission.

731 B. A state facility may, following the notice in accordance with subsection A, conduct a search for
732 an alternative facility that is able and willing to *take custody of the person immediately upon completion*
733 *of transportation and the arrival of the person at the facility and* provide temporary detention and
734 appropriate care to the individual, which may include another state facility if the state facility notified in
735 accordance with subsection A is unable to *take custody of the person immediately upon completion of*

transportation and the arrival of the person at the facility and provide temporary detention and appropriate care for the individual. Under no circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary detention pursuant to § 37.2-809 immediately upon completion of transportation and the arrival of the person at the facility unless an alternative facility that is able to take custody of the individual immediately upon completion of transportation and the arrival of the person at such alternative facility and provide temporary detention and appropriate care agrees to accept the individual for temporary detention and the has been identified. The individual shall not during the duration of the temporary detention order be released from custody of the facility except for purposes of transporting the individual to the state facility or alternative facility in accordance with the provisions of § 37.2-810. If an alternative facility is identified and agrees to accept the individual for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the Board.

D. The person shall not be held in the custody of law enforcement during any portion of the period of temporary detention, except that the person may be held in the custody of law enforcement for purposes of transportation of the person pursuant to § 37.2-810.

§ 37.2-810. Transportation of person in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to provide transportation, to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall (i) specify the law-enforcement agency to execute the order and provide (ii) designate the transportation provider. However,

In determining the transportation provider, the magistrate shall consider any request to authorize transportation by an all options for alternative transportation provider in accordance with this section; whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the temporary detention order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner upon. 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 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 an alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall designate such alternative transportation provider to provide transportation. If no alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall designate the primary law-enforcement agency and jurisdiction designated to execute the temporary detention order to provide transportation of the person. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified 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 temporary detention 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 temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate 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.

The order may include transportation of the person to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law. The provision of

797 *emergency medical treatment or medical evaluation shall not toll the running of the period of emergency*
798 *custody.*

799 C. If an alternative transportation provider providing transportation of a person who is the subject of
800 a temporary detention order becomes unable to continue providing transportation of the person at any
801 time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in
802 which the alternative transportation provider is located at the time he becomes unable to continue
803 providing transportation shall take custody of the person and shall transport the person to the facility of
804 temporary detention. In such cases, a copy of the temporary detention order shall accompany the person
805 being transported and shall be delivered to and returned by the temporary detention facility in
806 accordance with the provisions of subsection B.

807 D. In cases in which an alternative facility of temporary detention is identified and the
808 law-enforcement agency or alternative transportation provider identified to provide transportation in
809 accordance with subsection B continues to have custody of the person, the local law-enforcement agency
810 or alternative transportation provider shall transport the person to the alternative facility of temporary
811 detention identified by the employee or designee of the community services board. In cases in which an
812 alternative facility of temporary detention is identified and custody of the person has been transferred
813 from the law-enforcement agency or alternative transportation provider that provided transportation in
814 accordance with subsection B to the initial facility of temporary detention, the employee or designee of
815 the community services board shall request, and a magistrate may enter an order specifying, an
816 alternative transportation provider or, if no alternative transportation provider is available, willing, and
817 able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in
818 which the person resides or, if the nearest boundary of the jurisdiction in which the person resides is
819 more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the
820 law-enforcement agency of the jurisdiction in which the person is located, to provide transportation. *The*
821 *alternative facility of temporary detention shall accept custody of the person immediately upon*
822 *completion of transportation and arrival of the person at the facility, and the period during which the*
823 *person is in the custody of law enforcement shall not exceed the amount of time necessary to complete*
824 *transportation of the person. If the alternative facility of temporary detention fails to accept custody of*
825 *the person immediately upon completion of transportation and arrival of the person at the facility, the*
826 *temporary detention order shall be void and the person shall be released and returned to the*
827 *jurisdiction in which he was located when the emergency custody order pursuant to § 37.2-808 was*
828 *executed.*

829 E. The magistrate may change the transportation provider specified in a temporary detention order at
830 any time prior to the initiation of transportation of a person who is the subject of a temporary detention
831 order pursuant to this section. If the designated transportation provider is changed by the magistrate at
832 any time after the temporary detention order has been executed but prior to the initiation of
833 transportation, the transportation provider having custody of the person shall transfer custody of the
834 person to the transportation provider subsequently specified to provide transportation. For the purposes
835 of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative
836 transportation provider.

837 F. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the
838 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing
839 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into
840 agreements to facilitate the execution of temporary detention orders and provide transportation.

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

844 **§ 37.2-829. Transportation of person in civil admission process.**

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

If the judge or special justice determines that the person requires transportation by the sheriff, the person may be delivered to the care of the sheriff, as specified in this section, who shall transport the person to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff 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, the Commissioner shall give notice of the fact to all community services boards and shall designate the facility to which sheriffs or alternative transportation providers shall transport such persons. *The designated facility shall accept custody of any person transported to such facility pursuant to this subsection immediately upon completion of transportation and arrival of the person at the facility. If the designated facility fails to accept custody of the person immediately upon completion of transportation and arrival of the person at the facility, the temporary detention order shall be void and the person shall be released and returned to the jurisdiction in which he was located when the emergency custody order pursuant to § 37.2-808 was executed.*

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

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.

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

A. As used in this section, "mental or physical condition" includes intoxication.

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

C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order.

D. A court or, if the court is unavailable, a magistrate serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if such person meets the criteria set forth in subsection B. ~~In any case in which an order for temporary detention for~~ *Upon issuance of an order authorizing temporary detention for testing, observation, or treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, the law-enforcement officer or alternative transportation provider designated to provide transportation of the person pursuant to § 37.2-809 shall transport the person and transfer custody of the person to the hospital emergency department or other facility specified in the order authorizing temporary detention for testing, observation, or treatment. Upon completion of testing, observation, or treatment is issued for* of a person who is also the subject of an emergency custody order pursuant to § 37.2-808, the hospital emergency

920 room or other appropriate facility in which the person is detained for testing, observation, or treatment
921 shall notify the nearest community services board when such testing, observation, or treatment is
922 complete, and the designee of the community services board shall, as soon as is practicable and prior to
923 the expiration of the order for temporary detention issued pursuant to subsection B, conduct an
924 evaluation of the person to determine if he meets the criteria for temporary detention pursuant to
925 § 37.2-809. *If an order for temporary detention is ordered pursuant to § 37.2-809, the law-enforcement*
926 *agency or alternative transportation provider that initially provided transportation of the person to the*
927 *hospital emergency department or other appropriate facility for testing, observation, or treatment shall*
928 *resume custody of the person prior to expiration of the order for temporary detention for testing,*
929 *observation, or treatment pursuant to § 37.2-1104 and shall transport the person to the facility*
930 *designated in the order for temporary detention pursuant to § 37.2-809. No law-enforcement officer or*
931 *alternative transportation provider shall be required to remain with the person during the period of*
932 *temporary detention for testing, observation, or treatment pursuant to this section.*