

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

1 A BILL to amend and reenact §§ 37.2-809 and 37.2-817 of the Code of Virginia, relating to temporary  
2 detention; involuntary admission; recommendations of relatives.

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

4 **1. That §§ 37.2-809 and 37.2-817 of the Code of Virginia are amended and reenacted as follows:**

5 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

6 A. For the purposes of this section:

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

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

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

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

26 that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of  
27 mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
28 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if  
29 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for  
30 his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or  
31 incapable of volunteering for hospitalization or treatment. The magistrate shall also consider, if  
32 available, the recommendations of (a) the person's personal representative, including any agent named in  
33 an advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.),  
34 or any relative of the person and (b) any treating or examining physician licensed in Virginia-if available  
35 either verbally or in writing prior to rendering a decision. Any temporary detention order entered  
36 pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This  
37 subsection shall not preclude any other disclosures as required or permitted by law.

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

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

50 E. An employee or a designee of the local community services board shall determine the facility  
51 of temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained  
52 pursuant to this section. An employee or designee of the local community services board may change

53 the facility of temporary detention and may designate an alternative facility for temporary detention at  
54 any point during the period of temporary detention if it is determined that the alternative facility is a  
55 more appropriate facility for temporary detention of the individual given the specific security, medical,  
56 or behavioral health needs of the person. In cases in which the facility of temporary detention is changed  
57 following transfer of custody to an initial facility of temporary custody, transportation of the individual  
58 to the alternative facility of temporary detention shall be provided in accordance with the provisions of §  
59 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening  
60 report and indicated on the temporary detention order; however, if an employee or designee of the local  
61 community services board designates an alternative facility, that employee or designee shall provide  
62 written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of  
63 Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to  
64 the provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the  
65 expiration of the period of emergency custody pursuant to § 37.2-808, the individual shall be detained in  
66 a state facility for the treatment of individuals with mental illness and such facility shall be indicated on  
67 the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in  
68 accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place  
69 of confinement for persons charged with criminal offenses and shall remain in the custody of law  
70 enforcement until the person is either detained within a secure facility or custody has been accepted by  
71 the appropriate personnel designated by either the initial facility of temporary detention identified in the  
72 temporary detention order or by the alternative facility of temporary detention designated by the  
73 employee or designee of the local community services board pursuant to this subsection. The person  
74 detained or in custody pursuant to this section shall be given a written summary of the temporary  
75 detention procedures and the statutory protections associated with those procedures.

76 F. Any facility caring for a person placed with it pursuant to a temporary detention order is  
77 authorized to provide emergency medical and psychiatric services within its capabilities when the  
78 facility determines that the services are in the best interests of the person within its care. The costs  
79 incurred as a result of the hearings and by the facility in providing services during the period of

80 temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs  
81 reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of  
82 Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance  
83 Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary  
84 detention.

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

91 H. The duration of temporary detention shall be sufficient to allow for completion of the  
92 examination required by § 37.2-815, preparation of the preadmission screening report required by §  
93 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid  
94 involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour  
95 period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is  
96 lawfully closed, the person may be detained, as herein provided, until the close of business on the next  
97 day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The  
98 person may be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

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

106 served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be  
107 returned to the office of the clerk of the issuing court.

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

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

117 L. The employee or designee of the community services board who is conducting the evaluation  
118 pursuant to this section shall, if he recommends that the person should not be subject to a temporary  
119 detention order, inform the petitioner and an onsite treating physician of his recommendation.

120 **§ 37.2-817. Involuntary admission and mandatory outpatient treatment orders.**

121 A. The district court judge or special justice shall render a decision on the petition for  
122 involuntary admission after the appointed examiner has presented the report required by § 37.2-815, and  
123 after the community services board that serves the county or city where the person resides or, if  
124 impractical, where the person is located has presented a preadmission screening report with  
125 recommendations for that person's placement, care, and treatment pursuant to § 37.2-816. These reports,  
126 if not contested, may constitute sufficient evidence upon which the district court judge or special justice  
127 may base his decision. The examiner, if not physically present at the hearing, and the treating physician  
128 at the facility of temporary detention shall be available whenever possible for questioning during the  
129 hearing through a two-way electronic video and audio or telephonic communication system as  
130 authorized in § 37.2-804.1.

131 B. Any employee or designee of the local community services board, as defined in § 37.2-809,  
132 representing the community services board that prepared the preadmission screening report shall attend

133 the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through  
134 a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-  
135 804.1. Where a hearing is held outside of the service area of the community services board that prepared  
136 the preadmission screening report, and it is not practicable for a representative of the board to attend or  
137 participate in the hearing, arrangements shall be made by the board for an employee or designee of the  
138 board serving the area in which the hearing is held to attend or participate on behalf of the board that  
139 prepared the preadmission screening report. The employee or designee of the local community services  
140 board, as defined in § 37.2-809, representing the community services board that prepared the  
141 preadmission screening report or attending or participating on behalf of the board that prepared the  
142 preadmission screening report shall not be excluded from the hearing pursuant to an order of  
143 sequestration of witnesses. The community services board that prepared the preadmission screening  
144 report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send  
145 the preadmission screening report through certified mail, personal delivery, facsimile with return receipt  
146 acknowledged, or other electronic means to the community services board attending the hearing. Where  
147 a community services board attends the hearing on behalf of the community services board that prepared  
148 the preadmission screening report, the attending community services board shall inform the community  
149 services board that prepared the preadmission screening report of the disposition of the matter upon the  
150 conclusion of the hearing. In addition, the attending community services board shall transmit the  
151 disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or  
152 other electronic means.

153 At least 12 hours prior to the hearing, the court shall provide to the community services board  
154 that prepared the preadmission screening report the time and location of the hearing. If the representative  
155 of the community services board will be present by telephonic means, the court shall provide the  
156 telephone number to the board.

157 C. After observing the person and considering (i) the recommendations of any treating or  
158 examining physician or psychologist licensed in Virginia, if available, (ii) the recommendations of the  
159 person's personal representative, including any agent named in an advance directive executed in

160 accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.), or any relative of the person, (iii)  
161 any past actions of the person, ~~(iii)~~ (iv) any past mental health treatment of the person, ~~(iv)~~ (v) any  
162 examiner's certification, ~~(v)~~ (vi) any health records available, ~~(vi)~~ (vii) the preadmission screening  
163 report, and ~~(vii)~~ (viii) any other relevant evidence that may have been admitted, including whether the  
164 person recently has been found unrestorably incompetent to stand trial after a hearing held pursuant to  
165 subsection E of § 19.2-169.1, if the judge or special justice finds by clear and convincing evidence that  
166 (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental illness,  
167 the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by  
168 recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)  
169 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic  
170 human needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient  
171 treatment, pursuant to subsection D, that would offer an opportunity for the improvement of the person's  
172 condition have been investigated and determined to be inappropriate, the judge or special justice shall by  
173 written order and specific findings so certify and order that the person be admitted involuntarily to a  
174 facility for a period of treatment not to exceed 30 days from the date of the court order. Such involuntary  
175 admission shall be to a facility designated by the community services board that serves the county or  
176 city in which the person was examined as provided in § 37.2-816. If the community services board does  
177 not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a  
178 facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the  
179 person shall be released unless he is involuntarily admitted by further petition and order of a court,  
180 which shall be for a period not to exceed 180 days from the date of the subsequent court order, or such  
181 person makes application for treatment on a voluntary basis as provided for in § 37.2-805 or is ordered  
182 to mandatory outpatient treatment pursuant to subsection D. Upon motion of the treating physician, a  
183 family member or personal representative of the person, or the community services board serving the  
184 county or city where the facility is located, the county or city where the person resides, or the county or  
185 city where the person receives treatment, a hearing shall be held prior to the release date of any  
186 involuntarily admitted person to determine whether such person should be ordered to mandatory

187 outpatient treatment pursuant to subsection D upon his release if such person, on at least two previous  
188 occasions within 36 months preceding the date of the hearing, has been (A) involuntarily admitted  
189 pursuant to this section or (B) the subject of a temporary detention order and voluntarily admitted  
190 himself in accordance with subsection B of § 37.2-814. A district court judge or special justice shall  
191 hold the hearing within 72 hours after receiving the motion for a mandatory outpatient treatment order;  
192 however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held  
193 by the close of business on the next day that is not a Saturday, Sunday, or legal holiday.

194 C1. In the order for involuntary admission, the judge or special justice may authorize the treating  
195 physician to discharge the person to mandatory outpatient treatment under a discharge plan developed  
196 pursuant to subsection C2, if the judge or special justice further finds by clear and convincing evidence  
197 that (i) the person has a history of lack of compliance with treatment for mental illness that at least twice  
198 within the past 36 months has resulted in the person being subject to an order for involuntary admission  
199 pursuant to subsection C; (ii) in view of the person's treatment history and current behavior, the person  
200 is in need of mandatory outpatient treatment following inpatient treatment in order to prevent a relapse  
201 or deterioration that would be likely to result in the person meeting the criteria for involuntary inpatient  
202 treatment; (iii) as a result of mental illness, the person is unlikely to voluntarily participate in outpatient  
203 treatment unless the court enters an order authorizing discharge to mandatory outpatient treatment  
204 following inpatient treatment; and (iv) the person is likely to benefit from mandatory outpatient  
205 treatment. The duration of mandatory outpatient treatment shall be determined by the court based on  
206 recommendations of the community services board, but shall not exceed 90 days. Upon expiration of the  
207 order for mandatory outpatient treatment, the person shall be released unless the order is continued in  
208 accordance with § 37.2-817.4.

209 C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as  
210 authorized pursuant to subsection C1, the treating physician shall determine, based upon his professional  
211 judgment, that (i) the person (a) in view of the person's treatment history and current behavior, no longer  
212 needs inpatient hospitalization, (b) requires mandatory outpatient treatment at the time of discharge to  
213 prevent relapse or deterioration of his condition that would likely result in his meeting the criteria for

214 involuntary inpatient treatment, and (c) has agreed to abide by his discharge plan and has the ability to  
215 do so; and (ii) the ordered treatment will be delivered on an outpatient basis by the community services  
216 board or designated provider to the person. In no event shall the treating physician discharge a person to  
217 mandatory outpatient treatment under a discharge plan as authorized pursuant to subsection C1 if the  
218 person meets the criteria for involuntary commitment set forth in subsection C. The discharge plan  
219 developed by the treating physician and facility staff in conjunction with the community services board  
220 and the person shall serve as and shall contain all the components of the comprehensive mandatory  
221 outpatient treatment plan set forth in subsection G, and no initial mandatory outpatient treatment plan set  
222 forth in subsection F shall be required. The discharge plan shall be submitted to the court for approval  
223 and, upon approval by the court, shall be filed and incorporated into the order entered pursuant to  
224 subsection C1. The discharge plan shall be provided to the person by the community services board at  
225 the time of the person's discharge from the inpatient facility. The community services board where the  
226 person resides upon discharge shall monitor the person's compliance with the discharge plan and report  
227 any material noncompliance to the court in accordance with § 37.2-817.1.

228 D. After observing the person and considering (i) the recommendations of any treating or  
229 examining physician or psychologist licensed in Virginia, if available, (ii) the recommendations of the  
230 person's personal representative, including any agent named in an advance directive executed in  
231 accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.), or any relative of the person, (iii)  
232 any past actions of the person, ~~(iii)~~ (iv) any past mental health treatment of the person, ~~(iv)~~ (v) any  
233 examiner's certification, ~~(v)~~ (vi) any health records available, ~~(vi)~~ (vii) the preadmission screening  
234 report, and ~~(vii)~~ (viii) any other relevant evidence that may have been admitted, if the judge or special  
235 justice finds by clear and convincing evidence that (a) the person has a mental illness and that there  
236 exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1)  
237 cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or  
238 threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of  
239 capacity to protect himself from harm or to provide for his basic human needs; (b) less restrictive  
240 alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his

241 condition have been investigated and are determined to be appropriate; (c) the person has agreed to  
242 abide by his treatment plan and has the ability to do so; and (d) the ordered treatment will be delivered  
243 on an outpatient basis by the community services board or designated provider to the person, the judge  
244 or special justice shall by written order and specific findings so certify and order that the person be  
245 admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be  
246 determined to be appropriate unless the services are actually available in the community.

247 E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a  
248 hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-  
249 1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the  
250 person. Mandatory outpatient treatment shall not include the use of restraints or physical force of any  
251 kind in the provision of the medication. The community services board that serves the county or city in  
252 which the person resides shall recommend a specific course of treatment and programs for the provision  
253 of mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be determined  
254 by the court based on recommendations of the community services board, but shall not exceed 90 days.  
255 Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the  
256 requirements of the order unless the order is continued in accordance with § 37.2-817.4.

257 F. Any order for mandatory outpatient treatment entered pursuant to subsection D shall include  
258 an initial mandatory outpatient treatment plan developed by the community services board that  
259 completed the preadmission screening report. The plan shall, at a minimum, (i) identify the specific  
260 services to be provided, (ii) identify the provider who has agreed to provide each service, (iii) describe  
261 the arrangements made for the initial in-person appointment or contact with each service provider, and  
262 (iv) include any other relevant information that may be available regarding the mandatory outpatient  
263 treatment ordered. The order shall require the community services board to monitor the implementation  
264 of the mandatory outpatient treatment plan and report any material noncompliance to the court.

265 G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for  
266 mandatory outpatient treatment has been entered pursuant to subsection D, the community services  
267 board where the person resides that is responsible for monitoring compliance with the order shall file a

268 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment  
269 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided  
270 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)  
271 certify that the services are the most appropriate and least restrictive treatment available for the person,  
272 (iv) certify that each provider has complied and continues to comply with applicable provisions of the  
273 Department's licensing regulations, (v) be developed with the fullest possible involvement and  
274 participation of the person and his family, with the person's consent, and reflect his preferences to the  
275 greatest extent possible to support his recovery and self-determination, (vi) specify the particular  
276 conditions with which the person shall be required to comply, and (vii) describe how the community  
277 services board shall monitor the person's compliance with the plan and report any material  
278 noncompliance with the plan. The community services board shall submit the comprehensive mandatory  
279 outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive  
280 mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of  
281 mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with  
282 the court for review and attached to any order for mandatory outpatient treatment.

283 H. If the community services board responsible for developing the comprehensive mandatory  
284 outpatient treatment plan determines that the services necessary for the treatment of the person's mental  
285 illness are not available or cannot be provided to the person in accordance with the order for mandatory  
286 outpatient treatment, it shall notify the court within five business days of the entry of the order for  
287 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special  
288 justice, after notice to the person, the person's attorney, and the community services board responsible  
289 for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to §  
290 37.2-817.2.

291 I. Upon entry of any order for mandatory outpatient treatment entered pursuant to subsection D,  
292 the clerk of the court shall provide a copy of the order to the person who is the subject of the order, to  
293 his attorney, and to the community services board required to monitor compliance with the plan. The  
294 community services board shall acknowledge receipt of the order to the clerk of the court on a form

295 established by the Office of the Executive Secretary of the Supreme Court and provided by the court for  
296 this purpose within five business days.

297 J. The court may transfer jurisdiction of the case to the district court where the person resides at  
298 any time after the entry of the mandatory outpatient treatment order. The community services board  
299 responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan  
300 shall remain responsible for monitoring the person's compliance with the plan until the community  
301 services board serving the locality to which jurisdiction of the case has been transferred acknowledges  
302 the transfer and receipt of the order to the clerk of the court on a form established by the Office of the  
303 Executive Secretary of the Supreme Court and provided by the court for this purpose. The community  
304 services board serving the locality to which jurisdiction of the case has been transferred shall  
305 acknowledge the transfer and receipt of the order within five business days.

306 K. Any order entered pursuant to this section shall provide for the disclosure of medical records  
307 pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or  
308 permitted by law.

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