VIRGINIA BEACH BAR ASSOCIATION

Session 2 2:15-3:15pm

Virginia Beach Circuit Court

"Jury Practice and Procedure from a Judge's Perspective"

The Hon. James C. Lewis, Chief Judge

The Hon. Kevin M. Duffan

The Hon. Tanya L. Bullock

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Session 2- Circuit Court

VIRGINIA BEACH BAR ASSOCIATION

Session 2 ~ Panel Introductions:

The Hon. James C. Lewis, Chief Judge, Virginia Beach Circuit Court

The Hon., Kevin M Duffan, Presiding Judge, Virginia Beach Circuit Court

The Hon. Tanya L. Bullock, Presiding Judge, Virginia Beach Circuit Court

Jury Trials ~ Reference Materials

Virginia Code § 8.01-336. Jury trial of right; waiver of jury trial; court-ordered jury trial; trial by jury of plea in equity; equitable claim.

A. The right of trial by jury as declared in Article I, Section 11 of the Constitution of Virginia and by statutes thereof shall be preserved inviolate to the parties. Unless waived, any demand for a trial by jury in a civil case made in compliance with the Rules of Supreme Court of Virginia shall be sufficient, with no further notice, hearing, or order, to proceed thereon.

B. Waiver of jury trial. -- In any action at law in which the recovery sought is greater than $20, exclusive of interest, unless one of the parties demands that the case or any issue thereof be tried by a jury, or in a criminal action in which trial by jury is dispensed with as provided by law, the whole matter of law and fact may be heard and judgment given by the court.

C. Court-ordered jury trial. -- Notwithstanding any provision in this Code to the contrary, in any action asserting a claim at law in which there has been no demand for trial by jury by any party, a circuit court may on its own motion direct one or more issues, including an issue of damages, to be tried by a jury.

D. Trial by jury of plea in equity. -- In any action in which a plea has been filed to an equitable claim, and the allegations of such plea are denied by the plaintiff, either party may have the issue tried by jury.

E. Suit on equitable claim. -- In any suit on an equitable claim, the court may, of its own motion or upon motion of any party, supported by such party's affidavit that the case will be rendered doubtful by conflicting evidence of another party, direct an issue to be tried before an advisory jury.

§ 19.2-260. Provisions of Title 8.01 apply except as provided in this article.

Except as otherwise provided in this article, trial by jury in criminal cases shall be regulated as provided for in Chapter 11 (§ 8.01-336 et seq.) of Title 8.01.

Virginia Beach Circuit Court ~ Local Policies

7.1.23

CRIMINAL CASES

Statement of Policy Regarding Continuance of Criminal Trials for the Virginia Beach Circuit Court

The court views the scheduling of a trial date as a requirement for all counsel to be prepared to conduct the trial on the date scheduled. Continuances therefore will only be granted by the court for good cause shown. The mere agreement of counsel to continue a case will not be deemed good cause.

Continuance motions on the day of trial are discouraged.

Procedure

All continuance requests shall be made by written motion stating the specific grounds for the requested continuance. The use of Form No. CCJ 2-2 (commonly known as the continuance order) will satisfy this requirement.

I. Uncontested Motions for Continuances

Uncontested motions for continuances of a trial or hearing date may be submitted to the court for consideration prior to the scheduled trial or

hearing date. If the motion is denied, counsel may schedule a hearing with the court pursuant to the procedures set forth in section II below.

II. Contested Motions for Continuances / Hearings on Denied Uncontested Motions to Continue

All contested motions for continuances should be set for a hearing with the court as soon as practicable after the reason for the continuance is discovered.

All hearing requests on denied uncontested motions as set forth in section I above shall be set as soon as practicable after the denial of the motion.

Hearings shall be scheduled on the regular criminal docket. A hearing with the duty judge may be requested if circumstances do not permit scheduling on the regular criminal docket.

III. Motions for Continuances on the day of trial

Continuance motions on the day of the trial or hearing are disfavored and discouraged. In the event that a motion must be made on the day of the trial or hearing, such motion must be made on the record.

Statement of Policy Regarding Status Conferences for Criminal jury Trials in the Virginia Beach Circuit Court

A status conference is required for all criminal jury trials. The purpose of the status conference is to ensure the trial will proceed on the scheduled trial date and to determine whether any motions hearings need to be set prior to the trial date.

Procedure

The status conference is required to be conducted with the Circuit Court Administrator no later than seven days prior to trial. The Circuit Court Administrator shall initiate the conference by email or by telephone.

Counsel are expected to cooperate with the Circuit Court Administrator in conducting the conference.

CIVIL CASES

It is the goal of the Virginia Beach Circuit Court that all civil cases be concluded within 18 months of the date of filing, except for exceptional cases brought to the attention of the Court.

The Circuit Court has established procedures for civil cases. The events and duties of the parties are outlined in the **Civil Case Management Manual**.

A pretrial conference provided for by Rule 1:19 and Rule 4:13 of the Rules of the Supreme Court of Virginia is required in all civil jury trial cases.

The court may require that a court reporter be present at the trial. In a civil case filed directly in the circuit court, the services of a court reporter to appear and record the trial proceedings shall be arranged by the plaintiff unless otherwise arranged by the agreement of all counsel or directed by the court.

Counsel may submit for entry by the court the civil pretrial scheduling order. EXCEPTION: A **scheduling order** is not required in a civil appeal case. The provisions of Supreme Court Rule 1:18 shall apply.

When filing a civil action in the circuit court, counsel shall attach a completed Civil Cover Sheet (available on the Supreme Court's Website www.courts.state.va.us under forms) to the initial pleading filed. This will greatly assist the clerk's office with the filing fee assessment and the indexing of the case.

For actions originating in the circuit court, counsel must file a **praecipe for the setting of a trial date** or contact the court to set an agreed trial date. The clerk's office will issue a Notice of Docket Call in civil actions appealed from the general district court.

Counsel shall be responsible for preparing and submitting for approval any **continuance request of a trial date**.

Statement of Policy Regarding Status Conferences for Civil Jury Trials in the Virginia Beach Circuit Court

A status conference is required for all civil jury trials. The purpose of the status conference is to ensure that the trial will proceed on the scheduled trial date and to determine whether any motions hearings need to be set prior to the trial date.

Pretrial motions in excess of five minutes total will not be entertained on the trial date.

Procedure

At least 30 days in advance of a scheduled civil jury trial date, the Circuit Court Clerk's Office will call counsel for the cases scheduled for that date and determine which cases are ready for trial. The oldest pending case ready for trial will have priority on the docket for that date.

Counsel for the case with trial priority thereafter will schedule a status conference with the Duty Judge. The status conference shall be held no later than 14 days prior to the trial date. Status conferences will be heard Monday through Friday at 2:15 p.m.

In the discretion of the Duty Judge and depending on the complexity of the case, hearing may be held in person, by telephone, or by WebEx.

Statement of Policy Regarding Assignment of Cases to Individual Judges of the Virginia Beach Circuit Court

Effective July 1, 2023, the following types of cases shall be assigned:

- All Jury Trials
- Sexually Violent Predators
- Habeas Corpus
- Cases in which a judge has heard a suppression motion.
- Cases where all parties agree, and the Chief Judge determines assignment is necessary due to the complexity of the case or to other compelling factors.

Procedure

In all jury trials, counsel shall notify the court to inform of the filing of the case and that a jury trial has been requested. In civil cases, this may be accomplished by submitting the "**Civil Jury Judicial Assignment Request Form**" located at courts.virginiabeach.gov. In criminal cases, counsel is to send written notice to the Court Administrator. Counsel will be notified of judicial assignment as soon as possible.

Assignments in any other type of case not listed above may be requested by submitting a letter to the chief judge, which must include:

1. Whether or not all parties agree to assignment

2. Type of case

3. Estimated length of trial

4. The reason(s) for the assignment

§ 17.1-618. Allowances for jurors; expenses of keeping jury together; fees of jury commissioners and commissioner in chancery for drawing of juries.

Every person summoned as a juror in a civil or criminal case shall be entitled to $50 for each day of attendance upon the court for expenses of travel incident to jury service and other necessary and reasonable costs as the court may direct. Jurors summoned from another political subdivision pursuant to § 8.01-363 may be allowed by the court, in addition to the above allowance, their actual expenses. When kept together overnight under the supervision of the court, the jurors and the sheriff or his deputies keeping the jury shall be furnished suitable board and lodging. Reimbursement for board and lodging shall be set by the judge in an amount not to exceed the amount authorized by travel regulations promulgated pursuant to § 2.2-2823. Allowances and other costs will be allowed a juror in only one case the same day.

Every person serving as a jury commissioner and every person serving as a commissioner in chancery for the drawing of juries for a circuit court of this Commonwealth may be allowed, by the court appointing him, a fee not exceeding $50 per day for the time actually engaged in such work and such other necessary and reasonable costs as the court may direct.

CASE ASSIGNMENT POLICY

STATEMENT OF POLICY REGARDING ASSIGNMENT OF CASES TO INDIVIDUAL JUDGES OF THE VIRGINIA BEACH CIRCUIT COURT

The following types of cases shall be assigned:

- All Jury Trials
- Sexually Violent Predators
- Habeas Corpus
- Cases in which a judge has heard a suppression motion.
- Cases where all parties agree, and the Chief Judge determines assignment is necessary due to the complexity of the case or to other compelling factors.

Procedure

In all jury trials, counsel shall notify the court to inform of the filing of the case and that a jury trial has been requested. In civil cases, this may be accomplished by the scheduling order. In criminal cases, counsel is to send written notice to the Court Administrator. Counsel will be notified of judicial assignment as soon as possible.

Assignments in any other type of case not listed above may be requested by submitting a letter to the chief judge, which must include:

1) Whether or not all parties agree to assignment
2) Type of case
3) Estimated length of trial
5) The reason(s) for the assignment

CIVIL JURY JUDICIAL ASSIGNMENT REQUEST FORM
VIRGINIA BEACH CIRCUIT COURT

- **PLEASE SUBMIT THIS COMPLETED ASSIGNMENT REQUEST FORM TO THE COURT VIA EMAL TO dutyjudg@vbgov.com.**
- **STATE IN SUBJECT FIELD OF EMAIL: "JURY ASSIGNMENT"**

_____ **v.** _____

PLAINTIFF **DEFENDANT**

CASE NO.: _____ **TYPE OF CASE:** _____

LIST ALL COUNSEL OF RECORD AND ANY PRO SE PARTY:

PLAINTIF COUNSEL: _____ **EMAIL:** _____
PLAINTIFF COUNSEL: _____ **EMAIL:** _____
DEFENSE COUNSEL: _____ **EMAIL:** _____
DEFENSE COUNSEL: _____ **EMAIL:** _____
PRO SE PARTY: _____ **EMAIL:** _____
PRO SE PARTY: _____ **EMAIL:** _____

Form submitted by: _____ **Email:** _____ **Phone:** _____

FOR COURT USE ONLY

NOTIFICATION OF JUDICIAL ASSIGNMENT

This civil jury has been assigned to the Honorable _____, who will preside over all further proceedings in this case.

Please contact the Judge's assistant as indicated below for all scheduling matters:

☐	Norma L. Catoe	Email: nlcatoe@vbgov.com	Phone: 757-385-8680
☐	Debra L. Sager	Email: dlsager@vbgov.com	Phone: 757-385-4262
☐	Kim M. Beasley	Email: kmbeasle@vbgov.com	Phone: 757-385-8693

- **Upon completion of this section of this form, the judge's assistant will provide a copy to all counsel of record/pro se parties as listed above.**

Revised 6/21/23

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

IN RE: General Order Regarding the Recording of Trial Proceedings by a Court Reporter in Civil Cases

It is ordered, pursuant to Virginia Code § 17.1-128, as follows: In certain civil cases, the judge trying the case may require the recording verbatim of the evidence and incidents of trial by a court reporter or by a digital court recording device. If such recording is required, then

a. In a civil case filed directly in the circuit court, the services of a court reporter to appear and record the trial proceedings shall be arranged for by the plaintiff unless otherwise arranged by agreement of all counsel or directed by the court.

b. In civil cases from the general district court or the juvenile and domestic relations district court, the trial judge may provide for the recording verbatim of the evidence and incidents of trial by a digital court recording device.

c. In cases in which the trial is recorded by a digital court recording device the cost to prepare a transcript of the record shall be paid for by the party ordering the transcript.

ENTER: March 31, 2014

/s/ CHIEF JUDGE

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH
vs CASE NO._____

_____, DEFENDANT

WAIVER OF JURY

I, _____, stand charged in this court with the offense(s) of _____

_____

_____

I understand that I am entitled to be tried by a jury for the above offense(s) but that I may waive that right and agree to be tried by a judge sitting without a jury. I understand my right to trial by a jury and wish to WAIVE that right and agree to be tried by a judge sitting without a jury.

Signed in open court this _____ day of _____, 20____.

_____
Defendant

Age of Defendant _____ years

School Grades Completed _____

_____
Attorney for the Defendant

Jury Waived:

_____ _____
JUDGE Attorney for Commonwealth/City

Our system of justice cannot function unless citizens serve as jurors. We appreciate and thank you for responding to your questionnaire and appearing for jury service. Our hope is that you will enjoy the privilege and opportunity of jury service.

Jury Service Information

Reporting Instructions
Deferral/Excusal
Selection Process
Jury Scam

Step 1: Each year the names of prospective jurors are selected randomly by the computer from a merged list of voter registration records and the Virginia Department of Motor Vehicles records.

Step 2: The Circuit Court mails a Jury Questionnaire to individuals who were randomly selected. The questionnaire must be completed and returned to the Court within ten days.

Step 3: Jury Commissioners (appointed by the Court) review the questionnaire responses and select approximately 10,000 qualified citizens based on the criteria set forth in the Virginia Code. The citizens selected by the Jury Commissioners constitute the Master Jury Pool for the next calendar year.

Step 4: Approximately 800 jurors per month are randomly selected from the Master Jury Pool and are summoned to serve on Assigned Dates of Service (usually one day a week) during their month of service.

Step 5: The Court issues a Summons for Jury Duty which officially places you "on-call" for jury service. Approximately 200 jurors are "on-call" each day. Rather than require all 200 jurors to report, the Court "calls in" only the number of jurors needed, based on the number of jury trials scheduled. Not all jurors reporting for service are selected for trial cases.

Excusals

To complete an excusal request online, you will need the following information from your summons:

- The badge number is printed above the barcode on your summons,
- Your zip code, and
- Your birth date (format MM/DD/YYYY).

You will **ONLY** be granted an excusal if it is for a reason permitted by the Code of Virginia. Documentation will be required for an excusal request and can be uploaded via the Jury Plus Web Solutions Juror Portal, faxed to (757) 385-1314, or emailed to Juryadm@vbgov.com. You **MUST** verify that we have received your information when you submit it. Always call (757) 385-4589 or email us at juryadm@vbgov.com to verify receipt. Your request is not granted until you receive this verification.

Below is an explanation of the Excusal codes on the web.

- **AGE** - If you are under 18 years old
- **ALREADY SERVED** - If you have served in the past 3 YEARS
- **AGE-OVER 70** - If you are over 70 years old

- **CARE OF DEPENDENT** - If you are personally responsible for a person with a mental or physical disability between 8:30 and 5:00 pm.

- **DECEASED** - If a summons was mailed to the deceased person, please accept our apologies.

- **FELON** - If you are a felon (DUI is not a felony)

- **LANGUAGE** - This option is not to be used and must be determined by a Judge.

- **MEDICAL** - If you have a medical condition, please fax a note from your doctor with your name, month of service, and length of disability to (757) 385-1314

- **MILITARY** - If you are on active duty with armed forces and requesting excusal. Please fax a letter from the commanding officer to (757) 385-1314.

- **MEDI-PERMANENT** - If you have a permanent medical condition, please fax a letter from a doctor indicating such to (757) 385-1314.

- **MARINER** - If you are employed in maritime service.

- **NON-CITIZEN** - If you are not a citizen of the United States.

- **NON-RESIDENT** - If you reside outside of Virginia Beach, please fax proof.

- **OCCUPATION** - If you are a sole proprietor fax your business license as proof

Students

If you are a full-time student and cannot serve during the month for which you have been summoned, the court will allow a deferral to a month during which you are not in school for up to a 2 year period. This request will have to be made by phone only.

If you are a full or part-time student and need to change your Assigned Date of Service, you can change your day of service to any day Monday - Wednesday that best fits your class schedule. Thursdays and Fridays are not available.

12/1/2022

Code of Virginia
Title 8.01. Civil Remedies and Procedure
Chapter 11. Juries

§ 8.01-341. Who are exempt from jury service.

The following shall be exempt from serving on juries in civil and criminal cases:

1. The President and Vice President of the United States,

2. The Governor, Lieutenant Governor and Attorney General of the Commonwealth,

3. The members of both houses of Congress,

4. The members of the General Assembly, while in session or during a period when the member would be entitled to a legislative continuance as a matter of right under § 30-5,

5. Licensed practicing attorneys,

6. The judge of any court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, and magistrates,

7. Sheriffs, deputy sheriffs, state police, and police in counties, cities and towns,

8. The superintendent of the penitentiary and his assistants and the persons composing the guard,

9. Superintendents and jail officers, as defined in § 53.1-1, of regional jails.

Code 1950, § 8-208.6; 1973, c. 439; 1977, cc. 458, 617; 1978, cc. 176, 340; 1980, c. 535; 1982, c. 315; 1987, c. 256; 1990, c. 758; 1993, c. 572; 1998, c. 83.

12/1/2022

Code of Virginia
Title 8.01. Civil Remedies and Procedure
Chapter 11. Juries

§ 8.01-341.1. Exemptions from jury service upon request.

Any of the following persons may serve on juries in civil and criminal cases but shall be exempt from jury service upon his request:

1. through 3. [Repealed.]

4. A mariner actually employed in maritime service;

5. through 7. [Repealed.]

8. A person who has legal custody of and is necessarily and personally responsible for a child or children 16 years of age or younger requiring continuous care by him during normal court hours, or any mother who is breast-feeding a child;

9. A person who is necessarily and personally responsible for a person having a physical or mental impairment requiring continuous care by him during normal court hours;

10. Any person over 70 years of age;

11. Any person whose spouse is summoned to serve on the same jury panel;

12. Any person who is the only person performing services for a business, commercial or agricultural enterprise and whose services are so essential to the operations of the business, commercial or agricultural enterprise that such enterprise must close or cease to function if such person is required to perform jury duty;

13. Any person who is the only person performing services for a political subdivision as a firefighter, as defined in § 65.2-102, and whose services are so essential to the operations of the political subdivision that such political subdivision will suffer an undue hardship in carrying out such services if such person is required to perform jury duty;

14. Any person employed by the Office of the Clerk of the House of Delegates, the Office of the Clerk of the Senate, the Division of Legislative Services, and the Division of Legislative Automated Systems; however, this exemption shall apply only to jury service starting (i) during the period beginning 60 days prior to the day any regular session commences and ending 30 days after the day of adjournment of such session and (ii) during the period beginning seven days prior to the day any reconvened or special session commences and ending seven days after the day of adjournment of such session;

15. Any general registrar, member of a local electoral board, or person appointed or employed by either the general registrar or the local electoral board, except officers of election appointed pursuant to Article 5 (§ 24.2-115 et seq.) of Chapter 1 of Title 24.2; however, this exemption shall apply only to jury service starting (i) during the period beginning 90 days prior to any election and continuing through election day, (ii) during the period to ascertain the results of the election and continuing for 10 days after the local electoral board certifies the results of the election under § 24.2-671 or the State Board of Elections certifies the results of the election under § 24.2-679, or (iii) during the period of an election recount or contested election pursuant to Chapter 8 (§ 24.2-800 et seq.) of Title 24.2. Any officer of election shall be exempt from jury service only on election day and during the periods set forth in clauses (ii) and (iii); and

16. Any member of the armed services of the United States or the diplomatic service of the United States appointed under the Foreign Service Act (22 U.S.C. § 3901 et seq.) who will be serving outside of the United States at the time of such jury service.

Code 1970, § 8-208.6:1; 1977, c. 458; 1987, c. 256; 1997, c. 693; 1999, c. 153; 2004, c. 106; 2005, c. 195; 2011, cc. 389, 708; 2012, c. 98.

12/1/2022

Code of Virginia
Title 8.01. Civil Remedies and Procedure
Chapter 11. Juries

§ 8.01-341.2. Deferral or limitation of jury service for particular occupational inconvenience or for persons who have legal custody and are responsible for a child.

The court, at the request of a person selected for jury service or on its own motion, may exempt any person from jury service for a particular term of court, or limit that person's service to particular dates of that term, if serving on a jury during that term or certain dates of that term of court would cause such person a particular occupational inconvenience. Any such person who is selected for jury service, and who is exempted under the provisions of this section, shall not be discharged from his obligation to serve on a jury, but such obligation shall only be deferred until the term of court next after such particular occupational inconvenience ends. For purposes of this section, "occupational inconvenience" includes inconvenience to a person (i) who, during the term of court for which such person is selected for jury service, is enrolled as a full-time student at an accredited public or private institution of higher education and who is attending classes at such institution during such term and (ii) who has legal custody of and is necessarily and personally responsible for a child or children 16 years of age or younger requiring continuous care by him during normal court hours. The provisions of this section shall not interfere with the exemption available under subdivision 8 of § 8.01-341.1.

1981, c. 108; 1987, c. 155; 2018, c. 259; 2019, c. 518.

12/1/2022

Code of Virginia
Title 8.01. Civil Remedies and Procedure
Chapter 11. Juries

§ 8.01-341.2. Deferral or limitation of jury service for particular occupational inconvenience or for persons who have legal custody and are responsible for a child.

The court, at the request of a person selected for jury service or on its own motion, may exempt any person from jury service for a particular term of court, or limit that person's service to particular dates of that term, if serving on a jury during that term or certain dates of that term of court would cause such person a particular occupational inconvenience. Any such person who is selected for jury service, and who is exempted under the provisions of this section, shall not be discharged from his obligation to serve on a jury, but such obligation shall only be deferred until the term of court next after such particular occupational inconvenience ends. For purposes of this section, "occupational inconvenience" includes inconvenience to a person (i) who, during the term of court for which such person is selected for jury service, is enrolled as a full-time student at an accredited public or private institution of higher education and who is attending classes at such institution during such term and (ii) who has legal custody of and is necessarily and personally responsible for a child or children 16 years of age or younger requiring continuous care by him during normal court hours. The provisions of this section shall not interfere with the exemption available under subdivision 8 of § 8.01-341.1.

1981, c. 108; 1987, c. 155; 2018, c. 259; 2019, c. 518.

VIRGINIA BEACH BAR ASSOCIATION

Session 3 3:15-4:15pm

Virginia Beach Juvenile and Domestic Relations Court

"Do I Stay or Do I Go: Trying a Relocation Case in Virginia"

The Hon. Cheshire l'Anson Eveleigh, Chief Judge

The Hon. Jennifer Shupert

Richard Garriott, Esq., Garriott Maurer, PLLC

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Session 3- Juvenile & Domestic Relations Court

VIRGINIA BEACH BAR ASSOCIATION

Session 3 ~ Panel Introductions:

The Hon. Cheshire l'Anson Eveleigh,
Chief Judge, Virginia Beach Juvenile and Domestic Relations Court

The Hon. Jennifer Shupert,
Presiding Judge, Virginia Beach Juvenile and Domestic Relations Court

Richard Garriott, Esq.,
Partner- Garriott Mauer, PLLC

DO I STAY OR DO I GO:
TRYING A RELOCATION CASE IN VIRGINIA

VBBA BENCH BAR CONFERENCE

AUGUST 10, 2023

I. Introduction

When both parents have parenting time, but one parent seeks to relocate with the child(ren), the resulting litigation may become hotly contested. The notion of "taking my child away" leads to an emotionally charged atmosphere. Having one party in a different school system, a different state, coast, or country is sure to complicate parenting. These geographic differences can also impact logistics of preparing for and trying the case.

II. A Move is Not Always a Relocation

"In initial custody determinations there is no need for an express written finding that removal [from Virginia] is in the child's best interests; instead, the circuit court decided as an initial matter where the child would reside." *Brandon v. Coffey*, 77 Va. App. 628, 886 S.E.2d 780 (2023).

Relocation "law" only comes into play after the entry of a final order or decree, and a subsequent request by one party to remove the child from the geographical location in a way that will impact the other parent's access to and relationship with the child.

III. Relocation After the Entry of a Final Order

A. Material change

No Virginia Statute directly addresses relocation of a custodial parent. Case law, however, requires that, "A party seeking relocation must show a change of circumstances has occurred since the last custody award and that the relocation would be in the best interests of the child. *Sullivan v. James*, 42 Va. App. 794, 595 S.E.2d 36 (2994) *citing Parish v. Spaulding*, 26 Va.App. 566, 571, 496 S.E.2d 91, 93 (1998) aff'd, 257 Va. App. 357, 513 S.E. 2d 391 (1999).

In *Surles v. Mayer*, 48 Va.App.146, 628 S.E.2d 563 (2006), the Court stated "[W]e assume, without deciding, that Mayer's decision to relocate to Florida constituted a material change of circumstances."

Clearly, a move across multiple states constitutes a material change. A move from Pungo to Red Mill *will not*. However, there is no "hard and fast" rule regarding how much of a distance triggers applicable relocation standards, but there are some measures that can be useful in determining whether the proposed change is a "relocation" in the legal sense:

* Will the child be geographically removed from the school in which the child is enrolled?

* Will the non-relocating parent be able to travel (reasonably) to attend school, extracurricular, sporting or other events?

* Will the non-relocating parent be able to exercise his or her parenting time without travelling an unreasonable distance or incurring an expense?

If the answer to the above questions are yes (school change), no (parent cannot reasonably attend events), and no (parent cannot maintain visitation), the case is likely a relocation case.

If there is some other series of answers to the questions above, the matter may not fit into a mold, and the court may have to determine what standard to use for the particular circumstances of your specific matter.

Note: Interesting fact pattern - If the parties reside in different locations, and an initial JDRC order is appealed, and the matter is *de novo* prior to one party's relocation, this is not necessarily a relocation case, even if one or both parties have relocated.

B. Standard of Proof – Relocation Case

If the matter is a relocation matter, the party seeking to relocate bears the burden of proof to show both a material change and that the move would be in the child's best interests of the child. *Sullivan*, 42 Va. App. 794, 595 S.E.2d 36.

C. Independent Benefit to the Child

Th relocation must independently benefit the child and not just the parent. *Clouter v. Queen,* 35 Va. App. 413, 545 S.E.2d 574 (2001)

The moving party also bears the burden of showing that the relocation **will not substantially impair the relationship between the non-moving party and the child.** *Goodhand v. Killdoo*, 37 Va.App. 591, 602, 560 S.E.2d 466 (2002). (Emphasis added)

D. Best Interests of the Child, Virginia Code 20-124.3 – Please see Statutory Factors, attached.

E. Case Law – Analysis of Current Virginia Cases Addressing Relocation

In Parish v. Spalding, 257 Va. 357, 513 S.E. 2d 391 (1999), the court upheld mother's relocation from Virginia to Indiana. Mother's new husband lost his job in Virginia, mother was pregnant with her fourth child, and the family could live rent free in Indiana. Id. The court noted that the move offered economic stability. Parish, 257 Va. At 361, 513 S.E. 2d at 392. The children moved in the summer so the relocation did not interfere with schooling. 257 Va. at 361, 513 S.E. 2d at 393.

In Carpenter v. Carpenter, 220 Va. 299, 257 S.E. 2d 845 (1979), however, declined to allow mother's relocation to New York. Mother only had prospective jobs lined up, but no job offer. Mother claimed the move would improve her job situation and bring the children closer to their extended family.

Parish and Carpenter may be reconciled in that the move in Parish offered actual economic stability while the economic benefits of the move in Carpenter were speculative.

In Cloutier v. Queen, 35 Va. App. 413, 545 S.E. 2d 574 (2001), mother was not allowed to move to Pennsylvania even though her economic situation would improve allowing her to be a stay at home mother. Father had been extremely involved in the children's lives. The court noted that while it was in mother's best interest to move, it was not necessarily in the children's best interests.

The memorandum opinion Krusell v. Al-Rayes, No. 0922-09-4, (unpub. November, 10, 2009), though not binding, is instructive. In this case, the Court of Appeals affirmed the trial court's refusal to allow relocation due to mother's acceptance to a Harvard graduate work study program. Mother argued that she would have greater economic stability as she and the children would live with maternal grandparents in Boston. Father had lived in Saudi Arabia until June 2006 when he moved back to Northern Virginia and resumed a relationship with his children. The court found that the move would substantially impair the relationship between father and children and that the older children were thriving in Northern Virginia. Id.

IV. PRACTICE GUIDE – What to know if you are trying a relocation case:

A. Virginia Code § 20-124.5: Notification requirements of relocation

In any proceeding involving custody or visitation, the court shall include as a condition of any custody or visitation order a requirement that thirty days' advance written notice be given to the court and the other party by any party intending to relocate and of any intended change of address, unless the court, for good cause shown, orders otherwise. The court may require that the notice be in such form and contain such information as it deems proper and necessary under the circumstances of the case.

B. Frequent and Continuing Contact: Virginia Code §20-124.2

Examining the Impact on the Child's Relationship with the Noncustodial Parent

How involved is the parent in the child's daily activities?

Will contact be frequent?

How will electronic contact affect the evidence of preserving the relationship?

The moving party should be prepared to show the efforts which have been made or will be made to assure the non-moving party maintains high quality contact with the child.

C. Preparing for Mediation or Trial

1. *Examining the Impact on the Child's Relationship with the Noncustodial Parent*

How involved is the parent in the child's daily activities?

Will contact be frequent?

How will electronic contact affect the evidence of preserving the relationship?

2. *Geographical Considerations*

How far is the proposed new home? Will it impact the current parenting schedule?

3. *Evidence Relocating parent needs to gather*:

* Proof of appropriateness of new residence (home study, photos, videos of new residence)
* Proof of comparison of school systems
* Cost of travel to visit non-relocating parent
* Are there health, activity, or educational benefits that have not been considered?
* Can the court fashion a reasonable parenting schedule to allow frequent and continuing contact with the non-relocating parent?
* New pediatrician, speech therapist, etc… don't come to court without names, addresses, and information.

4. *Analyzing the reason for relocation*

Economic stability – is the benefit actual (job in hand) or potential (maybe getting a music gig in Nashville, or just a benefit tangential to one parent's new boyfriend, girlfriend, or spouse?

Additional academic opportunities? Child gets STEM classes in Huntsville Alabama. Comapre school systems.

5. *Examining the Impact on the Child's Relationship with the Noncustodial Parent*

How involved is the parent in the child's daily activities?

Will contact be frequent?

How will electronic contact affect the evidence of preserving the relationship?

6. *Cultural opportunities*

What are the connections to the "new" place?

Do factors regarding extended family apply ?

7. *GAL considerations* – How does your case differ, and how does your strategy differ if there is a GAL appointed?

D. Use of Experts – How to prove "independent benefit"?

- How to prove the impact of the proposed relocation on the parent/child relationship

VIRGINIA BEACH BAR ASSOCIATION

Session 4 4:15-5:15pm

Virginia Beach General District Court

"General Practice Concerns and Tips for Handling Cases on the Mental Health Case Management Meeting "

The Hon. Salvator R. Iaquinto, Chief Judge

The Hon. Elizabeth S. Foster

The Hon. Sandra S. Menago

The Hon. Vivian F. Henderson

The Hon. Wanda J. Cooper

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Session 4- General District Court

VIRGINIA BEACH BAR ASSOCIATION

Session 4 ~ Panel Introductions:

The Hon. Salvator R. Iaquinto, Chief Judge, Virginia Beach General District Court

The Hon. Elizabeth S. Foster, Presiding Judge, Virginia Beach General District Court

The Hon. Sandra S. Menago, Presiding Judge, Virginia Beach General District Court

The Hon. Vivian F. Henderson, Presiding Judge, Virginia Beach General District Court

The Hon. Wanda J. Cooper, Presiding Judge, Virginia Beach General District Court

Virginia Beach General District Court ~ General Practice Tips

Criminal/Traffic Practitioners:

1. **Setting Hearing Dates:** Defense Counsel and the Commonwealth should evaluate the type of case and set a trial date that would **maximize the chance of it being heard the first time up.** For example: take into consideration if there is lab analysis needed for guns, drugs, blood, etc. and the delay that causes. Also consider the time it will take to reasonably review body-camera footage by both the Commonwealth and the Defense.
2. **Plea Agreements:** The Commonwealth and Defense are highly encouraged to discuss and come to plea resolutions in advance of the morning of court.
3. **Restitution:** If you believe the court will be ordering restitution, or if you have an agreement as to restitution, please have both restitution forms filled out prior to the hearing.
4. **Continuance Motions:** Paralegals and staff are not allowed to sign and submit letters for continuances and other motions.
   All continuance requests must include (at minimum):
   a. Defendant's name and current mailing address
   b. Present court date
   c. Arresting/charging officer's name
   d. Offense(s)
   e. Reason for your request
   f. Case number(s)

   If your court date is 9 business days or less from this date, you must fax your request to (757) 385-1063 or appear at our office in person, between the hours of 8:00 am – 4:00 pm, Monday – Friday, except holidays. **If your court date is 10 business days or more today's date,** please submit your continuance request by mail. The Court cannot accept continuance requests by telephone.

Virginia Supreme Court Rule 7C:5. Discovery. (Criminal Cases- General District Court)

(a) *Application of Rule.* – This Rule applies only to the prosecution for a misdemeanor which may be punished by confinement in jail and to a preliminary hearing for a felony.

(b) *Definitions.* – For purposes of discovery under this Rule 1) the prosecuting attorney is the attorney for the Commonwealth or the city attorney, county attorney, or town attorney, who is responsible for prosecuting the case; 2) if no prosecuting attorney prosecutes the case, the representative of the Commonwealth is the law enforcement officer, or, if none, such person who appears on behalf of the Commonwealth, county, city or town in the case.

(c) *Discovery by the Accused.* – Upon motion of an accused, the court must order the prosecuting attorney or representative of the Commonwealth to permit the accused to hear, inspect and copy or photograph the following information or material when the existence of such is known or becomes known to the prosecuting attorney or representative of the Commonwealth and such material or information is to be offered in evidence against the accused in a General District Court:

(1) any relevant written or recorded statements or confessions made by the accused, or copies thereof and the substance of any oral statements and confessions made by the accused to any law enforcement officer; and

(2) any criminal record of the accused.

(d) *Time of Motion.* – A motion by the accused under this Rule must be made in writing and filed with the Court and a copy thereof mailed, faxed, or otherwise delivered to the prosecuting attorney and, if applicable, to the representative of the Commonwealth at least 10 days before the day fixed for trial or preliminary hearing. The motion must include the specific information or material sought under this Rule.

(e) *Time, Place and Manner of Discovery and Inspection.* – An order granting relief under this Rule must specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(f) *Failure to Comply.* – If at any time during the course of the proceedings, it is brought to the attention of the court that the prosecuting attorney or representative of the Commonwealth has failed to comply with this Rule or with an order issued pursuant to this Rule, the court must order the prosecuting attorney or representative of the Commonwealth to permit the discovery or inspection of the material not

previously disclosed, and may grant such continuance to the accused as it deems appropriate.

2. Civil Practitioners:

A. Continuances

1. Paralegals and staff are not allowed to sign and submit letters for continuance or other motions.

2. If a request for a continuance is made in writing do not assume it will be granted. Try to address the matter in person in advance of the court date if possible.

3. Motions for continuances shall comply with Supreme Court of Virginia Rule 7A:14. Motions made prior to trial shall be made either in person or in writing. If made in writing the motion shall be mailed or hand-delivered to the clerk's office. The motion may be faxed only if it is clear to the sender that a mailed motion will not be received on a timely basis. Emailed motions will not be considered.

4. Motions made on the day of trial shall be made in person unless unforeseen circumstances prevent a personal appearance. In such cases, the motion shall be faxed to the clerk's office. Requests to continue made by telephone on the day of the trial are permitted only when the moving party is unable to fax the motion to the court due to circumstances beyond their control.

B. High Volume Dockets

1. On the day of Court, high volume attorneys should not be meeting with defendants prior to Court starting. Rather, all attorneys and staff should instruct the defendants to wait in the courtroom to hear any announcements / instructions inside the courtroom.

2. Once everyone has heard the announcements and the cases have been given out by the clerk, attorneys and their staff can meet with the defendants in the hallway.

3. Please make every effort to have a sign-in sheet for the defendants to allow them to find a place to sit and wait for the turn rather than congregating in the hallway outside of conference rooms.

4. Do not have defendants sign the dispositions and do not stamp the court documents.

5. YOU MUST REDACT SOCIAL SECURITY NUMBERS ON EVERYTHING YOU SUBMIT TO THE COURT!

6. In Unlawful Detainer Cases please be sure to include the SCRA Affidavit, Tenants Rights and Responsibilities and the relevant supporting documents. For example, the entire lease doesn't need to be attached; only attached the front page, signatures, and any relevant provisions regarding the damages / attorney fees.

7. High Volume Attorneys… it is your responsibility to ensure all paperwork is correct or you will jeopardize your high-volume status with the Court.

8. No amendments should be made to original pleadings unless done before the bench.

9. Confirm that defendants are properly named in the pleadings. This includes suffixes (Jr., II, III, etc.)

References:

Virginia Supreme Court Rule 7A:14. Continuances.

(a) ***Continuances Granted for Good Cause.*** – Continuances should not be granted except by, and at the discretion of, a judge for good cause shown, or unless otherwise provided by law. The judge may, by order, delegate to the clerk the power to grant continuances consented to by all parties under such circumstances as are set forth in the order. Such an order of delegation should be reasonably disseminated and posted so as to inform the bar and the general public.

(b) ***All Parties Agree to Continuance.*** – If all parties to a proceeding agree to seek a continuance, the request may be made orally by one party as long as that party certifies to the judge that all other parties know of the request and concur. Such a request should be made as far in advance of the scheduled hearing or trial as is practicable. If granted, the moving party is responsible for assuring that notice of the continuance is given to all subpoenaed witnesses and that they are provided with the new court date. This obligation may be met by (i) an agreement between the parties that each side will notify its own witnesses; or (ii) any other arrangement that is reasonably calculated to get prompt notice to all witnesses.

(c) ***All Parties Do Not Agree to Continuance.*** – If a request for continuance is not agreed to by all parties, such request should be made to the court prior to the time originally scheduled for the hearing or trial. If the court determines that a hearing on the request should be conducted prior to the time originally scheduled for the trial, all parties must be given notice of such hearing by the requesting party.

(d) ***Continuances Requested At the Time of Hearing.*** – Where a request for a continuance has not been made prior to the hearing or trial and other parties or witnesses are present and prepared for trial, a continuance should be granted only upon a showing that to proceed with the trial would not be in the best interest of justice.

(e) ***Parties.*** – For purposes of this Rule, the term "parties" means all plaintiffs, defendants and third-party defendants in a civil case and the prosecution and the defendant in a criminal or traffic infraction case.

Virginia Supreme Court Rule 7B:2. Specific Rule for Pleadings in General District Courts.

The judge of any General District Court may require the plaintiff to file and serve a written bill of particulars and the defendant to file and serve a written grounds of defense within the periods of time specified in the order so requiring; the failure of either party to comply may be grounds for awarding summary judgment in favor of the adverse party. Upon trial, the judge may exclude evidence as to matters not described in any such pleading.

Virginia Supreme Court Rule 7B:3. General Provisions as to Pleadings.

(a) A party asserting either a claim, counterclaim, cross-claim or a defense may plead alternative facts and theories of recovery against alternative parties, provided that such claims, defenses, or demands for relief so joined arise out of the same transaction or occurrence. Subject to the jurisdictional limits of the General District Court, a party may also state separate related claims or defenses regardless of consistency and whether based on legal or equitable grounds.
(b) The warrant, summons or complaint or an attachment thereto must contain a statement, approved by the Committee on District Courts, explaining how any party may object to venue.
(c) The warrant, summons or complaint, or an attachment thereto must contain a statement, approved by the Committee on District Courts, explaining that if the case is contested, how a trial date will be set.
(d) All civil warrants and complaints must contain on their face language in substantially the following form: "The defendant is not required to appear pursuant to this document, but if the defendant does not appear, judgment may be granted in favor of the plaintiff.

Virginia Supreme Court Rule 7B:5. Production of Written Agreement. General District Courts-Civil

When a suit is brought on a written contract, note or other instrument, the original document must be tendered to the court for entry of judgment thereon unless the production of the original is excused by the court for good cause or by statute.

Virginia Code § 8.01-420.8. Protection of confidential information in court files.

A. Whenever a party files, or causes to be filed, with the court a motion, pleading, subpoena, exhibit, or other document containing a social security number or other identification number appearing on a driver's license or other document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another jurisdiction, or on a credit card, debit card, bank account, or other electronic billing

and payment system, the party shall make reasonable efforts to redact all but the last four digits of the identification number.

B. The provisions of subsection A apply to all civil actions in circuit and district court, unless there is a specific statute to the contrary that applies to the particular type of proceeding in which the party is involved.

C. Nothing in this section shall create a private cause of action against the party or lawyer who filed the document or any court personnel, the clerk, or any employees of the clerk's office who received it for filing.

Mental Health Case Management Program
Procedures for Attorneys

I. Not a Docket

1. VBGDC currently does not have a "mental or behavioral health docket" as contemplated by Virginia Supreme Court Rule 1:25.
2. VBGDC does have a referral program for defendants that the court or their attorneys believe are not competent to stand trial.
3. There is a Mental Health Case Management Program Meeting that is currently scheduled at 2:00 p.m. the second Wednesday of every other month in Civil Courtroom A.

1. The next meeting is scheduled for September 20, 2023.
2. Anyone with an interest is welcome to attend these meetings and usually a representative from various agencies including the Virginia Beach Sheriff's Office; the Virginia Beach Police Department; Commonwealth's Attorney's Office; Public Defender's Office; the Community Services Board; the Adult Correctional Services Unit; Pre-Trial Services; Community Corrections Program; Eastern State Hospital; the Office of the Magistrate; VBGDC Judges; and VBJDR Judges.
3. These meetings are designed to bridge the gap in communication between the various agencies and the courts. This is not a 'docket' in which any cases are heard, but rather may be discussed in general terms to address any issues or concerns with care the defendant is receiving.

II. To add a defendant to the Mental Health Case Management Program (MHCMP)

A. Fill out a Request for Referral for Mental Health Evaluation

1. The Court will only accept the form provided by the Court as it contains all of the information necessary to proceed.

B. Provide a copy to the Office of the Commonwealth's Attorney.

1. The Commonwealth's Attorney's Office will assign a prosecutor to the case regardless of the charge.
2. Even misdemeanors will be assigned a prosecutor to assist the court with providing information to evaluators and maintaining regular communication with any potential victims and/or witnesses.

C. A hearing to determine if an evaluation is appropriate will be scheduled for the next business day at 1:30 p.m. in Traffic Courtroom D.

1. At the motion hearing the Judge will review the Request for Referral for Mental Health Evaluation form and will review the information with the defendant and the attorney(s).

2. The defendant will appear by video unless the Judge determines an in person appearance is necessary.
3. The court will be speaking with the defendant by video to determine if (in the court's view) the defendant is competent or not competent to stand trial and believes an evaluation is or is not necessary.

D. IF THE REQUEST IS APPROVED

1. ALL of the defendant's pending cases will be placed on hold during the pendency of the defendant's treatment or until re-docketed as described below.
    1. A doctor will be assigned *by the Court* to do an initial evaluation by meeting with the defendant.
    2. The Commonwealth's Attorney's Office and the Office of the Public Defender (if no private counsel) will be notified and attorneys must be assigned to the case. Attorney assignments should be provided to Robin Gardner as soon as possible to prevent delay.
        1. If attorney assignments are changed either with the Office of the Public Defender or the Office of the Commonwealth's Attorney-an Order of Substitution must be filed with the Court to ensure providers and the Court are communicating with the correct counsel.
    3. The attorneys are responsible for providing all pertinent information to the evaluator within 96 hours pursuant to §19.2-169.1. (which is attached for your convenience)
    4. Following the initial evaluation, the doctor will make a recommendation for either, in-patient restoration services; out-patient restoration services; or no services at all.
    5. The evaluator will notify the court and the attorneys of the doctor's recommendation. If the recommendation is for restoration services, the matter will automatically be docketed for 5 business days (or the next day in the event of court closure).
        1. This hearing will be docketed in Traffic D at 1:30 p.m. with the Judge that originally ordered the evaluation unless your are notified otherwise OR, the attorneys need not appear if:
            1. If both attorneys agree with the recommendation they may submit written (including email) communication to the court and the Court (if the judge agrees with the recommendation) will enter an Order for Restoration and issue the Transportation Order for the defendant to be transported to the appropriate facility for restoration services. Attorneys will be notified if the Judge is not in agreement and is requesting a hearing.
        2. The defendant will not be present at this hearing.

III. DOCKETING AFTER COMPETENCY RESTORED

A. Once restoration services are completed and the defendant is found to be competent to stand trial the evaluator will provide a copy of the report to the attorneys and the Court.

B. The case will automatically be docketed 14 days (or the next business day in the event of court closure) after the report is received.

1. All of the defendant's case(s) will be kept together on the docket and will be heard in the criminal courtroom for which they were originally set.
2. If the court date needs to be changed for any reason, the attorneys should file the appropriate motion as with any other case.

IV. PROCEDURE IF DEFENDANT IS NOT RESTORED

1. If the defendant is not restored within 45 days or 6 months (statutory time) of receiving inpatient treatment, the respective treatment provider/facility will notify the attorneys and the Court. The matter will be automatically set for a hearing outside of the defendant's presence to determine the next course of action 5 days (or next business day in the event of court closure) from receiving the report. (No transportation orders will be issued for these hearings)
2. If the Court finds the defendant is unrestorably incompetent to stand trial and likely to remain so for the foreseeable future the Court may dismiss the charge(s) as long as the Commonwealth does not object pursuant to statute; or Order Civil Commitment pursuant to §§37.2-814 through 37.2-819 in which case the charge(s) will be dismissed without prejudice pursuant to statute.

V. PROCEDURE WHEN DEFENDANT IS ALREADY UNDER REVIEW

1. If the defendant is already being reviewed by another court <u>regardless of jurisdiction</u>:
    1. Fill out a Request to Place Cases on Hold

        i. This is the same form as the Referral Form provided by the Court.
2. ALL of the defendant's cases pending in Virginia Beach General District Court *only* will be placed on hold pending the results of the ongoing evaluation.
3. The Court will be looking for updates from the attorneys every 30 days.
4. No additional evaluation will be ordered by this Court.
5. It is the defendant's attorney's responsibility to notify the Court that the evaluation has been completed by filing a written request for a hearing.

VI. Tips for handling cases for clients that may be referred to the MHCMP

A. Read and understand the statutes on competency.

B. Understand you may have to meet with your client several times to ascertain their status.

1. Having suicidal tendencies does not necessarily equate to not being competent

2. Be mindful of any illegal substances recently used and medication changes as these may also result in temporary issues that may not equate to being incompetent.

C. Complete the Court provided forms completely and accurately. This information is vital in getting people the proper care they may need.

D. **<u>Read and Respond</u>** to all emails sent by the court and evaluators as these issues are often time sensitive.

1. If you are going to be out of the office for any extended period of time, please provide appropriate contact information for someone that can discuss these matters.

    E. Get familiar with area resources and contacts as they will be an invaluable resource to provide your client and their families even after their case has concluded.

Mental Health Case Management Program/Procedures for Attorneys

I. TO ADD A DEFENDANT TO THE Mental Health Case Management (MHCM) PROGRAM

A. Fill out a Request for Referral for Mental Health Evaluation

B. Provide a copy to the Office of the Commonwealth's Attorney so a prosecutor can be assigned.

C. The hearing will automatically be docketed the next business day at 1:30 p.m. in Traffic D

1. At the motion hearing the Judge will review the Request for Referral for Mental Health Evaluation form and will review the information with the defendant and the attorney(s)
2. The defendant will appear by video for this hearing unless the Judge determines there is no appearance necessary or that the defendant needs to be present in person.

D. IF THE REQUEST IS APPROVED

1. All defendant's pending cases will be placed on hold during the pendency of the defendant's treatment or until re-docketed as described below.
    a. The Court will notify the Commonwealth's Attorney's Office, the Office of the Public Defender (if no private counsel) and the jail by providing a copy of the warrants and the Order for the evaluation.
    b. A doctor will be assigned *by the Court* to do an initial evaluation by meeting with the defendant.
    c. The attorneys are responsible for providing all pertinent information to the evaluator within 96 hours pursuant to §19.2-169.1.
    d. Following the initial evaluation, the evaluator will make a recommendation for either, in-patient out-patient restoration services or no services.
    e. The evaluator will provide a written report to the court and the attorneys of the doctor's recommendation. If the recommendation is for restoration services, the matter will automatically be docketed for 5 business days (or the next day in the event of court closure) in Traffic D at 1:30 p.m.. If both attorneys agree with the recommendation they may submit written communication to the court and the Court (if the judge agrees with the recommendation) will enter an Order for Restoration and issue the Transportation Order for the defendant to be transported to the appropriate facility for restoration services. Attorneys will be notified if the Judge is requesting a hearing.

II. DOCKETING AFTER COMPETENCY RESTORED

A. Once restoration services are completed and the defendant is found to be competent to stand trial the evaluator will provide a copy of the written report to the attorneys and the Court.

B. The case will automatically be docketed 14 days (or the next business day in the event of court closure) after the report is received.

1. All of the defendant's case(s) will be kept together on the docket and will be heard in the criminal courtroom for which they were originally set.
2. If the court date needs to be changed for any reason, the attorneys should file the appropriate motion as with any other case.

III. PROCEDURE IF DEFENDANT IS NOT RESTORED

A. If the defendant is not restored within 45 days or 6 months (statutory time) of receiving inpatient treatment, the respective treatment provider/facility will notify the attorneys and the Court. The matter will be automatically set for a hearing outside of the defendant's presence to determine the next course of action 5 days (or next business day in the event of court closure) from receiving the written report. These hearings will be set in Traffic D at 1:30 p.m. (No transportation orders will be issued for these hearings)

B. If the Court finds the defendant is unrestorably incompetent to stand trial and likely to remain so for the foreseeable future the Court may Order for Civil Commitment pursuant to §§37.2-814 through 37.2-819.

IV. PROCEDURE WHEN DEFENDANT IS ALREADY UNDER REVIEW

A. If the defendant is already being reviewed by another court regardless of jurisdiction:

1. Fill out a Request to Place Cases on Hold

B. All of the defendant's cases pending in Virginia Beach General District Court *only* will be placed on hold pending the results of the ongoing evaluation.

C. No additional evaluation will be ordered by this Court.

D. It is the defendant's attorney's responsibility to notify the Court that the evaluation has been completed by filing a written request for a hearing.

REQUEST FOR REFERRAL FOR MENTAL HEALTH EVALUATION
VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE CITY OF VIRGINIA BEACH

Case No(s): _____

RE: _____
DEFENDANT'S NAME

_____
STREET ADDRESS CITY, STATE, ZIP

(_____) _____
TELEPHONE

☐ Defendant is an inmate in Virginia Beach Correctional Center
(CHECK IF APPLICABLE)

The above-referenced defendant is charged with the following offense(s): _____

I request the above-referenced defendant be referred for a mental health evaluation for the following reasons: _____

☐ I have provided a copy of this Request Form to the Office of the Commonwealth's Attorney

ATTORNEY INFORMATION: **DEFENDANT'S ATTORNEY**

_____
NAME

_____
EMAIL

(_____) _____
TELEPHONE

COMMONWEALTH'S ATTORNEY

_____
NAME

_____
EMAIL

(_____) _____
TELEPHONE

Individual or Agency Requesting Referral: (Circle One) Judge, Attorney, Other: _____

SIGNATURE: _____ DATE: _____

_____
(PRINTED NAME)

Approved: _____ Denied: _____

_____ _____
JUDGE DATE

REQUEST TO PLACE CASES ON HOLD DUE TO PENDING MENTAL HEALTH EVALUATION

It has been determined the Defendant is already under review in _____ Court. Therefore, the above-referenced cases will be placed on hold until the defendant's attorney advises the court the evaluation has been completed. NO EVALUATION WILL BE ORDERED BY THIS COURT.

Approved: _____ Denied: _____

_____ _____
JUDGE DATE

Virginia Beach General District Court ~ Reference Statutes and Materials

Current through the 2023 Regular Session

- Code of Virginia 1950
- Title 19.2. Criminal Procedure. (Chs. 1 – 25)
- Chapter 11. Proceedings on Question of Insanity. (§§ 19.2-167 – 19.2-182.1)

§ 19.2-169.1. Raising question of competency to stand trial or plead; evaluation and determination of competency.

A. Raising competency issue; appointment of evaluators. – If, at any time after the attorney for the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who (i) has performed forensic evaluations; (ii) has successfully completed forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental Services; (iii) has demonstrated to the Commissioner competence to perform forensic evaluations; and (iv) is included on a list of approved evaluators maintained by the Commissioner.

B. Location of evaluation. – The evaluation shall be performed on an outpatient basis at a mental health facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator opines that a hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2.

C. Provision of information to evaluators. – The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the evaluation request. The court shall require the attorney for the defendant to provide any available psychiatric records and other information that is deemed relevant. The court shall require that information be provided to the evaluator within 96 hours of the issuance of the court order pursuant to this section.

D. The competency report. – Upon completion of the evaluation, the evaluators shall promptly submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to understand the proceedings against him; (ii) the defendant's ability to assist his attorney; (iii) the defendant's need for treatment in the event he is found incompetent but restorable or incompetent for the foreseeable future; and (iv) if the defendant has been charged with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or a misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128, whether the defendant should be evaluated to determine whether he meets the criteria for temporary detention pursuant to § 37.2-809 in the event he is found incompetent but restorable or incompetent for the foreseeable future.

If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether inpatient or outpatient treatment (community-based or jail-based) is recommended. Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate community services board or behavioral health authority. In cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition, and where prior medical or educational records are available to support the diagnosis, or if the defendant was previously determined to be unrestorably incompetent in the past two years, the report may recommend that the court find the defendant unrestorably incompetent to stand trial and the court may proceed with the disposition of the case in accordance with § 19.2-169.3. No statements of the defendant relating to the time period of the alleged offense shall be included in the report. The evaluator shall also send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to establish and maintain the list of approved evaluators described in subsection A.

E. The competency determination. – After receiving the report described in subsection D, the court shall promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right to personally participate in and introduce evidence at the hearing.
The fact that the defendant claims to be unable to remember the time period surrounding the alleged offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the charges against him and can assist in his defense. Nor shall the fact that the defendant is under the influence of medication bar a finding of competency if the defendant is able to understand the charges against him and assist in his defense while medicated.
F. Finding. – If the court finds the defendant competent to stand trial, the case shall be set for trial or a preliminary hearing. If the court finds the defendant either incompetent but restorable or incompetent for the foreseeable future, the court shall proceed pursuant to § 19.2-169.2.

§ 19.2-169.2. Disposition when defendant found incompetent.

A. Upon finding pursuant to subsection E or F of § 19.2-169.1 that the defendant, including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge. Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate community services board or behavioral health authority. Notwithstanding the provisions of § 19.2-178, if the court orders inpatient hospital treatment, the defendant shall be transferred to and accepted by the hospital designated by the Commissioner as soon as practicable, but no later than 10 days, from the receipt of the court order requiring treatment to restore the defendant's competency. If the 10-day period expires on a Saturday, Sunday, or other legal holiday, the 10 days shall be extended to the next day that is not a Saturday, Sunday, or legal holiday. Any psychiatric records and other information that have been deemed relevant and submitted by the attorney for the defendant pursuant to subsection C of § 19.2-169.1 and any reports submitted pursuant to subsection D of § 19.2-169.1 shall be made available to the director of the community services board or behavioral health authority or his designee or to the director of the treating inpatient facility or his designee within 96 hours of the issuance of the court order requiring treatment to restore the defendant's competency. If the 96-hour period expires on a Saturday, Sunday, or other legal holiday, the 96 hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.

B. If, at any time after the defendant is ordered to undergo treatment under subsection A, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to the procedures specified in subsection E of § 19.2-169.1.

C. Notwithstanding the provisions of subsection A, in cases in which (i) the defendant has been charged with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or a misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128; (ii) the defendant has been found to be incompetent pursuant to subsection E or F of § 19.2-169.1; and (iii) the competency report described in subsection D of § 19.2-169.1 recommends that the defendant be evaluated to determine whether he meets the criteria for temporary detention pursuant to § 37.2-809, the court may order the community services board or behavioral health authority serving the jurisdiction in which the defendant is located to (a) conduct an evaluation of the defendant and (b) if the community services board or behavioral health authority determines that the defendant meets the criteria for temporary detention, file a petition for issuance of an order for temporary detention pursuant to § 37.2-809. The community services board or behavioral health authority shall notify the court, in writing, within 72 hours of the completion of the evaluation and, if appropriate, file a petition for issuance of an order for temporary detention. Upon receipt of such notice, the court may dismiss the charges without prejudice against the defendant. However, the court shall not enter an order or dismiss charges against a defendant pursuant to this subsection if the attorney for the Commonwealth is involved in the prosecution of the case and the attorney for the Commonwealth does not concur in the motion.

D. If a defendant for whom an evaluation has been ordered pursuant to subsection C fails or refuses to appear for the evaluation, the community services board or behavioral health authority shall notify the court and the court shall issue a mandatory examination order and capias directing the primary law-enforcement agency for the jurisdiction in which the defendant resides to transport the defendant to the location designated by the community services board or behavioral health authority for examination.

E. The clerk of the court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of an order for treatment issued pursuant to subsection

§ 19.2-178. Where prisoner kept when no vacancy in facility or hospital.

When a court shall have entered any of the orders provided for in § 19.2-168.1, 19.2-169.1, 19.2-169.5, or 19.2-169.6, the sheriff of the county or city or the proper officer of the penal institution shall immediately proceed to ascertain whether a vacancy exists at the proper facility or hospital and until it is ascertained that there is a vacancy such person shall be kept in the jail of such county or city or in such custody as the court may order, or in the penal institution in which he is confined, until there is room in such facility or hospital. Any person whose care and custody is herein provided for shall be taken to and from the facility or hospital to which he was committed by an officer of the penal institution having custody of him, or by the sheriff of the county or city whose court issued the order of commitment, and the expenses incurred in such removals shall be paid by such penal institution, county or city.

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

A. For the purposes of this section:

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

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

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

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

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

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

E. An employee or a designee of the local community services board shall determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all persons detained pursuant to this section. An employee or designee of the local community services board may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the person given the specific security, medical, or behavioral health needs of the person. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary custody, transportation of the person to the alternative facility of temporary detention shall be provided in accordance with

the provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board designates an alternative facility, that employee or designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the person shall be detained in a state facility for the treatment of persons with mental illness and such facility shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6 or in subsection C of § 37.2-813 for persons prior to transfer to the facility of temporary detention, the person shall remain in the custody of law enforcement until either (i) the person is detained within a secure facility or (ii) custody has been accepted by the appropriate personnel designated by either the initial facility of temporary detention identified in the temporary detention order or by the alternative facility of temporary detention designated by the employee or designee of the local community services board pursuant to this subsection. The person detained or in custody pursuant to this section shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures.

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

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

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

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

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

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

L. If the employee or designee of the community services board who is conducting the evaluation pursuant to this section recommends that the person should not be subject to a temporary detention order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if such person is present, and an onsite treating physician of his recommendation; (ii) promptly inform such person who initiated emergency custody that the community services board will facilitate communication between the person and the magistrate if the person disagrees with recommendations of the employee or designee of the community services board who conducted the evaluation and the person who initiated emergency custody so requests; and (iii) upon prompt request made by the person who initiated emergency custody, arrange for such person who initiated emergency custody to communicate with the magistrate as soon as is practicable and prior to the expiration of the period of emergency custody. The magistrate shall consider any information provided by the person who initiated emergency custody and any recommendations of the treating or examining physician and the employee or designee of the community services board who conducted the evaluation and consider such information and recommendations in accordance with subsection B in making his determination to issue a temporary detention order. The person who is the subject of emergency custody shall remain in the custody of law enforcement or a designee of law enforcement and shall not be released from emergency custody until communication with the magistrate pursuant to this subsection has concluded and the magistrate has made a determination regarding issuance of a temporary detention order.

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

N. In any case in which a person subject to an evaluation pursuant to this section is receiving services in a hospital emergency department, the treating physician or his designee and the employee or designee of the local community services board shall disclose to each other relevant information pertaining to the individual's treatment in the emergency department.

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

A. The commitment hearing for involuntary admission shall be held after a sufficient period of time has passed to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, if the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein

provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

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

C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge or special justice shall inform the person of his right to a commitment hearing and right to counsel. The judge or special justice shall ascertain if the person whose admission is sought is represented by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel, the judge or special justice shall give him a reasonable opportunity to employ counsel at his own expense.

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

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

F. The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

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§ 37.2-815. Commitment hearing for involuntary admission; examination required.

A. Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination of the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not available, a mental health professional who (i) is licensed in Virginia through the Department of

Health Professions as a clinical social worker, professional counselor, marriage and family therapist, or psychiatric advanced practice registered nurse; (ii) is qualified in the assessment of mental illness; and (iii) has completed a certification program approved by the Department. The examiner chosen shall be able to provide an independent clinical evaluation of the person and recommendations for his placement, care, and treatment. The examiner shall (a) not be related by blood or marriage to the person, (b) not be responsible for treating the person, (c) have no financial interest in the admission or treatment of the person, (d) have no investment interest in the facility detaining or admitting the person under this chapter, and (e) except for employees of state hospitals, the U.S. Department of Veterans Affairs, and community service boards, not be employed by the facility. For purposes of this section, the term "investment interest" shall be as defined in § 37.2-809.

B. The examination conducted pursuant to this section shall be a comprehensive evaluation of the person conducted in-person or, if that is not practicable, by two-way electronic video and audio communication system as authorized in § 37.2-804.1. Translation or interpreter services shall be provided during the evaluation where necessary. The examination shall consist of (i) a clinical assessment that includes a mental status examination; determination of current use of psychotropic and other medications; a medical and psychiatric history; a substance use, abuse, or dependency determination; and a determination of the likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) a substance abuse screening, when indicated; (iii) a risk assessment that includes an evaluation of the likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; (iv) an assessment of the person's capacity to consent to treatment, including his ability to maintain and communicate choice, understand relevant information, and comprehend the situation and its consequences; (v) a review of the temporary detention facility's records for the person, including the treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes; (vi) a discussion of treatment preferences expressed by the person or contained in a document provided by the person in support of recovery; (vii) an assessment of whether the person meets the criteria for an order authorizing discharge to mandatory outpatient treatment following a period of inpatient treatment pursuant to subsection c of § 37.2-817.01; (viii) an assessment of alternatives to involuntary inpatient treatment; and (ix) recommendations for the placement, care, and treatment of the person.

C. All such examinations shall be conducted in private. The judge or special justice shall summons the examiner who shall certify that he has personally examined the person and state whether he has probable cause to believe that the person (i) has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and (ii) requires involuntary inpatient treatment. The judge or special justice shall not render any decision on the petition until the examiner has presented his report. The examiner may report orally at the hearing, but he shall provide a written report of his examination prior to the hearing. The examiner's written certification may be accepted into evidence unless objected to by the person or his attorney, in which case the examiner shall attend in person or by electronic communication. When the examiner attends the hearing in person or by electronic communication, the examiner shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.

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

The district court judge or special justice shall require a preadmission screening report from the community services board that serves the county or city where the person resides or, if impractical, where the person is located. The report shall be admitted as evidence of the facts stated therein and shall state (i) whether the person has a mental illness and whether there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) whether the person is in need of involuntary inpatient treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the recommendations for that person's placement, care, and treatment including, where appropriate,

recommendations for mandatory outpatient treatment. The board shall provide the preadmission screening report to the court prior to the hearing, and the report shall be admitted into evidence and made part of the record of the case. In the case of a person who has been sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person has mental illness and should be involuntarily admitted without requesting a preadmission screening report from the community services board.

§ 37.2-817. Involuntary admission.

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

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

At least 12 hours prior to the hearing, the court shall provide to the community services board that prepared the preadmission screening report the time and location of the hearing. If the representative of the community services board that prepared the preadmission screening report will be present by telephonic means, the court shall provide the telephone number to the community services board. If a representative of a community services board will be attending the hearing on behalf of the community services board that prepared the preadmission screening report, the community services board that prepared the preadmission screening report shall promptly communicate the time and location of the hearing and, if the representative of the community services board attending on behalf of the community services board that prepared the preadmission screening report will be present by telephonic means, the telephone number to the attending community services board.

C. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, including whether the person recently has been found unrestorably incompetent to stand trial after a hearing held pursuant to subsection E of § 19.2-

169.1, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment that would offer an opportunity for the improvement of the person's condition have been investigated and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board that serves the county or city in which the person was examined as provided in § 37.2-816. If the community services board does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the person shall be released unless (A) he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order, (B) he makes application for treatment on a voluntary basis as provided for in § 37.2-805, or (C) he is ordered to mandatory outpatient treatment following a period of inpatient treatment pursuant to § 37.2-817.01.

§ 37.2-817.01. Mandatory outpatient treatment.

A. Prior to ordering involuntary admission pursuant to § 37.2-817, a judge or special justice shall investigate and determine whether (i) mandatory outpatient treatment is appropriate as a less restrictive alternative to admission pursuant to subsection B or (ii) mandatory outpatient treatment following a period of inpatient treatment is appropriate pursuant to subsection C.

B. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (b) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate, as reflected in the initial outpatient treatment plan prepared in accordance with subsection F, (c) the person has the ability to adhere to the mandatory outpatient treatment plan, and (d) the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board but shall not exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment. Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is continued in accordance with § 37.2-817.4.

C. Upon finding by clear and convincing evidence that, in addition to the findings described in subsection C of § 37.2-817, (i) the person has a history of lack of adherence to treatment for mental illness that has, at least twice within the past 36 months, resulted in the person being subject to an order for involuntary admission pursuant to subsection C of § 37.2-817 or being subject to a temporary detention order and then voluntarily admitting himself in accordance with subsection B of § 37.2-814, except that such 36-month period shall not include any time during which the person was receiving inpatient psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing, (ii) in view of the person's treatment history and current behavior, the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary inpatient treatment, (iii) the person has the ability to adhere to the comprehensive mandatory outpatient treatment plan, and (iv) the person is likely to

benefit from mandatory outpatient treatment, the judge or special justice may order that, upon discharge from inpatient treatment, the person adhere to a comprehensive mandatory outpatient treatment plan.

The period of mandatory outpatient treatment shall begin upon discharge of the person from involuntary inpatient treatment, either upon expiration of the order for inpatient treatment pursuant to subsection C of § 37.2-817 or pursuant to § 37.2-837 or 37.2-838. The duration of mandatory outpatient treatment shall be determined by the court on the basis of recommendations of the community services board, and the maximum period of mandatory outpatient treatment shall not exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment.

The treating physician and facility staff shall develop the comprehensive mandatory outpatient treatment plan in conjunction with the community services board and the person. The comprehensive mandatory outpatient treatment plan shall include all of the components described in, and shall be filed with the court and incorporated into, the order for mandatory outpatient treatment following a period of involuntary inpatient treatment in accordance with subsection G. The community services board where the person resides upon discharge shall monitor the person's progress and adherence to the comprehensive mandatory outpatient treatment plan. Upon expiration of the order for mandatory outpatient treatment following a period of involuntary inpatient treatment, the person shall be released unless the order is continued in accordance with § 37.2-817.4.

D. At any time prior to the discharge of a person who has been involuntarily admitted pursuant to subsection C of § 37.2-817, the person, the person's treating physician, a family member or personal representative of the person, or the community services board serving the county or city where the facility is located, the county or city where the person resides, or the county or city where the person will receive treatment following discharge may file a motion with the court for a hearing to determine whether such person should be ordered to mandatory outpatient treatment following a period of inpatient treatment upon discharge if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (i) involuntarily admitted pursuant to subsection C of § 37.2-817 or (ii) the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814, except that such 36-month period shall not include any time during which the person was receiving inpatient psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing. A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a hearing to determine whether the person should be ordered to mandatory outpatient treatment following a period of involuntary inpatient treatment; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday. The district court judge or special justice may enter an order for a period of mandatory outpatient treatment following a period of involuntary inpatient treatment upon finding that the person meets the criteria set forth in subsection C.

E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with antipsychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of any kind in the provision of the medication. The community services board that serves the county or city in which the person resides shall recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment.

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

G. The community services board where the person resides that is responsible for monitoring the person's progress and adherence to the comprehensive mandatory outpatient treatment plan shall file a comprehensive mandatory outpatient treatment plan no later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered pursuant to subsection B. The community services board where the person resides that is responsible for monitoring the person's progress and adherence to the

comprehensive mandatory outpatient treatment plan shall file a comprehensive mandatory outpatient treatment plan prior to discharging a person to mandatory outpatient treatment pursuant to subsection C or D. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided to the person; (ii) identify the provider that has agreed to provide each service included in the plan; (iii) certify that the services are the most appropriate and least restrictive treatment available for the person; (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department's licensing regulations; (v) be developed with the fullest possible involvement and participation of the person and his family, with the person's consent, and reflect his preferences to the greatest extent possible to support his recovery and self-determination, including incorporating any preexisting crisis plan or advance directive of the person; (vi) specify the particular conditions to which the person shall be required to adhere; and (vii) describe (a) how the community services board shall monitor the person's progress and adherence to the plan and (b) any conditions, including scheduled meetings or continued adherence to medication, necessary for mandatory outpatient treatment to be appropriate for the person. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment entered pursuant to subsection B, C, or D, as appropriate. A copy of the comprehensive mandatory outpatient treatment plan shall be provided to the person by the community services board upon approval of the comprehensive mandatory outpatient treatment plan by the court.

H. If the community services board responsible for developing a comprehensive mandatory outpatient treatment plan pursuant to subsection B, C, or D determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, it shall petition the court for rescission of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment in accordance with the provisions of subsection D of § 37.2-817.1.

I. Upon entry of any order for mandatory outpatient treatment pursuant to subsection B or mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C or D, the clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to the community services board required to monitor the person's progress and adherence to the comprehensive mandatory outpatient treatment plan. The community services board shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose within five business days.

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

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

§ 37.2-817.1. Monitoring and court review of mandatory outpatient treatment.

A. As used in this section, "material nonadherence" means deviation from a comprehensive mandatory outpatient treatment plan by a person who is subject to an order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C or D of § 37.2-817.01 or an order for mandatory outpatient treatment pursuant to subsection B of § 37.2-817.01 that it is likely to lead to the person's relapse or deterioration and for which the person cannot provide a reasonable explanation.

B. The community services board where the person resides shall monitor the person's progress and adherence to the comprehensive mandatory outpatient treatment plan prepared in accordance with § 37.2-817.01. Such monitoring shall include (i) contacting or making documented efforts to contact the person regarding the comprehensive mandatory outpatient treatment plan and any support necessary for the person to adhere to the comprehensive mandatory outpatient treatment plan, (ii) contacting the service providers to determine if the person is adhering to the comprehensive mandatory outpatient treatment plan and, in the event of material nonadherence, if the person fails or refuses to cooperate with efforts of the community services board or providers of services identified in the comprehensive mandatory outpatient treatment plan to address the factors leading to the person's material nonadherence, petitioning for a review hearing pursuant to this section. Service providers identified in the comprehensive mandatory outpatient treatment plan shall report any material nonadherence and any material changes in the person's condition to the community services board. Any finding of material nonadherence shall be based upon a totality of the circumstances.

C. The community services board responsible for monitoring the person's progress and adherence to the comprehensive mandatory outpatient treatment plan shall report monthly, in writing, to the court regarding the person's and the community services board's compliance with the provisions of the comprehensive mandatory outpatient treatment plan. If the community services board determines that the deterioration of the condition or behavior of a person who is subject to an order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C or D of § 37.2-817.01 or a mandatory outpatient treatment order pursuant to subsection B of § 37.2-817.01 is such that there is a substantial likelihood that, as a result of the person's mental illness, the person will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, it shall immediately request that the magistrate issue an emergency custody order pursuant to § 37.2-808 or a temporary detention order pursuant to § 37.2-809. Entry of an emergency custody order, temporary detention order, or involuntary inpatient treatment order shall suspend but not rescind an existing order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C or D of § 37.2-817.01 or a mandatory outpatient treatment order pursuant to subsection B of § 37.2-817.01.

D. The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the comprehensive mandatory outpatient treatment plan; however, if the fifth day is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The clerk shall provide notice of the hearing to the person, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order or discharge plan, and the original petitioner for the person's involuntary treatment. If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearing under this section or § 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment need not preside at the nonadherence hearing or any subsequent hearings. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

Any of the following may petition the court for a hearing pursuant to this subsection: (i) the person who is subject to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (ii) the community services board responsible for monitoring the person's progress and adherence to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (iii) a treatment provider designated in the comprehensive mandatory outpatient treatment plan; (iv) the person who originally filed the petition that resulted in the entry of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (v) any health care agent designated in the advance directive of the person who is the subject of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; or (vi) if the person who is the subject of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment has been determined to be incapable of making an informed decision, the person's guardian or other person authorized to make health care decisions for the person pursuant to § 54.1-2986.

A petition filed pursuant to this subsection may request that the court do any of the following:

1. Enforce a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment and require the person who is the subject of the order to adhere to the comprehensive mandatory outpatient treatment plan, in the case of material nonadherence;

2. Modify a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment or a comprehensive mandatory outpatient treatment plan due to a change in circumstances, including changes in the condition, behavior, living arrangement, or access to services of the person who is the subject to the order; or

3. Rescind a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment.

At any time after 30 days from entry of the mandatory outpatient treatment order pursuant to subsection B of § 37.2-817.01 or from the discharge of the person from involuntary inpatient treatment pursuant to an order under subsection C or D of § 37.2-817.01, the person may petition the court to rescind the order. The person shall not file a petition to rescind the order more than once during a 90-day period.

E. If requested in a petition filed pursuant to subsection D or on the court's own motion, the court may appoint an examiner in accordance with § 37.2-815 who shall personally examine the person on or before the date of the review, as directed by the court, and certify to the court whether or not he has probable cause to believe that the person meets the criteria for mandatory outpatient treatment as specified in subsection B, C, or D of § 37.2-817.01, as may be applicable. The examination shall include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not incarcerated or receiving treatment in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board. If the person refuses or fails to appear, the community services board shall notify the court, or a magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and capias directing the primary law-enforcement agency in the jurisdiction where the person resides to transport the person to the examination. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period exceed eight hours.

F. If the person fails to appear for the hearing, the court may, after consideration of any evidence regarding why the person failed to appear at the hearing, (i) dismiss the petition, (ii) issue an emergency custody order pursuant to § 37.2-808, or (iii) reschedule the hearing pursuant to subsection D and issue a subpoena for the person's appearance at the hearing and enter an order for mandatory examination, to be conducted prior to the hearing and in accordance with subsection E.

G. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed to practice in the Commonwealth, if available, (ii) the person's adherence to the comprehensive mandatory outpatient treatment plan, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) any report from the community services board, and (vii) any other relevant evidence that may have been admitted at the hearing, the judge or special justice shall make one of the following dispositions:

1. In a hearing on any petition seeking enforcement of a mandatory outpatient treatment order, upon finding that continuing mandatory outpatient treatment is warranted, the court shall direct the person to fully comply with the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment and may make any modifications to such order or the comprehensive mandatory outpatient treatment plan that are acceptable to the community services board or treatment provider responsible for the person's treatment. In determining the appropriateness of the outpatient treatment specified in such order and the comprehensive mandatory outpatient treatment plan, the court may consider the person's material nonadherence to the existing mandatory treatment order.

2. In a hearing on any petition seeking modification of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment, upon a finding that (i) one or more modifications of the order would benefit the person and help prevent relapse or deterioration of the person's

condition, (ii) the community services board and the treatment provider responsible for the person's treatment are able to provide services consistent with such modification, and (iii) the person is able to adhere to the modified comprehensive mandatory outpatient treatment plan, the court may order such modification of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment or the comprehensive mandatory outpatient treatment plan as the court finds appropriate.

3. In a hearing on any petition filed to enforce, modify, or rescind a mandatory outpatient treatment order, upon finding that mandatory outpatient treatment is no longer appropriate, the court may rescind the order.

H. The judge or special justice may schedule periodic status hearings for the purpose of obtaining information regarding the person's progress while the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment remains in effect. The clerk shall provide notice of the hearing to the person who is the subject of the order and the community services board responsible for monitoring the person's condition and adherence to the plan. The person shall have the right to be represented by counsel at the hearing, and if the person does not have counsel the court shall appoint an attorney to represent the person. However, status hearings may be held without counsel present by mutual consent of the parties. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation. During a status hearing, the treatment plan may be amended upon mutual agreement of the parties. Contested matters shall not be decided during a status hearing, nor shall any decision regarding enforcement, rescission, or renewal of the order be entered.

§ 37.2-817.2. Repealed by Acts 2022, c. 763, cl. 2, effective October 1, 2022.

§ 37.2-817.3. Repealed by Acts 2021 Sp. Sess. I, , c. 221, cl. 2, effective October 1, 2022.

§ 37.2-817.4. Continuation of mandatory outpatient treatment order.

A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment, any person or entity that may file a petition for review of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection D of § 37.2-817.1 may petition the court to continue the order for a period not to exceed 180 days.

B. If the person who is the subject of the order and the monitoring community services board, if it did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate order without further hearing. If either the person or the monitoring community services board does not join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection D of § 37.2-817.1.

C. Upon receipt of a contested petition for continuation, the court shall appoint an examiner who shall personally examine the person pursuant to subsection E of § 37.2-817.1. The community services board required to monitor the person's adherence to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment shall provide a report addressing whether the person continues to meet the criteria for being subject to a mandatory outpatient treatment order pursuant to subsection B of § 37.2-817.01 or order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C or D of § 37.2-817.01, as may be appropriate.

D. If, after observing the person, reviewing the report of the community services board provided pursuant to subsection C and considering the appointed examiner's certification and any other relevant evidence submitted at the hearing, the court finds that the person continues to meet the criteria for mandatory outpatient treatment pursuant to subsection B, C, or D of § 37.2-817.01, it may continue the order for a period not to exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment. Any order of mandatory

outpatient treatment that is in effect at the time a petition for continuation of the order is filed shall remain in effect until the disposition of the hearing.

§ 37.2-817.4. Continuation of mandatory outpatient treatment order.

A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment, any person or entity that may file a petition for review of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection D of § 37.2-817.1 may petition the court to continue the order for a period not to exceed 180 days.

B. If the person who is the subject of the order and the monitoring community services board, if it did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate order without further hearing. If either the person or the monitoring community services board does not join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection D of § 37.2-817.1.

C. Upon receipt of a contested petition for continuation, the court shall appoint an examiner who shall personally examine the person pursuant to subsection E of § 37.2-817.1. The community services board required to monitor the person's adherence to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment shall provide a report addressing whether the person continues to meet the criteria for being subject to a mandatory outpatient treatment order pursuant to subsection B of § 37.2-817.01 or order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C or D of § 37.2-817.01, as may be appropriate.

D. If, after observing the person, reviewing the report of the community services board provided pursuant to subsection C and considering the appointed examiner's certification and any other relevant evidence submitted at the hearing, the court finds that the person continues to meet the criteria for mandatory outpatient treatment pursuant to subsection B, C, or D of § 37.2-817.01, it may continue the order for a period not to exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment. Any order of mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is filed shall remain in effect until the disposition of the hearing.

§ 37.2-819. Order of involuntary admission or mandatory outpatient treatment forwarded to CCRE; certain voluntary admissions forwarded to CCRE; firearm background check.

A. The order from a commitment hearing issued pursuant to this chapter for involuntary admission or mandatory outpatient treatment and the certification of any person who has been the subject of a temporary detention order pursuant to § 37.2-809 and who, after being advised by the judge or special justice that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 37.2-805 shall be filed by the judge or special justice with the clerk of the district court for the county or city where the hearing took place as soon as practicable but no later than the close of business on the next business day following the completion of the hearing.

B. Upon receipt of any order from a commitment hearing issued pursuant to this chapter for involuntary admission to a facility, the clerk of court shall, as soon as practicable but not later than the close of business on the next following business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order. Upon receipt of any order from a commitment hearing issued pursuant to this chapter for mandatory outpatient treatment, the clerk of court shall, prior to the close of that business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order.

C. The clerk of court shall also, as soon as practicable but no later than the close of business on the next following business day, forward upon receipt to the Central Criminal Records Exchange, on a form provided by the Exchange, certification of any person who has been the subject of a temporary detention order pursuant to § 37.2-809, and who, after being advised by the judge or special justice that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 37.2-805.

D. Except as provided in subdivision A 1 of § 19.2-389, the copy of the forms and orders sent to the Central Criminal Records Exchange pursuant to subsection B, and the forms and certifications sent to the Central Criminal Records Exchange regarding voluntary admission pursuant to subsection C, shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange with any form, order, or certification required by subsection B or C. The Department of State Police shall forward only a person's eligibility to possess, purchase, or transfer a firearm to the National Instant Criminal Background Check System.

Selected Rules of the Virginia Supreme Court

Rule 1:25 - Specialty Dockets(a) ***Definition of and Criteria for Specialty Dockets.***

(1) When used in this Rule, the term "specialty dockets" refers to specialized court dockets within the existing structure of Virginia's circuit and district court system offering judicial monitoring of intensive treatment, supervision, and remediation integral to case disposition

(2) Types of court proceedings appropriate for grouping in a "specialty docket" are those which (i) require more than simply the adjudication of discrete legal issues, (ii) present a common dynamic underlying the legally cognizable behavior, (iii) require the coordination of services and treatment to address that underlying dynamic, and (iv) focus primarily on the remediation of the defendant in these dockets. The treatment, the services, and the disposition options are those which are otherwise available under law.

(3) Dockets which group cases together based simply on the area of the law at issue, e.g., a docket of unlawful detainer cases or child support cases, are not considered "specialty dockets."

(b) *Types of Specialty Dockets.* The Supreme Court of Virginia currently recognizes only the following three types of specialty dockets: (i) drug treatment court dockets as provided for in the Drug Treatment Court Act, § 18.2-254.1, (ii) veterans dockets, and (iii) behavioral health dockets as provided for in the Behavioral Health Docket Act, § 18.2-254.3. Drug treatment court dockets offer judicial monitoring of intensive treatment and strict supervision in drug and drug related cases. The dispositions in the family drug treatment court dockets established in juvenile and domestic relations district courts may include family and household members as defined in Virginia Code § 16.1-228. Veterans dockets offer eligible defendants who are veterans of the armed services with substance dependency or mental illness a specialized criminal specialty docket that is coordinated with specialized services for veterans. Behavioral health dockets offer defendants with diagnosed behavioral or mental health disorders judicially supervised, community-based treatment plans, which a team of court staff and mental health professionals design and implement.

(c) *Authorization Process.* A circuit or district court which intends to establish one or more types of these recognized specialty dockets must petition the Supreme Court

of Virginia for authorization before beginning operation of a specialty docket or, in the instance of an existing specialty docket, continuing its operation. A petitioning court must demonstrate sufficient local support for the establishment of this specialty docket, as well as adequate planning for its establishment and continuation.

(d)*Expansion of Types of Specialty Dockets.* A circuit or district court seeking to establish a type of specialty docket not yet recognized under this rule must first demonstrate to the Supreme Court that a new specialty docket of the proposed type meets the criteria set forth in subsection (a) of this Rule. If this additional type of specialty docket receives recognition from the Supreme Court of Virginia, any local specialty docket of this type must then be authorized as established in subsection (c) of this Rule.

(e)*Oversight Structure.* By order, the Chief Justice of the Supreme Court may establish a Specialty Docket Advisory Committee and appoint its members. The Chief Justice may also establish separate committees for each of the approved types of specialty dockets. The members of the Veterans Docket Advisory Committee, the Behavioral Health Docket Advisory Committee, and the committee for any other type of specialty docket recognized in the future by the Supreme Court will be chosen by the Chief Justice. The State Drug Treatment Court Advisory Committee established pursuant to Virginia Code § 18.2-254.1 constitutes the Drug Treatment Court Docket Advisory Committee.

(f)*Operating Standards.* The Specialty Docket Advisory Committee, in consultation with the committees created pursuant to subsection (e), will establish the training and operating standards for local specialty dockets.

(g)*Financing Specialty Dockets.* Any funds necessary for the operation of a specialty docket will be the responsibility of the locality and the local court, but may be provided via state appropriations and federal grants.

(h)*Evaluation.* Any local court establishing a specialty docket must provide to the Specialty Docket Advisory Committee the information necessary for the continuing evaluation of the effectiveness and efficiency of all local specialty dockets.

Va. Sup. Ct. 1:25

Adopted by Order dated November 1, 2016, effective 1/16/2016; adopted by order dated November 14, 2016, effective 1/16/2017; amended by order dated January 12, 2021, effective 1/12/2021; amended by order dated August 11, 2021, effective 10/11/2021.

VIRGINIA BEACH BAR ASSOCIATION

**Please join us at *Tempt* following Session 4 for a Reception. Tempt is located at 3102 Holly Rd., Virginia Beach, VA 23451.

The Virginia Beach Bar Association would like to thank all the members of our local delegation as well as our distinguished Bench for their time and contributions to this event!

The Bar truly appreciates the time and dedication provided in support of this event!