

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 37.2-804.2, 37.2-809, and 37.2-814 of the Code of Virginia, relating to  
2 notice of temporary detention and involuntary admission hearings.

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

4 **1. That §§ 37.2-804.2, 37.2-809, and 37.2-814 of the Code of Virginia are amended and reenacted**  
5 **as follows:**

6 **§ 37.2-804.2. Disclosure of records.**

7 Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is  
8 currently providing services to a person who is the subject of proceedings pursuant to this chapter shall,  
9 upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the  
10 examiner identified to perform an examination pursuant to § 37.2-815, the community services board or  
11 its designee performing any evaluation, preadmission screening, or monitoring duties pursuant to this  
12 chapter, or a law-enforcement officer any information that is necessary and appropriate for the  
13 performance of his duties pursuant to this chapter. Any health care provider, as defined in § 32.1-  
14 127.1:03, or other provider who has provided or is currently evaluating or providing services to a person  
15 who is the subject of proceedings pursuant to this chapter shall disclose information that may be  
16 necessary for the treatment of such person to any other health care provider or other provider evaluating  
17 or providing services to or monitoring the treatment of the person. Health records disclosed to a law-  
18 enforcement officer shall be limited to information necessary to protect the officer, the person, or the  
19 public from physical injury or to address the health care needs of the person. Information disclosed to a  
20 law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

21 Any health care provider providing services to a person who is the subject of proceedings under  
22 this chapter ~~may~~ shall make a reasonable attempt to notify the person's family member or personal  
23 representative, including any agent named in an advance directive executed in accordance with the  
24 Health Care Decisions Act (§ 54.1-2981 et seq.), of information that is directly relevant to such  
25 individual's involvement with the person's health care, which may include the person's location and

26 general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, unless the provider has  
27 actual knowledge that the family member or personal representative is currently prohibited by court  
28 order from contacting the person.

29 Any health care provider disclosing records pursuant to this section shall be immune from civil  
30 liability for any harm resulting from the disclosure, including any liability under the federal Health  
31 Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person  
32 or provider disclosing such records intended the harm or acted in bad faith.

33 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

34 A. For the purposes of this section:

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

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

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

48 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating  
49 physician, or upon his own motion and only after an evaluation conducted in-person or by means of a  
50 two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an  
51 employee or a designee of the local community services board to determine whether the person meets  
52 the criteria for temporary detention, a temporary detention order if it appears from all evidence readily

53 available, including any recommendation from a physician or clinical psychologist treating the person,  
54 that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of  
55 mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
56 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if  
57 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for  
58 his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or  
59 incapable of volunteering for hospitalization or treatment. The magistrate shall also consider the  
60 recommendations of any treating or examining physician licensed in Virginia if available either verbally  
61 or in writing prior to rendering a decision. Any temporary detention order entered pursuant to this  
62 section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection  
63 shall not preclude any other disclosures as required or permitted by law.

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

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

76 E. An employee or a designee of the local community services board shall determine the facility  
77 of temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained  
78 pursuant to this section. An employee or designee of the local community services board may change  
79 the facility of temporary detention and may designate an alternative facility for temporary detention at

80 any point during the period of temporary detention if it is determined that the alternative facility is a  
81 more appropriate facility for temporary detention of the individual given the specific security, medical,  
82 or behavioral health needs of the person. In cases in which the facility of temporary detention is changed  
83 following transfer of custody to an initial facility of temporary custody, transportation of the individual  
84 to the alternative facility of temporary detention shall be provided in accordance with the provisions of §  
85 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening  
86 report and indicated on the temporary detention order; however, if an employee or designee of the local  
87 community services board designates an alternative facility, that employee or designee shall provide  
88 written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of  
89 Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to  
90 the provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the  
91 expiration of the period of emergency custody pursuant to § 37.2-808, the individual shall be detained in  
92 a state facility for the treatment of individuals with mental illness and such facility shall be indicated on  
93 the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in  
94 accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place  
95 of confinement for persons charged with criminal offenses and shall remain in the custody of law  
96 enforcement until the person is either detained within a secure facility or custody has been accepted by  
97 the appropriate personnel designated by either the initial facility of temporary detention identified in the  
98 temporary detention order or by the alternative facility of temporary detention designated by the  
99 employee or designee of the local community services board pursuant to this subsection. The person  
100 detained or in custody pursuant to this section shall be given a written summary of the temporary  
101 detention procedures and the statutory protections associated with those procedures.

102 F. Any facility caring for a person placed with it pursuant to a temporary detention order is  
103 authorized to provide emergency medical and psychiatric services within its capabilities when the  
104 facility determines that the services are in the best interests of the person within its care. The costs  
105 incurred as a result of the hearings and by the facility in providing services during the period of  
106 temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs

107 reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of  
108 Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance  
109 Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary  
110 detention.

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

117 H. The duration of temporary detention shall be sufficient to allow for completion of the  
118 examination required by § 37.2-815, preparation of the preadmission screening report required by §  
119 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid  
120 involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour  
121 period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is  
122 lawfully closed, the person may be detained, as herein provided, until the close of business on the next  
123 day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The  
124 person may be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

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

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

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

143 L. The employee or designee of the community services board who is conducting the evaluation  
144 pursuant to this section shall, if he recommends that the person should not be subject to a temporary  
145 detention order, inform the petitioner ~~and~~, an onsite treating physician, and any other person who is  
146 required to be given notice of the hearing pursuant to subsection M of his recommendation.

147 M. The petitioner and the person's personal representative, including any agent named in an  
148 advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.), or,  
149 if no personal representative exists, the nearest known relative of the person other than the petitioner  
150 shall be given adequate notice of the place, date, and time of the hearing. Any person given notice  
151 pursuant to this subsection shall be entitled to retain counsel at his own expense, to be present during the  
152 hearing, and to testify and present evidence. Any person given notice pursuant to this subsection shall be  
153 encouraged but shall not be required to testify at the hearing, and the person whose temporary detention  
154 is sought shall not be released solely on the basis of the petitioner's, the personal representative's, or the  
155 relative's failure to attend or testify during the hearing.

156 **§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to**  
157 **counsel; rights of petitioner.**

158 A. The commitment hearing for involuntary admission shall be held after a sufficient period of  
159 time has passed to allow for completion of the examination required by § 37.2-815, preparation of the  
160 preadmission screening report required by § 37.2-816, and initiation of mental health treatment to

161 stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be  
162 held within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809;  
163 however, if the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day  
164 on which the court is lawfully closed, the person may be detained, as herein provided, until the close of  
165 business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is  
166 lawfully closed.

167 B. At the commencement of the commitment hearing, the district court judge or special justice  
168 shall inform the person whose involuntary admission is being sought of his right to apply for voluntary  
169 admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an  
170 opportunity for voluntary admission. The district court judge or special justice shall advise the person  
171 whose involuntary admission is being sought that if the person chooses to be voluntarily admitted  
172 pursuant to § 37.2-805, such person will be prohibited from possessing, purchasing, or transporting a  
173 firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then  
174 willing and capable of seeking voluntary admission for inpatient treatment. In determining whether a  
175 person is capable of consenting to voluntary admission, the judge or special justice may consider  
176 evidence regarding the person's past compliance or noncompliance with treatment. If the judge or  
177 special justice finds that the person is capable and willingly accepts voluntary admission for inpatient  
178 treatment, the judge or special justice shall require him to accept voluntary admission for a minimum  
179 period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall  
180 give the facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall  
181 not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject  
182 to the transportation provisions as provided in § 37.2-829 and the requirement for preadmission  
183 screening by a community services board as provided in § 37.2-805.

184 C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment,  
185 the judge or special justice shall inform the person of his right to a commitment hearing and right to  
186 counsel. The judge or special justice shall ascertain if the person whose admission is sought is  
187 represented by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint

188 an attorney to represent him. However, if the person requests an opportunity to employ counsel, the  
189 judge or special justice shall give him a reasonable opportunity to employ counsel at his own expense.

190 D. A written explanation of the involuntary admission process and the statutory protections  
191 associated with the process shall be given to the person, and its contents shall be explained by an  
192 attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the  
193 person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present  
194 any defenses including independent evaluation and expert testimony or the testimony of other witnesses,  
195 (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the  
196 circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the  
197 person whose involuntary admission is sought has been given the written explanation required herein.

198 E. To the extent possible, during or before the commitment hearing, the attorney for the person  
199 whose involuntary admission is sought shall interview his client, the petitioner, the examiner described  
200 in § 37.2-815, the community services board staff, and any other material witnesses. He also shall  
201 examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's  
202 behalf, and otherwise actively represent his client in the proceedings. A health care provider shall  
203 disclose or make available all such reports, treatment information, and records concerning his client to  
204 the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the  
205 extent possible.

206 F. The petitioner and the person's personal representative, including any agent named in an  
207 advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) or, if  
208 no personal representative exists, the nearest known relative of the person other than the petitioner shall  
209 be given adequate notice of the place, date, and time of the commitment hearing. ~~The petitioner~~ Any  
210 person given notice pursuant to this subsection shall be entitled to retain counsel at his own expense, to  
211 be present during the hearing, and to testify and present evidence. ~~The petitioner~~ Any person given  
212 notice pursuant to this subsection shall be encouraged but shall not be required to testify at the hearing,  
213 and the person whose involuntary admission is sought shall not be released solely on the basis of the  
214 petitioner's, the personal representative's, or the relative's failure to attend or testify during the hearing.



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FOR DISCUSSION PURPOSES ONLY