

HOUSE BILL NO. 163

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Ransone)

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.

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 delusionary 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.

27 When considering whether there is probable cause to issue an emergency custody order, the
28 magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining
29 physician or psychologist licensed in Virginia, if available, (2) any past actions of the minor, (3) any past
30 mental health treatment of the minor, (4) any relevant hearsay evidence, (5) any medical records available,
31 (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other
32 information available that the magistrate considers relevant to the determination of whether probable cause
33 exists to issue an emergency custody order.

34 B. Any minor for whom an emergency custody order is issued shall be taken into custody and
35 transported to a convenient location to be evaluated to determine whether he meets the criteria for
36 temporary detention pursuant to § 16.1-340.1 and to assess the need for hospitalization or treatment. The
37 evaluation shall be made by a person designated by the community services board serving the area in
38 which the minor is located who is skilled in the diagnosis and treatment of mental illness and who has
39 completed a certification program approved by the Department.

40 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement
41 agency and jurisdiction to execute the emergency custody order and provide transportation. However, the
42 magistrate may authorize transportation by an alternative transportation provider, including a parent,
43 family member, or friend of the minor who is the subject of the order, a representative of the community
44 services board, or other transportation provider with personnel trained to provide transportation in a safe
45 manner, upon determining, following consideration of information provided by the petitioner; the
46 community services board or its designee; the local law-enforcement agency, if any; the minor's treating
47 physician, if any; or other persons who are available and have knowledge of the minor, and, when the
48 magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-
49 way electronic video and audio or telephone communication system, that the proposed alternative
50 transportation provider is available to provide transportation, willing to provide transportation, and able
51 to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative
52 transportation provider, the magistrate shall order the specified primary law-enforcement agency to
53 execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative

54 transportation provider identified in the order. In such cases, a copy of the emergency custody order shall
55 accompany the minor being transported pursuant to this section at all times and shall be delivered by the
56 alternative transportation provider to the community services board or its designee responsible for
57 conducting the evaluation. The community services board or its designee conducting the evaluation shall
58 return a copy of the emergency custody order to the court designated by the magistrate as soon as is
59 practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and
60 return of an order to the court may be accomplished electronically or by facsimile.

61 Transportation under this section shall include transportation to a medical facility as may be
62 necessary to obtain emergency medical evaluation or treatment ~~that~~ of the minor. Such emergency medical
63 evaluation shall be conducted or emergency medical treatment provided immediately in accordance with
64 state and federal law. Transportation under this section shall also include transportation to a medical
65 facility for a medical evaluation if a physician at the hospital in which the minor subject to the emergency
66 custody order may be detained requires a medical evaluation prior to admission. The provision of
67 emergency medical evaluation or treatment or medical evaluation necessary for admission to a hospital
68 shall not toll the running of the period of emergency custody.

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

79 E. The law-enforcement agency or alternative transportation provider providing transportation
80 pursuant to this section may transfer custody of the minor to the facility or location to which the minor is

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

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

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

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

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

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

118 K. The minor shall remain in custody until a temporary detention order is issued, until the minor
119 is released, or until the emergency custody order expires. An emergency custody order shall be valid for
120 a period not to exceed eight hours from the time of execution.

121 L. If an emergency custody order is not executed within eight hours of its issuance, the order shall
122 be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is
123 not open, to any magistrate serving the jurisdiction of the issuing court.

124 M. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if
125 the minor is detained in a state facility pursuant to subsection D of § 16.1-340.1, the state facility and an
126 employee or designee of the community services board may, for an additional four hours, continue to
127 attempt to identify an alternative facility that is able and willing to provide temporary detention and
128 appropriate care to the minor.

129 N. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical
130 screening and assessment services provided to minors with mental illnesses while in emergency custody.

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

134 **§ 16.1-340.1. Involuntary temporary detention; issuance and execution of order.**

135 A. A magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if
136 the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including
137 the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and
138 domestic relations district court, or upon his own motion and only after an evaluation conducted in-person
139 or by means of a two-way electronic video and audio communication system as authorized in § 16.1-345.1
140 by an employee or designee of the local community services board to determine whether the minor meets
141 the criteria for temporary detention, a temporary detention order if it appears from all evidence readily
142 available, including any recommendation from a physician, clinical psychologist, or clinical social worker
143 treating the person, that (i) because of mental illness, the minor (a) presents a serious danger to himself or
144 others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or
145 threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally
146 age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of
147 functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of
148 compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment.
149 The magistrate shall also consider the recommendations of the minor's parents and of any treating or
150 examining physician licensed in Virginia if available either verbally or in writing prior to rendering a
151 decision. To the extent possible, the petition shall contain the information required by § 16.1-339.1. Any
152 temporary detention order entered pursuant to this section shall be effective until such time as the juvenile
153 and domestic relations district court serving the jurisdiction in which the minor is located conducts a
154 hearing pursuant to subsection B of § 16.1-341. Any temporary detention order entered pursuant to this
155 section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This
156 subsection shall not preclude any other disclosures as required or permitted by law.

157 B. When considering whether there is probable cause to issue a temporary detention order, the
158 magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining
159 physician, psychologist, or clinical social worker licensed in Virginia, if available, (ii) any past actions of
160 the minor, (iii) any past mental health treatment of the minor, (iv) any relevant hearsay evidence, (v) any
161 medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the

162 affidavit, and (vii) any other information available that the magistrate considers relevant to the
163 determination of whether probable cause exists to issue a temporary detention order.

164 C. A magistrate may issue a temporary detention order without an emergency custody order
165 proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to
166 subsection A if (i) the minor has been personally examined within the previous 72 hours by an employee
167 or designee of the local community services board or (ii) there is a significant physical, psychological, or
168 medical risk to the minor or to others associated with conducting such evaluation.

169 D. An employee or designee of the local community services board shall determine the facility of
170 temporary detention in accordance with the provisions of § 16.1-340.1:1 for all minors detained pursuant
171 to this section. ~~An employee or designee of the local community services board may change the facility
172 of temporary detention and may designate an alternative facility for temporary detention at any point
173 during the period of temporary detention if it is determined that the alternative facility is a more
174 appropriate facility for temporary detention of the minor given the specific security, medical, or behavioral
175 health needs of the minor. In cases in which the facility of temporary detention is changed following
176 transfer of custody to an initial facility of temporary detention, transportation of the minor to the
177 alternative facility of temporary detention shall be provided in accordance with the provisions of § 16.1-
178 340.2. The initial facility of temporary detention shall be identified on the preadmission screening report
179 and indicated on the temporary detention order; however, if an employee or designee of the local
180 community services board designates an alternative facility, that employee or designee shall provide
181 written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of
182 Virginia, to the clerk of the issuing court of the name and address of the alternative facility. The facility
183 designated by the magistrate shall accept custody of the minor immediately upon completion of
184 transportation and arrival of the minor at the facility and prior to the expiration of the eight-hour period
185 of emergency custody specified in subsections G, H, and K of § 16.1-340.~~

186 Subject to the provisions of § 16.1-340.1:1, if a facility of temporary detention that is ready and
187 able to accept custody of the minor upon issuance of the temporary detention order cannot be identified
188 by the time of the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall

189 be detained in a state facility for the treatment of minors with mental illness and such facility shall be
190 indicated on the temporary detention order. The state facility shall accept custody of the minor
191 immediately upon completion of transportation and arrival of the minor at the facility, and prior to the
192 expiration of the eight-hour period of emergency custody specified in subsections G, H, and K of § 16.1-
193 340.

194 An employee or designee of the local community services board may change the facility of
195 temporary detention and may designate an alternative facility for temporary detention at any point during
196 the period of temporary detention if it is determined that the alternative facility is a more appropriate
197 facility for temporary detention of the minor given the specific security, medical, or behavioral health
198 needs of the minor. In cases in which the facility of temporary detention is changed following transfer of
199 custody to an initial facility of temporary detention, transportation of the minor to the alternative facility
200 of temporary detention shall be provided in accordance with the provisions of § 16.1-340.2. The initial
201 facility of temporary detention shall be identified on the preadmission screening report and indicated on
202 the temporary detention order; however, if an employee or designee of the local community services board
203 designates an alternative facility, that employee or designee shall provide written notice forthwith, on a
204 form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing
205 court of the name and address of the alternative facility.

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

213 E. Any facility caring for a minor placed with it pursuant to a temporary detention order is
214 authorized to provide emergency medical and psychiatric services within its capabilities when the facility
215 determines that the services are in the best interests of the minor within its care. The costs incurred as a

216 result of the hearings and by the facility in providing services during the period of temporary detention
217 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the
218 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance
219 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation,
220 establish a reasonable rate per day of inpatient care for temporary detention.

221 F. The employee or designee of the local community services board who is conducting the
222 evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order,
223 the insurance status of the minor. Where coverage by a third party payor exists, the facility seeking
224 reimbursement under this section shall first seek reimbursement from the third party payor. The
225 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances
226 covered by the third party payor have been received.

227 G. The duration of temporary detention shall be sufficient to allow for completion of the
228 examination required by § 16.1-342, preparation of the preadmission screening report required by § 16.1-
229 340.4, and initiation of mental health treatment to stabilize the minor's psychiatric condition to avoid
230 involuntary commitment where possible, but shall not exceed 96 hours prior to a hearing. If the 96-hour
231 period herein specified terminates on a Saturday, Sunday, or legal holiday, the minor may be detained, as
232 herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal holiday.
233 The period of temporary detention shall begin upon acceptance of custody of the minor by the facility of
234 temporary detention. The minor may be released, pursuant to § 16.1-340.3, before the 96-hour period
235 herein specified has run.

236 H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter
237 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of
238 the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the
239 issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition
240 is filed, provided that the initial order remains unexecuted. However, a magistrate must again obtain the
241 advice of an employee or designee of the local community services board prior to issuing a subsequent
242 order upon the original petition. Any petition for which no temporary detention order or other process in

243 connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall
244 be void and shall be returned to the office of the clerk of the issuing court.

245 I. For purposes of this section a ~~healthcare~~ health care provider or an employee or designee of the
246 local community services board shall not be required to encrypt any email containing information or
247 medical records provided to a magistrate unless there is reason to believe that a third party will attempt to
248 intercept the email.

249 J. The employee or designee of the local community services board who is conducting the
250 evaluation pursuant to this section shall, if he recommends that the minor should not be subject to a
251 temporary detention order, inform the petitioner and an on-site treating physician of his recommendation.

252 K. Each community services board shall provide to each juvenile and domestic relations district
253 court and magistrate's office within its service area a list of employees and designees who are available to
254 perform the evaluations required herein.

255 **§ 16.1-340.1:1. Facility of temporary detention.**

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

265 B. A state facility may, following the notice in accordance with subsection A, conduct a search for
266 an alternative facility that is able and willing to take custody of the minor immediately upon completion
267 of transportation and arrival of the minor at the facility and provide temporary detention and appropriate
268 care to the minor, which may include another state facility if the state facility notified in accordance with
269 subsection A is unable to take custody of the minor immediately upon completion of transportation and

270 arrival of the minor at the facility and provide temporary detention and appropriate care for the minor.
271 Under no circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for
272 temporary detention pursuant to § 16.1-340.1 immediately upon completion of transportation and arrival
273 of the minor at the facility unless an alternative facility that is able to take custody of the minor
274 immediately upon completion of transportation and arrival of the minor at the facility and provide
275 temporary detention and appropriate care ~~agrees to accept the minor for temporary detention, and the~~ has
276 been identified. The minor shall not during the duration of the temporary detention order be released from
277 custody of the facility except for purposes of transporting the minor to the state facility or alternative
278 facility in accordance with the provisions of § 16.1-340.2. If an alternative facility is identified and agrees
279 to accept the minor for temporary detention, the state facility shall notify the community services board,
280 and an employee or designee of the community services board shall designate the alternative facility on
281 the prescreening report.

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

285 D. The minor shall not be held in the custody of law enforcement during any portion of the period
286 of temporary detention, except that the minor may be held in the custody of law enforcement for the
287 purpose of transporting the minor pursuant to § 16.1-340.2.

288 **§ 16.1-340.2. Transportation of minor in the temporary detention process.**

289 A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
290 the magistrate shall specify in the temporary detention order the law-enforcement agency of the
291 jurisdiction in which the minor resides to execute the order and, in cases in which transportation is ordered
292 to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest
293 boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary
294 of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which
295 the minor is located shall execute the order and provide transportation.

296 B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency
297 to execute the order and provide transportation. However, the magistrate may authorize transportation by
298 an alternative transportation provider, including a parent, family member, or friend of the minor who is
299 the subject of the temporary detention order, a representative of the community services board, or other
300 transportation provider with personnel trained to provide transportation in a safe manner upon
301 determining, following consideration of information provided by the petitioner; the community services
302 board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or
303 other persons who are available and have knowledge of the minor, and, when the magistrate deems
304 appropriate, the proposed alternative transportation provider, either in person or via two-way electronic
305 video and audio or telephone communication system, that the proposed alternative transportation provider
306 is available to provide transportation, willing to provide transportation, and able to provide transportation
307 in a safe manner. When transportation is ordered to be provided by an alternative transportation provider,
308 the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the
309 minor into custody, and to transfer custody of the minor to the alternative transportation provider identified
310 in the order.

311 In such cases any case in which a magistrate authorizes transportation of a minor subject to a
312 temporary detention order by an alternative transportation provider, a copy of the temporary detention
313 order shall accompany the minor being transported pursuant to this section at all times and shall be
314 delivered by the alternative transportation provider to the temporary detention facility. The temporary
315 detention facility shall return a copy of the temporary detention order to the court designated by the
316 magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative
317 transportation provider and return of an order to the court may be accomplished electronically or by
318 facsimile.

319 The order may include transportation of the minor to such other medical facility as may be
320 necessary to obtain further medical evaluation or treatment prior to placement as required by a physician
321 at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or
322 alternative transportation provider from obtaining emergency medical treatment or further medical

323 evaluation at any time for a minor in his custody as provided in this section. Such medical evaluation or
324 treatment shall be conducted immediately in accordance with state and federal law. The provision of
325 emergency medical treatment or further medical evaluation shall not toll the running of the period of
326 temporary detention.

327 C. If an alternative transportation provider providing transportation of a minor who is the subject
328 of a temporary detention order becomes unable to continue providing transportation of the minor at any
329 time after taking custody of the minor, the primary law-enforcement agency for the jurisdiction in which
330 the alternative transportation provider is located at the time he becomes unable to continue providing
331 transportation shall take custody of the minor and shall transport the minor to the facility of temporary
332 detention. In such cases, (i) a copy of the temporary detention order shall accompany the minor being
333 transported and shall be delivered to and returned by the temporary detention facility in accordance with
334 the provisions of subsection B and (ii) if the alternative transportation provider originally authorized to
335 provide transportation is a person other than the minor's parent, the alternative transportation provider
336 shall notify the minor's parent (a) that the primary law-enforcement agency for the jurisdiction in which
337 he is located has taken custody of the minor and is transporting the minor to the facility of temporary
338 detention and (b) of the name of the law-enforcement officer providing transportation of the minor.

339 D. In cases in which an alternative facility of temporary detention is identified and the law-
340 enforcement agency or alternative transportation provider identified to provide transportation in
341 accordance with subsection B continues to have custody of the minor, the local law-enforcement agency
342 or alternative transportation provider shall transport the minor to the alternative facility of temporary
343 detention identified by the employee or designee of the local community services board. In cases in which
344 an alternative facility of temporary detention is identified and custody of the minor has been transferred
345 from the law-enforcement agency or alternative transportation provider that provided transportation in
346 accordance with subsection B to the initial facility of temporary detention, the employee or designee of
347 the local community services board shall request, and a magistrate may enter an order specifying, an
348 alternative transportation provider or, if no alternative transportation provider is available, willing, and
349 able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in

350 which the minor resides or, if the nearest boundary of the jurisdiction in which the minor resides is more
351 than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-
352 enforcement agency of the jurisdiction in which the minor is located, to provide transportation. The
353 alternative facility of temporary detention shall accept custody of the minor immediately upon completion
354 of transportation and arrival of the minor at the facility, and the period during which the minor is in the
355 custody of law enforcement shall not exceed the amount of time necessary to complete transportation of
356 the minor.

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

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

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

372 **§ 37.2-808. Emergency custody; issuance and execution of order.**

373 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating
374 physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody
375 order when he has probable cause to believe that any person (i) has a mental illness and that there exists a
376 substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious

377 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening
 378 harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect
 379 himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment,
 380 and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any
 381 emergency custody order entered pursuant to this section shall provide for the disclosure of medical
 382 records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or
 383 permitted by law.

384 When considering whether there is probable cause to issue an emergency custody order, the
 385 magistrate may, in addition to the petition, or the court may pursuant to § 19.2-271.6, consider (1) the
 386 recommendations of any treating or examining physician or psychologist licensed in Virginia, if available,
 387 (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant
 388 hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is
 389 unavailable and it so states in the affidavit, and (7) any other information available that the magistrate or
 390 the court considers relevant to the determination of whether probable cause exists to issue an emergency
 391 custody order.

392 B. Any person for whom an emergency custody order is issued shall be taken into custody and
 393 transported to a convenient location to be evaluated to determine whether the person meets the criteria for
 394 temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The
 395 evaluation shall be made by a person designated by the community services board who is skilled in the
 396 diagnosis and treatment of mental illness and who has completed a certification program approved by the
 397 Department.

398 C. The magistrate or court issuing an emergency custody order shall (i) specify the primary law-
 399 enforcement agency and jurisdiction to execute the emergency custody order and ~~provide~~ (ii) designate a
 400 transportation provider. ~~However, In determining the transportation provider,~~ the magistrate or court shall
 401 consider ~~any request to authorize transportation by an~~ all options for alternative transportation ~~provider~~ in
 402 accordance with this section, ~~whenever an alternative transportation provider is identified to the magistrate~~
 403 ~~or court,~~ which may be a person, facility, or agency, including a family member or friend of the person

404 who is the subject of the order, a representative of the community services board, or other transportation
405 provider with personnel trained to provide transportation in a safe manner, ~~upon~~. Upon determining,
406 following consideration of information provided by the petitioner; the community services board or its
407 designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons
408 who are available and have knowledge of the person, and, when the magistrate or court deems appropriate,
409 the proposed alternative transportation provider, either in person or via two-way electronic video and
410 audio or telephone communication system, ~~that the proposed~~ an alternative transportation provider is
411 available to provide transportation, willing to provide transportation, and able to provide transportation in
412 a safe manner, the magistrate or court shall designate such alternative transportation provider to provide
413 transportation of the person. If no alternative transportation provider is available to provide transportation,
414 willing to provide transportation, and able to provide transportation in a safe manner, the magistrate or
415 court shall designate the primary law-enforcement agency and jurisdiction designated to execute the
416 emergency custody order to provider transportation of the person.

417 When transportation is ordered to be provided by an alternative transportation provider, the
418 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take
419 the person into custody, and to transfer custody of the person to the alternative transportation provider
420 identified in the order. In such cases, a copy of the emergency custody order shall accompany the person
421 being transported pursuant to this section at all times and shall be delivered by the alternative
422 transportation provider to the community services board or its designee responsible for conducting the
423 evaluation. The community services board or its designee conducting the evaluation shall return a copy of
424 the emergency custody order to the court designated by the magistrate or the court that issued the
425 emergency custody order as soon as is practicable. Delivery of an order to a law-enforcement officer or
426 alternative transportation provider and return of an order to the court may be accomplished electronically
427 or by facsimile.

428 Transportation under this section shall include transportation to ~~a~~ such medical facility as may be
429 necessary to obtain emergency medical evaluation or treatment ~~that~~ of the person. Such emergency
430 medical evaluation shall be conducted or emergency medical treatment provided immediately in

431 accordance with state and federal law. Transportation under this section shall also include transportation
432 to a medical facility for a medical evaluation if a physician at the hospital in which the person subject to
433 the emergency custody order may be detained requires a medical evaluation prior to admission. The
434 provision of emergency medical evaluation or treatment or medical evaluation necessary for admission to
435 a hospital shall not toll the running of the period of emergency custody.

436 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
437 the magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by
438 the community services board that designated the person to perform the evaluation required in subsection
439 B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-
440 enforcement agency, provide transportation. If the community services board serves more than one
441 jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the
442 particular jurisdiction within the community services board's service area where the person who is the
443 subject of the emergency custody order was taken into custody or, if the person has not yet been taken
444 into custody, the primary law-enforcement agency from the jurisdiction where the person is presently
445 located to execute the order and provide transportation.

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

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

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

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

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

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

484 execution of the emergency custody order or after the person has been taken into custody pursuant to
485 subsection G or H.

486 K. The person shall remain in custody until (i) a temporary detention order is issued in accordance
487 with § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in
488 accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the
489 emergency custody order expires. An emergency custody order shall be valid for a period not to exceed
490 eight hours from the time of execution. An emergency custody order shall not be extended, and no
491 successive emergency custody orders shall be entered.

492 L. Nothing in this section shall preclude the issuance of an order for temporary detention for
493 testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an
494 emergency custody order issued pursuant to this section. In any case in which an order for temporary
495 detention for testing, observation, or treatment is issued for a person who is also the subject of an
496 emergency custody order, the law-enforcement officer or alternative transportation provider shall
497 transport the person and transfer custody of the person to the hospital emergency department or other
498 appropriate facility specified in the order for temporary detention for testing, observation, or treatment
499 pursuant to § 37.2-1104. A person who is subject to an order for temporary custody for testing,
500 observation, or treatment pursuant to § 37.2-1104 may be detained by a hospital emergency room or other
501 appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless
502 extended by the court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of §
503 37.2-1104. Upon completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital
504 emergency room or other appropriate facility in which the person is detained shall notify the nearest
505 community services board, and the designee of the community services board shall, as soon as is
506 practicable and prior to the expiration of the order for temporary detention issued pursuant to § 37.2-1104,
507 conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant
508 to § 37.2-809. If an order for temporary detention is ordered pursuant to § 37.2-809, the law-enforcement
509 agency or alternative transportation provider that initially provided transportation of the person to the
510 hospital emergency department or other appropriate facility for testing, observation, or treatment shall

511 resume custody of the person prior to expiration of the order for temporary detention for testing,
512 observation, or treatment pursuant to § 37.2-1104 and shall transport the person to the facility designated
513 in the order for temporary detention pursuant to § 37.2-809. No law-enforcement officer or alternative
514 transportation provider shall be required to remain with the person during the period of temporary
515 detention for testing, observation, or treatment pursuant to § 37.2-1104.

516 M. Any person taken into emergency custody pursuant to this section shall be given a written
517 summary of the emergency custody procedures and the statutory protections associated with those
518 procedures.

519 N. If an emergency custody order is not executed within eight hours of its issuance, the order shall
520 be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is
521 not open, to any magistrate serving the jurisdiction of the issuing court.

522 O. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if
523 the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and
524 an employee or designee of the community services board as defined in § 37.2-809 may, for an additional
525 four hours, continue to attempt to identify an alternative facility that is able and willing to provide
526 temporary detention and appropriate care to the individual.

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

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

532 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

533 A. For the purposes of this section:

534 "Designee of the local community services board" means an examiner designated by the local
535 community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has
536 completed a certification program approved by the Department, (iii) is able to provide an independent
537 examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has

538 no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment
539 interest in the facility detaining or admitting the person under this article, and (vii) except for employees
540 of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

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

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

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

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

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

576 E. An employee or a designee of the local community services board shall determine the facility
577 of temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained
578 pursuant to this section. ~~An employee or designee of the local community services board may change the
579 facility of temporary detention and may designate an alternative facility for temporary detention at any
580 point during the period of temporary detention if it is determined that the alternative facility is a more
581 appropriate facility for temporary detention of the individual given the specific security, medical, or
582 behavioral health needs of the person. In cases in which the facility of temporary detention is changed
583 following transfer of custody to an initial facility of temporary custody, transportation of the individual to
584 the alternative facility of temporary detention shall be provided in accordance with the provisions of §
585 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening
586 report and indicated on the temporary detention order; however, if an employee or designee of the local
587 community services board designates an alternative facility, that employee or designee shall provide
588 written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of
589 Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Such facility
590 shall accept custody of the person immediately upon completion of transportation and arrival of the person~~

591 at the facility and prior to the expiration of the eight-hour period specified in subsections G, H, and K of
592 § 37.2-808.

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

600 An employee or designee of the local community services board may change the facility of
601 temporary detention and may designate an alternative facility for temporary detention at any point during
602 the period of temporary detention if it is determined that the alternative facility is a more appropriate
603 facility for temporary detention of the individual given the specific security, medical, or behavioral health
604 needs of the person. In cases in which the facility of temporary detention is changed following transfer of
605 custody to an initial facility of temporary custody, transportation of the individual to the alternative facility
606 of temporary detention shall be provided in accordance with the provisions of § 37.2-810. The initial
607 facility of temporary detention shall be identified on the preadmission screening report and indicated on
608 the temporary detention order; however, if an employee or designee of the local community services board
609 designates an alternative facility, that employee or designee shall provide written notice forthwith, on a
610 form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing
611 court of the name and address of the alternative facility.

612 Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with
613 subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement
614 for persons charged with criminal offenses and shall remain in the custody of law enforcement until the
615 person is either detained within a secure facility or custody has been accepted by the appropriate personnel
616 designated by either the initial facility of temporary detention identified in the temporary detention order

617 or by the alternative facility of temporary detention designated by the employee or designee of the local
618 community services board pursuant to this subsection.

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

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

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

635 H. The duration of temporary detention shall be sufficient to allow for completion of the
636 examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-
637 816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid
638 involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour
639 period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is
640 lawfully closed, the person may be detained, as herein provided, until the close of business on the next
641 day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The period
642 of temporary detention shall begin upon acceptance of custody of the person by the facility of temporary

643 detention. The person may be released, pursuant to § 37.2-813, before the 72-hour period herein specified
644 has run.

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

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

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

663 L. If the employee or designee of the community services board who is conducting the evaluation
664 pursuant to this section recommends that the person should not be subject to a temporary detention order,
665 such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if
666 such person is present, and an onsite treating physician of his recommendation; (ii) promptly inform such
667 person who initiated emergency custody that the community services board will facilitate communication
668 between the person and the magistrate if the person disagrees with recommendations of the employee or
669 designee of the community services board who conducted the evaluation and the person who initiated

670 emergency custody so requests; and (iii) upon prompt request made by the person who initiated emergency
671 custody, arrange for such person who initiated emergency custody to communicate with the magistrate as
672 soon as is practicable and prior to the expiration of the period of emergency custody. The magistrate shall
673 consider any information provided by the person who initiated emergency custody and any
674 recommendations of the treating or examining physician and the employee or designee of the community
675 services board who conducted the evaluation and consider such information and recommendations in
676 accordance with subsection B in making his determination to issue a temporary detention order. The
677 individual who is the subject of emergency custody shall remain in the custody of law enforcement or a
678 designee of law enforcement and shall not be released from emergency custody until communication with
679 the magistrate pursuant to this subsection has concluded and the magistrate has made a determination
680 regarding issuance of a temporary detention order. However, in no case shall the individual remain in the
681 custody of law enforcement for a period longer than the period of emergency custody specified in § 37.2-
682 808.

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

686 **§ 37.2-809.1. Facility of temporary detention.**

687 A. In each case in which an employee or designee of the local community services board as defined
688 in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of §
689 37.2-808, an employee or designee of the local community services board shall, upon being notified of
690 the need for such evaluation, contact the state facility for the area in which the community services board
691 is located and notify the state facility that the individual will be transported to the facility upon issuance
692 of a temporary detention order if no other facility of temporary detention can be identified by the time of
693 the expiration of the period of emergency custody pursuant to § 37.2-808. Upon completion of the
694 evaluation, the employee or designee of the local community services board shall convey to the state
695 facility information about the individual necessary to allow the state facility to determine the services the
696 individual will require upon admission.

697 B. A state facility may, following the notice in accordance with subsection A, conduct a search for
698 an alternative facility that is able and willing to take custody of the person immediately upon completion
699 of transportation and the arrival of the person at the facility and provide temporary detention and
700 appropriate care to the individual, which may include another state facility if the state facility notified in
701 accordance with subsection A is unable to take custody of the person immediately upon completion of
702 transportation and the arrival of the person at the facility and provide temporary detention and appropriate
703 care for the individual. Under no circumstances shall a state facility fail or refuse to admit an individual
704 who meets the criteria for temporary detention pursuant to § 37.2-809 immediately upon completion of
705 transportation and the arrival of the person at the facility unless an alternative facility that is able to take
706 custody of the individual immediately upon completion of transportation and the arrival of the person at
707 such alternative facility and provide temporary detention and appropriate care ~~agrees to accept the~~
708 ~~individual for temporary detention and the~~ has been identified. The individual shall not during the duration
709 of the temporary detention order be released from custody of the facility except for purposes of
710 transporting the individual to the state facility or alternative facility in accordance with the provisions of
711 § 37.2-810. If an alternative facility is identified and agrees to accept the individual for temporary
712 detention, the state facility shall notify the community services board, and an employee or designee of the
713 community services board shall designate the alternative facility on the prescreening report.

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

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

719 **§ 37.2-810. Transportation of person in the temporary detention process.**

720 A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
721 the magistrate shall specify in the temporary detention order the law-enforcement agency of the
722 jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to
723 provide transportation, to execute the order and, in cases in which transportation is ordered to be provided

724 by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the
725 jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction
726 in which the person is located, the law-enforcement agency of the jurisdiction in which the person is
727 located shall execute the order and provide transportation.

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

730 In determining the transportation provider, the magistrate shall consider ~~any request to authorize~~
731 ~~transportation by an~~ all options for alternative transportation ~~provider~~ in accordance with this section,
732 ~~whenever an alternative transportation provider is identified to the magistrate,~~ which may be a person,
733 facility, or agency, including a family member or friend of the person who is the subject of the temporary
734 detention order, a representative of the community services board, or other transportation provider with
735 personnel trained to provide transportation in a safe manner ~~upon~~. Upon determining, following
736 consideration of information provided by the petitioner; the community services board or its designee; the
737 local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are
738 available and have knowledge of the person, and, when the magistrate deems appropriate, the proposed
739 alternative transportation provider, either in person or via two-way electronic video and audio or telephone
740 communication system, ~~that the proposed~~ an alternative transportation provider is available to provide
741 transportation, willing to provide transportation, and able to provide transportation in a safe manner, the
742 magistrate shall designate such alternative transportation provider to provide transportation. If no
743 alternative transportation provider is available to provide transportation, willing to provide transportation,
744 and able to provide transportation in a safe manner, the magistrate shall designate the primary law-
745 enforcement agency and jurisdiction designated to execute the temporary detention order to provide
746 transportation of the person. When transportation is ordered to be provided by an alternative transportation
747 provider, the magistrate shall order the specified law-enforcement agency to execute the order, to take the
748 person into custody, and to transfer custody of the person to the alternative transportation provider
749 identified in the order. In such cases, a copy of the temporary detention order shall accompany the person
750 being transported pursuant to this section at all times and shall be delivered by the alternative

751 transportation provider to the temporary detention facility. The temporary detention facility shall return a
752 copy of the temporary detention order to the court designated by the magistrate as soon as is practicable.
753 Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an
754 order to the court may be accomplished electronically or by facsimile.

755 The order may include transportation of the person to such other medical facility as may be
756 necessary to obtain further medical evaluation or treatment prior to placement as required by a physician
757 at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or
758 alternative transportation provider from obtaining emergency medical treatment or further medical
759 evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or
760 treatment shall be conducted immediately in accordance with state and federal law. The provision of
761 emergency medical treatment or medical evaluation shall not toll the running of the period of emergency
762 custody.

763 C. If an alternative transportation provider providing transportation of a person who is the subject
764 of a temporary detention order becomes unable to continue providing transportation of the person at any
765 time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which
766 the alternative transportation provider is located at the time he becomes unable to continue providing
767 transportation shall take custody of the person and shall transport the person to the facility of temporary
768 detention. In such cases, a copy of the temporary detention order shall accompany the person being
769 transported and shall be delivered to and returned by the temporary detention facility in accordance with
770 the provisions of subsection B.

771 D. In cases in which an alternative facility of temporary detention is identified and the law-
772 enforcement agency or alternative transportation provider identified to provide transportation in
773 accordance with subsection B continues to have custody of the person, the local law-enforcement agency
774 or alternative transportation provider shall transport the person to the alternative facility of temporary
775 detention identified by the employee or designee of the community services board. In cases in which an
776 alternative facility of temporary detention is identified and custody of the person has been transferred from
777 the law-enforcement agency or alternative transportation provider that provided transportation in

778 accordance with subsection B to the initial facility of temporary detention, the employee or designee of
779 the community services board shall request, and a magistrate may enter an order specifying, an alternative
780 transportation provider or, if no alternative transportation provider is available, willing, and able to provide
781 transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person
782 resides or, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles
783 from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency
784 of the jurisdiction in which the person is located, to provide transportation. The alternative facility of
785 temporary detention shall accept custody of the person immediately upon completion of transportation
786 and arrival of the person at the facility, and the period during which the person is in the custody of law
787 enforcement shall not exceed the amount of time necessary to complete transportation of the person.

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

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

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

803 **§ 37.2-829. Transportation of person in civil admission process.**

804 When a person has volunteered for admission pursuant to § 37.2-814 or been ordered to be
805 admitted to a facility under §§ 37.2-815 through 37.2-821, the judge or special justice shall determine
806 after consideration of information provided by the person's treating mental health professional and any
807 involved community services board or behavioral health authority staff regarding the person's
808 dangerousness, whether transportation shall be provided by the sheriff or may be provided by an
809 alternative transportation provider, including a family member or friend of the person, a representative of
810 the community services board, a representative of the facility at which the person was detained pursuant
811 to a temporary detention order, or other alternative transportation provider with personnel trained to
812 provide transportation in a safe manner. If the judge or special justice determines that transportation may
813 be provided by an alternative transportation provider, the judge or special justice may consult with the
814 proposed alternative transportation provider either in person or via two-way electronic video and audio or
815 telephone communication system to determine whether the proposed alternative transportation provider
816 is available to provide transportation, willing to provide transportation, and able to provide transportation
817 in a safe manner. If the judge or special justice finds that the proposed alternative transportation provider
818 is available to provide transportation, willing to provide transportation, and able to provide transportation
819 in a safe manner, the judge or special justice may order transportation by the proposed alternative
820 transportation provider. In all other cases, the judge or special justice shall order transportation by the
821 sheriff of the jurisdiction where the person is a resident unless the sheriff's office of that jurisdiction is
822 located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings
823 took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100
824 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be
825 the responsibility of the sheriff of the latter jurisdiction to transport the person.

826 If the judge or special justice determines that the person requires transportation by the sheriff, the
827 person may be delivered to the care of the sheriff, as specified in this section, who shall transport the
828 person to the proper facility. In no event shall transport commence later than six hours after notification
829 to the sheriff or alternative transportation provider of the judge's or special justice's order.

830 If any state hospital has become too crowded to admit any such person, the Commissioner shall
831 give notice of the fact to all community services boards and shall designate the facility to which sheriffs
832 or alternative transportation providers shall transport such persons. The designated facility shall accept
833 custody of any person transported to such facility pursuant to this subsection immediately upon
834 completion of transportation and arrival of the person at the facility.

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

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

843 **§ 37.2-1104. Temporary detention in hospital for testing, observation, or treatment.**

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

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

854 C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless
855 extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion
856 of authorized testing, observation, or treatment, the physician determines that a person subject to an order

857 under this subsection has become capable of making and communicating an informed decision, the
858 physician shall rely on the person's decision on whether to consent to further testing, observation, or
859 treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the
860 physician learns of an objection by a member of the person's immediate family to the testing, observation,
861 or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining
862 whether to issue, modify, or terminate the order.

863 D. A court or, if the court is unavailable, a magistrate serving the jurisdiction may issue an order
864 authorizing temporary detention for testing, observation, or treatment for a person who is also the subject
865 of an emergency custody order issued pursuant to § 37.2-808, if such person meets the criteria set forth in
866 subsection B. ~~In any case in which an order for temporary detention for~~ Upon issuance of an order
867 authorizing temporary detention for testing, observation, or treatment for a person who is also the subject
868 of an emergency custody order issued pursuant to § 37.2-808, the law-enforcement officer or alternative
869 transportation provider designated to provide transportation of the person pursuant to § 37.2-809 shall
870 transport the person and transfer custody of the person to the hospital emergency department or other
871 facility specified in the order authorizing temporary detention for testing, observation, or treatment. Upon
872 completion of testing, observation, or treatment ~~is issued for~~ of a person who is also the subject of an
873 emergency custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate facility
874 in which the person is detained for testing, observation, or treatment shall notify the nearest community
875 services board when such testing, observation, or treatment is complete, and the designee of the
876 community services board shall, as soon as is practicable and prior to the expiration of the order for
877 temporary detention issued pursuant to subsection B, conduct an evaluation of the person to determine if
878 he meets the criteria for temporary detention pursuant to § 37.2-809. If an order for temporary detention
879 is ordered pursuant to § 37.2-809, the law-enforcement agency or alternative transportation provider that
880 initially provided transportation of the person to the hospital emergency department or other appropriate
881 facility for testing, observation, or treatment shall resume custody of the person prior to expiration of the
882 order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 and shall
883 transport the person to the facility designated in the order for temporary detention pursuant to § 37.2-809.

884 No law-enforcement officer or alternative transportation provider shall be required to remain with the
885 person during the period of temporary detention for testing, observation, or treatment pursuant to this
886 section.

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