



# Workplan

## 2023

Commonwealth of Virginia

## **Behavioral Health Commission**

Senator R. Creigh Deeds, Chair

Delegate John G. Avoli

Senator George L. Barker

Delegate Robert B. Bell

Delegate Emily M. Brewer

Delegate Tara A. Durant

Senator Barbara A. Favola

Senator Emmett W. Hanger Jr.

Delegate Patrick A. Hope

Senator T. Montgomery "Monty" Mason

Delegate Sam Rasoul

Delegate Vivian E. Watts

Nathalie Molliet-Ribet, Executive Director

Sarah Stanton, Chief Policy Analyst

Claire Pickard Mairead, Assistant Policy Analyst

Agnes Dymora, Executive Assistant and Office Manager

### **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.

# 2023 BHC Workplan

The Behavioral Health Commission (BHC) uses a structured yet flexible process to plan staff work 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. The BHC’s workplan also places higher priority on those initiatives that are expected to help the Commission progress most significantly toward its goals while also playing the roles it has adopted in its strategic framework.

The 2023 workplan presented in this document was approved by the Commission during its May 16<sup>th</sup> meeting and is therefore final.

## Summary of work referred to the Commission in 2023

Studies and other work 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 direct staff to work on initiatives that support the goals set forth in its strategic framework. 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.

### Work to be completed in 2023

The initiatives included in the 2023 workplan can be organized into four categories that correspond to the roles that the BHC adopted in its strategic framework: (1) tracking new initiatives wholistically; (2) monitoring program implementation and performance; (3) conducting research; and (4) building and maintaining knowledge.

Initiatives	Complexity	Expected completion	Source
<b>Tracking new initiatives wholistically</b>			
<b>1. Map and track progress of new initiatives</b> Map current and planned initiatives across government entities to understand evolving landscape; identify initiatives that warrant support and topics that require further study	H	11/2023, ongoing	BHC directed

Initiatives	Complexity	Expected completion	Source
<b>Monitoring program implementation and performance</b>			
<b>2. Stand up monitoring program</b> Monitor program implementation and performance to ensure that past initiatives yield expected results – STEP-VA – Project BRAVO – Permanent supportive housing	H M M	09/2023, ongoing	BHC directed
<b>3. Report on key metrics</b> Report quarterly on key metrics to recognize trends and identify potential issues requiring further study	M	09/2023, ongoing	BHC directed
<b>Conducting research</b>			
<b>4. Maximize school-based mental health services</b> Evaluate the reach of school-based mental health services and identify strategies to connect clinical interventions to schools	H	11/2023	2022 Appropriation Act
<b>5. Limited-scope study of EDCOT (HB 2339 / SB 1174)</b> Identify factors that may impact the effectiveness of EDCOT in meeting the goals of diversion	M	09/2023	2023 committee referral
<b>Building and maintaining knowledge</b>			
Inherent in items 1-5			

**Additional work referred but not undertaken in 2023**

The following two initiatives were referred to the BHC by letter during the 2023 General Assembly session. Due to limited staff and competing priorities, the Commission opted not to include them in the BHC’s 2023 workplan.

Initiatives	Complexity	Source	Disposition
<b>Conducting research</b>			
<b>1. Study SB 931</b> Provides that unrestorably incompetent defendants charged with an act of violence may be ordered to receive restoration services indefinitely, subject to certain requirements, in the same manner as unrestorably incompetent defendants charged with aggravated murder	M	2023 committee referral	Patron notified of lack of capacity
<b>2. Study HB 1923</b> Increases from 14 to 16 the age at which a minor's consent is required for admission of the minor to an inpatient behavioral health facility	L	2023 committee referral	Studied by the Commission on Youth (2023)

## Description of initiatives to be completed in 2023

Studies and other activities are assigned to BHC staff, who are 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 in the 2023 workplan are summarized below. The legislation or budget language associated with each study, where applicable, is included in the appendix.

### Map and track progress of new initiatives

*Source: BHC directed*

*Staff lead: Nathalie Molliet-Ribet*

*Scheduled completion: November 2023/ongoing*

Multiple entities are currently engaged in major efforts to enhance the behavioral health system, such as the Governor's *Right Help Right Now* plan and the Department of Behavioral Health and Developmental Services' *North Star* plan. Several other state entities are also working on more focused initiatives, such as the Virginia Health Workforce Development Authority's health workforce study. Due to the broad range of ongoing work and the diffuse nature of these efforts, Commission members (and potentially other stakeholders) do not

have a comprehensive understanding of these various plans, their mutual influences, and the potential outcomes and consequences of their implementation.

Mapping new and planned initiatives and analyzing their scope and content can provide valuable insight into their interactions and potential impacts on the behavioral health system. This understanding will enable the Commission to identify proposals that warrant legislative support and areas that require further study and investigation.

BHC staff will identify key efforts currently underway to improve the Commonwealth's behavioral health system. Staff will collaborate with agencies and stakeholders to receive regular information and updates on the development and implementation of plans and recommendations. Additionally, staff will provide members with an analysis of the interactions between these initiatives and assess their impacts. This analysis will inform the Commission's legislative and budget proposal as well as the work of Commission members.

### **Stand up monitoring program**

*Source: BHC directed*

*Staff lead: Sarah Stanton*

*Scheduled completion: September 2023/ongoing*

Monitoring the implementation and performance of mature initiatives that have received state funding can help identify implementation challenges and design flaws, drive accountability, and ensure that expected results are met. By monitoring programs and initiatives, the BHC can help provide the resources needed to help address implementation challenges and determine when state funding should no longer be invested. The following programs have been identified as top priorities for monitoring during 2023:

- **STEP- VA.** STEP-VA substantially expanded the core services that CSBs are required to provide. The implementation of STEP-VA was structured as a multi-year process to allow for effective planning, development, and initiation of services. Over \$381M has been appropriated to implement this program since 2017. Despite the program's emphasis on metrics, there appears to be limited insight into its impact six years post implementation.
- **Project BRAVO.** Project BRAVO represents a significant investment in the mental health system and is intended to yield improvements by implementing effective, innovative services with reimbursement rates that match the cost of service delivery. The effective implementation of Project BRAVO could have a sizeable impact on enhancing access to quality services and providers because Medicaid is the largest payor of behavioral health services in the state.

- **Permanent Supportive Housing (PSH).** PSH integrates basic behavioral and primary health care services with stable housing for individuals with a mental illness. The General Assembly has appropriated more than \$175M since 2018 to expand access to PSH. Effective implementation can promote wellness, prevent homelessness, avoid unnecessary hospital admissions, and facilitate discharge from inpatient care. Evaluating utilization and outcome data can help gauge the effectiveness of PSH in improving long-term outcomes.

To ensure effective monitoring, staff will develop a framework for identifying outcomes to be measured, a plan for collecting and analyzing relevant data, and a process for reporting results in meaningful and actionable way.

### **Report on key metrics**

*Source: BHC directed*

*Staff lead: Nathalie Molliet-Ribet*

*Scheduled completion: September 2023/ongoing*

Key metrics help show how various components of the behavioral health system are performing, while tracking and analyzing these metrics on an ongoing basis can help identify trends and gain insight into the factors that explain improvements or deteriorations. 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. Producing a standard, routinely updated report on carefully selected behavioral health 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.

BHC staff will build upon the report developed in 2022 and work with Commission members to identify any additional metrics that may be of value. Staff will also work with partner agencies and other entities to ensure that the selected data is available, reliable, and easily obtainable. The report will be updated quarterly and will be revised as needed to capture emerging priorities and evolving needs.

### **Maximize school-based mental health services**

*Source: 2022-2024 Appropriation Act*

*Staff lead: Claire Mairead*

*Scheduled completion: November 2023*

Legislators and stakeholders have expressed concern about the status of youth mental health. The American Academy of Pediatrics, American Academy of Child and Adolescent

Psychiatry and Children's Hospital Association have declared a National State of Emergency in children's mental health; at the state level, reports from Mental Health America and JLARC indicate high rates of depression among Virginia children.

Schools remain a major provider of mental health services for children and adolescents, in part because of the important role they play in early identification and because they are easily accessible for youths and their families. Most mental health services offered in Virginia public schools are selected and provided by individual school divisions and not by the state, however. Although there is no statewide inventory of school-based mental health services, stakeholders have reported significant variation among divisions with respect to the types and extent of services available. There may also be the potential for divisions to draw down additional federal funding for school-based services through Medicaid. The overarching purpose of this study is to identify opportunities to maximize school-based mental health services across Virginia, with special attention paid to Medicaid funding opportunities and clinical mental health interventions.

Staff will examine the opportunities and challenges associated with maximizing school-based services by estimating the current reach of services in K-12 public schools, identifying strategies to connect new and existing interventions with school settings, and evaluating opportunities to increase Medicaid funding.

### **Complete a limited-scope study of EDCOT**

*Source: 2023 committee referral*

*Staff lead: Sarah Stanton*

*Scheduled completion: September 2023*

Jail diversion strategies can redirect individuals with mental illness from the criminal justice system to the behavioral health system when appropriate, where services can be provided to reduce recidivism while protecting public safety and conserving system resources. Many diversion programs and strategies serving individuals at various points in the criminal process already exist in Virginia, yet a significant proportion of individuals involved in the criminal justice system have a mental illness and were not diverted:

- Nearly one-third of jail inmates in the Commonwealth have either been diagnosed with a mental illness or are suspected to have such diagnosis.
- Approximately 23 percent of inmates with mental illness have been charged with a misdemeanor offense.

Numerous stakeholders in the criminal justice and behavioral health systems have reported encountering the same defendants cycling through their courtroom, jail, or inpatient facility. For example, 25% of patients who received inpatient competency restoration services in FY19 were readmitted within 3 years, and 7% were readmitted in the same year.

HB 2339/SB 1174, introduced during the 2023 General Assembly Session, would have created a new process (expedited diversion to court-ordered treatment, or EDCOT) to divert individuals with mental illness who are charged with certain misdemeanors from the



criminal justice system to court-ordered mental health treatment through a new civil commitment process. The proposed process is different from existing diversion programs and strategies because it provides complete diversion from the criminal justice system: criminal charges are dismissed with prejudice when an order for EDCOT is entered and the case is transferred to the civil court. EDCOT is also unique in that it is available to both competent individuals and individuals who are incompetent to stand trial, so that an order for EDCOT may be entered prior to a determination of competence.

Implementation of EDCOT, as described in HB 2339/SB 1174, could impact both the publicly funded inpatient and outpatient service systems, as well as the Commonwealth's court system and individuals involved with the criminal justice system. Additionally, significant financial and other resources would likely be required to implement EDCOT in the form described in HB 2339/SB 1174. It is not clear whether the service, financial, and other implications of adopting EDCOT are fully understood and whether they have been addressed either in practice or in draft legislation.

Commission staff will perform a limited-scope study to identify the goals of diversion programs and strategies and the factors that may impact the effectiveness of EDCOT, as described in HB 2339/SB 1174, in meeting the goals of diversion. A description of the factors and their potential impact on the effectiveness of EDCOT in meeting the goals of diversion will be presented to the Commission at the conclusion of the study.

## 2023 Commission meeting schedule

Meetings of the Behavioral Health Commission will take place on the following dates in 2023. The schedule of presentations is subject to change.

Date	Planned presentations
January 9	– Review of BHC draft legislative and budgetary actions
April 28	– Member discussion of BHC role and goals for strategic framework
May 16	– 2023 workplan recommendations and member discussion – Key metrics
<i>June</i>	– <i>No meeting</i>
July 18	– Finalization of BHC strategic framework – Presentation on current and planned crisis services – Update on monitoring process
<i>August</i>	– <i>No meeting</i>
September 19	– Presentation of EDCOT limited-scope report

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	- Key metrics
October 17	- Monitoring report
November 13	- Presentation on school-based mental health services report
December 6	- Final vote on recommendations for the 2024 General Assembly Session - Key metrics

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## Other organizational products

### Annual legislative and budget proposal

To facilitate legislative action, staff works with BHC members to develop a legislative and budget proposal that acts upon multiple policy options and recommendations that originate from BHC staff research or from research conducted by other legislative study commissions (e.g., JLARC, JCHC). Legislative action pertaining to the structure of the Commission may also be taken. A policy option or recommendation cannot be adopted and included in the proposal 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 options and recommendations has been finalized in late November / early December, BHC staff request bills to be prefiled and work with staff from the Division of Legislative Services, Senate Finance and Appropriations Committee, and House Appropriations Committee to draft language that operationalizes Commission recommendations. Each recommendation is introduced by a BHC member as a bill or budget amendment, as appropriate.

### 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 calendar year. The executive summary is prepared by staff, using materials presented to BHC members during the course of the year. The document also conveys the recommendations adopted by the Commission. Once approved by the Chair of the Commission, the summary is submitted no later than the first day of the next regular session of the General Assembly.

# Appendix

## **Requests for studies**

## Study of school-based mental health services

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### Budget language

#### 2022-2024 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.

## Limited-scope study of EDCOT HB 2339 / SB 1174

### Referral from House Courts of Justice Committee



ROBERT B. BELL  
2308 FINCH COURT  
CHARLOTTESVILLE, VIRGINIA 22911  
FIFTY-EIGHTH DISTRICT

COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

COMMITTEE ASSIGNMENTS:  
COURTS OF JUSTICE (CHAIR)  
HEALTH, WELFARE AND INSTITUTIONS  
RULES

April 1, 2023

Ms. Nathalie Molliet-Ribet  
Behavioral Health Commission  
411 E. Franklin St, Ste 505  
Richmond, Virginia 23219  
nmolliet-ribet@bhc.virginia.gov

Dear Ms. Molliet-Ribet,

I am writing to you regarding legislation that was tabled in the House Courts of Justice Committee during the 2023 General Assembly Session. The Committee has voted to request the Behavioral Health Commission study certain bills further. I respectfully ask that the Commission review the following bills and the concepts they address and make recommendations for the 2024 Session of the General Assembly.

HB 1923 (Tata)  
HB 2339 (Bell)  
HB 2434 (Bell)

Thank you for your consideration. Should you need any other information, please do not hesitate to contact me.

Best Regards,

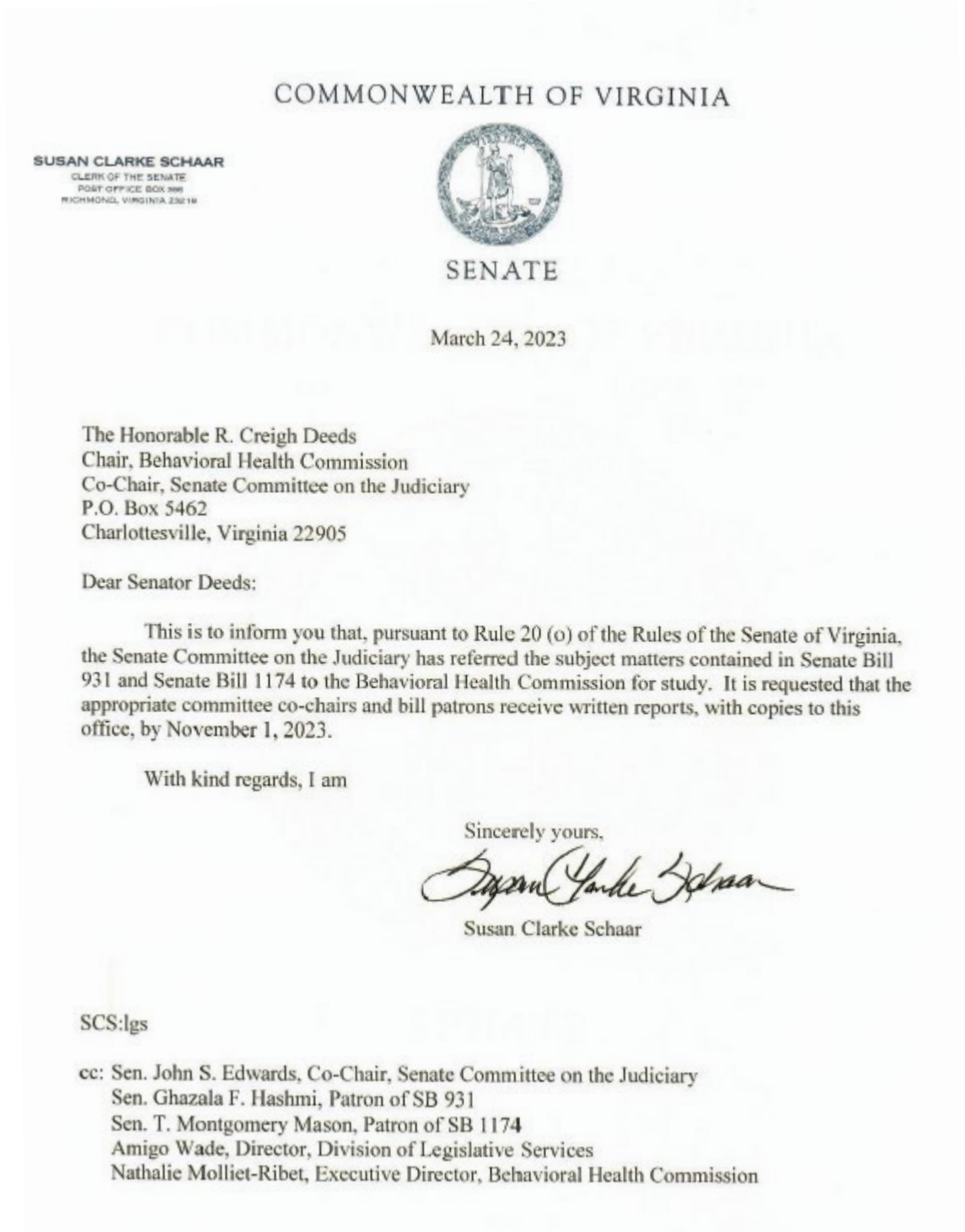
Robert B. Bell

CC: The Honorable Robert B. Bell  
The Honorable Anne Ferrell Tata

## Limited-scope study of EDCOT HB 2339 / SB 1174

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### Referral from Senate Committee on the Judiciary



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**HOUSE BILL NO. 2339  
(identical to SENATE BILL NO. 1174)**

A *BILL to amend and reenact §§ 19.2-169.1, as it is currently effective and as it shall become effective, 37.2-803, 37.2-804, and 37.2-804.2 of the Code of Virginia and to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 11.2, consisting of sections numbered 19.2-182.17 through 19.2-182.22, and by adding in Title 37.2 a chapter numbered 8.1, consisting of sections numbered 37.2-848 through 37.2-851, relating to expedited diversion to court-ordered treatment in lieu of criminal adjudication.*

Patron—Bell

Referred to Committee for Courts of Justice

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

**1. That §§ 19.2-169.1, as it is currently effective and as it shall become effective, 37.2-803, 37.2-804, and 37.2-804.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 11.2, consisting of sections numbered 19.2-182.17 through 19.2-182.22, and by adding in Title 37.2 a chapter numbered 8.1, consisting of sections numbered 37.2-848 through 37.2-851 as follows:**

**§ 19.2-169.1. (Effective until July 1, 2023) 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. *In the event the defendant is charged with an offense listed in § 19.2-182.18 and may be eligible for expedited diversion to court-ordered treatment, the court may also order that an evaluation be performed pursuant to Chapter 11.2 (§ 19.2-182.17 et seq.).*

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

59 determined to be unrestorably incompetent in the past two years, the report may recommend that the  
60 court find the defendant unrestorably incompetent to stand trial and the court may proceed with the  
61 disposition of the case in accordance with § 19.2-169.3. In cases where a defendant has been charged  
62 with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or a  
63 misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128 and is incompetent, the  
64 report may recommend that the court direct the community services board or behavioral health authority  
65 for the jurisdiction in which the defendant is located to (a) conduct an evaluation of the defendant in  
66 accordance with subsection B of § 37.2-808 to determine whether the defendant meets the criteria for  
67 temporary detention and (b) upon determining that the defendant does meet the criteria for temporary  
68 detention, file a petition for issuance of an order for temporary detention of the defendant in accordance  
69 with § 37.2-809. No statements of the defendant relating to the time period of the alleged offense shall  
70 be included in the report. The evaluator shall also send a redacted copy of the report removing  
71 references to the defendant's name, date of birth, case number, and court of jurisdiction to the  
72 Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to  
73 establish and maintain the list of approved evaluators described in subsection A.

74 E. The competency determination. — After receiving the report described in subsection D, the court  
75 shall promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's  
76 competency is not required unless one is requested by the attorney for the Commonwealth or the  
77 attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be  
78 hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent  
79 shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The  
80 defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right  
81 to personally participate in and introduce evidence at the hearing.

82 The fact that the defendant claims to be unable to remember the time period surrounding the alleged  
83 offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the  
84 charges against him and can assist in his defense. Nor shall the fact that the defendant is under the  
85 influence of medication bar a finding of competency if the defendant is able to understand the charges  
86 against him and assist in his defense while medicated.

87 F. Finding. — If the court finds the defendant competent to stand trial, the case shall be set for trial  
88 or a preliminary hearing. If the court finds the defendant either incompetent but restorable or  
89 incompetent for the foreseeable future, the court shall proceed pursuant to § 19.2-169.2.

90 **§ 19.2-169.1. (Effective July 1, 2023) Raising question of competency to stand trial or plead;**  
91 **evaluation and determination of competency.**

92 A. Raising competency issue; appointment of evaluators. — If, at any time after the attorney for the  
93 defendant has been retained or appointed and before the end of trial, the court finds, upon hearing  
94 evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that  
95 there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to  
96 § 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist  
97 his attorney in his own defense, the court shall order that a competency evaluation be performed by at  
98 least one psychiatrist or clinical psychologist who (i) has performed forensic evaluations; (ii) has  
99 successfully completed forensic evaluation training recognized by the Commissioner of Behavioral  
100 Health and Developmental Services; (iii) has demonstrated to the Commissioner competence to perform  
101 forensic evaluations; and (iv) is included on a list of approved evaluators maintained by the  
102 Commissioner. *In the event the defendant is charged with an offense listed in § 19.2-182.18 and may be*  
103 *eligible for expedited diversion to court-ordered treatment, the court may also order that an evaluation*  
104 *be performed pursuant to Chapter 11.2 (§ 19.2-182.17 et seq.).*

105 B. Location of evaluation. — The evaluation shall be performed on an outpatient basis at a mental  
106 health facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator  
107 opines that a hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is  
108 in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to  
109 § 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  
110 seq.) of Chapter 8 of Title 37.2.

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

120 D. The competency report. — Upon completion of the evaluation, the evaluators shall promptly



121 submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity  
 122 to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for  
 123 treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future.  
 124 If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether  
 125 inpatient or outpatient treatment (community-based or jail-based) is recommended. Outpatient treatment  
 126 may occur in a local correctional facility or at a location determined by the appropriate community  
 127 services board or behavioral health authority. In cases where a defendant is likely to remain incompetent  
 128 for the foreseeable future due to an ongoing and irreversible medical condition, and where prior medical  
 129 or educational records are available to support the diagnosis, or if the defendant was previously  
 130 determined to be unrestorably incompetent in the past two years, the report may recommend that the  
 131 court find the defendant unrestorably incompetent to stand trial and the court may proceed with the  
 132 disposition of the case in accordance with § 19.2-169.3. No statements of the defendant relating to the  
 133 time period of the alleged offense shall be included in the report. The evaluator shall also send a  
 134 redacted copy of the report removing references to the defendant's name, date of birth, case number, and  
 135 court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the  
 136 purpose of peer review to establish and maintain the list of approved evaluators described in subsection  
 137 A.

138 E. The competency determination. — After receiving the report described in subsection D, the court  
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 140 competency is not required unless one is requested by the attorney for the Commonwealth or the  
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 144 defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right  
 145 to personally participate in and introduce evidence at the hearing.

146 The fact that the defendant claims to be unable to remember the time period surrounding the alleged  
 147 offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the  
 148 charges against him and can assist in his defense. Nor shall the fact that the defendant is under the  
 149 influence of medication bar a finding of competency if the defendant is able to understand the charges  
 150 against him and assist in his defense while medicated.

#### 151 CHAPTER 11.2.

#### 152 EXPEDITED DIVERSION TO COURT-ORDERED TREATMENT IN THE COMMUNITY.

#### 153 § 19.2-182.17. Definitions.

154 As used in this chapter:

155 "Expedited diversion to court-ordered treatment" means a formal procedure authorizing the transfer  
 156 from the criminal court to civil outpatient commitment of a person with a mental illness who was  
 157 charged for criminal conduct but found eligible for dismissal of charges and commitment to  
 158 court-ordered outpatient treatment pursuant to this chapter.

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

163 Wherever the term "community services board" or "board" appears, it includes the behavioral health  
 164 authority.

#### 165 § 19.2-182.18. Evaluation for expedited diversion to civil court-ordered treatment.

166 A. A defendant who is charged with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of  
 167 Chapter 5 of Title 18.2 or a misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or  
 168 19.2-128, appears to have a mental illness, and whose charged conduct appears to be associated with  
 169 that mental illness, may be considered for transfer from criminal court to court-ordered treatment  
 170 pursuant to this chapter.

171 B. A defendant may be identified as a candidate for eligibility at any time prior to or during a first  
 172 court appearance, or any time before the end of trial, by a law-enforcement officer, jail officer,  
 173 magistrate, pre-trial services staff, defense counsel, attorney for the Commonwealth, or judge. Diversion  
 174 eligibility may be raised by representations to the court or by motion. The judge may consider (i) his  
 175 observations of the defendant; (ii) available information about the defendant's criminal history and  
 176 mental health history, if any; (iii) the charge report; (iv) representations made by the party or parties  
 177 raising the issue; (v) previous orders for expedited diversion to court-ordered treatment pursuant to this  
 178 chapter; or (vi) any other relevant evidence presented at the time the issue is raised. Upon finding that  
 179 there is probable cause to believe that the defendant is charged with an eligible offense, has a mental  
 180 illness, and his charged conduct is associated with the mental illness, the court may order that an  
 181 evaluation be performed by a diversion case manager designated by the local community services board

182 who is a mental health professional and has at least a bachelor's degree in a mental health field, is  
183 skilled in the assessment and treatment of mental illness, is able to provide an independent examination  
184 of the person, and is not related by blood or marriage to the person being evaluated. The order for  
185 evaluation shall give notice of the place, date, and time of the evaluation. Nothing in this chapter shall  
186 preclude the court from arraigning the defendant, considering bond, or any other relevant procedures  
187 pursuant to this title. The court shall set a date for the criminal hearing, which shall proceed as  
188 scheduled unless, prior to the hearing date, the defendant is ordered into expedited diversion to  
189 court-ordered treatment as provided pursuant to this chapter.

190 C. The court shall not order evaluation for expedited diversion to court-ordered treatment over the  
191 objection of the attorney for the Commonwealth or the objection of a defendant who understands the  
192 nature and consequences of his decision, including the possibility of criminal prosecution for the eligible  
193 charges.

194 D. The evaluation shall be performed on an outpatient basis at a mental health facility or in a local  
195 correctional facility unless the defendant appears to meet criteria for emergency custody or temporary  
196 detention pursuant to Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 or is in the custody of the  
197 Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-169.2, 19.2-169.6,  
198 19.2-182.2, 19.2-182.3, 19.2-182.8, or 19.2-182.9 or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title  
199 37.2. A defendant shall not be detained solely for purposes of the diversion evaluation if he would  
200 otherwise be released in accordance with Chapter 9 (§ 19.2-119 et seq.). If the person is not  
201 incarcerated or receiving treatment in an inpatient facility, the community services board shall arrange  
202 for the person to be examined at a convenient location and time. The community services board shall  
203 offer to arrange for the person's transportation to the examination if the person has no other source of  
204 transportation and resides within the service area or an adjacent service area of the community services  
205 board.

206 E. The court shall require the attorney for the Commonwealth to provide to the evaluator appointed  
207 under subsection B any information relevant to the evaluation, including (i) a copy of the warrant or  
208 indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the  
209 defendant, and the judge ordering the evaluation; (iii) information about the alleged crime; and (iv) a  
210 summary of the reasons for the evaluation request. The court shall require the attorney for the  
211 defendant to provide any available psychiatric records and other information that is deemed relevant.  
212 The court shall require that information be provided to the evaluator within 96 hours of the issuance of  
213 the court order pursuant to this section.

214 F. The diversion case manager shall complete an evaluation of the defendant and his service needs  
215 within two weeks of the order for evaluation. Upon completion of the evaluation, the diversion case  
216 manager shall promptly submit a report in writing to the court and the attorneys of record concerning  
217 (i) the defendant's mental illness, if any; (ii) the association, if any, between the defendant's mental  
218 illness and his behavior at the time of the alleged offense; (iii) the defendant's treatment needs; (iv) the  
219 defendant's risk of future offending in the absence of treatment; and (v) the likelihood that  
220 community-based services will reduce the defendant's risk of psychiatric deterioration and future  
221 offending. No statements of the defendant relating to the time period of the alleged offense shall be  
222 included in the report. If diversion is recommended, the report shall include an expedited diversion to  
223 court-ordered treatment plan pursuant to § 37.2-849.

224 **§ 19.2-182.19. Hearing on expedited diversion to court-ordered treatment.**

225 A. Upon receipt of a diversion evaluation report that includes an expedited diversion to  
226 court-ordered treatment plan, the court shall schedule the expedited diversion to court-ordered treatment  
227 hearing on an expedited basis, giving the matter priority over other civil matters before the court, to  
228 determine the appropriate disposition of the defendant. The defendant shall be provided with adequate  
229 notice of the hearing and a written explanation of his rights as set forth in subsection D. The attorney  
230 for the Commonwealth shall be provided notice of the hearing, and legal counsel shall be appointed to  
231 represent the defendant at the hearing, which shall be a civil proceeding. The defendant may retain  
232 legal counsel of his choosing, who shall promptly notify the court of such representation. Upon such  
233 notification, the court shall dismiss court-appointed counsel from the matter.

234 At the hearing, the court may consider (i) the diversion evaluation report, including the expedited  
235 diversion to court-ordered treatment plan; (ii) any past actions of the person; (iii) any past mental  
236 health treatment of the person; (iv) any health records available; and (v) any other relevant evidence  
237 that may have been admitted. The diversion case manager appointed pursuant to subsection B of  
238 § 19.2-182.18, if not physically present at the hearing, shall be available whenever possible for  
239 questioning during the hearing through a two-way electronic video and audio or telephonic  
240 communication system as authorized in § 37.2-804.1. At the conclusion of the hearing, the court shall  
241 dismiss the charges with prejudice and order that the defendant be admitted into expedited diversion to  
242 court-ordered treatment if it finds by clear and convincing evidence that (a) the defendant has a mental  
243 illness, (b) the defendant engaged in the alleged conduct, (c) the criminal conduct was caused by or had

244 a direct and substantial relationship to the defendant's mental illness, (d) there is a significant risk of  
 245 future offending in the absence of treatment, and (e) there is a reasonable likelihood that  
 246 community-based services will reduce the defendant's risk of psychiatric deterioration and future  
 247 offending. If the court finds the defendant not eligible for expedited diversion to court-ordered treatment,  
 248 the criminal case shall proceed as scheduled.

249 In the event the attorney for the Commonwealth and an eligible defendant whose competence to  
 250 stand trial is not in question agree to expedited diversion to court-ordered treatment as recommended in  
 251 the evaluation report, the court may find that the defendant meets the criteria and dismiss the charges  
 252 and order the defendant into expedited diversion to court-ordered treatment. In the event that the  
 253 competence of an eligible defendant to stand trial is in question, the court may dismiss the charges and  
 254 order the defendant into expedited diversion to court-ordered treatment with or without the defendant's  
 255 assent. The court shall not commit an eligible defendant over his objection if the defendant is competent  
 256 to stand trial and capable of making a rational decision to refuse treatment.

257 The court shall not commit the defendant to emergency custody, temporary detention, or inpatient  
 258 treatment unless the defendant meets criteria for such commitment pursuant to Article 4 (§ 37.2-808 et  
 259 seq.) or 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, in which case the court shall proceed in  
 260 accordance with § 37.2-808 or 37.2-809 as applicable. If recommended in the evaluation report and  
 261 treatment plan, the court may commit the defendant for a period not to exceed two days to an inpatient  
 262 facility, crisis stabilization facility, or crisis receiving center for initial stabilization of his condition.

263 The duration of expedited diversion to court-ordered treatment shall be determined by the court  
 264 based on recommendations of the diversion case manager, community services board, and attorney for  
 265 the Commonwealth but shall not exceed 180 days unless extenuating circumstances exist, in which case  
 266 the duration shall not exceed one year or the maximum sentence that would be available for the charge,  
 267 whichever is shorter. In prescribing the terms of the order, including its length, the judge shall consider  
 268 the impact on the person's opportunities and obligations, including education and employment. The  
 269 order duration may be reduced, but not extended, and the treatment plan may be modified after  
 270 jurisdiction is transferred to the civil court in accordance with § 37.2-849.

271 B. The attorney for the Commonwealth shall represent the Commonwealth in all proceedings held  
 272 pursuant to this chapter. The attorney for the Commonwealth has absolute discretion to decline  
 273 expedited diversion to court-ordered treatment for any eligible defendant. The attorney for the  
 274 Commonwealth may stipulate to the findings in the diversion evaluation report.

275 C. Defense counsel shall recuse himself from all civil proceedings concerning expedited diversion to  
 276 court-ordered treatment until the defendant is found not to be eligible and returned to the criminal  
 277 process, at which point he shall return to representing the defendant, or the defendant is found to be  
 278 eligible for diversion, at which point defense counsel shall meet with the defendant to explain the  
 279 diversion process, confirm with the defendant that he is not objecting to expedited diversion to  
 280 court-ordered treatment, and formally withdraw from the case. The court shall appoint counsel  
 281 experienced in civil commitment practice for the defendant unless the defendant requests an opportunity  
 282 to employ counsel. To the extent possible before the diversion hearing, the attorney for the defendant  
 283 shall interview his client, the evaluator described in § 37.2-849, the community services board staff, and  
 284 any other material witnesses. He also shall examine all relevant diagnostic and other reports, present  
 285 evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the  
 286 proceedings. The diversion case manager shall disclose the evaluation report to the attorney. A health  
 287 care provider shall disclose or make available all such reports, treatment information, and records  
 288 concerning his client to the attorney, upon request. The role of the attorney shall be to represent the  
 289 wishes of his client, to the extent possible.

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

299 E. The criminal court shall retain jurisdiction over the person until court-ordered treatment is  
 300 initiated. Upon the person successfully attending initial appointments with the diversion case manager,  
 301 community services board, or service providers, the diversion case manager shall notify the criminal  
 302 court and the judge or special justice who will have civil jurisdiction. If the person fails to appear for  
 303 initial appointments and cannot provide a reasonable explanation, the diversion case manager shall  
 304 notify the criminal court and the attorney for the Commonwealth.

305 **§ 19.2-182.20. Fees and compensation.**

306 A circuit or district court that has transferred a person to court-ordered treatment pursuant to this  
 307 chapter shall impose upon such person the costs of the proceedings. Additionally, such person shall be  
 308 assessed the applicable fixed fee pursuant to § 16.1-69.48:1 or 17.1-275.7.

309 Any attorney appointed by the criminal court shall be compensated pursuant to § 19.2-163.

310 **§ 19.2-182.21. Orders for evaluation or commitment; duties of clerk; copies.**

311 A. Whenever a court orders an evaluation pursuant to this section, the clerk of the court shall  
 312 provide a copy of the order to the diversion case manager and to the director of the community services  
 313 board or, if the person is hospitalized, to the director of the hospital named in the order as soon as  
 314 practicable but no later than the close of business on the next business day following entry of the order.  
 315 The appointed evaluator and the director of the community services board or hospital shall acknowledge  
 316 receipt of the order to the clerk of the court on a form developed by the Office of the Executive  
 317 Secretary of the Supreme Court of Virginia as soon as practicable but no later than the close of  
 318 business on the next business day following receipt of the order. The clerk shall also provide a copy of  
 319 the order to the attorney for the Commonwealth and the Department of Behavioral Health and  
 320 Developmental Services.

321 B. No person shall be liable for any act or omission relating to the performance of any requirement  
 322 pursuant to subsection A unless the person was grossly negligent or engaged in willful misconduct.

323 **§ 19.2-182.21. Order of expedited diversion to court-ordered treatment forwarded to Central  
 324 Criminal Records Exchange.**

325 A. The order from a hearing issued pursuant to this chapter for expedited diversion to court-ordered  
 326 treatment shall be filed by the judge with the clerk of the district court for the county or city where the  
 327 hearing took place as soon as practicable but no later than the close of business on the next business  
 328 day following the completion of the hearing.

329 B. Upon receipt of any order from a diversion hearing issued pursuant to this chapter for expedited  
 330 diversion to court-ordered treatment, the clerk of court shall, as soon as practicable but not later than  
 331 the close of business on the next following business day, certify and forward a copy of the order to the  
 332 Central Criminal Records Exchange, on a form provided by the Exchange.

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

340 **§ 19.2-182.22. Recordings and records.**

341 Except as provided in § 19.2-182.21, the court shall keep its copies of recordings made pursuant to  
 342 this chapter, relevant medical records, reports, and court documents pertaining to the hearings provided  
 343 for in this chapter confidential. The person who is the subject of the hearing may, in writing, waive the  
 344 confidentiality provided herein. In the absence of such waiver, access to the dispositional order only  
 345 may be provided upon court order. Any person seeking access to the dispositional order may file a  
 346 written motion setting forth why such access is needed. The court may issue an order to disclose the  
 347 dispositional order if it finds that such disclosure is in the best interest of the person who is the subject  
 348 of the hearing or of the public. The Executive Secretary of the Supreme Court of Virginia and anyone  
 349 acting on his behalf shall be provided access to the court's records upon request. Such recordings,  
 350 records, reports, and documents shall not be subject to the Virginia Freedom of Information Act  
 351 (§ 2.2-3700 et seq.).

352 **§ 37.2-803. Special justices to perform duties of judge.**

353 The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of  
 354 performing the duties required of a judge by this chapter, Chapter 8.1 (§ 37.2-848 et seq.), Chapter 11  
 355 (§ 37.2-1100 et seq.), and §§ 16.1-69.28, 16.1-335 through 16.1-348, 19.2-169.6, 19.2-174.1, 19.2-182.9,  
 356 53.1-40.1, 53.1-40.2, 53.1-40.9, and 53.1-133.04. Each special justice shall be a person licensed to  
 357 practice law in the Commonwealth or a retired or substitute judge in good standing and shall have all  
 358 the powers and jurisdiction conferred upon a judge. The special justice shall serve under the supervision  
 359 and at the pleasure of the chief judge of the judicial circuit for a period of up to six years. The special  
 360 justice may be reappointed and may serve additional periods of up to six years, at the pleasure of the  
 361 chief judge. Within six months of appointment, each special justice appointed on or after January 1,  
 362 1996, shall complete a minimum training program prescribed by the Executive Secretary of the Supreme  
 363 Court. Special justices shall collect the fees prescribed in this chapter for their service and shall retain  
 364 those fees, unless the governing body of the county or city in which the services are performed provides  
 365 for the payment of an annual salary for the services, in which case the fees shall be collected and paid  
 366 into the treasury of that county or city.

367 **§ 37.2-804. Fees and expenses.**

368 A. Any special justice, retired judge sitting by designation pursuant to § 16.1-69.35, or any district  
 369 court substitute judge who presides over hearings pursuant to the provisions of §§ 37.2-809 through  
 370 37.2-820, *Chapter 8.1* (§ 37.2-848 *et seq.*), Article 16 (§ 16.1-335 *et seq.*) of Chapter 11 of Title 16.1,  
 371 or § 19.2-169.6 shall receive a fee of \$86.25 for each hearing thereunder plus his necessary mileage,  
 372 parking, tolls, and postage, and \$43.25 for each certification hearing and each order under Chapter 11  
 373 (§ 37.2-1100 *et seq.*) ruling on competency or treatment plus his necessary mileage, parking, tolls, and  
 374 postage.

375 B. Any physician, psychologist or other mental health professional, or any interpreter, appointed  
 376 pursuant to § 37.2-802 for persons who are deaf, who is not regularly employed by the Commonwealth  
 377 and is required to serve as a witness or as an interpreter in any proceeding under this chapter, *Chapter*  
 378 *8.1* (§ 37.2-848 *et seq.*), or § 19.2-169.6 shall receive a fee of \$75 and his necessary expenses for each  
 379 commitment hearing for involuntary admission in which he serves and \$43.25 and necessary expenses  
 380 for each certification hearing in which he serves.

381 C. Other witnesses regularly summoned before a judge or special justice under the provisions of this  
 382 chapter *or Chapter 8.1* (§ 37.2-848 *et seq.*) shall receive the compensation for their attendance and  
 383 mileage that is allowed witnesses summoned to testify before grand juries.

384 D. Every attorney appointed under § 37.2-806 ~~or~~, §§ 37.2-809 through 37.2-820, *or Chapter 8.1*  
 385 (*§ 37.2-848 et seq.*) shall receive a fee of \$75 and his necessary expenses for each hearing thereunder  
 386 and \$43.25 and his necessary expenses for each certification hearing and each proceeding under Chapter  
 387 11 (§ 37.2-1100 *et seq.*).

388 E. Except as hereinafter provided, all expenses incurred, including the fees, attendance, and mileage  
 389 aforesaid, shall be paid by the Commonwealth. When any such fees, costs, and expenses, incurred in  
 390 connection with an examination or hearing for an admission pursuant to § 37.2-806 ~~or~~, §§ 37.2-809  
 391 through 37.2-820, *or Chapter 8.1* (§ 37.2-848 *et seq.*) to carry out the provisions of this chapter or in  
 392 connection with a proceeding under *Chapter 8.1* (§ 37.2-848 *et seq.*), Chapter 11 (§ 37.2-1100 *et seq.*),  
 393 or § 19.2-169.6, are paid by the Commonwealth, they shall be recoverable by the Commonwealth from  
 394 the person who is the subject of the examination, hearing, or proceeding or from his estate. Collection  
 395 or recovery may be undertaken by the Department. When the fees, costs, and expenses are collected or  
 396 recovered by the Department, they shall be refunded to the Commonwealth. No fees or costs shall be  
 397 recovered, however, from the person who is the subject of the examination or hearing or his estate when  
 398 no good cause for his admission exists or when the recovery would create an undue financial hardship.

399 **§ 37.2-804.2. Disclosure of records.**

400 Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is  
 401 currently providing services to a person who is the subject of proceedings pursuant to this chapter *or*  
 402 *Chapter 8.1* (§ 37.2-848 *et seq.*) shall, upon request, disclose to a magistrate, the court, the person's  
 403 attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to  
 404 § 37.2-815, the community services board or its designee performing any evaluation, preadmission  
 405 screening, or monitoring duties pursuant to this chapter *or Chapter 8.1* (§ 37.2-848 *et seq.*), or a  
 406 law-enforcement officer any information that is necessary and appropriate for the performance of his  
 407 duties pursuant to this chapter. Any health care provider, as defined in § 32.1-127.1:03, or other  
 408 provider who has provided or is currently evaluating or providing services to a person who is the  
 409 subject of proceedings pursuant to this chapter *or Chapter 8.1* (§ 37.2-848 *et seq.*) shall disclose  
 410 information that may be necessary for the treatment of such person to any other health care provider or  
 411 other provider evaluating or providing services to or monitoring the treatment of the person. Health  
 412 records disclosed to a law-enforcement officer shall be limited to information necessary to protect the  
 413 officer, the person, or the public from physical injury or to address the health care needs of the person.  
 414 Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to  
 415 others, or retained.

416 Any health care provider providing services to a person who is the subject of proceedings under this  
 417 chapter *or Chapter 8.1* (§ 37.2-848 *et seq.*) shall (i) inform the person that his family member or  
 418 personal representative, including any agent named in an advance directive executed in accordance with  
 419 the Health Care Decisions Act (§ 54.1-2981 *et seq.*), will be notified of information that is directly  
 420 relevant to such individual's involvement with the person's health care, which may include the person's  
 421 location and general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, and (ii) make a  
 422 reasonable effort to so notify the person's family member or personal representative, unless the provider  
 423 has actual knowledge that the family member or personal representative is currently prohibited by court  
 424 order from contacting the person. No health care provider shall be required to notify a person's family  
 425 member or personal representative pursuant to this section if the health care provider has actual  
 426 knowledge that such notice has been provided.

427 Any health care provider disclosing records pursuant to this section shall be immune from civil

428 liability for any harm resulting from the disclosure, including any liability under the federal Health  
 429 Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person  
 430 or provider disclosing such records intended the harm or acted in bad faith.

431 *CHAPTER 8.1.*

432 *EXPEDITED DIVERSION TO COURT-ORDERED TREATMENT IN THE COMMUNITY IN LIEU OF*  
 433 *CRIMINAL ADJUDICATION.*

434 **§ 37.2-848. Definitions.**

435 *As used in this chapter:*

436 *"Diversion case manager" means a community services board employee who is a mental health*  
 437 *professional and (i) has a bachelor's degree or higher in a mental health field, (ii) is skilled in the*  
 438 *assessment and treatment of mental illness, (iii) is able to provide an independent examination of a*  
 439 *person who is the subject of a diversion hearing, and (iv) is not related by blood or marriage to the*  
 440 *person being evaluated.*

441 *"Material nonadherence" means deviation from an expedited diversion to court-ordered treatment*  
 442 *plan by a person who is subject to an order for expedited diversion to court-ordered treatment that it is*  
 443 *likely to lead to the person's relapse or deterioration and for which the person cannot provide a*  
 444 *reasonable explanation. The community services board and service providers identified in the expedited*  
 445 *diversion to court-ordered treatment plan shall report any material nonadherence and any material*  
 446 *changes in the person's condition to the diversion case manager.*

447 *Whenever the term "community services board" or "board" appears, it includes the behavioral health*  
 448 *authority.*

449 **§ 37.2-849. Evaluation of diversion eligibility, treatment needs; development of expedited diversion**  
 450 **to court-ordered treatment plan.**

451 *A. The presiding judge in a criminal case shall require an evaluation of the person who is the*  
 452 *subject of the diversion hearing by a diversion case manager designated by the local community services*  
 453 *board.*

454 *B. The evaluation conducted pursuant to this section shall be a comprehensive evaluation of the*  
 455 *person conducted in-person or, if that is not practicable, by two-way electronic video and audio*  
 456 *communication system as authorized in § 37.2-804.1. Translation or interpreter services shall be*  
 457 *provided during the evaluation where necessary. The examination shall consist of (i) a clinical*  
 458 *assessment that includes a mental status examination; determination of current use of psychotropic and*  
 459 *other medications; a medical and psychiatric history; a substance use, abuse, or dependency*  
 460 *determination; (ii) a substance abuse screening, when indicated; (iii) a review of treatment records,*  
 461 *criminal records, if any, and records pertaining to the alleged conduct; (iv) an assessment of*  
 462 *criminogenic risk factors; (v) an assessment of the person's capacity to consent to treatment, including*  
 463 *his ability to maintain and communicate choice, understand relevant information, and comprehend the*  
 464 *situation and its consequences; (vi) an assessment of the person's treatment needs, including housing*  
 465 *needs and need for interim inpatient admission to stabilize symptoms, if any; (vii) a discussion of*  
 466 *treatment preferences expressed by the person or contained in a document provided by the person in*  
 467 *support of recovery; and (viii) an assessment of whether the person meets the criteria for expedited*  
 468 *diversion to court-ordered treatment as set forth in § 19.2-182.18. No statements of the defendant*  
 469 *relating to the time period of the alleged offense shall be included in the report.*

470 *C. All such evaluations shall be conducted in private. The judge shall summons the diversion case*  
 471 *manager who shall certify that he has personally examined the person. The judge shall not render any*  
 472 *decision until the diversion case manager has presented his report. The diversion case manager may*  
 473 *report orally at the diversion hearing, but he shall provide a written report of his examination prior to*  
 474 *the hearing. The diversion case manager's written certification may be accepted into evidence unless*  
 475 *objected to by the person or his attorney, in which case the diversion case manager shall attend in*  
 476 *person or by electronic communication. When the diversion case manager attends the hearing in person*  
 477 *or by electronic communication, the diversion case manager shall not be excluded from the hearing*  
 478 *pursuant to an order of sequestration of witnesses.*

479 *D. The diversion case manager and community services board shall file an expedited diversion to*  
 480 *court-ordered treatment plan with the diversion evaluation report. The diversion case manager shall*  
 481 *monitor the person's adherence with the expedited diversion to court-ordered treatment plan. The*  
 482 *expedited diversion to court-ordered treatment plan shall (i) identify the specific type, amount, duration,*  
 483 *and frequency of each service to be provided to the person; (ii) identify the provider that has agreed to*  
 484 *provide each service included in the plan; (iii) certify that the services are the most appropriate and*  
 485 *least restrictive treatment available for the person; (iv) certify that each provider has complied and*  
 486 *continues to comply with applicable provisions of the Department's licensing regulations; (v) be*  
 487 *developed with the fullest possible involvement and participation of the person and his family, with the*  
 488 *person's consent, and reflect his preferences to the greatest extent possible to support his recovery and*  
 489 *self-determination, including incorporating any preexisting crisis plan or advance directive of the*

490 person; (vi) specify the particular conditions to which the person shall be required to adhere; and (vii)  
 491 describe (a) how the community services board shall monitor the person's progress and adherence to the  
 492 plan and (b) any conditions, including scheduled meetings or continued adherence to medication,  
 493 necessary for expedited diversion to court-ordered treatment to be appropriate for the person. The  
 494 diversion case manager shall submit the expedited diversion to court-ordered treatment plan to the court  
 495 for approval. Upon approval by the court, the expedited diversion to court-ordered treatment plan shall  
 496 be filed with the court and incorporated into the order for expedited diversion to court-ordered  
 497 treatment. A copy of the expedited diversion to court-ordered treatment plan shall be provided to the  
 498 person by the community services board upon approval of the treatment plan by the court.

499 E. Expedited diversion to court-ordered treatment may include day treatment in a hospital, night  
 500 treatment in a hospital, outpatient involuntary treatment with antipsychotic medication pursuant to  
 501 Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet  
 502 the needs of the person. Expedited diversion to court-ordered treatment shall not include the use of  
 503 restraints or physical force of any kind in the provision of the medication. The diversion case manager  
 504 and community services board shall recommend a specific course of treatment and programs for the  
 505 provision of expedited diversion to court-ordered treatment.

506 F. If the diversion case manager or community services board responsible for developing the  
 507 expedited diversion to court-ordered treatment plan determine that the services necessary for the  
 508 treatment of the person's mental illness are not available or cannot be provided to the person in  
 509 accordance with the order for expedited diversion to court-ordered treatment, he shall petition the court  
 510 for rescission of the expedited diversion to court-ordered treatment order in accordance with the  
 511 provisions § 37.2-851.

512 G. Upon entry of any order for expedited diversion to court-ordered treatment, the clerk of the court  
 513 shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to  
 514 the diversion case manager and community services board required to monitor the person's adherence  
 515 with the expedited diversion to court-ordered treatment plan. The diversion case manager and  
 516 community services board shall acknowledge receipt of the order to the clerk of the court on a form  
 517 established by the Office of the Executive Secretary of the Supreme Court of Virginia and provided by  
 518 the court for this purpose within five business days.

519 **§ 37.2-850. Monitoring adherence to expedited diversion to court-ordered treatment; court review**  
 520 **of expedited diversion to court-ordered treatment.**

521 A. The diversion case manager shall monitor the person's adherence to the expedited diversion to  
 522 court-ordered treatment plan prepared in accordance with § 37.2-849. Such monitoring shall include (i)  
 523 contacting or making documented efforts to contact the person weekly regarding the comprehensive  
 524 mandatory outpatient treatment plan and any support necessary for the person to adhere to the  
 525 expedited diversion to court-ordered treatment plan, (ii) contacting the service providers at least once  
 526 every two weeks to determine if the person is adhering to the comprehensive mandatory outpatient  
 527 treatment plan, (iii) documenting all such contacts, and (iv) reporting in writing to the court every two  
 528 weeks regarding the person's and the community services board's adherence to the provisions of the  
 529 diversion mandatory outpatient treatment plan.

530 B. In the event of material nonadherence, the diversion case manager shall, as soon as practicable,  
 531 meet with the person, the community services board, and service providers to identify the factors leading  
 532 to material nonadherence and develop a remediation plan for addressing the factors. The diversion case  
 533 manager shall report the meeting and remediation plan to the court within five business days. If the  
 534 person fails or refuses to cooperate with efforts of the diversion case manager, community services  
 535 board, and service providers to address the material nonadherence, the diversion case manager shall, as  
 536 soon as practicable, petition for a review hearing pursuant to subsection F, to include a request for  
 537 reevaluation in accordance with subsection H. If, in addition to material nonadherence, the diversion  
 538 case manager determines that the condition or behavior of the person has deteriorated substantially, but  
 539 not to the level of requiring emergency custody or temporary detention in accordance with subsection D,  
 540 the diversion case manager may recommend to the court that the reevaluation take place in an inpatient  
 541 mental health facility.

542 C. In the event that a person receiving court-ordered treatment is re-arrested, the diversion case  
 543 manager shall determine as expeditiously as possible whether the person's behavior amounts to  
 544 nonadherence to the treatment plan and, if so, shall immediately petition for a review hearing pursuant  
 545 to this section.

546 D. If the diversion case manager or community services board determines that the deterioration of  
 547 the condition or behavior of the person is such that there is a substantial likelihood that, as a result of  
 548 the person's mental illness, the person will, in the near future, (i) cause serious physical harm to himself  
 549 or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant  
 550 information, if any, or (ii) suffer serious harm due to his lack of capacity to protect himself from harm

551 or to provide for his basic human needs, the diversion case manager or community services board shall  
552 immediately request that the magistrate issue an emergency custody order pursuant to § 37.2-808 or a  
553 temporary detention order pursuant to § 37.2-809. Entry of an emergency custody order, temporary  
554 detention order, or involuntary inpatient treatment order shall suspend but not rescind an existing order  
555 for expedited diversion to court-ordered treatment.

556 E. The district court judge or special justice shall hold a hearing within seven days after receiving  
557 the petition for review of the expedited diversion to court-ordered treatment plan; however, if the  
558 seventh day is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the  
559 hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, legal  
560 holiday, or day on which the court is lawfully closed. The clerk shall provide notice of the hearing to  
561 the person, the diversion case manager, the community services board, and all service providers listed  
562 in the expedited diversion to court-ordered treatment order. If the person is not represented by counsel,  
563 the court shall appoint an attorney to represent the person in this hearing and any subsequent hearing  
564 under this section, giving consideration to appointing the attorney who represented the person at the  
565 proceeding that resulted in the issuance of the order for expedited diversion to court-ordered treatment.  
566 The same judge that presided over the hearing resulting in the order for expedited diversion to  
567 court-ordered treatment need not preside at the nonadherence hearing or any subsequent hearings. The  
568 community services board shall offer to arrange the person's transportation to the hearing if the person  
569 is not detained and has no other source of transportation.

570 F. Any of the following may petition the court for a hearing pursuant to this subsection: (i) the  
571 person who is subject to the order for expedited diversion to court-ordered treatment; (ii) the diversion  
572 case manager; (iii) the community services board responsible for monitoring the person's adherence to  
573 the order for expedited diversion to court-ordered treatment; (iv) a treatment provider designated in the  
574 expedited diversion to court-ordered treatment plan; (v) any health care agent designated in the advance  
575 directive of the person who is the subject of the order for expedited diversion to court-ordered  
576 treatment; or (vi) if the person who is the subject of the order for expedited diversion to court-ordered  
577 treatment has been determined to be incapable of making an informed decision, the person's guardian  
578 or other person authorized to make health care decisions for the person pursuant to § 54.1-2986.

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

580 1. Enforce an order for expedited diversion to court-ordered treatment and require the person who is  
581 the subject of the order to adhere to the expedited diversion to court-ordered treatment plan, in the case  
582 of material nonadherence;

583 2. Modify an order for expedited diversion to court-ordered treatment or an expedited diversion to  
584 court-ordered treatment plan due to a change in circumstances, including changes in the condition,  
585 behavior, living arrangement, or access to services of the person who is the subject to the order; or

586 3. Rescind an order for expedited diversion to court-ordered treatment.

587 At any time after 30 days from entry of the order for expedited diversion to court-ordered treatment,  
588 the person may petition the court to rescind the order. The person shall not file a petition to rescind the  
589 order more than once during a 90-day period.

590 H. If requested in a petition filed pursuant to this section, or on the court's own motion, the court  
591 may direct the diversion case manager to reevaluate the person as to the considerations listed in  
592 subsection B of § 37.2-849. The diversion case manager shall certify to the court whether he has  
593 probable cause to believe that (i) the person has treatment needs and poses a risk of future offending in  
594 the absence of treatment and (ii) community-based services will reduce the person's risk of psychiatric  
595 deterioration and future offending. If the person is not incarcerated or receiving treatment in an  
596 inpatient facility, the community services board shall arrange for the person to be examined at a  
597 convenient location and time. The community services board shall offer to arrange for the person's  
598 transportation to the examination if the person has no other source of transportation and resides within  
599 the service area or an adjacent service area of the community services board.

600 If the person refuses or fails to appear for the evaluation, or if the evaluation was requested in  
601 accordance with subsection B, the diversion case manager or community services board shall notify the  
602 court, and the court shall issue a mandatory examination order and *capias* directing the primary  
603 law-enforcement agency in the jurisdiction where the person resides to transport the person to the  
604 examination. The person shall remain in custody until a temporary detention order is issued or until the  
605 person is released, but in no event shall the period exceed eight hours.

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

611 J. After observing the person and considering (i) the recommendations of any treating physician or  
612 psychologist licensed to practice in the Commonwealth, if available, (ii) the person's adherence with the



613 expedited diversion to court-ordered treatment plan, (iii) any past mental health treatment of the person,  
 614 (iv) any evaluator's certification, (v) any health records available, (vi) any report from the diversion  
 615 case manager or the community services board, and (vii) any other relevant evidence that may have  
 616 been admitted at the hearing, the judge or special justice shall make one of the following dispositions:

617 1. In a hearing on any petition seeking enforcement of an order for expedited diversion to  
 618 court-ordered treatment, upon finding that continuing court-ordered treatment is warranted, the court  
 619 shall direct the person to fully adhere to the order for expedited diversion to court-ordered treatment  
 620 and may make any modifications to such order or the expedited diversion to court-ordered treatment  
 621 plan that are acceptable to the community services board or treatment provider responsible for the  
 622 person's treatment. In determining the appropriateness of the outpatient treatment specified in such  
 623 order and treatment plan, the court may consider the person's material nonadherence to the existing  
 624 treatment order. The court may impose sanctions on the person, including reflective exercises such as  
 625 writing an essay about his nonadherence, increased frequency of status hearings, and increased  
 626 frequency of reporting to the diversion case manager. Sanctions for nonadherence shall not include  
 627 contempt of court or criminal sanctions, including incarceration of any duration.

628 2. In a hearing on any petition seeking modification of an order for expedited diversion to  
 629 court-ordered treatment or the expedited diversion to court-ordered treatment plan, upon a finding that  
 630 (i) one or more modifications of the order would benefit the person and help prevent relapse or  
 631 deterioration of the person's condition, (ii) the community services board and the treatment provider  
 632 responsible for the person's treatment are able to provide services consistent with such modification, and  
 633 (iii) the person is able to adhere to the modified treatment plan, the court may order such modification  
 634 of the order for expedited diversion to court-ordered treatment or the expedited diversion to  
 635 court-ordered treatment plan as the court finds appropriate.

636 3. In a hearing on any petition filed to enforce, modify, or rescind an order for expedited diversion  
 637 to court-ordered treatment, upon finding that expedited diversion to court-ordered treatment is no longer  
 638 appropriate, in accordance with the criteria set forth in § 37.2-851, the court may order that the order  
 639 be rescinded upon the filing of a discharge treatment plan by the diversion case manager pursuant to  
 640 § 37.2-851.

641 K. If at any time the court finds reasonable ground to believe that the person (i) has repeatedly been  
 642 in material nonadherence with the expedited diversion to court-ordered treatment plan and (ii) requires  
 643 inpatient hospitalization, it may order an evaluation of the person by a psychiatrist or clinical  
 644 psychologist who is licensed in Virginia by the Board of Medicine or the Board of Psychology, qualified  
 645 in the diagnosis of mental illness, and able to provide an independent clinical evaluation of the person  
 646 and recommendations for his placement, care, and treatment. If the court, based on the evaluation and  
 647 after hearing evidence on the issue, finds by clear and convincing evidence that the person (a) has  
 648 repeatedly been in material nonadherence with the expedited diversion to court-ordered treatment plan  
 649 and (b) has a mental illness and requires inpatient hospitalization, the court may suspend the order for  
 650 expedited diversion to court-ordered treatment and order the person to be admitted involuntarily to a  
 651 facility for a period of treatment not to exceed three days from the date of the court order.

652 At any hearing pursuant to this section, the person shall be provided with adequate notice of the  
 653 hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation  
 654 for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the  
 655 hearing. The hearing shall be scheduled on an expedited basis and shall be given priority over other  
 656 civil matters before the court. The hearing is a civil proceeding.

657 L. The judge or special justice shall schedule a status hearing every 60 days while the order for  
 658 expedited diversion to court-ordered treatment remains in effect for the purposes of obtaining  
 659 information regarding the person's progress and the community services board's and service providers'  
 660 provision of treatment. The judge or special justice may schedule additional status hearings upon its  
 661 own motion, as recommended by the diversion case manager, or in response to the person's  
 662 nonadherence to the expedited diversion to court-ordered treatment plan. The clerk shall provide notice  
 663 of the hearing to the person who is the subject of the order, the diversion case manager, and the  
 664 community services board responsible for monitoring the person's adherence with the plan. The person  
 665 shall have the right to be represented by counsel at the hearing, and if the person does not have  
 666 counsel the court shall appoint an attorney to represent the person. However, status hearings may be  
 667 held without counsel present by mutual consent of the parties. The community services board shall offer  
 668 to arrange the person's transportation to the hearing if the person is not detained and has no other  
 669 source of transportation. During a status hearing, the treatment plan may be amended upon mutual  
 670 agreement of the parties. Contested matters shall not be decided during a status hearing, nor shall any  
 671 decision regarding enforcement or rescission of the order be entered.

672 M. The court may transfer jurisdiction of the case to the district court where the person resides at  
 673 any time after the entry of the order for expedited diversion to court-ordered treatment. The diversion

674 case manager and the community services board responsible for monitoring the person's adherence to  
675 the treatment plan shall remain responsible for monitoring the person's adherence to the plan until the  
676 community services board serving the locality to which jurisdiction of the case has been transferred  
677 acknowledges the transfer and receipt of the order to the clerk of the court on a form established by the  
678 Office of the Executive Secretary of the Supreme Court of Virginia and provided by the court for this  
679 purpose. The community services board serving the locality to which jurisdiction of the case has been  
680 transferred shall acknowledge the transfer and receipt of the order within five business days.

681 **§ 37.2-851. Rescission of order for expedited diversion to court-ordered treatment; discharge**  
682 **treatment plan upon rescission or expiration of order for expedited diversion to court-ordered**  
683 **treatment.**

684 A. If the diversion case manager or community services board determines at any time prior to the  
685 expiration of the order for expedited diversion to court-ordered treatment that the person has adhered to  
686 the order and no longer meets the criteria for expedited diversion to court-ordered treatment, or that  
687 continued expedited diversion to court-ordered treatment is no longer necessary for any other reason,  
688 the diversion case manager or community services board shall file a petition to rescind the order. The  
689 court shall schedule a review hearing and provide notice of the hearing in accordance with § 37.2-850.  
690 The diversion case manager shall prepare, in collaboration with the person, the community services  
691 board, and the service providers, a discharge plan in accordance with subsection D, to be submitted to  
692 the court before or during the review hearing.

693 B. At any time after 30 days from entry of the order for expedited diversion to court-ordered  
694 treatment, the person may petition the court to rescind the order on the grounds that he no longer meets  
695 the criteria for expedited diversion to court-ordered treatment as specified in § 19.2-182.18. The court  
696 shall schedule a review hearing and provide notice of the hearing in accordance with § 37.2-850. The  
697 diversion case manager required to monitor the person's adherence to the treatment order shall provide  
698 a reevaluation of the person as described in subsection H § 37.2-850. After observing the person and  
699 considering the person's current condition, any material nonadherence to the order for expedited  
700 diversion to court-ordered treatment on the part of the person, and any other relevant evidence referred  
701 to in subsection K of § 37.2-850, the court shall make one of the dispositions specified in subsection K  
702 of § 37.2-850. The person may not file a petition to rescind the order more than once during a 90-day  
703 period.

704 C. In the event the order for expedited diversion to court-ordered treatment is not rescinded before it  
705 is set to expire, the court shall schedule a review hearing prior to that date at which the diversion case  
706 manager shall submit a discharge plan in accordance with subsection D. Upon approval by the court,  
707 the discharge treatment plan shall be filed with the court and the judge or special justice shall rescind  
708 the order for expedited diversion to court-ordered treatment.

709 If the diversion case manager determines that a deterioration of the condition or behavior of the  
710 person is such that (i) there is a substantial likelihood that, as a result of the person's mental illness,  
711 the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by  
712 recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b)  
713 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic  
714 human needs; (ii) less restrictive alternatives to involuntary inpatient treatment that would offer an  
715 opportunity for improvement of his condition have been investigated and are determined to be  
716 appropriate, as reflected in the initial outpatient treatment plan prepared in accordance with subsection  
717 F of § 37.2-817.01; (iii) the person has the ability to adhere to the mandatory outpatient treatment  
718 plan; and (iv) the ordered treatment will be delivered on an outpatient basis by the community services  
719 board or designated provider to the person, the diversion case manager may petition for the person's  
720 commitment to mandatory outpatient treatment in accordance with subsection B of § 37.2-817.01.

721 D. For all individuals for whom the order for expedited diversion to court-ordered treatment may be  
722 rescinded, a discharge plan shall be formulated by the diversion case manager in collaboration with the  
723 community services board and service providers. The discharge plan shall be prepared with the  
724 involvement and participation of the individual receiving services or his representative and must reflect  
725 the individual's preferences to the greatest extent possible. The discharge plan shall be contained in a  
726 uniform discharge document developed by the Department and used by all state hospitals, training  
727 centers, and community services boards or behavioral health authorities and shall identify (i) the  
728 services, including mental health, developmental, substance abuse, social, educational, medical,  
729 employment, housing, legal, advocacy, transportation, and other services that the individual will require  
730 upon discharge into voluntary treatment in the community and (ii) the public or private agencies that  
731 have agreed to provide these services. If the individual will be housed in an assisted living facility, as  
732 defined in § 63.2-100, the discharge plan shall identify the facility, document its appropriateness for  
733 housing and capacity to care for the individual, contain evidence of the facility's agreement to admit  
734 and care for the individual, and describe how the community services board or behavioral health  
735 authority will monitor the individual's care in the facility. Prior to discharging an individual who has

**736** *not executed an advance directive, the expedited diversion to court-ordered treatment case manager*  
**737** *shall give to the individual a written explanation of the procedures for executing an advance directive in*  
**738** *accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an advance directive form,*  
**739** *which may be the form set forth in § 54.1-2984.*

**INTRODUCED**

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