

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 temporary  
2 detention and involuntary admission; access to medical records.

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, and the employee or  
35 designee of the local community services board who is conducting the evaluation shall request the  
36 disclosure of any medical records that are not in the possession of the employee or designee of the local  
37 community services board from any health care provider, as defined in § 32.1-127.1:03, who the  
38 employee or designee of the local community services board knows has provided or is currently  
39 providing services to the person. The employee or designee of the local community services board shall  
40 provide any medical records disclosed to him to the magistrate. This subsection shall not preclude any  
41 other disclosures as required or permitted by law.

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

49 D. A magistrate may issue a temporary detention order without an emergency custody order  
50 proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to  
51 subsection B if (i) the person has been personally examined within the previous 72 hours by an

52 employee or a designee of the local community services board or (ii) there is a significant physical,  
53 psychological, or medical risk to the person or to others associated with conducting such evaluation.

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

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

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

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

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

103 I. If a temporary detention order is not executed within 24 hours of its issuance, or within a  
104 shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the

105 office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the  
106 jurisdiction of the issuing court. Subsequent orders may be issued upon the original petition within 96  
107 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or a  
108 designee of the local community services board prior to issuing a subsequent order upon the original  
109 petition. Any petition for which no temporary detention order or other process in connection therewith is  
110 served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be  
111 returned to the office of the clerk of the issuing court.

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

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

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

124 **§ 37.2-816. Commitment hearing for involuntary admission; preadmission screening**  
125 **report.**

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

132 information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or  
133 to provide for his basic human needs, (ii) whether the person is in need of involuntary inpatient  
134 treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the  
135 recommendations for that person's placement, care, and treatment including, where appropriate,  
136 recommendations for mandatory outpatient treatment. In preparing the preadmission screening report,  
137 the board shall request the disclosure of any medical records that are not in the possession of the board  
138 from any health care provider, as defined in § 32.1-127.1:03, who the board knows has provided or is  
139 currently providing services to the person. The board shall include any medical records disclosed to it in  
140 the preadmission screening report provided to the court. The board shall provide the preadmission  
141 screening report to the court prior to the hearing, and the report shall be admitted into evidence and  
142 made part of the record of the case. In the case of a person who has been sentenced and committed to the  
143 Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the  
144 judge or special justice may proceed to adjudicate whether the person has mental illness and should be  
145 involuntarily admitted without requesting a preadmission screening report from the community services  
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