

A BRIEF STATUTORY ANALYSIS OF CIVIL COMMITMENT IN VIRGINIA

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1. **§ 37.1-67.01. Emergency custody; issuance and execution of order.**
— Based upon probable cause to believe that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, **any magistrate may, upon the sworn petition of any responsible person or upon his own motion**, issue an emergency custody order requiring any person within his judicial district who is incapable of volunteering or unwilling to volunteer for treatment to be taken into custody and transported to a convenient location to be evaluated by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department in order to assess the need for hospitalization. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization without prior authorization. Such evaluation shall be conducted immediately. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours. A law-enforcement officer may lawfully go to or be sent beyond the

¹ No claim as to statutory language is made.

territorial limits of the county, city or town in which he serves to any point in the Commonwealth for the purpose of executing an order for emergency custody pursuant to this section. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

If an order of emergency custody is not executed within four hours of its issuance the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any judge or magistrate thereof. (1995, c. 844; 1996, c. 893; 1998, c. 611.)

2. **§ 37.1-67.1. Involuntary temporary detention; issuance and execution of order.**² — For the purposes of this section, a designee of a community services board is defined as an examiner able to provide an independent examination of the person who:

- is not related by blood or marriage to the person,
- who has no financial interest in the admission or treatment of the person,³
- who has no investment interest in the hospital detaining or admitting the person under this article and,
- except for employees of state hospitals and of the U.S. Department of Veterans Affairs, who is not employed by such hospital.

WHO MAY REQUEST A TEMPORARY DETENTION ORDER:

A **magistrate** may, upon the sworn petition of **any** responsible person or upon his own motion, and **only after an in-person evaluation**⁴ by

² Parsed for easier discussion.

³ For purposes of this section, investment interest means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

⁴ The evaluation requirement has two exceptions: A magistrate may issue an order of temporary detention without a prior in-person evaluation if (i) the person has been

an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department, issue an order of temporary detention *if it appears from all evidence readily available, including any recommendation from a physician treating the person or from a clinical psychologist treating the person*, that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, and the person is incapable of volunteering or unwilling to volunteer for treatment.

Such order may include transportation of the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement.⁵

SELECTION OF *TEMPORARY DETENTION* HOSPITAL

An employee of the local **community services board** or its designee shall **determine the facility of temporary detention** for all individuals detained pursuant to this section. The facility shall be identified on the prescreening report and indicated on the temporary detention order. The Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention. The institution or other place of detention shall be approved pursuant to regulations of the Board of Mental Health, Mental Retardation and Substance Abuse Services. The employee of the community services board or its designee who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Except as provided herein for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6,

personally examined within the previous seventy-two hours by an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department or (ii) there is a significant physical, psychological or medical risk, to the person or to others, associated with conducting such evaluation.

⁵ The doctor may also avail himself of the special justice to provide for emergency treatment under Va. Code § 37.1-134.21

such person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.

EXTRA-TERRITORIALITY OF ORDERS

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

TIME LIMITS

The duration of temporary detention shall not exceed forty-eight hours prior to a hearing. If the forty-eight-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday or legal holiday. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

CRIMINAL CIVIL COMMITMENT PROCESS

In any case in which temporary detention is ordered pursuant to this section upon petition of a person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate executing the order of temporary detention shall place such person in a hospital designated by § 19.2-169.6 B, or if such facility is not available, the defendant shall be detained in a jail or other place of confinement for persons charged with criminal offenses and shall be transferred to such hospital as soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant, either (i) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be represented by counsel as specified in § 37.1-67.3. **In any case in which temporary detention is ordered pursuant to this section upon petition for involuntary commitment of a minor, the petition**

shall be filed and the hearing scheduled in accordance with the provisions of § 16.1-341.⁶

PRE-TRIAL RELEASE

On such petition and prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341, the judge may release such person on his personal recognizance or bond set by the judge if it appears from all evidence readily available that such person will not pose an imminent danger to himself or others. **In the case of a minor, the judge may release the minor to his parent.**⁷ **The director of the hospital in which the person is detained may release such person prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that the person would not present an imminent danger to self or others if released.**⁸

If an order of temporary detention is not executed within twenty-four hours of its issuance, or within such shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or if such office is not open, to any judge or magistrate thereof. Subsequent orders may be issued upon the original petition within ninety-six hours after the petition is filed. However, a magistrate must again obtain the advice of an employee of the local community services board or its designee who is skilled in the diagnosis or treatment of mental illness and who has completed a certification program approved by the Department prior to issuing a subsequent order upon the original petition. Any petition for which no order of temporary detention or other process in connection therewith is served on the subject of the petition within ninety-six hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

The chief judge of each general district court shall establish and require that a magistrate, as provided by this section, be available seven

⁶ A special justice cannot conduct civil commitment hearings for a juvenile.

⁷ A juvenile court judge, not the special justice.

⁸ See *Wackwitz v. Roy*, 244 Va. 60, 418 S.E.2d 861 (1992), and Va. Code Ann. § 54.1-2400.1 for the absence of any protection for the hapless hospital director who, like the unlucky villain in *Indiana Jones and the Last Crusade*, fails to “choose wisely.”

days a week, twenty-four hours a day, for the purpose of performing the duties established by this section. Each community services board shall provide to each general district court and magistrate's office within its jurisdiction a list of its employees and designees who are available to perform the evaluations required herein.

3. **§ 37.1-67.3. Same; involuntary admission and treatment. —**

TIME LIMIT FOR HOLDING COMMITMENT HEARING

The commitment hearing shall be held within forty-eight hours of the execution of the temporary detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, such person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

SPECIAL JUSTICE'S DUTIES: VOLUNTEER

The judge, in commencing the commitment hearing, shall:

inform the person whose involuntary admission is being sought of his right to apply for voluntary admission and treatment as provided for in § 37.1-65[,]⁹ and

shall afford such person an opportunity for voluntary admission; [... and]

⁹ Technically this only applies to state hospitals (where, in practice, if there is a “right” to volunteer, it is more honored in the breach than observance): **§ 37.1-65. Voluntary admission.** — Any state hospital shall admit as a patient any person requesting admission who, having been screened by the community services board or the community mental health clinic which serves the political subdivision of which the person is a resident and having been examined by a physician on the staff of such hospital, is deemed to be in need of hospitalization by such board or clinic and the physician for mental illness, mental retardation or substance abuse. If it is impossible or impractical to obtain a prescreening report from the community services board which serves the political subdivision where the person resides, the person may be screened by the community services board of the political subdivision where the person is located.

shall ascertain if such person is then willing and capable of seeking voluntary admission and treatment[, and if the person is capable and willingly accepts voluntary admission and treatment, the judge shall

require him to accept voluntary admission for a minimum period of treatment and after such minimum period, not to exceed seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital, during which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or § 37.1-99.

TRANSPORT OF VOLUNTEERS BY SHERIFF IS AUTHORIZED

Such person shall be subject to the transportation provisions as provided in § 37.1-71¹⁰ and the requirement for prescreening by a

¹⁰ Transportation is largely in the special justice's discretion under this statute and Va. Code § 37.1-72:

§ 37.1-71. **Transportation of person certified for admission.** — When a person has been certified for admission to a hospital under §§ 37.1-67.3, 37.1-67.4 or § 37.1-67.6, a determination shall be made by the judge regarding the transportation of that person to the proper hospital. The judge may consult with the person's treating mental health professional and any involved community services board staff regarding the person's dangerousness and whether the sheriff should transport or whether transportation alternatives as provided in § 37.1-72 may be utilized. If the judge determines that the person requires transportation by the sheriff, such person may be delivered to the care of the sheriff, as specified in this section, who shall transport such person to the proper hospital. In no event shall transport commence later than six hours after notification to the sheriff of such certification.

The sheriff of the jurisdiction where the person is a resident shall be responsible for transporting the person unless the sheriff's office of such jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person. The cost of transportation of any person so applying or certified for admission pursuant to § 37.1-67.3 or § 37.1-67.4 shall be paid by the Commonwealth from the same funds as for care in jail.

community services board or community mental health clinic as provided in § 37.1-65.

SPECIAL JUSTICE'S DUTIES FOR NON-VOLUNTARY PATIENT: COUNSEL

If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge shall inform such person of his right to a commitment hearing and right to counsel. The judge shall ascertain if a person whose admission is sought is represented by counsel, and if he is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. *However, if such person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.*¹¹

DUTY TO ASSURE WRITTEN STATEMENT OF RIGHTS

A written explanation of the involuntary commitment process and the statutory protections associated with the process shall be given to the person and its contents explained by an attorney prior to the commitment hearing.¹² The written explanation shall include, at a minimum:

If any state hospital has become too crowded to accommodate any such person certified for admission therein, the Commissioner shall give notice of the fact to all sheriffs and shall designate the hospital to which they shall transport such persons.

§ 37.1-72. Custody of certified person for purpose of transportation. — Any judge who shall certify an admission under this chapter may order that such person be placed in the custody of any responsible person or persons, including a representative of the facility in which the individual is temporarily hospitalized during the temporary detention period, for the sole purpose of transporting such person to the proper hospital.

¹¹ Who pays for the hospital and other medical care of the patient while he exercises his “reasonable opportunity to employ counsel”? Does the 48 hour rule apply? Is the “reasonable opportunity” determined in the context of the absence of any payment source beyond the temporary detention order period (which the writer understands is seventy two hours, without any extension (for the unfortunate, uninsured and typically obdurate patient admitted on Friday morning in the wee hours who doesn’t have a first presentment until Monday afternoon)?

¹² Whose duty is it to provide the written statement – the hospital, the special justice, the Community Service Boards, or the attorney? The statute is silent. Since the writing is to

- an explanation of the person's right to retain private counsel or be represented by a court-appointed attorney,
- to present any defenses including independent evaluation and expert testimony or the testimony of other witnesses,
- to be present during the hearing and testify,
- to appeal any certification for involuntary admission to the circuit court, and
- to have a jury trial on appeal.

The judge shall ascertain whether the person whose admission is sought has been given the written explanation required herein.

DUTIES OF PATIENT'S COUNSEL

To the extent possible, or before the commitment hearing, the attorney for the person whose admission is sought **shall**:

- interview:
 - his client,
 - the petitioner,
 - the examiner described below,
 - the community services board staff, and
 - any other material witnesses.
- examine all relevant diagnostic and other reports,
- present evidence and witnesses, if any, on his client's behalf, and
- otherwise actively represent his client in the proceedings.

ATTORNEY AS ADVOCATE, NOT GUARDIAN *AD LITEM*

be provided and explained prior to the commitment hearing, and the special justice is required to assure that the statement has been given, it is unlikely the duty of the special justice who will not see the patient until that hearing. In Richmond, the practice is for the attorney to provide and explain the written statement of statutory rights in the private consultations with the patient preceding the hearing.

The role of the attorney shall be to represent the wishes of his client, to the extent possible.

NOTICE TO AND PROCEDURAL RIGHTS OF THE PETITIONER

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

PROFESSIONAL MENTAL EXAMINATION

Notwithstanding the above, the judge shall require an examination of such person by a **psychiatrist or a psychologist** who is licensed in Virginia by either the Board of Medicine or the Board of Psychology who is qualified in the diagnosis of mental illness **OR**, if such a psychiatrist or psychologist is not available, **any mental health professional** who is (i) licensed in Virginia through the Department of Health Professions and (ii) qualified in the diagnosis of mental illness.

INDEPENDENCE OF EXAMINER

The examiner chosen shall be able to provide an independent examination of the person[, and:]

- shall not be related by blood or marriage to the person,
- shall not be responsible for treating the person,
- shall have *no financial interest in the admission or treatment of the person*,¹³ [and]
- shall have no investment interest in the hospital detaining or admitting the person under this article, and, except for employees of state hospitals

¹³ Query: does the existence of the revenue sharing agreement reportedly in place between Central State Hospital and several Community Service Boards, requiring a 28 day stay in a private hospital in the locale before admission to Central State Hospital, the breach of which results in a payment by the local Community Service Board of an above market per diem for the care provided in the facility, render the Community Service Board employee a non-disinterested person?

and of the U.S. Department of Veterans Affairs, shall not be employed by such hospital.¹⁴

All such examinations shall be conducted in private.

EXAMINER'S TESTIMONY: CONTENT

The judge shall summons the examiner who shall certify that he has personally examined the individual and has probable cause to believe that the individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and (iii) requires or does not require involuntary hospitalization or treatment.

EXAMINER'S TESTIMONY *ORE TENUS* OR BY STATEMENT IF WITHOUT OBJECTION BY COUNSEL

Alternatively, the judge, in his discretion, may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and *if there is no objection sustained to the acceptance of such written certification by the person or his attorney. The judge shall not render any decision on the petition until such examiner has presented his report either orally or in writing.*

PRESCREENING REPORT BEFORE COMMITMENT

Except as otherwise provided in this section, *prior to making any adjudication that such person is mentally ill and shall be confined to an institution pursuant to this section,*¹⁵ the judge shall require from the community services board which serves the political subdivision where the person resides a prescreening report, and the board or clinic shall provide such a report within forty-eight hours or if the forty-

¹⁴ For purposes of this section, investment interest means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

¹⁵ The special justice may apparently dismiss the case without such a report.

eight-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. If it is impossible or impractical to obtain a prescreening report from the community services board which serves the political subdivision where the person resides, the judge may obtain such report from the community services board of the political subdivision where the person is located.¹⁶

PRESCREENING REPORT ADMISSIBLE AS EVIDENCE¹⁷

The report shall be admissible as evidence of the facts stated therein and shall state whether the person is deemed to be so seriously mentally ill that he is substantially unable to care for himself, an imminent danger to himself or others as a result of mental illness and in need of involuntary hospitalization or treatment, whether there is no less restrictive alternative to institutional confinement and what the recommendations are for that person's care and treatment.

PRESCREENING REPORT NOT REQUIRED FOR POST-CONVICTION PRISONERS

In the case of a person *sentenced* and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should be confined pursuant to this section without requesting a prescreening report from the community services board.

¹⁶ In practice, the report always accompanies the temporary detention order and petition for commitment in the writer's court.

¹⁷ It has always been troubling to the writer that these reports are admissible as evidence even when there is an objection by the patient and counsel to what is often the most florid and attenuated hearsay and opinion evidence ("his family told me [the earnest Community Service Board pre-screener] that his boss told them that he said he was going to shoot himself" or "his ex wife's stepson (whom he used to beat regularly) said that he told her he was going to kill her"). Would this statute (and those comments) survive due process concerns, especially when such high stakes – 6 months of involuntary commitment at the financial expense of the patient, Va. Code Ann. § 37.1-110 *et seq.* – are involved?

HEARING PROCESS

After observing the person and obtaining the necessary positive certification and any other relevant evidence which may have been offered, if the judge finds specifically

- (i) that the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and
- (ii) that alternatives to involuntary confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to institutional confinement and treatment,

the judge shall by written order and specific findings so certify and order that the person be placed in a hospital or other facility for a period of treatment not to exceed 180 days from the date of the court order.

DESIGNATION OF COMMITMENT FACILITY BY COMMUNITY SERVICE BOARD¹⁸

Such placement shall be in a hospital or other facility designated by the community services board which serves the political subdivision in which the person was examined as provided in this section. If the community services board does not provide a placement recommendation at the commitment hearing, the person shall be placed in a hospital or other facility designated by the Commissioner.

OUTPATIENT COMMITMENT AND INVOLUNTARY ADMINISTRATION OF ANTI-PSYCHOTIC DRUGS

After observing the person and obtaining the necessary positive certification and any other relevant evidence which may have been offered, if the judge finds specifically

¹⁸ See above discussion of the revenue sharing agreement as potential for conflict of interest by Community Service Board.

- (i) that the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and
- (ii) that less restrictive alternatives to institutional confinement and treatment have been investigated and are deemed suitable,

and if ... the judge finds specifically that

i) the patient has the degree of competency necessary to understand the stipulations of his treatment,

(ii) the patient expresses an interest in living in the community and agrees to abide by his treatment plan,

(iii) the patient is deemed to have the capacity to comply with the treatment plan,

(iv) the ordered treatment can be delivered on an outpatient basis, and the ordered treatment can be monitored by the community services board or designated providers,

the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.21, or such other appropriate course of treatment as may be necessary to meet the needs of the individual.

BREACH OF OUTPATIENT COMMITMENT ORDER

Upon failure of the patient to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to the *patient and after a commitment hearing*,¹⁹ order involuntary commitment for treatment at a hospital.

¹⁹ Since the judge may only commit “after a commitment hearing,” and since a commitment hearing only occurs after a temporary detention order had been issued (see above) on proof that the patient is dangerously mentally ill, there is apparently no mechanism by which the order can be enforced other than a regular commitment hearing.

DUTY OF COMMUNITY SERVICE BOARD TO MONITOR OUTPATIENT COMMITMENT

The community services board which serves the political subdivision in which the person resides shall recommend a specific course of treatment and programs for provision of such treatment. The community services board shall monitor the person's compliance with such treatment as may be ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this section.

TAPE RECORDING OF HEARINGS; CONFIDENTIALITY OF TAPES

The judge shall make or cause to be made a tape or other audio recording of the hearing and shall submit such recording to the appropriate district court clerk to be retained in a confidential file. Such recordings shall only be used to document and to answer questions concerning the judge's conduct of the hearing. These recordings shall be retained for at least three years from the date of the relevant commitment hearing.

RELEASE OF RECORDS; CONFIDENTIALITY²⁰

The judge shall also order that copies of the relevant medical records of such person be released to the facility or program in which he is placed upon request of the treating physician or director of the facility or program. Except as provided in this section, the court shall keep its copies of relevant medical records, reports, and court documents pertaining to the hearings provided for in this section confidential if so requested by such person, or his counsel, with access provided only upon court order for good cause shown. Such records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such person shall be released at the expiration of 180 days unless involuntarily committed by further petition and order of a court as provided herein or such person makes

²⁰ See Va. Code Ann. § 32.1-127.1:03.

application for treatment on a voluntary basis as provided for in § 37.1-65.

MORE DUTIES OF THE SPECIAL JUSTICE

The procedures required by this section shall be followed at such commitment hearing. The judge shall render a decision on such petition after the appointed examiner has presented his report, either orally or in writing, and after the community services board that serves the political subdivision where the person resides has presented a prescreening report, either orally or in writing, with recommendations for that person's placement, care and treatment. *These reports, if not contested, may constitute sufficient evidence upon which the court may base its decision.*²¹

DUTY OF THE CLERK

The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order for involuntary commitment to a hospital. The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase or transfer a firearm.

4. **§ 37.1-67.4. Same; where hearings may be held; services during temporary detention; costs. —**

SPECIAL JUSTICE MAY TRAVEL BEYOND HIS JURISDICTION

The hearing provided for pursuant to § 37.1-67.3 may be conducted by the judge at the convenient institution or other place provided for in § 37.1-67.1, if he deems it advisable, even though such institution or place is located in a county or city other than his own. In conducting such hearings in a county or city other than his own, the judge shall have all of the authority and power which he would have in his own county or city.

WHO MAY OFFICIATE AT CIVIL

²¹ Does this qualification “unless contested” conflict with the unqualified provision for admissibility of the pre-screening report discussed *ante*, see fn. 16?

COMMITMENT HEARINGS

A judge,²² substitute judge or special justice of the county or city in which such institution or place is located may conduct the hearing provided for in § 37.1-67.3.

EMERGENCY MEDICAL SERVICES AUTHORIZED BY TEMPORARY DETENTION ORDER

Any such convenient institution caring for a person placed with it pursuant to a temporary order of detention is authorized to provide *emergency*²³ medical and psychiatric services within its capabilities when the institution determines such services are in the best interests of the person within its care. The costs incurred as a result of such hearings and such costs incurred by the convenient institution in providing such services during such period of temporary detention shall be paid and recovered as provided in § 37.1-89.²⁴ The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria.

Where coverage by a third-party payor exists, the institution seeking reimbursement under this section shall first seek reimbursement from the third-party payor. The Commonwealth shall

²² Va. Code § 37.1-1 defines “Judge” as “includ[ing] only the judges, associate judges and substitute judges of general district courts within the meaning of Chapter 4.1 (§ 16.1-69.1 et seq.) of Title 16.1 and of juvenile and domestic relations district courts within the meaning of Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, as well as the special justices authorized by § 37.1-88.”

²³ Another difficulty which has long plagued the writer is that “emergency” is nowhere defined globally in the Virginia Code, or for all of Title 37.1. However, emergent care is permitted upon an *ex parte* request of a physician when in Va. Code Ann. § 37.1-134.21 when “the medical standard of care calls for testing, observation or treatment of the disorder within the next twenty-four hours to prevent death, disability, or a serious irreversible condition.” The writer cannot conceive of an emergency *psychiatric* service which would meet this definition. Further, the standard of decision is different: in the .21 (m) proceeding, *ex parte* consent is provided only to save a life or prevent a serious and irreversible condition. In contrast, the hospital’s staff is apparently authorized to do anything that is judged by the staff to be “in the best interests” of the patient.

²⁴ Va. Code Ann. § 37.1-89 imposes the duty on the Commonwealth to pay hearing expenses (for the special justice, attorney, examiner, etc.) but not health care providers.

reimburse the providers only for the balance of costs remaining after the allowances covered by the third-party payor have been received.

5. **§ 37.1-67.5. Same; interpreters for deaf persons in commitment or certification proceedings.**

DUTY TO APPOINT INTERPRETER FOR THE DEAF²⁵

In any proceeding pursuant to § 37.1-65.1 or §§ 37.1-67.1 through 37.1-67.4 in which a deaf person is alleged to be mentally retarded or mentally ill, an interpreter for such deaf person shall be appointed by the justice of the court in which such proceeding is pending from a list of qualified interpreters provided by the Department for the Deaf and Hard-of-Hearing. Such interpreter shall be compensated as provided for in § 37.1-89

6. **§ 37.1-67.6. Appeal of commitment or certification order.**

ABSOLUTE RIGHT OF APPEAL: CIRCUIT COURT WHERE HEARING OCCURRED OR IN WHICH PATIENT IS COMMITTED

Any person involuntarily committed pursuant to § 37.1-67.3 or certified as eligible for admission pursuant to § 37.1-65.1 shall have the right to appeal such order to the circuit court in the jurisdiction wherein he was committed or certified or wherein the hospital or mental retardation facility to which he was admitted is located. **Choice of venue shall rest with the party noting the appeal.**²⁶ The court may transfer the case upon a finding that the other forum is more convenient.

**THIRTY DAYS IN WHICH TO APPEAL;
PRIORITY ON CIRCUIT COURT DOCKET**

Such appeal must be filed within thirty days from the date of the order and shall be given priority over all other pending matters before the court and

²⁵ Va. Code Ann. § 37.1-89 provides for payments appointed under this section. No such provision applies to interpreters for persons who are not deaf but who cannot speak English.

²⁶ Does the Petitioner have the right to appeal? If not, why doesn't the statute state "patient" instead of "party noting the appeal"?

heard as soon as possible, notwithstanding § 19.2-241 providing time within which the court shall set criminal cases for trial.

DUTY OF SPECIAL JUSTICE IN APPEAL

The clerk of the court²⁷ from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the petitioner in the case in accordance with procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required and the appeal shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in § 37.1-89.

BRAND NEW HEARING; RIGHT TO JURY TRIAL

The appeal shall be heard *de novo*.²⁸ An order *continuing the commitment*²⁹ shall be entered only if the criteria in § 37.1-67.3³⁰ are met at the time the appeal is heard. The person so committed or certified shall be entitled to trial by jury. Seven persons from a panel of thirteen shall constitute a jury in such cases.

If such person is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. Counsel so appointed shall be paid a fee of seventy-five dollars and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth

²⁷ In practice, this is the Hospital which transmits the Order and the pre-screening report to the Circuit Court.

²⁸ I.e., from the beginning – it is a new hearing and the proceedings below are not relevant.

²⁹ The patient remains in custody of the hospital pending the appeal.

³⁰ The patient must be mentally ill to a degree of dangerousness.