

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

1 A BILL to amend and reenact §§ 37.2-809 and 37.2-816 of the Code of Virginia, relating to local  
2 community services boards; contents of evaluation or preadmission screening report.

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

4 **1. That §§ 37.2-809 and 37.2-816 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 the  
32 recommendations of any treating or examining physician licensed in Virginia if available either verbally  
33 or in writing prior to rendering a decision. Any temporary detention order entered pursuant to this  
34 section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection  
35 shall not preclude any other disclosures as required or permitted by law.

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

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

48 E. An employee or a designee of the local community services board shall determine the facility  
49 of temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained  
50 pursuant to this section. An employee or designee of the local community services board may change  
51 the facility of temporary detention and may designate an alternative facility for temporary detention at  
52 any point during the period of temporary detention if it is determined that the alternative facility is a

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

74 F. Any facility caring for a person placed with it pursuant to a temporary detention order is  
75 authorized to provide emergency medical and psychiatric services within its capabilities when the  
76 facility determines that the services are in the best interests of the person within its care. The costs  
77 incurred as a result of the hearings and by the facility in providing services during the period of  
78 temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs  
79 reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of

80 Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance  
81 Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary  
82 detention.

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

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

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

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

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

115 L. The employee or designee of the community services board who is conducting the evaluation  
116 pursuant to this section shall, if he recommends that the person should not be subject to a temporary  
117 detention order, inform the petitioner and an onsite treating physician of his recommendation. If the  
118 employee or designee of the local community services board recommends that the person should not be  
119 subject to a temporary detention order, the employee or designee of the local community services board  
120 shall include in his evaluation, if available, any recommendations of (i) the person's personal  
121 representative, including any agent named in an advance directive executed in accordance with the  
122 Health Care Decisions Act (§ 54.1-2981 et seq.), or any relative of the person and (ii) any treating or  
123 examining physician licensed in Virginia that are contrary to the recommendations of the employee or  
124 designee of the local community services board.

125 **§ 37.2-816. Commitment hearing for involuntary admission; preadmission screening**  
126 **report.**

127 The district court judge or special justice shall require a preadmission screening report from the  
128 community services board that serves the county or city where the person resides or, if impractical,  
129 where the person is located. The report shall be admitted as evidence of the facts stated therein and shall  
130 state (i) whether the person has a mental illness and whether there exists a substantial likelihood that, as  
131 a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or  
132 others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant

133 information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or  
134 to provide for his basic human needs, (ii) whether the person is in need of involuntary inpatient  
135 treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the  
136 recommendations for that person's placement, care, and treatment including, where appropriate,  
137 recommendations for mandatory outpatient treatment. If the employee or designee of the local  
138 community services board recommends that the person is not in need of involuntary treatment, the  
139 employee or designee of the local community services board shall include in the report, if available, any  
140 recommendations of (a) the person's personal representative, including any agent named in an advance  
141 directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.), or any  
142 relative of the person and (b) any treating or examining physician licensed in Virginia that are contrary  
143 to the recommendations of the employee or designee of the local community services board. The board  
144 shall provide the preadmission screening report to the court prior to the hearing, and the report shall be  
145 admitted into evidence and made part of the record of the case. In the case of a person who has been  
146 sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist  
147 or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person has  
148 mental illness and should be involuntarily admitted without requesting a preadmission screening report  
149 from the community services board.

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