BHC Behavioral Health Commission

Proposed Workplan

2022

Commonwealth of Virginia

Behavioral Health Commission

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Nathalie Molliet-Ribet, Executive Director

Purpose

The Commission is established in the legislative branch of state government for the purpose of studying and making recommendations for the improvement of behavioral health services and the behavioral health service system in the Commonwealth to encourage the adoption of policies to increase the quality and availability of and ensure access to the full continuum of high-quality, effective, and efficient behavioral health services for all persons in the Commonwealth. In carrying out its purpose, the Commission shall provide ongoing oversight of behavioral health services and the behavioral health service system in the Commonwealth, including monitoring and evaluation of established programs, services, and delivery and payment structures and implementation of new services and initiatives in the Commonwealth and development of recommendations for improving such programs, services, structures, and implementation.

Proposed 2022 BHC Workplan

The Behavioral Health Commission uses a structured yet flexible process to plan staff work at the beginning of each year. This process takes into consideration the size and experience level of current staff; the complexity of the work being proposed; the amount of time available to complete the work; the degree of flexibility afforded by the entity proposing the work; the time sensitivity of the work; and the type of research needed. In subsequent years, the BHC's workplan will be shaped, in part, by the priorities identified in the Commission's Strategic Plan, which is expected to be completed by the end of 2022.

The proposed workplan is being submitted to the Commission for review, discussion, and approval. Following a presentation of the proposed workplan to the Commission, an approved version will be published. Revisions could still occur during the course of the year to reflect changes in organizational priorities and needs.

Work referred to the Commission in 2021/2022

Studies and requests can be referred to the Behavioral Health Commission in several ways but they must generally be approved by the full commission before they are assigned to staff. The Commission can select topics for the staff to study, as may become the case more frequently after it has adopted a Strategic Plan. In addition, the BHC can receive work from joint resolutions passed by the General Assembly, language in the Appropriation Act, letters from Committee chairs, requests from BHC members, and staff recommendations.

Proposed studies and research activities to be completed in 2022

The workplan below represents a staff proposal for a feasible yet ambitious work schedule. Proposed activities are broken out into three categories: (1) strategic priorities that are necessary to maximize the impact of the BHC in the long-term; (2) studies that were referred to the Commission and will help improve the care and outcomes for individuals in need of behavioral health services; and (3) participation in workgroups aiming to solve issues that span multiple agencies.

Study topics / participation summary	Complexity	Due date/ complete	Source
Strategic priorities			
1. **Develop strategic plan** Develop 5-year plan including system baseline, goals, strategies and studies to meet goals, and metrics to assess progress	H	10/15/22	Strategic/staff recommendation
2. **Design report on key behavioral health system metrics** Identify and report on key metrics of interest to members	L	12/15/22	Strategic/staff recommendation
Studies			
3. **Complete study of HB 2047 / SB 1315** Evaluate options for requiring individuals to receive treatment when found not guilty of an offense due to a mental condition	H	11/01/22	2021 legislation/ SJ47 referral
4. **Further study SB 198** Examine implementation of SB 198 and how it addresses issues related to competency restoration process	H	12/01/22	2022 Committee referral
Participation in outside workgroups			
5. **Participate in workgroup to restructure DBHDS** Examine options for restructuring the responsibilities and operations of DBHDS	M	12/01/22	Commission priority, 2022 budget language
6. **Participate in workgroup to increase use of alternative custody** Study options to increase the use of alternative custody arrangements for individuals subject to an ECO or TDO	M	10/01/22	2022 legislation

Additional work referred for 2022

Three additional bills were referred by letter to the Commission for study, following the 2022 General Assembly Session. The scope of the issues that staff are asked to research cannot be absorbed in 2022, given existing resources and other work that must be completed during the year. To be comprehensive and useful, a review of HB 743 should be postponed to 2023. It is not clear whether the issues associated with HB 613 and SB 453

would benefit from research, or if they are instead policy decisions that can only be decided by legislators. If the latter, additional guidance from the BHC would be helpful in determining how to proceed with both bills.

Study / bill summary	Expected complexity	Due date/ complete	Source
1. **Further study HB 743** Adds conditions related to serving individuals subject to TDOs when issuing COPNs for projects involving inpatient psychiatric services	H+	2023	2022 Committee referral
2. **Further study HB 613** Would reduce penalties for individuals with ASDs, intellectual disabilities, or SMIs who were charged for assault and battery against certain groups. Closely related to SB 453	M	TBD	2022 Committee referral
3. **Further study SB 453** Would avoid arrest & prosecution for assault and battery against law enforcement officers for individuals experiencing a mental health emergency. Closely related to HB 613	M	TBD	2022 Committee referral

Requests for 2023 studies

One additional study was referred to the Commission through the budget with a 2023 completion deadline.

Study topics / participation summary	Complexity	Due date	Source
1. **Study school-based mental health services** Evaluate the reach of school-based mental health services and identify strategies to connect clinical interventions to schools	H	11/01/23	2022 budget language

Overview of work referred to the Commission for 2022 completion

Studies and other activities are assigned to one (or more) BHC staff member who is responsible for developing a research plan laying out how the work will be conducted and completed by its due date. Research plans are reviewed by the Executive Director, who provides continuous guidance, feedback, and quality control throughout the course of each assignment to ensure that final products are objective, substantiated, comprehensive, and on point.

The studies and activities being proposed in the 2022 workplan are summarized below. They are followed by a brief summary of the three additional bills expected to be referred to the Commission by letter and that are not currently scheduled for 2022. The requests and legislation associated with each study and activity are included in the appendix.

Develop strategic plan

Source: Strategic/staff recommendation
Staff lead: Nathalie Molliet-Ribet
Scheduled completion: December 2022

The mission of the BHC is to study and make recommendations for improving Virginia's behavioral health system so that all Virginians have access to a full continuum of high-quality and efficient behavioral health services. A strategic plan will outline the BHC's vision for a best-in-class behavioral health system in Virginia and act as a specific blueprint for how this vision can be realized over the next five years. Having a plan will also enable the BHC to be more proactive and to maintain focus on those activities that have been identified as critical to achieving the Commission's mission.

The strategic planning process will entail:

- assessing the current behavioral health system for strengths and weaknesses;
- articulating the transformational goals that must be met in order to achieve an "ideal" behavioral health system in light of existing strengths and weaknesses;
- identifying strategies that could be used to achieve each transformational goal;
- translating strategies into studies that Commission staff or other entities should conduct to determine how best to implement such strategy;
- validating that Commission involvement would help facilitate the implementation of each strategy;
- gauging the impact and, if possible, the cost of implementing each strategy;
- prioritizing and sequencing the studies associated with each strategy over a five-year period to maximize impact and staff efficiency, assigning owners, and estimating implementation timelines to drive accountability and foster progress; and

- selecting performance metrics to monitor progress toward accomplishing the strategies and transformational goals identified.

Throughout the strategic planning process, Commission staff will work closely with BHC members, conduct extensive outreach and meet with stakeholders, and consult with experts. Staff will also closely review previous work and studies related to Virginia's behavioral health system.

The strategic plan will be coupled with annual workplans, which will lay out the specific activities that must take place every year to make progress toward long-term goals. The strategic plan will be updated every two years, or as needed, to reflect changes in the behavioral system that may impact the Commission's approach and priorities.

Develop standard BHC report on key behavioral health system metrics

Source: Strategic/staff recommendation
Staff lead: Nathalie Molliet-Ribet
Scheduled completion: December 2022

Producing a standard, routinely updated report of carefully selected metrics will help ensure that BHC members have consistent access to relevant, complete, objective, and timely information and analysis needed to understand the key issues affecting Virginia's behavioral health system. Metrics can be useful in gauging the status of the components of the state behavioral health system; understanding historical and spotting new trends; and gaining insight into the factors that may play into budding issues. Information related to behavioral health services has historically been made available by a variety of state agencies and other entities, but it has not been reported on a consistent basis or in a common, user-friendly format.

Contents of the report will be selected using input from BHC members as well as stakeholders, and staff will work closely with partner agencies and other entities to ensure that the selected data is available, reliable, and easily obtainable. Metrics will characterize both inpatient and outpatient services, and include indicators such as available capacity at state inpatient facilities, TDO admissions by hospital type, etc.

BHC staff will design a report that is crisp, easy to understand, and focuses on insights and interpretations rather than strictly data. The report will be revised and updated as needed to capture emerging priorities and to support members. Staff will also explore making this information available interactively on the BHC website.

Complete study of HB 2047 / SB 1315

Source: 2020 legislation/ Joint Subcommittee referral
Staff lead: TBD
Scheduled completion: December 2022

House Bill 2047 and its companion Senate Bill 1315, which were enacted during the 2021 Special Session I of the General Assembly, allow evidence related to a criminal defendant's mental condition to be admitted during trial. Defendants can now be found "not guilty" if the evidence shows that they meet diagnostic criteria for a mental illness, developmental disability, or intellectual disability that was present at the time of the alleged offense, and that as a result of their condition they did not have the specific intent required to commit the offense. Previously, unless defendants entered a plea of "not guilty by reason of insanity", evidence of a mental condition related to their guilt was not admissible and they could not be acquitted on the basis of a mental illness, developmental disability, or intellectual disability; mental conditions, however, have been taken into consideration to reduce sentences. The bills also amended the law to give courts the ability to issue an Emergency Custody Order (ECO) for defendants when there is probable cause to believe that there is a substantial likelihood that the person will "cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information" because of his mental illness.

In an enactment clause, the bills directed the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century to provide recommendations regarding the relevant standard of danger to self or others that should be applied to persons found not guilty under the new law when issuing an ECO or involuntary Temporary Detention Order (TDO), or ordering other mandatory mental health treatment. During its deliberations in 2021, the Joint Subcommittee discussed whether the requirements for issuing an ECO should be revised, including whether harm had to be likely to occur "in the near future", and whether an ECO was the most appropriate option for linking individuals with behavioral health services in cases related to the new law. The Joint Subcommittee referred this study to the Behavioral Health Commission to resolve outstanding questions.

BHC staff will evaluate options for requiring individuals to receive behavioral health services after they have been found "not guilty" due to evidence related to their mental condition. Specifically, staff will examine whether a legal mechanism is needed to require services and, if so, whether and how to amend existing mechanisms such as ECOs or develop a new one. Options and/or recommendations will be developed using research findings and presented to the Commission at the conclusion of the study.

Further study SB 198

Source: 2022 Committee referral
Staff lead: TBD
Scheduled completion: December 2022

Under current law, courts are required to order services to restore the competency of defendants who have been found incompetent to stand trial. Services may be provided either on an outpatient basis or in a hospital setting, as deemed most appropriate. This process creates demand for a limited number of inpatient psychiatric beds. The services provided to restore competency also do not necessarily address defendants' underlying behavioral health conditions and may not reduce future crises and/or involvement with law enforcement. Once defendants' competency has been restored, they return to court to stand trial and those who have been committed may only be released by a judge's order.

SB 198 (Mason) was passed by the 2022 Virginia General Assembly and provides courts with an alternative to the traditional competency restoration process for defendants who have been charged with certain misdemeanors set forth in the bill. Under the new law, courts may dismiss the criminal charges and order Community Services Boards to evaluate the defendants and, when defendants meet the criteria for temporary detention, to file for a temporary detention order (TDO). Under the civil commitment process that governs TDOs, individuals can be released without judicial review, unlike defendants who are part of the criminal restoration process.

Commission staff will examine the issues that precipitated the enactment of SB 198 and assess the extent to which the bill can be expected to address such issues. Specifically, staff will analyze the prevalence, severity, and geographic distribution of the issues stemming from the current competency restoration process; analyze preliminary information about the implementation of SB 198; review similar laws or policies implemented in other states; and provide options, if needed, to inform legislative action regarding the bill's expiration on July 1, 2023.

Participate in Secretary's workgroup to restructure DBHDS

Source: Commission priority, 2022 budget
Staff lead: Nathalie Molliet-Ribet
Scheduled completion: December 2022

The 2023-2024 Appropriation Act directs the Secretary of Health and Human Resources to convene a workgroup to examine several options for restructuring the responsibilities and operations of the Department of Behavioral Health and Developmental Services (DBHDS). DBHDS serves a broad population that consists of individuals who receive mental health, substance abuse, and/or developmental services and supports in both outpatient and inpatient settings. The agency oversees the funding and provision of outpatient behavioral health services through a network of Community Services Boards and also operates nine

inpatient psychiatric state hospitals. Frequently cited concerns about behavioral health services in the state include gaps in access to community-based services and the lack of available inpatient beds.

Some of the challenges exhibited by Virginia's public behavioral health system have raised questions about the ability of the current single-agency model to serve all its customers in the most efficient and effective manner. The workgroup is tasked with evaluating whether (1) developmental disability services should be administered by another agency; (2) community-based services and state mental health hospitals should be overseen by separate entities and if so (3) whether state mental health hospitals should be operated using a different model, such as a public-private partnership; and (4) the current structure for community-based services could be enhanced, and how. In addition, the workgroup will evaluate the results of a feasibility analysis to transform the campus of Catawba Hospital into a campus offering a full continuum of behavioral health services. A report on findings and recommendations is due by December 1, 2022.

The Secretary's workgroup must include representatives from DBHDS, the Department of Medical Assistance Services (DMAS), the Department of Planning and Budget (DPB), the Behavioral Health Commission, and "other entities as deemed necessary by the Secretary to complete the tasks of the workgroup". Staff will represent Commission members, actively participate in meetings, provide methodological rigor, and conduct the necessary research to weigh in on discussions and recommendations.

Participate in Secretary' workgroup to increase alternative custody arrangements

Source: 2022 legislation
Staff lead: TBD
Scheduled completion: October 2022

SB 202 directs the Secretary of Health and Human Resources, together with the Secretary of Public Safety and Homeland Security, to study options to increase the use of alternative custody arrangements for individuals who are subject to an emergency custody or temporary detention order. Currently, only law enforcement personnel can maintain custody of individuals under and ECO or TDO order until these individuals are admitted to a hospital for inpatient psychiatric services.

As delays in hospital admissions have worsened, law enforcement officers have spent an increasing amount of time waiting for the individuals under their custody to be admitted to a hospital, which has reduced the time available for other public safety responsibilities. The workgroup is tasked with reducing the time law-enforcement officers are required to maintain custody of such individuals and to mitigate the burden that custody places on local law-enforcement. Specifically, the workgroup is directed to look at options for (i)

allowing law enforcement to transfer custody to another person; and (ii) increasing the availability of beds for individuals who are subject to an ECO or TDO to ensure prompt transfer to an appropriate facility. A report on findings and recommendations is due by October 1, 2022.

The Secretary's workgroup must provide opportunity for participation to stakeholders including the Behavioral Health Commission, Virginia State Police, Virginia Sheriffs' Association, Virginia Association of Community Services Boards, Virginia Hospital and Healthcare Association, Office of the Executive Secretary of the Virginia Supreme Court, and others. Staff will represent Commission members, actively participate in meetings, provide methodological rigor, and conduct the necessary research to weigh in on discussions and recommendations.

Further study HB 743

Source: 2022 Committee referral
Staff lead: TBD
Scheduled completion: 2023

House Bill 743 from the 2022 General Assembly would have applied different requirements for issuing certificates of public need (COPNs) for projects involving inpatient psychiatric services and facilities. When determining the public need for such projects, the Commissioner would not have taken into consideration the impact of issuing a COPN on existing inpatient psychiatric services or facilities if the existing facilities were not providing an adequate amount of services to individuals subject to temporary detention orders (TDOs). The "adequate amount" of services that an existing inpatient psychiatric service or facility had to provide to individuals subject to a TDO would have been established by the Commissioner annually.

The Committee letter referring this bill for further study has not yet been communicated to the Behavioral Health Commission. Therefore, the specific issues that Commission staff is being asked to examine are not known.

Further study HB 613

Source: Expected 2022 Committee referral
Staff lead: TBD
Scheduled completion: TBD

House Bill 613 would have provided that individuals could not be arrested or prosecuted for assault and battery against a law-enforcement officer if at the time of the offense (i) they were experiencing a mental health emergency or met the criteria for issuance of an emergency custody order, and (ii) the law-enforcement officer subject to the assault and battery was responding to a call requesting assistance for these individuals. The bill would

also have shielded law-enforcement officers acting in good faith from liability for false arrest if it was later determined that the person arrested was immune from prosecution.

The Committee letter referring this bill for further study has not yet been communicated to the Behavioral Health Commission. Therefore, the specific issues that Commission staff is being asked to examine are not known.

Further study SB 453

Source: Expected 2022 Committee referral
Staff lead: TBD
Scheduled completion: TBD

SB 453 would have provided that any person charged with a simple assault and battery offense could not be subject to mandatory minimum punishment if (1) they had been diagnosed with an autism spectrum disorder, an intellectual disability, or serious mental illness; and (2) the violation was caused by or had a direct and substantial relationship to the person's disorder or disability. Under current law, certain simple assault and battery offenses carry mandatory minimum punishment when they are committed against certain groups of people, such as law enforcement officers, judges, or teachers.

The Committee letter referring this bill for further study has not yet been communicated to the Behavioral Health Commission. Therefore, the specific issues that Commission staff is being asked to examine are not known.

Tentative 2022 Commission meeting schedule

Meetings of the Behavioral Health Commission will take place on the following dates in 2022. The schedule of presentations may be revised as it relies on assumptions about the timing and number of BHC staff hires, and the content of the 2022 Appropriation Act.

Date	Planned presentations
April 26*	— BHC organizational update — Research process — 2022 proposed workplan — Key facilities metrics — DBHDS 2022 key issues and priorities
May 17	— Workplan follow ups — BHC operations update — Legislative update — System update
June 14	— BHC operations update — Budget update — System update
July 26	— System update
August	— *No meeting*
September 20	— BHC operations update — Key system metrics — System issue framework
October 18	— Update on Secretary's workgroup on alternative custody — System update — System issue framework
November 14*	— Study briefing — Preliminary legislative and budget proposals
December 13	— Study briefing — Final legislative and budget proposals — Update on Secretary's workgroup to restructure DBHDS

Note: All meetings held on Tuesday at 2:00, unless otherwise indicated; time for public comments will be available at every meeting
*April 26 meeting starts at 11:00; November 14 meeting is on Monday

Other organizational products

Annual legislative and budget proposal

To facilitate legislative action, staff will work with BHC members to develop a legislative and budget proposal that acts upon recommendations adopted by the Commission as a result of the work conducted during the year. Recommendations cannot be reported if a majority of the Senate members or a majority of the House members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission. Once a list of adopted recommendations has been finalized in late November / early December, staff will request bills to be prefiled and work with staff from the Division of Legislative Services and money committees to draft language that operationalizes Commission recommendations.

Executive summary

Every year, the chairman of the Behavioral Health Commission is required to submit to the General Assembly and to the Governor an executive summary of the work completed by the Commission during the interim. The executive summary will be prepared by staff, using materials presented to BHC members during the course of the year. The document may also be used to convey the recommendations adopted by the Commission. Once approved by the Chair of the Commission, the summary will be submitted no later than the first day of the next regular session of the General Assembly.

Appendix

Requests for studies and staff participation

Study of HB 2047 / SB 1315

Direction from Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century

At the December 8 meeting of the Special Populations Subcommittee of the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the Twenty-First Century, workgroup members discussed whether the standard for issuance of an emergency custody order should be revised. Specifically, members discussed whether the requirement for a finding of probable cause to believe that the person will cause serious harm to himself or others because of his mental illness should be revised to eliminate the requirement that the harm is likely to occur "in the near future." Staff reported that while a finding that the person poses a danger to self or others is constitutionally required for issuance of an emergency custody order, some states do not require a finding that the danger posed be likely to occur "in the near future" and are instead silent as to the temporal immediacy of the potential harm. Staff noted that a change to the criteria in § 37.2-808 would apply to all emergency custody orders, not just those issued by a court in a hearing involving submission of evidence pursuant to § 19.2-271.6. Staff also noted that the criteria for issuance of a temporay detention order pursuant to § 37.2-809 and an order for involuntary commitment pursuant to § 37.2-817 include the same language as that set out in § 37.2-808. Members of the work group then discussed whether an an ECO was the most appropriate option for linking a person found not guilty following presentation of evidence described in § 189.2-271.6 to services for his mental illness.

After extensive discussion, the work group recommended that, due to the many questions raised and issues involved in determining the most appropriate way to link a person found not guilty following presentation of evidence described in § 189.2-271.6 to services for his mental illness, including potential issues related to revisions of the ECO standard, the matter be referred to the Behavioral Health Commission for further study during the 2022 interim. Such study should include (i) determination of the need for a legal mechanism to require a person who is found not guilty of an offense following introduction of evidence related to his mental illness pursuant to § 19.2-271.6 to engage in mental health services following such finding and (ii) identification and evaluation of options for requiring such person to engage in mental health services following such finding, including evaluation of potential revisions to the criteria for issuance of an emergency custody order or establishment of a new legal mechanism for requiring a person who is found not guilty of an offense following introduction of evidence related to his mental illness pursuant to § 19.2-271.6 to engage in mental health services following such finding.

Study of HB 2047 / SB 1315

Statutory direction from 2021 General Assembly

CHAPTER 523

An Act to amend and reenact §§ 19.2-120, 19.2-163.03, 19.2-299, and 37.2-808 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-271.6, relating to criminal proceedings; consideration of mental condition and intellectual and developmental disabilities.

[H 2047]
Approved April 7, 2021

Be it enacted by the General Assembly of Virginia:

3. That the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the Twenty-First Century (the Joint Subcommittee) shall study, consider, and provide recommendations regarding the relevant standard of danger to self or others that may be appropriately applied to persons found not guilty under this act in the issuance of emergency custody orders, involuntary temporary detention orders, or the ordering of other mandatory mental health treatments in accordance with Article 4 (§ 37.2-808 et seq.) or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 of the Code of Virginia. The Joint Subcommittee shall report its findings, conclusions, and recommendations to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by December 1, 2021.

CHAPTER 540

An Act to amend and reenact §§ 19.2-120, 19.2-163.03, 19.2-299, and 37.2-808 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-271.6, relating to criminal proceedings; consideration of mental condition and intellectual and developmental disabilities.

[H 2047]

Approved April 7, 2021

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-120, 19.2-163.03, 19.2-299, and 37.2-808 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-271.6 as follows:

§ 19.2-120. Admission to bail.

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or

2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;

2. An offense for which the maximum sentence is life imprisonment or death;

3. A violation of § 18.2-248, 18.2-248.01, 18.2-255, or 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;

4. A violation of § 18.2-308.1, 18.2-308.2, or 18.2-308.4 and which relates to a firearm and provides for a mandatory minimum sentence;

5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of the Commonwealth or substantially similar laws of the United States;

6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;

7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;

8. A violation of § 18.2-374.1 or 18.2-374.3 where the offender has reason to believe that the solicited person is under 15 years of age and the offender is at least five years older than the solicited person;

9. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5, or 18.2-46.7;

10. A violation of § 18.2-36.1, 18.2-51.4, 18.2-266, or 46.2-341.24 and the person has, within the past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto, and has been at liberty between each conviction;

11. A second or subsequent violation of § 16.1-253.2 or 18.2-60.4 or a substantially similar offense under the laws of any state or the United States;

12. A violation of subsection B of § 18.2-57.2;

13. A violation of subsection C of § 18.2-460 charging the use of threats of bodily harm or force to knowingly attempt to intimidate or impede a witness;

14. A violation of § 18.2-51.6 if the alleged victim is a family or household member as defined in § 16.1-228; or

15. A violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1.

C. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is

being arrested pursuant to § 19.2-81.6.

D. For a person who is charged with an offense giving rise to a rebuttable presumption against bail, any judicial officer may set or admit such person to bail in accordance with this section.

E. The judicial officer shall consider the following factors and such others as it deems appropriate in determining, for the purpose of rebuttal of the presumption against bail described in subsection B, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:

1. The nature and circumstances of the offense charged;

2. The history and characteristics of the person, including his character, physical and mental condition, *including a diagnosis of an intellectual or developmental disability as defined in § 37.2-100,* family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in a criminal street gang as defined in § 18.2-46.1, and record concerning appearance at court proceedings; and

3. The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

F. The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with § 19.2-124.

G. If the judicial officer sets a secured bond and the person engages the services of a licensed bail bondsman, the magistrate executing recognizance for the accused shall provide the bondsman, upon request, with a copy of the person's Virginia criminal history record, if readily available, to be used by the bondsman only to determine appropriate reporting requirements to impose upon the accused upon his release. The bondsman shall pay a $15 fee payable to the state treasury to be credited to the Literary Fund, upon requesting the defendant's Virginia criminal history record issued pursuant to § 19.2-389. The bondsman shall review the record on the premises and promptly return the record to the magistrate after reviewing it.

§ 19.2-163.03. Qualifications for court-appointed counsel.

A. Initial qualification requirements. An attorney seeking to represent an indigent accused in a criminal case, in addition to being a member in good standing of the Virginia State Bar, shall meet the specific criteria required for each type or level of case. The following criteria shall be met for qualification and subsequent court appointment:

1. Misdemeanor case. To initially qualify to serve as counsel appointed pursuant to § 19.2-159 for an indigent defendant charged with a misdemeanor, the attorney shall:

~~(i) if~~ *a. If* an active member of the Virginia State Bar for less than one year, have completed ~~six~~ *eight* hours of MCLE-approved continuing legal education developed by the Indigent Defense Commission, ~~or~~ *two of which shall cover the representation of individuals with behavioral or mental health issues and individuals with intellectual or developmental disabilities as defined in § 37.2-100;*

~~(ii) if~~ *b. If* an active member of the Virginia State Bar for one year or more, either complete the ~~six~~ *eight* hours of approved continuing legal education developed by the Commission, *two of which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities as defined in § 37.2-100,* or certify to the Commission that he has represented, in a district court within the past year, four or more defendants charged with misdemeanors~~,~~*;* or

~~(iii) be~~ *c. Be* qualified pursuant to this section to serve as counsel for an indigent defendant charged with a felony.

2. Felony case.

a. To initially qualify to serve as counsel appointed pursuant to § 19.2-159 for an indigent defendant charged with a felony, the attorney shall (i) have completed the ~~six~~ *eight* hours of MCLE-approved continuing legal education developed by the Commission, *two of which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities as defined in § 37.2-100,* and (ii) certify that he has participated as either lead counsel or co-counsel in four felony cases from their beginning through to their final resolution, including appeals, if any.

b. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past year, as lead counsel in four felony cases through to their final resolution, including appeals, if any, the requirement to complete ~~six~~ *eight* hours of continuing legal education and the requirement to participate as co-counsel shall be waived.

c. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years, as lead counsel in five felony cases through to their final resolution, including appeals, if any, the requirement to participate as either lead counsel or co-counsel in four felony cases within the past year shall be waived.

3. Juvenile and domestic relations case.

a. To initially qualify to serve as appointed counsel in a juvenile and domestic relations district court pursuant to subdivision C 2 of § 16.1-266, the attorney shall (i) have completed the ~~six~~ *eight* hours of MCLE-approved continuing legal education developed by the Commission, *two of which shall cover the*

representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities as defined in § 37.2-100, (ii) have completed four additional hours of MCLE-approved continuing legal education on representing juveniles developed by the Commission, and (iii) certify that he has participated as either lead counsel or co-counsel in four cases involving juveniles in a juvenile and domestic relations district court.

b. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has, within the past year, been lead counsel in four cases involving juveniles in juvenile and domestic relations district court, the requirement to complete the ~~10~~ *12* hours of continuing legal education shall be waived.

c. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years in five cases involving juveniles in a juvenile and domestic relations district court, the requirement to participate as either lead counsel or co-counsel in four juvenile cases shall be waived.

B. Requalification requirements. After initially qualifying as provided in subsection A, an attorney shall maintain his eligibility for certification biennially by notifying the Commission of completion of at least ~~six~~ *eight* hours of Commission and MCLE-approved continuing legal education, *two of which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities as defined in § 37.2-100*. The Commission shall provide information on continuing legal education programs that have been approved.

In addition, to maintain eligibility to accept court appointments under subdivision C 2 of § 16.1-266, an attorney shall complete biennially thereafter four additional hours of MCLE-approved continuing legal education on representing juveniles, certified by the Commission.

C. Waiver and exceptions. The Commission or the court before which a matter is pending, may, in its discretion, waive the requirements set out in this section for individuals who otherwise demonstrate their level of training and experience. A waiver of such requirements pursuant to this subsection shall not form the basis for a claim of error at trial, on appeal, or in any habeas corpus proceeding.

§ 19.2-271.6. Evidence of defendant's mental condition admissible; notice to Commonwealth.

A. For the purposes of this section:

"Developmental disability" means the same as that term is defined in § 37.2-100.

"Intellectual disability" means the same as that term is defined in § 37.2-100.

"Mental illness" means a disorder of thought, mood, perception, or orientation that significantly impairs judgment or capacity to recognize reality.

B. In any criminal case, evidence offered by the defendant concerning the defendant's mental condition at the time of the alleged offense, including expert testimony, is relevant, is not evidence concerning an ultimate issue of fact, and shall be admitted if such evidence (i) tends to show the defendant did not have the intent required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of evidence. For purposes of this section, to establish the underlying mental condition the defendant must show that his condition existed at the time of the offense and that the condition satisfies the diagnostic criteria for (i) a mental illness, (ii) a developmental disability or intellectual disability, or (iii) autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

If a defendant intends to introduce evidence pursuant to this section, he, or his counsel, shall give notice in writing to the attorney for the Commonwealth, at least 60 days prior to his trial in circuit court, or at least 21 days prior to trial in general district court or juvenile and domestic relations district court, or at least 14 days if the trial date is set within 21 days of last court appearance, of his intention to present such evidence. In the event that such notice is not given, and the person proffers such evidence at his trial as a defense, then the court may in its discretion either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence. The period of any such continuance shall not be counted for speedy trial purposes under § 19.2-243.

If a defendant intends to introduce expert testimony pursuant to this section, the defendant shall provide the Commonwealth with (a) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and bases and reasons for those opinions, and (b) the witness's qualifications and contact information.

C. The defendant, when introducing evidence pursuant to this section, shall permit the Commonwealth to inspect, copy, or photograph any written reports of any physical or mental examination of the accused made in connection with the case, provided that no statement made by the accused in the course of such an examination disclosed pursuant to this subsection shall be used by the Commonwealth in its case in chief, whether the examination was conducted with or without the consent of the accused.

D. Nothing in this section shall prevent the Commonwealth from introducing relevant, admissible evidence, including expert testimony, in rebuttal to evidence introduced by the defendant pursuant to this section.

E. Nothing in this section shall be construed as limiting the authority of the court from entering an emergency custody order pursuant to subsection A of § 37.2-808.

F. Nothing in this section shall be construed to affect the requirements for a defense of insanity pursuant to Chapter 11 (§ 19.2-167 et seq.).

G. Nothing in this section shall be construed as permitting the introduction of evidence of voluntary intoxication.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the attorney for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall, unless waived by the defendant and the attorney for the Commonwealth, when the defendant pleads guilty or nolo contendere without a plea agreement or is found guilty by the court after a plea of not guilty or nolo contendere; or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-48, clause (2) or (3) of § 18.2-49, § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.1, or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5, 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, any information regarding the accused's participation or membership in a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. Unless the defendant or the attorney for the Commonwealth objects, the court may order that the report contain no more than the defendant's criminal history, any history of substance abuse, any physical or health-related problems as may be pertinent, *including any diagnoses of an intellectual or developmental disability as defined in § 37.2-100,* and any applicable sentencing guideline worksheets. This expedited report shall be subject to all the same procedures as all other sentencing reports and sentencing guidelines worksheets. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with a copy of the presentence report. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been provided with a copy of the presentence report by his counsel or advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Subject to the limitations set forth in § 37.2-901, any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person (a) is charged with a felony subsequent to the time of the preparation of the report or (b) has been convicted of the crime or crimes for which the report was prepared and is pursuing a post-conviction remedy. Such report shall be made available for review without a court order to incarcerated persons who are eligible for release by the Virginia Parole Board, or such person's counsel, pursuant to regulations promulgated by the Virginia Parole Board for that purpose. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections. For the purposes of this subsection, information regarding the accused's participation or membership in a criminal street gang may include the characteristics, specific rivalries, common practices, social customs and behavior, terminology, and types of crimes that are likely to be committed by that criminal street gang.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide

pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

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

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, *or a court may issue pursuant to § 19.2-271.6,* an emergency custody order when he has probable cause to believe that any 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. Any emergency custody 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.

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

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

C. The magistrate *or court* issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate *or court* shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate *or court*, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate *or court* deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate *or court* shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate *or the court that issued the emergency custody order* as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include transportation to a medical facility for a medical evaluation if a physician at the hospital in which the person subject to the

emergency custody order may be detained requires a medical evaluation prior to admission.

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

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

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

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

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

I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

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

K. The person shall remain in custody until (i) a temporary detention order is issued in accordance with § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution.

L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency custody order issued pursuant to this section. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order, the person may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other

appropriate facility in which the person is detained shall notify the nearest community services board, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

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

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

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

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

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

2. That the Office of the Executive Secretary of the Supreme Court of Virginia shall collect the following data and report such data annually to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by December 1, 2021, and December 1, 2022: (i) the number of cases in which a defendant introduces evidence concerning his mental condition pursuant to § 19.2-271.6 of the Code of Virginia, as created by this act; (ii) the number of cases in which such evidence is introduced and a jury or court finds that a defendant did not have the intent required for the offense charged due to a mental illness as defined in § 19.2-271.6 of the Code of Virginia, as created by this act, an intellectual or developmental disability, or autism spectrum disorder; (iii) the number of cases in which the court issues an emergency custody order pursuant to § 37.2-808 of the Code of Virginia, as amended by this act, after a jury or the court finds that a defendant did not have the intent required for the offense charged due to a mental illness as defined in § 19.2-271.6 of the Code of Virginia, as created by this act, an intellectual or developmental disability, or autism spectrum disorder; and (iv) if an emergency custody order is issued in such case, the number of defendants for whom no subsequent temporary detention order is issued and who are released, the number of defendants for whom a subsequent temporary detention order is issued, and the number of defendants who are subsequently involuntarily admitted.

3. That the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the Twenty-First Century (the Joint Subcommittee) shall study, consider, and provide recommendations regarding the relevant standard of danger to self or others that may be appropriately applied to persons found not guilty under this act in the issuance of emergency custody orders, involuntary temporary detention orders, or the ordering of other mandatory mental health treatments in accordance with Article 4 (§ 37.2-808 et seq.) or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 of the Code of Virginia. The Joint Subcommittee shall report its findings, conclusions, and recommendations to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by December 1, 2021.

Study of SB 198

Letter from House Committee on Courts of Justice

Senate Bill 198 (Mason), passed by the House and Senate during the 2022 Regular Session and effective July 1, 2022, provides that in cases in which a defendant has been charged with certain misdemeanor offenses and, following a competency hearing, is found to be incompetent, the competency report may recommend that the court direct the community services board or behavioral health authority to conduct an evaluation of the defendant to determine whether the defendant meets the criteria for temporary detention and, upon determining that the defendant does meet the criteria for temporary detention, file a petition for issuance of an order for temporary detention of the defendant. Similarly, the bill provides that in cases in which a defendant has been charged with one of the listed misdemeanors, the defendant is found to be incompetent, and the competency report recommends that the defendant be temporarily detained, the court may dismiss the charges without prejudice and, in lieu of ordering that the defendant receive treatment to restore his competency, as the court is required to order under current law, order the community services board or behavioral health authority to conduct an evaluation of the defendant and, upon determining that the defendant does meet the criteria for temporary detention, file a petition for issuance of an order for temporary detention of the defendant. The bill provides that the court shall not dismiss such charges and enter such order if the attorney for the Commonwealth is involved in the prosecution of the case and does not concur in the motion. The bill also clarifies the process following the completion of the competency evaluation of a defendant. The provisions of the bill expire on July 1, 2023.

In subcommittee and committee hearings on Senate Bill 198, members of the House Committee for Courts of Justice discussed the desire to more comprehensively study the issues raised by the bill and its implementation. Therefore, as Chairman of the House Committee for Courts of Justice, I request that the Behavioral Health Commission study the issues raised by Senate Bill 198 (2022) and provide a report by December 1, 2022.

I request that the report (i) describe the full range of issues that the bill is intended to address; (ii) describe the nature and scope of the problems created by those issues, including prevalence, severity, geographic distribution, and other information necessary to understand the full impact of the issues identified, as well as the factors contributing to their occurrence; (iii) offer preliminary information about (a) how frequently the process described in the bill is utilized, (b) how often temporary detention orders are issued for defendants in accordance with the bill, (c) how often defendants for whom a temporary detention order is issued in accordance with the provisions of the bill are subsequently involuntarily committed, whether such involuntarily committed defendants are committed

to involuntary inpatient or outpatient care, and the duration of involuntary treatment for such involuntarily committed defendants, (d) the extent to which and how defendants for whom a temporary detention order is issued in accordance with the provisions of the bill are subsequently involved in the criminal justice system, and (e) other issues as warranted, and (iv) describe similar laws or policies implemented in other states and the outcomes related to implementation of such laws or policies, if available.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 19.2-169.1 and 19.2-169.2 of the Code of Virginia, relating to disposition when defendant found incompetent; involuntary admission of the defendant.

[S 198]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.1 and 19.2-169.2 of the Code of Virginia are amended and reenacted as follows:

§ 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) his ability to assist his attorney; and (iii) his need for treatment 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. *In cases where a 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 and is incompetent, the report may recommend that the court direct the community services board or behavioral health authority for the jurisdiction in which the defendant is located to (a) conduct an evaluation of the defendant in accordance with subsection B of § 37.2-808 to determine whether the defendant meets the criteria for temporary detention and (b) upon determining that the defendant does meet the criteria for temporary detention, file a petition for issuance of an order for temporary detention of the defendant in*

accordance with § 37.2-809. 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 ~~of this section~~, 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 temporarily detained pursuant to § 37.2-809, the court may dismiss the charges without prejudice against the defendant and, in lieu of ordering the defendant receive treatment to restore his competency, 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. However, the court shall not dismiss charges and enter an order 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. 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 A.

2. That the provisions of this act shall expire on July 1, 2023.

Participation in Secretary's workgroup on restructuring DBHDS

Commission priority
Budget language

2023-2024 Appropriation Act

OFFICE OF HEALTH AND HUMAN RESOURCES

§ 1-89. SECRETARY OF HEALTH AND HUMAN RESOURCES

" F.1. The Secretary of Health and Human Resources shall establish a workgroup to review the current structure of the Department of Behavioral Health and Developmental Services (DBHDS) and make recommendations on modifications to the department's structure that improves the delivery of behavioral health and developmental disability services to the citizens of the Commonwealth. The workgroup shall include representatives of DBHDS, the Department of Medical Assistance Services, the Department of Planning and Budget, the Behavioral Health Commission and other entities as deemed necessary by the Secretary to complete the tasks of the workgroup. Specifically, the workgroup shall evaluate: (i) whether responsibility for developmental disability services is more appropriate in another state agency or a new state agency; (ii) whether community-based behavioral health services and the operations of the state mental health hospitals should be divided into separate entities; (iii) whether a different structure or model, such as public-private partnerships, is appropriate for the operation of state mental health hospitals; and (iv) whether the current structure for community-based services can be enhanced to better deliver services.

2. Out of this appropriation, $750,000 from the general fund the first year shall be provided for the Secretary of Health and Human Resources to contract for a feasibility analysis to transform the Catawba Hospital Campus into a state-of-the-art campus at which a continuum of substance abuse treatment and recovery services, including long-term, short-term, acute, and outpatient services, is provided in addition to the array of behavioral health services currently provided to individuals in need of behavioral health care services. This analysis shall be completed for consideration of the workgroup in its recommendations on the structure and delivery of behavioral health and developmental disability services.

3. The workgroup shall report its findings and recommendations to the Governor and the Chairs of the House Appropriations and Senate Finance and Appropriations Committees by December 1, 2022."

Participation in Secretary's workgroup to increase alternative custody arrangements

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2022 legislation

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 103

An Act to require the Secretary of Health and Human Resources, together with the Secretary of Public Safety and Homeland Security, to study options to increase the use of alternative custody arrangements for individuals who are subject to an emergency custody or temporary detention order; report.

[S 202]

Approved April 6, 2022

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the Secretary of Health and Human Resources (the Secretary) shall, together with the Secretary of Public Safety and Homeland Security, study options to increase the use of alternative custody arrangements for individuals who are subject to an emergency custody or temporary detention order to reduce the time law-enforcement officers are required to maintain custody of such individuals and mitigate the burden the requirement for law enforcement custody places on local law-enforcement officers and local law-enforcement agencies. In conducting such study, the Secretary shall review overall best practices for alternative custody arrangements implemented in other states and develop recommendations for options to (i) allow law-enforcement officers to transfer custody of individuals who are subject to an emergency custody or temporary detention order to another person with the necessary training and certification to maintain custody of such individual in order to reduce the time law-enforcement officers must remain with the person who is the subject of the emergency custody or temporary detention order and (ii) increase the availability of beds for individuals who are subject to an emergency custody or temporary detention order to ensure prompt transfer to an appropriate facility, including expansion of crisis intervention team assessment centers and development of regional crisis receiving centers and other options for increasing the availability of beds at state and private hospitals and other behavioral health facilities for adults and children who are subject to an emergency custody or temporary detention order. In conducting such study, the Secretary shall include opportunity for participation by stakeholders, including the Behavioral Health Commission, Virginia State Police, Virginia Sheriffs' Association, Police Benevolent Association, Virginia Association of Community Services Boards, Virginia Hospital and Healthcare Association, Office of the Executive Secretary of the Supreme Court of Virginia, and other stakeholders. The Secretary shall report his findings and recommendations to the Governor and the Chairmen of the House Committees on Appropriations and Health, Welfare and Institutions and the Senate Committees on Education and Health and Finance and Appropriations by October 1, 2022.*

Study of HB 743

Letter from House Committee on Courts of Justice

House Bill 743 (Bell), which was continued to 2023 by the House Committee for Courts of Justice during the 2022 General Assembly Session, required the Commissioner of Health (the Commissioner) to impose conditions related to the provision of care to individuals who are the subject of a temporary detention order on certificates of public need for projects involving inpatient psychiatric services and facilities and provided that when determining the public need for a proposed project involving an inpatient psychiatric service or facility, the Commissioner shall not take into consideration existing inpatient psychiatric services or facilities or the impact of approving the application and issuing the certificate of public need for the proposed project on an existing inpatient psychiatric service or facility if the existing inpatient psychiatric service or facility does not provide an adequate amount of service to individuals who are subject to a temporary detention order, as determined by the Commissioner in accordance with regulations of the Board of Health (the Board). The bill directed the Board to adopt regulations establishing a process by which the Commissioner shall annually establish the amount of services for individuals who are subject to a temporary detention order that an existing inpatient psychiatric service or facility must provide.

The members of the House Committee for Courts of Justice discussed the need for information regarding implementation of this bill. Therefore, as Chairman of the House Committee for Courts of Justice, I request that the Behavioral Health Commission study and review House Bill 743. I also request that if the Commission determines any recommendations regarding this bill or the subject matter therein, that the Commission provide those to the General Assembly by December 1, 2022.

22105314D

HOUSE BILL NO. 743

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice on February 11, 2022)

(Patron Prior to Substitute—Delegate Bell)

A BILL to amend and reenact §§ 32.1-102.3 and 32.1-102.4 of the Code of Virginia, relating to certificate of public need; inpatient psychiatric services and facilities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-102.3 and 32.1-102.4 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-102.3. Demonstration of public need required; criteria for determining need.

A. No certificate may be issued unless the Commissioner has determined that a public need for the project has been demonstrated. If it is determined that a public need exists for only a portion of a project, a certificate may be issued for that portion and any appeal may be limited to the part of the decision with which the appellant disagrees without affecting the remainder of the decision. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Health Services Plan; however, if the Commissioner finds, upon presentation of appropriate evidence, that the provisions of such plan are not relevant to a rural locality's needs, inaccurate, outdated, inadequate or otherwise inapplicable, the Commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan. In cases in which a provision of the State Health Services Plan has been previously set aside by the Commissioner and relevant amendments to the Plan have not yet taken effect, the Commissioner's decision shall be consistent with the applicable portions of the State Health Services Plan that have not been set aside and the remaining considerations in subsection B.

B. In determining whether a public need for a project has been demonstrated, the Commissioner shall consider:

1. The extent to which the proposed project will provide or increase access to health care services for people in the area to be served and the effects that the proposed project will have on access to health care services in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to health care;

2. The extent to which the proposed project will meet the needs of people in the area to be served, as demonstrated by each of the following: (i) the level of community support for the proposed project demonstrated by people, businesses, and governmental leaders representing the area to be served; (ii) the availability of reasonable alternatives to the proposed project that would meet the needs of people in the area to be served in a less costly, more efficient, or more effective manner; (iii) any recommendation or report of the regional health planning agency regarding an application for a certificate that is required to be submitted to the Commissioner pursuant to subsection B of § 32.1-102.6; (iv) any costs and benefits of the proposed project; (v) the financial accessibility of the proposed project to people in the area to be served, including indigent people; and (vi) at the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a proposed project;

3. The extent to which the proposed project is consistent with the State Health Services Plan;

4. The extent to which the proposed project fosters institutional competition that benefits the area to be served while improving access to essential health care services for all people in the area to be served;

5. The relationship of the proposed project to the existing health care system of the area to be served, including the utilization and efficiency of existing services or facilities;

6. The feasibility of the proposed project, including the financial benefits of the proposed project to the applicant, the cost of construction, the availability of financial and human resources, and the cost of capital;

7. The extent to which the proposed project provides improvements or innovations in the financing and delivery of health care services, as demonstrated by (i) the introduction of new technology that promotes quality, cost effectiveness, or both in the delivery of health care services; (ii) the potential for provision of health care services on an outpatient basis; (iii) any cooperative efforts to meet regional health care needs; and (iv) at the discretion of the Commissioner, any other factors as may be appropriate; and

8. In the case of a project proposed by or affecting a teaching hospital associated with a public institution of higher education or a medical school in the area to be served, (i) the unique research, training, and clinical mission of the teaching hospital or medical school and (ii) any contribution the teaching hospital or medical school may provide in the delivery, innovation, and improvement of health care services for citizens of the Commonwealth, including indigent or underserved populations.

C. In determining whether a public need exists for a proposed project, the Commissioner shall disregard an existing medical care service or facility and shall not consider the availability of or the impact of granting the application and issuing the certificate of public need for the proposed project on an existing medical care service or facility if (i) the existing medical care facility is or the existing medical care services are provided by a medical care facility that provided inpatient psychiatric services on or after January 1, 2022, and (ii) the medical care facility described in clause (i) did not provide the amount of care to individuals who are subject to an involuntary temporary detention order pursuant to § 37.2-809 as required by the Commissioner in accordance with regulations of the Board during the previous calendar year.

The Board shall adopt regulations establishing a process by which the Commissioner shall annually establish the amount of service to individuals who are subject to an involuntary temporary detention order pursuant to § 37.2-809 that each medical care facility that provides inpatient psychiatric services shall provide, which shall include consideration of (a) the number of temporary detention orders entered in the Commonwealth in the previous year, (b) current and historical state hospital bed utilization, (c) the average amount of care provided to individuals subject to an involuntary temporary detention order pursuant to § 37.2-809 by the medical care facility per year for the previous five years, and (d) other data and information indicating the need for inpatient psychiatric services and facilities for individuals who are subject to an involuntary temporary detention order pursuant to § 37.2-809 in the Commonwealth.

§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates; civil penalties.

A. The Commissioner may, in accordance with regulations of the Board, condition issuance of a certificate on compliance with a schedule for the completion of the proposed project and a maximum capital expenditure amount for the proposed project. The approved schedule and maximum capital expenditure for a proposed project shall be issued together with the certificate. The approved schedule may not be extended and the maximum capital expenditure may not be exceeded without the approval of the Commissioner in accordance with the regulations of the Board. The Commissioner shall not approve an extension for a schedule for completion of any project or the exceeding of the maximum capital expenditure of any project unless such extension or excess complies with the limitations provided in the regulations promulgated by the Board pursuant to § 32.1-102.2.

The Commissioner shall monitor each project to determine its progress and compliance with the approved schedule and with the maximum capital expenditure, and may revoke the certificate for (i) lack of substantial and continuing progress toward completion of the project in accordance with the schedule or (ii) expenditures in excess of the approved maximum capital expenditure for the project.

Any person willfully violating conditions imposed pursuant to this subsection shall be subject to a civil penalty of up to $100 per violation per day until the date of completion of the project which shall be collected by the Commissioner and paid into the Literary Fund.

For the purposes of this subsection, "completion" means conclusion of construction activities necessary for the substantial performance of the contract.

B. The Commissioner shall, pursuant to the regulations of the Board, condition the approval of a certificate upon the agreement of the applicant to provide care to *(i)* individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq. *or (ii) in the case of a certificate for a project involving an inpatient psychiatric service or facility, individuals who are subject to an involuntary temporary detention order pursuant to § 37.2-809.* In addition, the Commissioner shall condition the approval of a certificate upon the agreement of the applicant to ~~(i)~~ *(a)* provide a specified level of charity care to indigent persons or accept patients requiring specialized care, ~~(ii)~~ *(b)* facilitate the development and operation of primary and specialty medical care services in designated medically underserved areas of the applicant's service area, or ~~(iii)~~ *(c)* all of the above. Except in the case of nursing homes, the value of charity care provided to individuals pursuant to this subsection shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

Every certificate holder shall develop a financial assistance policy that includes specific eligibility criteria and procedures for applying for charity care, which shall be provided to a patient at the time of admission or discharge or at the time services are provided, included with any billing statements sent to uninsured patients, posted conspicuously in public areas of the medical care facility for which the certificate was issued and posted on a website maintained by the certificate holder.

The certificate holder shall annually provide documentation to the Department demonstrating that the certificate holder has satisfied the conditions of the certificate, including documentation of the amount of charity care provided to patients. If the certificate holder is unable or fails to satisfy the conditions of a certificate, the Department may approve alternative methods to satisfy the conditions pursuant to a plan of compliance, which shall identify a timeframe within which the certificate holder will satisfy the conditions of the certificate, and identify how the certificate holder will satisfy the conditions of the

certificate, which may include ~~(a)~~ *(1)* making direct payments to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, ~~(b)~~ *(2)* making direct payments to a private nonprofit foundation that funds basic insurance coverage for indigents authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, or ~~(c)~~ *(3)* other documented efforts or initiatives to provide primary or specialized care to underserved populations. In cases in which the certificate holder holds more than one certificate with conditions pursuant to this subsection, and the certificate holder is unable to satisfy the conditions of one certificate, such plan of compliance may provide for satisfaction of the conditions on that certificate by providing care at a reduced rate to indigent individuals in excess of the amount required by another certificate issued to the same holder, in an amount approved by the Department provided such care is offered at the same facility. Nothing in the preceding sentence shall prohibit the satisfaction of conditions of more than one certificate among various affiliated facilities or certificates subject to a system-wide or all-inclusive charity care condition established by the Commissioner. In determining whether the certificate holder has met the conditions of the certificate pursuant to a plan of compliance, only such actions undertaken after issuance of the conditioned certificate shall be counted towards satisfaction of conditions.

Any person refusing, failing, or neglecting to honor such agreement shall be subject to a civil penalty of up to $100 per violation per day until the date of compliance which shall be collected by the Commissioner and paid into the Literary Fund. For the purpose of determining the amount of a civil penalty imposed pursuant to this subsection, the date on which the person began providing services in accordance with the original certificate shall be the date from which the period of noncompliance shall be calculated.

C. The Commissioner shall (i) review every certificate of public need upon which conditions were imposed pursuant to subsection B at least once every three years to determine whether such conditions continue to be appropriate or should be revised and (ii) notify each certificate holder of his conclusions regarding (a) the appropriateness of conditions imposed on the certificate and whether such conditions should be revised and (b) the process by which the certificate holder may request amendments to conditions imposed on a certificate in accordance with subsection D.

D. Pursuant to regulations of the Board, the Commissioner may accept requests for and approve amendments to conditions of existing certificates related to the provision of care at reduced rates or to patients requiring specialized care or related to the development and operation of primary medical care services in designated medically underserved areas of the certificate holder's service area.

E. In determining whether conditions imposed on a certificate of public need pursuant to subsection B are appropriate for the purposes of subsection C or should be amended in response to a request submitted pursuant to subsection D, the Commissioner shall consider any changes in the circumstances of the certificate holder resulting from changes in the financing or delivery of health care services, including changes to the Commonwealth's program of medical assistance services, and any other specific circumstances of the certificate holder.

Study of HB 613 / SB 453

Letter from House Committee on Courts of Justice

House Bill 743 (Bell), which was continued to 2023 by the House Committee for Courts of Justice during the 2022 General Assembly Session, required the Commissioner of Health (the Commissioner) to impose conditions related to the provision of care to individuals who are the subject of a temporary detention order on certificates of public need for projects involving inpatient psychiatric services and facilities and provided that when determining the public need for a proposed project involving an inpatient psychiatric service or facility, the Commissioner shall not take into consideration existing inpatient psychiatric services or facilities or the impact of approving the application and issuing the certificate of public need for the proposed project on an existing inpatient psychiatric service or facility if the existing inpatient psychiatric service or facility does not provide an adequate amount of service to individuals who are subject to a temporary detention order, as determined by the Commissioner in accordance with regulations of the Board of Health (the Board). The bill directed the Board to adopt regulations establishing a process by which the Commissioner shall annually establish the amount of services for individuals who are subject to a temporary detention order that an existing inpatient psychiatric service or facility must provide.

The members of the House Committee for Courts of Justice discussed the need for information regarding implementation of this bill. Therefore, as Chairman of the House Committee for Courts of Justice, I request that the Behavioral Health Commission study and review House Bill 743. I also request that if the Commission determines any recommendations regarding this bill or the subject matter therein, that the Commission provide those to the General Assembly by December 1, 2022.

22101407D

HOUSE BILL NO. 613

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 18.2-57 of the Code of Virginia, relating to arrest and prosecution of individual experiencing a mental health emergency; assault or assault and battery against a law-enforcement officer.

Patrons—Bourne, Bagby, Bennett-Parker, Clark, Glass, Hope, Jenkins, Kory, Maldonado, McQuinn, Plum, Price, Scott, D.L., Simon, Simonds, Torian and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-57 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-57. Assault and battery; penalty.

A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin, the penalty upon conviction shall include a term of confinement of at least six months.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice, an employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Services, a firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire department or volunteer emergency medical services agency, regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or emergency medical services personnel as employees, engaged in the performance of his public duties anywhere in the Commonwealth, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

No individual shall be subject to arrest or prosecution for an offense in violation of this subsection involving an assault or assault and battery against a law-enforcement officer if at the time of the assault or assault and battery (i) the individual (a) is experiencing a mental health emergency or (b) meets the criteria for issuance of an emergency custody order pursuant to § 37.2-808 and (ii) the law-enforcement officer subject to the assault or assault and battery was responding to a call for service requesting assistance for such individual. No law-enforcement officer acting in good faith shall be found liable for false arrest if it is later determined that the person arrested was immune from prosecution under this section.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time employee of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory minimum sentence of confinement of six months.

E. In addition, any person who commits a battery against another knowing or having reason to know that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the performance of his duties in a hospital or in an emergency room on the premises of any clinic or other facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15 days in jail, two days of which shall be a mandatory minimum term of confinement.

F. As used in this section:

"Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities.

"Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

"Judge" means any justice or judge of a court of record of the Commonwealth including a judge designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers' Compensation Commission, and any judge of a district court of the Commonwealth or any substitute judge of such district court.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

"Mental health emergency" means as a result of mental illness (i) there exists a substantial likelihood that a 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, or (ii) the person is severely disoriented or lacks the capacity to recognize reality.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual experiencing such disorder or for the safety of others.

"School security officer" means the same as that term is defined in § 9.1-101.

G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any school security officer or full-time or part-time employee of any public or private elementary or secondary school while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a school security officer or full-time or part-time employee of any public or private elementary or secondary school at the time of the event.

22106448D

SENATE BILL NO. 453

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary on February 9, 2022)

(Patron Prior to Substitute—Senator Boysko)

A BILL to amend and reenact § 18.2-57 of the Code of Virginia, relating to assault and battery; persons diagnosed with autism spectrum disorder, intellectual disability, or serious mental illness; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-57 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-57. Assault and battery; penalty.

A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin, the penalty upon conviction shall include a term of confinement of at least six months.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice, an employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Services, a firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire department or volunteer emergency medical services agency, regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or emergency medical services personnel as employees, engaged in the performance of his public duties anywhere in the Commonwealth, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time employee of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory minimum sentence of confinement of six months.

E. In addition, any person who commits a battery against another knowing or having reason to know that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the performance of his duties in a hospital or in an emergency room on the premises of any clinic or other facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15 days in jail, two days of which shall be a mandatory minimum term of confinement.

F. As used in this section:

"Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities.

"Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

"Judge" means any justice or judge of a court of record of the Commonwealth including a judge designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore

under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers' Compensation Commission, and any judge of a district court of the Commonwealth or any substitute judge of such district court.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

"School security officer" means the same as that term is defined in § 9.1-101.

G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any school security officer or full-time or part-time employee of any public or private elementary or secondary school while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a school security officer or full-time or part-time employee of any public or private elementary or secondary school at the time of the event.

H. In any case where a person who has been charged with committing an offense in violation of subsection C, D, or E has been diagnosed by a psychiatrist or clinical psychologist with (i) an autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, (ii) an intellectual disability as defined in § 37.2-100, or (iii) serious mental illness, and the court or finder of fact finds by clear and convincing evidence that the criminal conduct was caused by or had a direct and substantial relationship to the person's disorder or disability, then the defendant shall not be subject to mandatory minimum punishment.

Nothing in this subsection shall be construed as permitting the introduction of evidence of voluntary intoxication.

Study school-based mental health services

Budget language

2023-2024 Appropriation Act

§ 1-9. BEHAVIORAL HEALTH COMMISSION

The Behavioral Health Commission shall conduct a study of how to maximize school-based mental health services across the Commonwealth. The Commission shall form a task force of local school administrators, school-based mental health professionals, community-based mental health professionals in public and private settings, teachers, students, and parents as well as relevant stakeholders from the Departments of Medical Assistance Services, Behavioral Health and Developmental Services, and Education to evaluate the current reach of school-based mental health services and to identify strategies to connect mental health clinical interventions (Tier 2 and Tier 3) to school settings. The Commission shall consider opportunities to align Medicaid-funded behavioral health services included in Project BRAVO and school-initiated services that will be newly eligible under the “free care rule" implementation. In addition, the Commission shall provide relevant information related to the role of qualified mental health professionals eligible to provide these services and opportunities to identify where they can be appropriately included and compensated to meet student mental health needs. Other initiatives, such as youth peer support specialists, recovery high schools, and school-based health centers shall be included as well. The Commission shall make recommendations about strategies to implement and expand school-based mental health services by December 1, 2023.