

**Nifty Fifty:
Mental Health, Mental Retardation & Substance Abuse Services Bills
2009 Virginia General Assembly**

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1 **HB 1588 Autism spectrum disorder; mandated health insurance coverage**
2 **therefor.**

3 A BILL to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the
4 Code of Virginia by adding a section numbered 38.2-3418.15, relating to health insurance
5 coverage for autism spectrum disorder.

6 **090002616**

7 *Summary as introduced:*

8 **Health insurance; mandated coverage for autism spectrum disorder.** Requires health
9 insurers, health care subscription plans, and health maintenance organizations to provide
10 coverage for the diagnosis and treatment of autism spectrum disorder in individuals under
11 age 21. Coverage is subject to an annual maximum benefit of \$36,000.

¹ Image: reconstruction of the first public hospital building in the United States, at Colonial Williamsburg.
Credit: <http://www.esh.dmhmrzas.virginia.gov/crossroads/history.htm>.

12 02/03/09 House: Subcommittee made no recommendation
13 02/09/09 House: Pending question ordered
14 02/09/09 House: Motion to discharge from Commerce and Labor rejected (32-Y 63-N 1-
15 A)
16 02/09/09 House: VOTE: --- AGREE TO MOTION REJECTED (32-Y 63-N 1-A)
17 02/10/09 House: Left in Commerce and Labor²

18 **HB 1601 Administration of prescription drugs; expands authority of**
19 **persons allowed to administer.**

20 An Act to amend and reenact § 54.1-3408 of the Code of Virginia, relating to
21 administration of prescription drugs.

22 *Summary as introduced:*

23 **Administration of prescription drugs.** Expands authority of persons who have
24 completed a training course approved by the Board of Nursing to allow administration of
25 prescription drugs, in compliance with the prescriber's instructions and in accordance
26 with regulations promulgated by the Board of Pharmacy, where the drugs would
27 normally be self-administered by an individual receiving services in a program licensed
28 by the Department of Mental Health, Mental Retardation and Substance Abuse Services.
29 Such authority was previously limited to administration of drugs that would normally be
30 self-administered by a resident of a facility licensed or certified by the Department of
31 Mental Health, Mental Retardation and Substance Abuse Services.

32 02/18/09 House: Impact statement from DPB (HB1601ER)

33 02/18/09 House: Signed by Speaker

34 02/18/09 Senate: Signed by President

35 02/25/09 Governor: Approved by Governor-Chapter 48 (effective 7/1/09)

36 02/25/09 Governor: Acts of Assembly Chapter text (CHAP0048)

37 **HB 1657 Appointment of guardian/conservator; when court hearing**
38 **petition therefor, spouse may be appointed.**

39 An Act to amend and reenact § 37.2-1007 of the Code of Virginia, relating to
40 appointment of guardian or conservator.

41 *Summary as passed:*

42 **Appointment of guardian or conservator.** Clarifies that in a proceeding to appoint a
43 guardian or conservator for a person, a court may appoint the spouse of the person.

44 02/25/09 House: Bill text as passed House and Senate (HB1657ER)

45 02/25/09 House: Signed by Speaker

46 02/26/09 Senate: Signed by President

47 03/27/09 Governor: Approved by Governor-Chapter 433 (effective 7/1/09)

48 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0433)

² In the Internet version of this work, Bills appearing highlighted in "red" failed or were incorporated in other bills; Bills appearing in "green" passed and have been enacted into law, generally to become effective on July 1, 2009.

Highlights

49

§ [37.2-1007](#).

Hearing on petition to appoint.

If, after considering the evidence presented at the hearing, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, the court shall appoint a suitable person, *who may be the spouse of the respondent*, to be the guardian or the conservator or both, giving due deference to the wishes of the respondent.

50

51 **HB 1802 Behavioral health authority; allows member of local government**
52 **to member of board of directors.**

53 An Act to amend and reenact §§ 15.2-1535 and 37.2-603 of the Code of Virginia, relating
54 to behavioral health authority board membership.

55 *Summary as passed House:*

56 **Behavioral health authority; board membership.** Allows a member of a local
57 governing body to be a member of a behavioral health authority's board of directors.
58 Also allows members to serve more than three full terms, but not more than three full
59 consecutive terms. After a three-year period has elapsed since the end of the member's
60 last three-year term, the governing body may reappoint that member.

61 02/28/09 House: Bill text as passed House and Senate (HB1802ER)

62 02/28/09 House: Signed by Speaker

63 02/28/09 Senate: Signed by President

64 03/27/09 Governor: Approved by Governor-Chapter 400 (effective 7/1/09)

65 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0400)

66 **HB 1843 Civil commitment of sexually violent predators; changes**
67 **including access to sealed records, etc.**

68 An Act to amend and reenact §§ 16.1-69.55, 16.1-300, 16.1-305, 37.2-900, 37.2-901
69 through 37.2-909, 37.2-911 through 37.2-914, 37.2-918, and 53.1-32 of the Code of
70 Virginia, relating to civil commitment of sexually violent predators; penalties.

71 *Summary as passed:*

72 **Civil commitment of sexually violent predators; penalties.** Makes a number of
73 changes, including requiring that the court records for certain sexual misdemeanors be
74 retained for 50 years rather than 10 years; allowing access to records of juvenile court
75 and the Department of Juvenile Justice; addressing challenges to filing defects, including
76 defendants under the Commitment Review Committee; allowing access to sealed records;
77 extending from 60 to 90 days the time for a probable cause hearing and allowing the
78 respondent to waive his right to such hearing; setting a standard for the court to find
79 probable cause; and extending from 90 to 120 the number of days after the probable
80 cause hearing for conduct of the trial.

81 03/09/09 Senate: Signed by President

82 03/11/09 House: Signed by Speaker

83 03/17/09 House: Impact statement from DPB (HB1843ER)
84 03/30/09 Governor: Approved by Governor-Chapter 740 (effective 7/1/09)
85 03/30/09 Governor: Acts of Assembly Chapter text (CHAP0740)

86 **HB 1853 Mental Retardation Waiver and IFDDS Waiver; Governor to**
87 **plan to eliminate urgent care waiting lists.**

88 A BILL to require a plan to eliminate the Mental Retardation and IFDDS waiver waiting
89 lists within ten years.

90 093279476

91 **Plan to eliminate the Mental Retardation and IFDDS waiver waiting lists.** Requires
92 the Governor to develop a plan to eliminate waiting lists for the Mental Retardation
93 Waiver and the Individual and Family Developmental Disabilities Support Waiver.

94 02/10/09 House: VOTE: --- PASSAGE #2 (99-Y 0-N)

95 02/11/09 Senate: Constitutional reading dispensed

96 02/11/09 Senate: Referred to Committee on Rules

97 02/12/09 Senate: Assigned Rules sub: Studies

98 02/23/09 Senate: Left in Rules

99 **HB 1948 Involuntary commitment; allow examination by licensed**
100 **marriage and family therapists.**

101 An Act to amend and reenact § 37.2-815 of the Code of Virginia, relating to examination
102 for involuntary commitment; allow examination by licensed marriage and family
103 therapists.

104 *Summary as introduced:*

105 **Examination for involuntary commitment; allow examination by licensed marriage**
106 **and family therapists.** Adds licensed marriage and family therapists to the list of
107 persons who may conduct independent examinations of persons who are subject to a
108 hearing for involuntary commitment.

109 02/18/09 House: Impact statement from DPB (HB1948ER)

110 02/18/09 House: Signed by Speaker

111 02/18/09 Senate: Signed by President

112 02/26/09 Governor: Approved by Governor-Chapter 132 (effective 7/1/09)

113 02/26/09 Governor: Acts of Assembly Chapter text (CHAP0132)

114

Highlights

§ [37.2-815](#).
Commitment
hearing for
involuntary
admission;
examination

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

required. mental health professional who (i) is licensed in Virginia through the Department of Health Professions as a clinical social worker, professional counselor, *marriage and family therapist*, psychiatric nurse practitioner, or clinical nurse specialist

[For online licensing information: <http://www.dhp.virginia.gov/Counseling/>

Addresses and Phone Numbers:

Perimeter Center

9960 Mayland Drive, Suite 300

Richmond Virginia 23233-1463

Phone: (804) 367-4610

Fax:(804) 527-4435

Complaints: (800) 533-1560 Automated License Verification: (804) 270-6836

Email: coun@dhp.virginia.gov

115

116 **HB 2060 Mental health law; amends statutes to address issues resulting**
117 **from overhaul thereof.**

118 An Act to amend and reenact §§ 19.2-182.9, 37.2-808, 37.2-815, 37.2-816, 37.2-817, and
119 37.2-819 of the Code of Virginia, relating to mental health law revisions.

120 *Summary as introduced:*

121 **Mental health law revisions.** Amends mental health statutes to address issues resulting
122 from the overhaul of mental health laws during the 2008 Session. This bill clarifies
123 requirements that law-enforcement initiated emergency custody remains subject to the
124 four hour limit and two hour extension provisions; clarifies that the employee or designee
125 of the community services board attending a commitment hearing need not be the person
126 who prepared the prescreening report, and that neither the employee or designee of the
127 community services board attending a commitment hearing nor the independent examiner
128 who attends the commitment hearing shall be excluded pursuant to an order of
129 sequestration of the witnesses; clarifies that the prescreening report shall be admitted into
130 evidence and made part of the record of the case; and extends the CCRE reporting
131 requirement to close of business on the next business day following the hearing resulting
132 in involuntary commitment. This bill has an emergency clause.

133 02/16/09 House: Bill text as passed House and Senate (HB2060ER)

134 02/17/09 House: Signed by Speaker

135 02/17/09 Senate: Signed by President

136 02/23/09 Governor: Approved by Governor-Chapter 21 (effective 2/23/09)

137 02/23/09 Governor: Acts of Assembly Chapter text (CHAP0021)

138 **HB 2061 Psychiatric Inpatient Treatment of Minors Act; mandatory**
139 **outpatient treatment.**

140 An Act to amend and reenact §§ 16.1-336 through 16.1-339, 16.1-340, 16.1-341, 16.1-
141 342, 16.1-344, 16.1-345, 16.1-345.1, 37.2-808, and 37.2-809 of the Code of Virginia and
142 to amend the Code of Virginia by adding sections numbered 16.1-339.1 and 16.1-345.2
143 through 16.1-345.5, relating to the Psychiatric Inpatient Treatment of Minors Act.

144 *Summary as passed House:*

145 **Psychiatric Inpatient Treatment of Minors Act; outpatient treatment; etc.** Provides
146 that a person who meets the criteria for involuntary commitment under the Psychiatric
147 Inpatient Treatment of Minors Act may be ordered to mandatory outpatient treatment if
148 less restrictive alternatives to involuntary inpatient treatment are appropriate and
149 available, and the minor and his parents have the capacity to understand the stipulations
150 of the minor's treatment and to comply with such outpatient treatment and they have
151 agreed to abide by the treatment plan. The bill also sets forth how such mandatory
152 outpatient treatment will be monitored and how a minor's noncompliance with such
153 treatment will be addressed, and clarifies that the judge who presides over any
154 noncompliance hearing does not have to be the judge who presided over the mandatory
155 outpatient commitment hearing. The bill also clarifies that the commitment criteria for
156 minors, and not the criteria for adults, apply when the emergency admission of a minor is
157 sought under the procedures for the emergency admission of an adult set forth in Article
158 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2. The bill also provides that a minor who
159 has been properly detained by a juvenile and domestic relations court may petition for
160 voluntary admission and treatment of mental illness. Currently, such detained minors
161 may not voluntarily seek admission. The bill further requires that if a minor is in a
162 detention home or shelter care facility when admitted to a mental health facility, the
163 director of the detention home or shelter care facility or his designee shall provide, if
164 available, certain information relating to the minor to the mental health facility and to the
165 juvenile and domestic relations district court for the jurisdiction in which the facility is
166 located if such court is different than the court that placed the minor in detention or
167 shelter care. The bill also clarifies the circumstances under which the qualified evaluator
168 who examined the minor must attend the minor's hearing and under what circumstances
169 the evaluator's report is admissible. *This bill is identical to SB 1122.*

170 02/28/09 House: Signed by Speaker

171 02/28/09 Senate: Signed by President

172 03/05/09 House: Impact statement from DPB (HB2061ER)

173 03/27/09 Governor: Approved by Governor-Chapter 455 (effective 7/1/09)

174 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0455)

175 **HB 2062 Incapacitated person; admission to a mental health facility by an**
176 **agent or guardian.**

177 A BILL to amend and reenact §§ 37.2-801, 37.2-1009, 54.1-2984, and 54.1-2986 of the
178 Code of Virginia, to amend the Code of Virginia by adding in Article 2 of Chapter 8 of
179 Title 37.2 a section numbered 37.2-805.1, relating to admission of incapacitated persons
180 to mental health facilities.

181 094047528

182 *Summary as introduced:*
183 **Mental health; admission to a facility by an agent or guardian.** Allows an agent
184 appointed in an advance directive or a guardian to admit an incapacitated person to a
185 mental health facility for no more than 10 calendar days if (i) prior to admission, a
186 physician on the staff of or designated by the proposed admitting facility examines the
187 person and states, in writing, that the person (a) has a mental illness, (b) is **incapable**
188 **of making an informed decision** regarding admission, and (c) is in need of
189 treatment in a facility; (ii) the proposed admitting facility is willing to admit the person;
190 and, either (iii) the person has executed an advance directive in accordance with the
191 Health Care Decisions Act (§ 54.1-2981 et seq.) authorizing the agent to consent to his
192 admission to a facility and he is not protesting such admission; or (iv) the guardianship
193 order specifically authorizes the guardian to consent to the admission of such person to a
194 facility. This bill was incorporated into HB 2396.

195 01/13/09 House: Prefiled and ordered printed; offered 01/14/09 094047528
196 01/13/09 House: Referred to Committee on Health, Welfare and Institutions
197 01/21/09 House: Impact statement from DPB (HB2062)
198 01/29/09 House: Incorporated by Health, Welfare and Institutions (HB2396-Bell)

199 **HB 2104 Students with Disabilities Tuition Assistance Grant Program;**
200 **created.**

201 A BILL to amend the Code of Virginia by adding in Title 22.1 a chapter numbered 16.1,
202 consisting of sections numbered 22.1-335.1 through 22.1-335.8, relating to the Students
203 with Disabilities Tuition Assistance Grant Program.

204 093425568

205 *Summary as passed House:*
206 **Students with Disabilities Tuition Assistance Grant Program.** Creates the Students
207 with Disabilities Tuition Assistance Grant Program, to provide tuition assistance for
208 attendance at an eligible private school for any K-12 student as defined by the Board of
209 Education in its Regulations Governing Special Education Programs for Children with
210 Disabilities in Virginia who is diagnosed with an autism spectrum disorder. "Autism
211 spectrum disorder" means any pervasive developmental disorder, including (i) autistic
212 disorder, (ii) Asperger's Syndrome, (iii) Rett syndrome, (iv) childhood disintegrative
213 disorder, or (v) Pervasive Developmental Disorder - Not Otherwise Specified, as defined
214 in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of
215 the American Psychiatric Association. The amount of the grant shall be limited to the
216 average state share of the Standards of Quality basic aid per pupil expenditure.

217 02/10/09 House: VOTE: --- PASSAGE (59-Y 39-N)
218 02/11/09 Senate: Constitutional reading dispensed
219 02/11/09 Senate: Referred to Committee on Education and Health
220 02/12/09 House: Impact statement from DPB (HB2104H1)
221 02/19/09 Senate: Failed to report (defeated) in Education and Health (4-Y 10-N 1-A)

222 **HB 2156 Involuntary commitment hearing; upon request, district court**
223 **judge, etc. may restrict attendance.**

224 A BILL to amend and reenact § 37.2-820 of the Code of Virginia, relating to involuntary
225 commitment; place of hearing.

226 093153528

227 *Summary as introduced:*

228 **Involuntary commitment; place of hearing.** Provides that, upon the request of the
229 respondent or his attorney, a district court judge or special justice may restrict attendance
230 at an involuntary commitment hearing to persons whose participation is required for
231 proper conduct of the hearing and those whose presence is requested by the respondent
232 upon a finding that (i) such restriction is necessary to protect the respondent's health,
233 safety, or privacy and (ii) the respondent's interest in the restriction outweighs the public's
234 interest in attendance by any person who would be excluded.

235 01/14/09 House: Referred to Committee for Courts of Justice

236 01/20/09 House: Assigned Courts sub: Mental Health

237 02/02/09 House: Assigned Courts sub: Criminal

238 02/04/09 House: Subcommittee recommends reporting with amendment(s)

239 02/06/09 House: Failed to report (defeated) in Courts of Justice (10-Y 12-N)

240 **HB 2257 Outpatient treatment; allows court to order mandatory**
241 **treatment following involuntary admission.**

242 An Act to amend and reenact § 37.2-814 of the Code of Virginia, relating to voluntary
243 admission; evidence of past compliance or noncompliance with treatment.

244 *Summary as passed House:*

245 **Outpatient treatment; voluntary admission.** Provides that, in determining whether a
246 person is capable of consenting to voluntary admission, the judge or special justice shall
247 consider evidence regarding the person's past compliance or noncompliance with
248 treatment.

249 03/05/09 House: Impact statement from DPB (HB2257ER)

250 03/05/09 Senate: Signed by President

251 03/06/09 House: Signed by Speaker

252 03/30/09 Governor: Approved by Governor-Chapter 647 (effective 7/1/09)

253 03/30/09 Governor: Acts of Assembly Chapter text (CHAP0647)

254

Highlights

§ [37.2-814](#).
Commitment
hearing for
involuntary
admission;

B. At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission for inpatient treatment as provided for in § [37.2-805](#) and shall afford the person an opportunity for voluntary admission. The district court judge or special justice shall advise the

written explanation; right to counsel; rights of petitioner person whose involuntary admission is being sought that if the person chooses to be voluntarily admitted pursuant to § [37.2-805](#), such person will be prohibited from possessing or purchasing a firearm pursuant to § [18.2-308.1:3](#). The judge or special justice shall ascertain if the person is then willing and capable of seeking voluntary admission for inpatient treatment. *In determining whether a person is capable of consenting to voluntary admission, the judge or special justice may consider evidence regarding the person's past compliance or noncompliance with treatment.*

255

256 **HB 2288 Community services board; removes provision allowing employment of person**
257 **convicted of assault.**

258 **A BILL to amend and reenact § 37.2-506 of the Code of Virginia, relating to eligibility**
259 **for employment with community services board; removing provision allowing**
260 **employment of person convicted of assault and battery of a family member.**

261 **091146840**

262 ***Summary as introduced:***

263 **Eligibility for employment with community services board; removes provision**
264 **allowing employment of person convicted of assault and battery of a family**
265 **member. Eliminates provision authorizing employment of a person convicted of assault**
266 **and battery of a family member at an adult substance abuse or adult mental health**
267 **treatment program by a community services board.**

268 **01/30/09 House: Read third time and passed House BLOCK VOTE (97-Y 0-N)**

269 **01/30/09 House: VOTE: BLOCK VOTE PASSAGE (97-Y 0-N)**

270 **02/02/09 Senate: Constitutional reading dispensed**

271 **02/02/09 Senate: Referred to Committee on Education and Health**

272 **02/19/09 Senate: Left in Education and Health**

273 **HB 2300 Mental Health, Mental Retardation & Substance Abuse Services,**
274 **Department of; name change.**

275 **An Act to amend and reenact §§ 2.2-212, 2.2-213, 2.2-214, 2.2-223, 2.2-507, 2.2-704,**
276 **2.2-705, 2.2-1839, 2.2-2001.1, 2.2-2411, 2.2-2648, 2.2-2664, 2.2-2691, 2.2-2692, 2.2-**
277 **2694, 2.2-2696, 2.2-2818, 2.2-2905, 2.2-3705.5, 2.2-4344, 2.2-5201, 2.2-5206, 2.2-5300,**
278 **4.1-305, 9.1-111, 9.1-901, 15.2-2291, 15.2-5386, 16.1-275, 16.1-278.8, 16.1-278.8:01,**
279 **16.1-280, 16.1-293.1, 16.1-336, 16.1-345, 16.1-356, 16.1-357, 16.1-361, 18.2-73, 18.2-**
280 **74, 18.2-251, 18.2-251.01, 18.2-252, 18.2-254, 18.2-254.1, 18.2-258.1, 18.2-271.2, 18.2-**
281 **308.1:1, 18.2-308.2:2, 19.2-169.1, 19.2-169.2, 19.2-169.3, 19.2-169.5, 19.2-175, 19.2-**
282 **182.2, 19.2-182.13, 19.2-182.16, 19.2-264.3:1, 19.2-264.3:1.1, 19.2-264.3:1.2, 19.2-301,**
283 **19.2-302, 19.2-389, 19.2-390, as it is currently effective and as it shall become effective,**
284 **20-88, 22.1-7, 22.1-205, 22.1-209.2, 22.1-214.2, 22.1-214.3, 22.1-215, 22.1-217.1, 22.1-**
285 **272.1, 23-38.2, 25.1-100, 29.1-313, 32.1-45.1, 32.1-64.1, 32.1-73.7, 32.1-102.1, 32.1-**
286 **122.5, 32.1-124, 32.1-125.1, 32.1-127.1:03, 32.1-127.1:04, 32.1-135.2, 32.1-276.3, 32.1-**
287 **276.8, 32.1-283, 32.1-283.1, 32.1-283.5, 32.1-325, 32.1-351.2, 37.2-100, 37.2-200, 37.2-**

288 300, 37.2-316, 37.2-317, 37.2-318, 37.2-319, 37.2-423, 37.2-716, 37.2-900, 37.2-900.1,
289 37.2-909, 37.2-912, 37.2-919, 37.2-1101, 38.2-3412.1, 38.2-3418.5, 46.2-400, 46.2-401,
290 46.2-1229, 51.5-1, 51.5-2, 51.5-14, 51.5-14.1, 51.5-31, 51.5-39.2, 51.5-39.7, 51.5-39.12,
291 53.1-32, 53.1-40.2, 53.1-136, 53.1-145, 54.1-2715, 54.1-2726, 54.1-2970, 54.1-2987.1,
292 54.1-3408, 54.1-3408.01, 54.1-3437.1, 54.1-3506, 56-484.19, 57-2.02, 57-60, 63.2-100,
293 63.2-1503, 63.2-1528, 63.2-1709, 63.2-1726, 63.2-1735, and 63.2-1805 of the Code of
294 Virginia, relating to changing the name of the Department, Board, Inspector General, and
295 Commissioner of Mental Health, Mental Retardation and Substance Abuse Services.

296 *Summary as introduced:*

297 **Department of Mental Health, Mental Retardation and Substance Abuse Services;**
298 **name change.** Changes the name of the Department, Board, Inspector General, and
299 Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to
300 the Department, Board, Inspector General, and Commissioner of Behavioral Health and
301 Developmental Services. This bill also makes technical amendments. ***This bill is***
302 ***identical to SB 1117.***

303 04/08/09 House: VOTE: --- ADOPTION (99-Y 0-N)

304 04/08/09 Senate: Senate concurred in Governor's recommendation (40-Y 0-N)

305 04/08/09 Governor: Governor's recommendation adopted

306 04/14/09 House: Reenrolled

307 04/14/09 House: Reenrolled bill text (HB2300ER2)

308 **HB 2396 Advance medical directives; revises Health Care Decisions Act to**
309 **clarify process.**

310 An Act to amend and reenact §§ 37.2-801, 37.2-1009, 54.1-2982, 54.1-2983, as it is
311 currently effective and as it shall become effective, 54.1-2984, 54.1-2985, as it is
312 currently effective and as it shall become effective, 54.1-2986, 54.1-2987 through 54.1-
313 2989, 54.1-2990, 54.1-2991, and 54.1-2992 of the Code of Virginia and to amend the
314 Code of Virginia by adding in Article 2 of Chapter 8 of Title 37.2 a section numbered
315 37.2-805.1 and by adding sections numbered 54.1-2983.1, 54.1-2983.2, 54.1-2983.3,
316 54.1-2985.1, 54.1-2986.1, and 54.1-2986.2, relating to advance medical directives.

317 *Summary as passed:*

318 **Advance medical directives.** Revises the Health Care Decisions Act to (i) allow a person
319 to make a written advance directive to specify health care the declarant does or does not
320 authorize, appoint an agent to make health care decisions for the declarant, and specify an
321 anatomical gift; (ii) clarify the process for determining a patient to be **incapable of**
322 **making an informed decision** regarding health care; (iii) require that
323 determinations of incapacity be made by two physicians, or one physician and one
324 licensed clinical psychologist, one of whom is not otherwise involved in the care of the
325 patient; (iv) allow any one physician to declare that a patient is again capable of making
326 an informed decision; (v) clarify the authority of an agent named in an advance directive,
327 or a person otherwise given authority to make medical decisions for an incompetent
328 patient, including authority to admit the declarant to a facility for mental health treatment
329 for a period not to exceed 10 days and to authorize participation by the declarant in a

330 health care study approved by an institutional review board or research review
331 committee; and (vi) determine when a physician may treat a patient over his protests.
332 This bill provides that a person who willfully conceals, cancels, defaces, obliterates,
333 damages, falsifies, or forges an advance directive or revocation of an advance directive of
334 another shall be guilty of a Class 1 misdemeanor. Where such action causes life-
335 prolonging procedures to be utilized in contravention of the previously expressed intent
336 of the declarant, such person shall be guilty of a Class 6 felony, and where such action
337 directly causes life-prolonging procedures to be withheld in contravention of the
338 previously expressed intent of the declarant or death to be hastened, the person shall be
339 guilty of a class 2 felony. This bill incorporates HB 2062 and HB 2334. **This bill is**
340 **identical to** SB1142.

341 03/09/09 Senate: Signed by President
342 03/11/09 House: Signed by Speaker
343 03/12/09 House: Impact statement from DPB (HB2396ER)
344 03/27/09 Governor: Approved by Governor-Chapter 211 (effective 7/1/09)
345 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0211)

346 **HB 2459 Right to notify; consumer in mental health facility to have**
347 **opportunity thereto of his condition.**

348 An Act to amend and reenact § 37.2-400 of the Code of Virginia, relating to consumers;
349 right to notify.

350 *Summary as introduced:*
351 **Consumers; right to notify.** Provides that a consumer in a mental health facility shall
352 have the opportunity to have an individual of his choosing notified of his general
353 condition, location, and transfer to another facility. **This bill is identical to** SB 1076.

354 02/18/09 House: Impact statement from DPB (HB2459ER)
355 02/18/09 House: Signed by Speaker
356 02/18/09 Senate: Signed by President
357 02/25/09 Governor: Approved by Governor-Chapter 111 (effective 7/1/09)
358 02/25/09 Governor: Acts of Assembly Chapter text (CHAP0111)

359 **HB 2460 Transportation of person under emergency custody, etc.; allowed**
360 **to be transported by family member.**

361 An Act to amend and reenact §§ 16.1-345, 37.2-808, 37.2-810, 37.2-817.2, and 37.2-829
362 of the Code of Virginia and to repeal § 37.2-830 of the Code of Virginia, relating to
363 transportation of person under emergency custody order, temporary detention order, or
364 involuntary commitment order.

365 *Summary as passed House:*
366 **Transportation of person under emergency custody order.** Provides for
367 transportation of a person who is the subject of an emergency custody order as a result of
368 his inability to protect himself from harm, a person under a temporary detention order,
369 and a person under an involuntary commitment order by a family member or friend,

370 representative of the community services board, or other alternative transportation
371 provider with staff trained to provide transportation in a safe manner. **This bill is**
372 **identical to SB 823.**

373 02/18/09 House: Bill text as passed House and Senate (HB2460ER)

374 02/18/09 House: Signed by Speaker

375 02/18/09 Senate: Signed by President

376 02/25/09 Governor: Approved by Governor-Chapter 112 (effective 7/1/09)

377 02/25/09 Governor: Acts of Assembly Chapter text (CHAP0112)

378 **HB 2461 Notification of family member in commitment process; disclosure**
379 **of certain information of patient.**

380 An Act to amend and reenact §§ 32.1-127.1:03 and 37.2-804.2 of the Code of Virginia,
381 relating to notification of family member of person involved in the commitment process.

382 *Summary as passed House:*

383 **Notification of family member of person involved in commitment process.**

384 Authorizes disclosure to a friend or family member of a person who is the subject of an
385 emergency custody order, temporary detention order, or involuntary commitment order,
386 of information that is relevant to that friend's or family member's involvement with the
387 person's health care, including information regarding the person's location and general
388 condition. **This bill is identical to SB 1077.**

389 03/05/09 House: Impact statement from DPB (HB2461ER)

390 03/05/09 Senate: Signed by President

391 03/06/09 House: Signed by Speaker

392 03/30/09 Governor: Approved by Governor-Chapter 651 (effective 7/1/09)

393 03/30/09 Governor: Acts of Assembly Chapter text (CHAP0651)

Highlights

394

§ [32.1-](#)
[127.1:03.](#)

Health
records
privacy

D. Health care entities may, and, when required by other provisions of state law, shall, disclose health records:

*34. To notify a family member or personal representative of an individual who is the subject of a proceeding pursuant to Chapter 8 (§ [37.2-800](#) et seq.) of Title 37.2 of information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition, **WHEN THE INDIVIDUAL HAS THE CAPACITY** to make health care decisions and (i) the individual has agreed to the notification, (ii) the individual has been provided an opportunity to object to the notification and does not express an objection, or (iii) the health care provider can, on the basis of his professional judgment, reasonably infer from the circumstances that the individual does not object to the notification. **IF THE OPPORTUNITY TO AGREE OR OBJECT TO THE NOTIFICATION CANNOT PRACTICABLY BE PROVIDED BECAUSE OF THE***

INDIVIDUAL'S INCAPACITY OR AN EMERGENCY³ CIRCUMSTANCE

the health care provider may notify a family member or personal representative of the individual of information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition if the health care provider, in the exercise of his professional judgment, determines that the notification is in the best interests of the individual. Such notification shall not be made if the provider has actual knowledge the family member or personal representative is currently prohibited by court order from contacting the individual.

37.2-804.2.
Disclosure of records.

Any health care provider providing services to a person who is the subject of proceedings under this chapter may notify the person's family member or personal representative of information which is directly relevant to such individual's involvement with the person's health care, which may include the person's location and general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, unless the provider has actual knowledge that the family member or personal representative is currently prohibited by court order from contacting the person.

395

396 **HB 2486 Emergency custody; authority of law-enforcement officer.**

397 An Act to amend and reenact § 37.2-808 of the Code of Virginia, relating to emergency
398 custody; authority of law-enforcement officer.

399 *Summary as passed House:*

400 **Emergency custody; authority of law-enforcement officer.** Authorizes a law-
401 enforcement officer who is transporting a person who has voluntarily consented to being
402 transported to a facility for assessment or evaluation and who subsequently revokes
403 consent to be transported to take such person into emergency custody when the law-
404 enforcement officer determines that consent has been revoked and the person meets the
405 criteria for emergency custody, even if the law-enforcement officer is beyond the
406 territorial limits of the jurisdiction in which he serves. This bill also clarifies that a law-
407 enforcement officer who takes a person into emergency custody based upon his own
408 observations or reliable reports of others may transport such person beyond the territorial
409 boundaries of the jurisdiction in which he serves in order to obtain the required
410 assessment. This bill states that it is declarative of existing law. ***This bill is identical***
411 ***to SB 1079.***

412 02/23/09 House: Bill text as passed House and Senate (HB2486ER)

413 02/24/09 House: Signed by Speaker

414 02/25/09 Senate: Signed by President

415 03/27/09 Governor: Approved by Governor-Chapter 383 (effective 7/1/09)

416 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0383)

³ "Emergency" is not a defined term in the statute. It is defined elsewhere in the Code, see, e.g., § 2.2-3701. **Definitions.** (" **Emergency** means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.")

417 **HB 2489 Assault and battery; penalty when against family or household**
418 **member.**

419 A BILL to amend and reenact § 18.2-57.2, 19.2-151, and 37.2-506 of the Code of
420 Virginia, relating to assault and battery against a family or household member; protective
421 order; penalty.

422 098724624

423 *Summary as introduced:*

424 **Assault and battery against a family or household member; protective order;**
425 **penalty.** Provides that a person who commits an assault and battery against a person who
426 is protected by the provisions of a protective order is guilty of a Class 1 misdemeanor
427 and, for a third offense, a Class 6 felony.

428 01/14/09 House: Presented and ordered printed 098724624

429 01/14/09 House: Referred to Committee for Courts of Justice

430 01/20/09 House: Assigned Courts sub: Criminal

431 01/21/09 House: Impact statement from VCSC (HB2489)

432 02/10/09 House: Left in Courts of Justice

433 **HB 2674 Mental Retardation Waiver and IFDDS Waiver; Governor to**
434 **plan to eliminate urgent care waiting lists.**

435 An Act relating to elimination of waiting lists for the Mental Retardation Medicaid
436 Waiver and Individual and Family Developmental Disabilities and Support Medicaid
437 Waiver within 10 years.

438 *Summary as passed:*

439 **Medicaid; eliminate MR and IFDDS Waiver waiting lists.** Expresses the intent of the
440 General Assembly to eliminate the waiting lists for the Mental Retardation Medicaid
441 Waiver and the Individual and Family Developmental Disabilities and Support Medicaid
442 Waiver. Beginning July 1, 2010, and each year thereafter, the Department of Medical
443 Assistance Services shall add at least 400 funded slots for MR Waivers, and at least 67
444 funded slots for IFDDS Waivers, until the waiting lists for both have been eliminated.

445 ***This bill is identical to SB 1501.***

446 03/09/09 Senate: Signed by President

447 03/11/09 House: Signed by Speaker

448 03/17/09 House: Impact statement from DPB (HB2674ER)

449 03/27/09 Governor: Approved by Governor-Chapter 228 (effective 7/1/09)

450 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0228)

451 **SB 818 Opiate addiction treatment providers; daily service fee.**

452 A BILL to amend the Code of Virginia by adding a section numbered 37.2-406.1,
453 relating to opiate addiction treatment providers' service fee.

454 097803260

455 *Summary as introduced:*
456 **Opiate addiction treatment providers; service fee.** Requires that any licensed provider
457 of treatment for persons with opiate addiction shall pay a service fee of not greater than
458 1.5 percent of each consumer's daily dosing fee that is charged by the program. The
459 provider shall be responsible for calculating the fee, and on a quarterly basis, forwarding
460 the collected fees to the Department.

461 12/05/08 Senate: Prefiled and ordered printed; offered 01/14/09 097803260
462 12/05/08 Senate: Referred to Committee on Education and Health
463 01/14/09 Senate: Impact statement from DPB (SB818)
464 01/15/09 Senate: Assigned Education sub: Health Care
465 01/29/09 Senate: Stricken at request of patron in Education and Health (14-Y 0-N)

466 **SB 822 Autopsy reports; release to mental health facilities.**

467 A BILL to amend and reenact § 32.1-283 of the Code of Virginia, relating to autopsy
468 reports; release to mental health facilities.

469 090281216

470 *Summary as introduced:*
471 **Autopsy reports; release to mental health facilities.** Clarifies that programs at mental
472 health facilities, community services boards, and behavioral health authorities are
473 included among the health facility quality assurance programs that are authorized to
474 receive autopsy reports.

475 12/09/08 Senate: Prefiled and ordered printed; offered 01/14/09 090281216
476 12/09/08 Senate: Referred to Committee on Education and Health
477 01/15/09 Senate: Stricken at request of patron in Education and Health

478 **SB 823 Transportation of person under emergency custody, etc.; allowed**
479 **to be transported by family member.**

480 An Act to amend and reenact §§ 16.1-345, 37.2-808, 37.2-810, 37.2-817.2, and 37.2-829
481 of the Code of Virginia and to repeal § 37.2-830 of the Code of Virginia, relating to
482 transportation of person under emergency custody order, temporary detention order, or
483 involuntary commitment order.

484 *Summary as passed Senate:*
485 **Transportation of person under emergency custody order.** Provides for
486 transportation of a person who is the subject of an emergency custody order as a result of
487 his inability to protect himself from harm, a person under a temporary detention order,
488 and a person under an involuntary commitment order by a family member or friend,
489 representative of the community services board, or other alternative transportation
490 provider with staff trained to provide transportation in a safe manner. ***This bill is***
491 ***identical to*** HB 2460.

492 02/28/09 Senate: Bill text as passed Senate and House (SB823ER)
493 02/28/09 Senate: Signed by President

494 02/28/09 House: Signed by Speaker
495 03/30/09 Governor: Approved by Governor-Chapter 697 (effective 7/1/09)
496 03/30/09 Governor: Acts of Assembly Chapter text (CHAP0697)

497 **SB 825 Involuntary commitment hearing; certain requirement for 3rd yr.**
498 **law student to represent petitioner.**

499 A BILL to amend and reenact § 54.1-3900 of the Code of Virginia, relating to the
500 practice of law; third-year students.

501 091407216

502 *Summary as introduced:*

503 **Involuntary commitment hearings; law students.** Provides that it is not the
504 unauthorized practice of law for a third-year law student enrolled at any law school in the
505 Commonwealth to represent a petitioner in a commitment hearing for involuntary
506 admission without the presence of a practicing attorney. The student must have
507 completed coursework in evidence and trial advocacy and received training on
508 involuntary commitment law. The student must inform the petitioner that he is not a
509 licensed attorney, that he may not be compensated for his services, and that he can be
510 held liable only for intentional malfeasance.

511 12/11/08 Senate: Prefiled and ordered printed; offered 01/14/09 091407216

512 12/11/08 Senate: Referred to Committee for Courts of Justice

513 01/27/09 Senate: Assigned Courts sub: Mental Health

514 02/04/09 Senate: Passed by indefinitely in Courts of Justice (8-Y 5-N)

515 **SB 840 Outpatient treatment; allows court to order mandatory treatment**
516 **following involuntary admission.**

517 A BILL to amend and reenact §§ 37.2-817 through 37.2-817.4 and 37.2-818 of the Code
518 of Virginia, relating to mandatory outpatient treatment following involuntary admission.

519 090273216

520 *Summary as introduced:*

521 **Mandatory outpatient treatment following inpatient treatment.** Allows a court to
522 enter an order for mandatory outpatient treatment following involuntary admission,
523 which orders a person who has been involuntarily admitted to mandatory outpatient
524 treatment. The criteria for such an order differ from the criteria used for a mandatory
525 outpatient treatment order entered where the person was not first involuntarily admitted.
526 The criteria for an order for mandatory outpatient treatment following involuntary
527 admission are that the person (i) has mental illness; (ii) no longer needs inpatient
528 hospitalization but requires mandatory outpatient treatment to prevent rapid deterioration
529 of his condition that would likely result in his meeting the criteria for inpatient treatment;
530 (iii) is not likely to obtain outpatient treatment unless the court enters the order; and (iv)
531 is likely to comply with the order. Additionally, services must actually be available in
532 the community and providers of services must have actually agreed to deliver the

533 services. The bill also sets forth how orders for mandatory outpatient treatment following
534 involuntary admission will be enforced, reviewed, continued, and rescinded.

535 12/22/08 Senate: Prefiled and ordered printed; offered 01/14/09 090273216

536 12/22/08 Senate: Referred to Committee for Courts of Justice

537 01/27/09 Senate: Assigned Courts sub: Mental Health

538 02/04/09 Senate: Impact statement from DPB (SB840)

539 02/11/09 Senate: Left in Courts of Justice

540 **SB 854 Mental health courts; Office of Ex. Secretary of Supreme Court to**
541 **establish for nonviolent offender.**

542 A BILL to establish a pilot program of mental health courts in the Commonwealth.

543 091455228

544 *Summary as passed Senate:*

545 **Mental health courts; pilot program.** Directs the Office of the Executive Secretary of
546 the Supreme Court to establish by January 1, 2010, no less than two and no more than
547 five mental health courts in Virginia for nonviolent offenders with serious mental
548 illnesses. This bill incorporates SB 1503.

549 02/13/09 House: Placed on Calendar

550 02/13/09 House: Read first time

551 02/13/09 House: Referred to Committee for Courts of Justice

552 02/16/09 House: Assigned Courts sub: Criminal

553 02/24/09 House: Left in Courts of Justice

554 **SB 855 Uniform Power of Attorney Act; created.**

555 An Act to amend and reenact §§ 6.1-125.15:1, 37.2-1009, 37.2-1020, 37.2-1023, 55-34.7,
556 55-544.01, 55-544.02, and 55-546.02 of the Code of Virginia; to amend the Code of
557 Virginia by adding in Title 26 a chapter numbered 7, consisting of sections numbered 26-
558 71.01 through 26-74.02; and to repeal §§ 11-9.1 through 11-9.7 and 37.2-1018 of the
559 Code of Virginia, relating to the Uniform Power of Attorney Act.

560 *Summary as passed:*

561 **Uniform Power of Attorney Act (UPOAA).** Establishes in the Code of Virginia the
562 Uniform Act that was adopted by the National Conference of Commissioners on Uniform
563 State Laws in 2006. The Act consists of default rules that can be modified if the principal
564 desires. Powers of attorney will be durable unless drafted to expire upon a specified date
565 or event. The UPOAA addresses creation and use, good faith reliance, limitations of
566 agent's powers, refusal to recognize, judicial review, notification of resignation, and other

567 matters. ***The Act contains an optional statutory form.***

568 ***The bill contains a reenactment clause.***

569 04/08/09 House: House concurred in Governor's recommendation (87-Y 9-N)

570 04/08/09 House: VOTE: --- ADOPTION (87-Y 9-N)

571 04/08/09 Governor: Governor's recommendation adopted

572 04/14/09 House: Reenrolled

573 **04/14/09 Senate: Reenrolled bill text (SB855ER2)⁴**

574 **SB 1051 Mental health; admission of incapacitated person to a facility by**
575 **an agent or guardian.**

576 A BILL to amend and reenact §§ 37.2-801, 37.2-1009, 54.1-2984, and 54.1-2986 of the
577 Code of Virginia, to amend the Code of Virginia by adding in Article 2 of Chapter 8 of
578 Title 37.2 a section numbered 37.2-805.1, relating to admission of incapacitated persons
579 to mental health facilities.

580 094048248

581 *Summary as introduced:*

582 **Mental health; admission to a facility by an agent or guardian.** Allows an agent
583 appointed in an advance directive or a guardian to admit an incapacitated person to a
584 mental health facility for no more than 10 calendar days if (i) prior to admission, a
585 physician on the staff of or designated by the proposed admitting facility examines the
586 person and states, in writing, that the person (a) has a mental illness, (b) is **incapable**
587 **of making an informed decision** regarding admission, and (c) is in need of
588 treatment in a facility; (ii) the proposed admitting facility is willing to admit the person;
589 and, either (iii) the person has executed an advance directive in accordance with the
590 Health Care Decisions Act (§ 54.1-2981 et seq.) authorizing the agent to consent to his
591 admission to a facility and he is not protesting such admission; or (iv) the guardianship
592 order specifically authorizes the guardian to consent to the admission of such person to a
593 facility. This bill was incorporated into SB 1142.

594 01/13/09 Senate: Prefiled and ordered printed; offered 01/14/09 094048248

595 01/13/09 Senate: Referred to Committee on Education and Health

596 01/19/09 Senate: Assigned Education sub: Special on Mental Health

597 01/21/09 Senate: Impact statement from DPB (SB1051)

598 02/05/09 Senate: Incorporated by Education and Health (SB1142-Whipple) (14-Y 0-N)

599 **SB 1076 Right to notify; consumer in mental health facility to have person**
600 **of choice notified of condition.**

601 An Act to amend and reenact § 37.2-400 of the Code of Virginia, relating to consumers;
602 right to notify.

603 *Summary as introduced:*

604 **Consumers; right to notify.** Provides that a consumer in a mental health facility shall
605 have the opportunity to have an individual of his choosing notified of his general
606 condition, location, and transfer to another facility. This bill incorporates SB 1433.

607 02/25/09 House: Signed by Speaker

608 02/27/09 Senate: Signed by President

⁴ The Act passed but must be passed again in the 2010 Assembly to become law.

609 03/03/09 Senate: Impact statement from DPB (SB1076ER)
610 03/27/09 Governor: Approved by Governor-Chapter 517 (effective 7/1/09)
611 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0517)

612 **SB 1077 Notification of family member in commitment process; disclosure**
613 **of certain information of patient.**

614 An Act to amend and reenact §§ 32.1-127.1:03 and 37.2-804.2 of the Code of Virginia,
615 relating to notification of family member of person involved in the commitment process.

616 *Summary as passed:*

617 **Notification of family member of person involved in commitment process.**

618 Authorizes disclosure to a family member or personal representative of a person who is
619 involved in the commitment process of information that is directly relevant to such
620 person's involvement with the individual's health care, which may include the individual's
621 location and general condition.

622 02/28/09 Senate: Signed by President

623 02/28/09 House: Signed by Speaker

624 03/05/09 Senate: Impact statement from DPB (SB1077ER)

625 03/27/09 Governor: Approved by Governor-Chapter 606 (effective 7/1/09)

626 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0606)

627 **SB 1078 Special justices; expenses when presiding over certain hearings.**

628 An Act to amend and reenact § 37.2-804 of the Code of Virginia, relating to special
629 justices; expenses.

630 *Summary as passed Senate:*

631 **Special justices; expenses.** Provides that special justices, retired judges, or district court
632 substitute judges presiding over involuntary commitment hearings shall receive their
633 necessary mileage, parking, tolls, and postage.

634 03/09/09 Senate: Signed by President

635 03/11/09 Senate: Impact statement from DPB (SB1078ER)

636 03/11/09 House: Signed by Speaker

637 03/27/09 Governor: Approved by Governor-Chapter 266 (effective 7/1/09)

638 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0266)

Highlights

639

§ [37.2-804](#). Fees and expenses. A. Any special justice, retired judge sitting by designation pursuant to § [16.1-69.35](#), or any district court substitute judge who presides over hearings pursuant to the provisions of §§ [37.2-809](#) through [37.2-820](#) or Article 16 (§ [16.1-335](#) et seq.) of Chapter 11 of Title 16.1 shall receive a fee of \$86.25 for each hearing thereunder ~~and~~ *plus* his necessary mileage, *parking, tolls, and postage*, and \$43.25 for each certification hearing and each order under Chapter 11 (§ [37.2-1100](#) et seq.) ruling on competency or treatment ~~and his~~

necessary mileage plus his necessary mileage, parking, tolls, and postage.

640

641 **SB 1079 Emergency custody; authority of law-enforcement officer.**

642 An Act to amend and reenact § 37.2-808 of the Code of Virginia, relating to emergency
643 custody, authority of law-enforcement officer.

644 *Summary as passed Senate:*

645 **Emergency custody; authority of law-enforcement officer.** Authorizes a law-
646 enforcement officer who is transporting a person who has voluntarily consented to being
647 transported to a facility for assessment or evaluation and who subsequently revokes
648 consent to be transported to take such person into emergency custody when the law-
649 enforcement officer determines that consent has been revoked and the person meets the
650 criteria for emergency custody, even if the law-enforcement officer is beyond the
651 territorial limits of the jurisdiction in which he serves. This bill also clarifies that a law-
652 enforcement officer who takes a person into emergency custody based upon his own
653 observations or reliable reports of others may transport such person beyond the territorial
654 boundaries of the jurisdiction in which he serves in order to obtain the required
655 assessment. A second enactment clause provides that this bill is declarative of existing
656 law. ***This bill is identical to*** HB 2486.

657 02/28/09 Senate: Bill text as passed Senate and House (SB1079ER)

658 02/28/09 House: Signed by Speaker

659 03/04/09 Senate: Signed by President

660 03/27/09 Governor: Approved by Governor-Chapter 607 (effective 7/1/09)

661 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0607)

Highlights

662

§ [37.2-808](#).
Emergency
custody;
issuance and
execution of
order.

G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization. *A law-enforcement officer who takes a person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of obtaining the assessment.* Such evaluation shall be conducted immediately.

H. *A law-enforcement officer who is transporting a person who has voluntarily consented to be transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of the county, city, or town in which he serves may take such person into custody and transport him to an appropriate location to assess the need for hospitalization or treatment without prior authorization when the law-enforcement officer determines (i) that the person has revoked consent to be transported to a facility for the purpose of*

assessment or evaluation, and (ii) based upon his observations, that probable cause exists to believe that the person meets the criteria for emergency custody as stated in this section. The period of custody shall not exceed four hours from the time the law-enforcement officer takes the person into custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate shall issue an order extending the period of emergency custody one time for an additional period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (a) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809, or (b) a medical evaluation of the person to be completed if necessary.

663

664 **SB 1080 Involuntary commitment hearing; upon request, district court**
665 **judge, etc. may restrict attendance.**

666 A BILL to amend and reenact § 37.2-820 of the Code of Virginia, relating to involuntary
667 commitment, place of hearing.

668 091454248

669 *Summary as passed Senate:*

670 **Involuntary commitment.** Provides that Upon request of the respondent or his attorney,
671 the district court judge or a special justice may restrict attendance at all or part of the
672 hearing to persons whose participation is required for proper conduct of the hearing and
673 those whose presence is requested by the respondent upon a finding based upon clear and
674 convincing evidence that (i) such restriction is necessary to protect the health or safety of
675 the respondent, or the privacy of the respondent's health information and (ii) the
676 respondent's interest in the restriction outweighs the public's interest in attendance by any
677 person who would be excluded.

678 02/09/09 Senate: Passed Senate (40-Y 0-N)

679 02/13/09 House: Placed on Calendar

680 02/13/09 House: Read first time

681 02/13/09 House: Referred to Committee for Courts of Justice

682 02/18/09 House: Stricken from docket by Courts of Justice

683 **SB 1081 Special justices; appointment, duties.**

684 An Act to amend and reenact § 37.2-803 of the Code of Virginia, relating to special
685 justices; appointment.

686 *Summary as introduced:*

687 **Special justices; appointment.** Clarifies that a special justice serves at the pleasure of
688 the chief justice of the judicial circuit in which he serves, rather than the specific chief
689 justice that makes the original appointment.

690 03/04/09 Senate: Bill text as passed Senate and House (SB1081ER)
691 03/05/09 Senate: Signed by President
692 03/06/09 House: Signed by Speaker
693 03/27/09 Governor: Approved by Governor-Chapter 608 (effective 7/1/09)
694 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0608)

695 **SB 1082 Voluntary and involuntary commitment; Executive Secretary of**
696 **Supreme Court to prepare petitions.**

697 An Act to amend and reenact § 37.2-801 of the Code of Virginia, relating to voluntary
698 and involuntary commitment; forms.

699 *Summary as introduced:*

700 **Voluntary and involuntary commitment; forms.** Provides that the Office of the
701 Executive Secretary of the Supreme Court shall prepare the petitions, orders, and such
702 other legal documents as may be required in proceedings for emergency custody,
703 temporary detention, and voluntary and involuntary admission to a facility and distribute
704 such forms to the clerks of the general district courts and the juvenile and domestic
705 relations courts. This bill further provides that the Department of Mental Health, Mental
706 Retardation and Substance Abuse Services shall prepare the preadmission screening
707 report, examination, and such other clinical forms as may be required for emergency
708 custody, temporary detention, and voluntary and involuntary admission to a facility and
709 distribute such forms to community services boards, mental health care providers, and
710 directors of state facilities.

711 03/04/09 Senate: Bill text as passed Senate and House (SB1082ER)
712 03/05/09 Senate: Signed by President
713 03/06/09 House: Signed by Speaker
714 03/30/09 Governor: Approved by Governor-Chapter 708 (effective 7/1/09)
715 03/30/09 Governor: Acts of Assembly Chapter text (CHAP0708)

Highlights

716

37.2-801.
Admission
procedures;
forms.

B. The ~~Board~~ *Office of the Executive Secretary of the Supreme Court of Virginia shall prescribe and the Department shall prepare the petitions, orders, and such other legal forms as may be required in procedures for custody, detention, and involuntary admission. ~~These forms, which shall be the legal forms used in admissions, shall be approved by the Attorney General and distributed by the Department~~⁵ pursuant to Articles 4 (§ 37.2-808 et seq.) and 5 (§ 37.2-814 et seq.) of Chapter 8, and shall distribute such forms to the clerks of the general district courts and juvenile and domestic relations district courts of the Commonwealth and to the directors of the state facilities. The Department shall prepare the preadmission screening report, examination, and such other clinical forms as may be required in proceedings for custody, detention, and admission pursuant to § 37.2-805, and Articles 4 (§ 37.2-808 et seq.) and 5 (§ 37.2-814 et seq.) of Chapter 8, and shall distribute such forms to*

⁵ The stricken language implicitly endorses the use of the “official” forms but apparently acknowledges and accepts the widespread practice of jurisdiction specific forms.

community services boards, mental health care providers, and directors of state facilities.

717

718 **SB 1083 Mental health law; amends statutes to address issues resulting from overhaul**
719 **thereof.**

720 **An Act to amend and reenact §§ 19.2-182.9, 37.2-808, 37.2-815, 37.2-816, 37.2-817, and**
721 **37.2-819 of the Code of Virginia, relating to mental health law revisions.**

722 **Summary as introduced:**

723 **Mental health law revisions.** Amends mental health statutes to address issues resulting
724 from the overhaul of mental health laws during the 2008 Session. This bill clarifies
725 requirements that law-enforcement initiated emergency custody remains subject to the
726 four hour limit and two hour extension provisions; clarifies that the employee or designee
727 of the community services board attending a commitment hearing need not be the person
728 who prepared the prescreening report, and that neither the employee or designee of the
729 community services board attending a commitment hearing nor the independent examiner
730 who attends the commitment hearing shall be excluded pursuant to an order of
731 sequestration of the witnesses; clarifies that the prescreening report shall be admitted into
732 evidence and made part of the record of the case; and extends the CCRE reporting
733 requirement to close of business on the next business day following the hearing resulting
734 in involuntary commitment. This bill has an emergency clause.

735 04/08/09 House: House concurred in Governor's recommendation (99-Y 0-N)

736 04/08/09 House: VOTE: --- ADOPTION (99-Y 0-N)

737 04/08/09 Governor: Governor's recommendation adopted

738 04/14/09 Senate: Reenrolled

739 04/14/09 Senate: Reenrolled bill text (SB1083ER2)

740

Highlights

§ [37.2-808](#). *The period of custody shall not exceed four hours from the time the law-enforcement officer takes the person into custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate shall issue an order extending the period of emergency custody one time for an additional period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (i) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to § [37.2-809](#) or (ii) a medical evaluation of the person to be completed if necessary.*

§ [37.2-815](#). *When the examiner attends the hearing in person or by electronic communication, the examiner shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.*

Commitment hearing for involuntary admission; examination required.

§ [37.2-816](#).
Commitment
hearing for
involuntary
admission;
preadmission
screening
report

The board shall provide the preadmission screening report to the court prior to the hearing, *and the report shall be admitted into evidence and made part of the record of the case.*

[37.2-817](#).
Involuntary
admission
and
mandatory
outpatient
treatment
orders.

B. ~~An~~ Any employee or a designee of the local community services board, as defined in § [37.2-809](#), *representing the community services board* that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § [37.2-804.1](#). *The employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board that prepared the preadmission screening report or attending or participating on behalf of the board that prepared the preadmission screening report shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.*

§ [37.2-819](#).
Order of
involuntary
admission or
involuntary
outpatient
treatment
forwarded to
CCRE;
certain
voluntary
admissions
forwarded to
CCRE;
firearm
background
check.

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

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

2. That an emergency exists and this act is in force from its passage.

741
742

SB 1117 Mental Health, Mental Retardation & Substance Abuse Services, Department of; name change.

743
744

An Act to amend and reenact §§ 2.2-212, 2.2-213, 2.2-214, 2.2-223, 2.2-507, 2.2-704, 2.2-705, 2.2-1839, 2.2-2001.1, 2.2-2411, 2.2-2648, 2.2-2664, 2.2-2691, 2.2-2692, 2.2-

745 2694, 2.2-2696, 2.2-2818, 2.2-2905, 2.2-3705.5, 2.2-4344, 2.2-5201, 2.2-5206, 2.2-5300,
746 4.1-305, 9.1-111, 9.1-901, 15.2-2291, 15.2-5386, 16.1-275, 16.1-278.8, 16.1-278.8:01,
747 16.1-280, 16.1-293.1, 16.1-336, 16.1-345, 16.1-356, 16.1-357, 16.1-361, 18.2-73, 18.2-
748 74, 18.2-251, 18.2-251.01, 18.2-252, 18.2-254, 18.2-254.1, 18.2-258.1, 18.2-271.2, 18.2-
749 308.1:1, 18.2-308.2:2, 19.2-169.1, 19.2-169.2, 19.2-169.3, 19.2-169.5, 19.2-175, 19.2-
750 182.2, 19.2-182.13, 19.2-182.16, 19.2-264.3:1, 19.2-264.3:1.1, 19.2-264.3:1.2, 19.2-301,
751 19.2-302, 19.2-389, 19.2-390, as it is currently effective and as it shall become effective,
752 20-88, 22.1-7, 22.1-205, 22.1-209.2, 22.1-214.2, 22.1-214.3, 22.1-215, 22.1-217.1, 22.1-
753 272.1, 23-38.2, 25.1-100, 29.1-313, 32.1-45.1, 32.1-64.1, 32.1-73.7, 32.1-102.1, 32.1-
754 122.5, 32.1-124, 32.1-125.1, 32.1-127.1:03, 32.1-127.1:04, 32.1-135.2, 32.1-276.3, 32.1-
755 276.8, 32.1-283, 32.1-283.1, 32.1-283.5, 32.1-325, 32.1-351.2, 37.2-100, 37.2-200, 37.2-
756 300, 37.2-316, 37.2-317, 37.2-318, 37.2-319, 37.2-423, 37.2-716, 37.2-900, 37.2-900.1,
757 37.2-909, 37.2-912, 37.2-919, 37.2-1101, 38.2-3412.1, 38.2-3418.5, 46.2-400, 46.2-401,
758 46.2-1229, 51.5-1, 51.5-2, 51.5-14, 51.5-14.1, 51.5-31, 51.5-39.2, 51.5-39.7, 51.5-39.12,
759 53.1-32, 53.1-40.2, 53.1-136, 53.1-145, 54.1-2715, 54.1-2726, 54.1-2970, 54.1-2987.1,
760 54.1-3408, 54.1-3408.01, 54.1-3437.1, 54.1-3506, 56-484.19, 57-2.02, 57-60, 63.2-100,
761 63.2-1503, 63.2-1528, 63.2-1709, 63.2-1726, 63.2-1735, and 63.2-1805 of the Code of
762 Virginia, relating to changing the name of the Department, Board, Inspector General, and
763 Commissioner of Mental Health, Mental Retardation and Substance Abuse Services.

764 *Summary as introduced:*
765 **Department of Mental Health, Mental Retardation and Substance Abuse Services;**
766 **name change.** Changes the name of the Department, Board, Inspector General, and
767 Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to
768 the Department, Board, Inspector General, and Commissioner of Behavioral Health and
769 Developmental Services. This bill also makes technical amendments. *This bill is*
770 *identical to* HB 2300.

771 04/08/09 House: House concurred in Governor's recommendation (97-Y 0-N)
772 04/08/09 House: VOTE: --- ADOPTION (97-Y 0-N)
773 04/08/09 Governor: Governor's recommendation adopted
774 04/08/09 Senate: Reenrolled
775 04/14/09 Senate: Reenrolled bill text (SB1117ER2)

776 **SB 1122 Psychiatric Inpatient Treatment of Minors Act; mandatory**
777 **outpatient treatment; etc.**

778 An Act to amend and reenact §§ 16.1-336 through 16.1-339, 16.1-340, 16.1-341, 16.1-
779 342, 16.1-344, 16.1-345, 16.1-345.1, 37.2-808, and 37.2-809 of the Code of Virginia and
780 to amend the Code of Virginia by adding sections numbered 16.1-339.1 and 16.1-345.2
781 through 16.1-345.5, relating to the Psychiatric Inpatient Treatment of Minors Act.

782 *Summary as passed Senate:*
783 **Psychiatric Inpatient Treatment of Minors Act; outpatient treatment; etc.** Provides
784 that a person who meets the criteria for involuntary commitment under the Psychiatric
785 Inpatient Treatment of Minors Act may be ordered to mandatory outpatient treatment if
786 less restrictive alternatives to involuntary inpatient treatment are appropriate and

787 available, and the minor and his parents have the capacity to understand the stipulations
788 of the minor's treatment and to comply with such outpatient treatment and they have
789 agreed to abide by the treatment plan. The bill also sets forth how such mandatory
790 outpatient treatment will be monitored and how a minor's noncompliance with such
791 treatment will be addressed, and clarifies that the judge who presides over any
792 noncompliance hearing does not have to be the judge who presided over the mandatory
793 outpatient commitment hearing. The bill also clarifies that the commitment criteria for
794 minors, and not the criteria for adults, apply when the emergency admission of a minor is
795 sought under the procedures for the emergency admission of an adult set forth in Article
796 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2. The bill also provides that a minor who
797 has been properly detained by a juvenile and domestic relations court may petition for
798 voluntary admission and treatment of mental illness. Currently, such detained minors
799 may not voluntarily seek admission. The bill further requires that if a minor is in a
800 detention home or shelter care facility when admitted to a mental health facility, the
801 director of the detention home or shelter care facility or his designee shall provide, if
802 available, certain information relating to the minor to the mental health facility and to the
803 juvenile and domestic relations district court for the jurisdiction in which the facility is
804 located if such court is different than the court that placed the minor in detention or
805 shelter care. The bill also clarifies the circumstances under which the qualified evaluator
806 who examined the minor must attend the minor's hearing and under what circumstances
807 the evaluator's report is admissible. ***This bill is identical to*** HB 2061.

808 02/28/09 House: Signed by Speaker

809 03/04/09 Senate: Signed by President

810 03/05/09 Senate: Impact statement from DPB (SB1122ER)

811 03/27/09 Governor: Approved by Governor-Chapter 555 (effective 7/1/09)

812 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0555)

813 **SB 1142 Advance medical directives; revises Health Care Decisions Act to**
814 **clarify process.**

815 An Act to amend and reenact §§ 37.2-801, 37.2-1009, 54.1-2982, 54.1-2983, as it is
816 currently effective and as it shall become effective, 54.1-2984, 54.1-2985, as it is
817 currently effective and as it shall become effective, 54.1-2986, 54.1-2987 through 54.1-
818 2989, 54.1-2990, 54.1-2991, and 54.1-2992 of the Code of Virginia and to amend the
819 Code of Virginia by adding in Article 2 of Chapter 8 of Title 37.2 a section numbered
820 37.2-805.1 and by adding sections numbered 54.1-2983.1, 54.1-2983.2, 54.1-2983.3,
821 54.1-2985.1, 54.1-2986.1, and 54.1-2986.2, relating to advance medical directives.

822 ***Summary as passed:***

823 **Advance medical directives.** Revises the Health Care Decisions Act to (i) allow a person
824 to make a written advance directive to specify health care the declarant does or does not
825 authorize, appoint an agent to make health care decisions for the declarant, and specify an
826 anatomical gift; (ii) clarify the process for determining a patient to be ***incapable of***
827 ***making an informed decision*** regarding health care; (iii) require that
828 determinations of incapacity be made by two physicians, or one physician and one
829 licensed clinical psychologist, one of whom is not otherwise involved in the care of the

830 patient; (iv) allow any one physician to declare that a patient is again capable of making
831 an informed decision; (v) clarify the authority of an agent named in an advance directive,
832 or a person otherwise given authority to make medical decisions for an incompetent
833 patient, including authority to admit the declarant to a facility for mental health treatment
834 for a period not to exceed 10 days and to authorize participation by the declarant in a
835 health care study approved by an institutional review board or research review
836 committee; and (vi) determine when a physician may treat a patient over his protests.
837 This bill provides that a person who willfully conceals, cancels, defaces, obliterates,
838 damages, falsifies, or forges an advance directive or revocation of an advance directive of
839 another shall be guilty of a Class 1 misdemeanor. Where such action causes life-
840 prolonging procedures to be utilized in contravention of the previously expressed intent
841 of the declarant, such person shall be guilty of a Class 6 felony, and where such action
842 directly causes life-prolonging procedures to be withheld in contravention of the
843 previously expressed intent of the declarant or death to be hastened, the person shall be
844 guilty of a class 2 felony. This bill incorporates SB 1051. **This bill is identical to HB**
845 **2396.**

846 03/09/09 Senate: Bill text as passed Senate and House (SB1142ER)
847 03/09/09 Senate: Signed by President
848 03/11/09 House: Signed by Speaker
849 03/27/09 Governor: Approved by Governor-Chapter 268 (effective 7/1/09)
850 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0268)

851 Highlights

AGENCY

AGENT'S INVOLUTNARY ADMISSION FOR TREATMENT

§ [37.2-805.1](#).
Admission of
incapacitated
persons
pursuant to
advance
directives or by
guardians

A. An agent for a person who has been determined to be **incapable of making an informed decision** may consent to the person's admission to a facility for no more than 10 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is **incapable of making an informed decision**, as defined in § [54.1-2982](#), regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the person has executed an advance directive in accordance with the Health Care Decisions Act (§ [54.1-2981](#) et seq.) authorizing his agent to consent to his admission to a facility and, if the person protests the admission, he has included in his advance directive specific authorization for his agent to make health care decisions even in the event of his protest as provided in § [54.1-2986.2](#). In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if

impractical, where the person is located.

§ [37.2-805.1](#).
*Admission of
incapacitated
persons
pursuant to
advance
directives or by
guardians*

C. A person admitted to a facility pursuant to this section shall be discharged no later than 10 calendar days after admission unless, within that time, the person's continued admission is authorized under other provisions of law.

§ [54.1-2986.2](#).
*Health care
decisions in the
event of patient
protest.*

*A. Except as provided in subsections B and C, the provisions of this article shall not authorize providing, continuing, withholding or withdrawing health care if the patient's attending physician knows that such action is **protested** by the patient.*

*B. If a patient who is **incapable of making an informed decision** **protests** a health care recommendation that is otherwise authorized by his advance directive, his agent may make a decision consistent with the advance directive over the patient's **protest** if:*

- 1. The decision does not involve withholding or withdrawing life-prolonging procedures;*
- 2. The patient's advance directive explicitly states that the provisions of his advance directive regarding the specific decision at issue should govern, even over his later **protest**;*
- 3. The patient's advance directive **was signed** by the patient's attending physician or licensed clinical psychologist who **attested** that the patient was capable of making an informed decision and understood the consequences of the provision;⁶ and*
- 4. The health care that is to be provided, continued, withheld or withdrawn is determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law.*

*C. If a patient who is **incapable of making an informed decision** **protests** a health care recommendation, his agent, or person authorized to make decisions by § [54.1-2986](#), may make a decision over the patient's **protest** if:*

- 1. The decision does not involve withholding or withdrawing life-prolonging procedures;*
- 2. The health care decision is based, to the extent known, on the patient's*

⁶ To be effective, the patient's attending physician or licensed clinical psychologist must witness and sign the instrument attesting the capacity of the declarant to make an informed decision.

religious beliefs and basic values and on any preferences previously expressed by the patient regarding such health care or, if they are unknown, is in the patient's best interests; and

3. The health care that is to be provided, continued, withheld, or withdrawn has been affirmed and documented as being ethically acceptable by the health care facility's ethics committee, if one exists, or otherwise by two physicians not currently involved in the patient's care, or in the determination of the patient's capacity to make health care decisions.

D. A patient's **protest** shall not revoke the patient's advance directive unless it meets the requirements of § [54.1-2985](#).

E. If a patient **protests** the authority of a named agent or any person authorized to make health care decisions by § [54.1-2986](#), except for the patient's guardian, the **protested** individual shall have no authority under this article to make health care decisions on his behalf unless the patient's advance directive explicitly confers continuing authority on his agent, even over his later **protest**. If the **protested** individual is denied authority under this subsection, authority to make health care decisions shall be determined by any other provisions of the patient's advance directive, or in accordance with § [54.1-2986](#).

§ [54.1-2983.2](#).
Capacity;
required
determinations.

A. Every adult shall be presumed to be **capable of making an informed decision** unless he is determined to be **incapable of making an informed decision** in accordance with this article. A determination that a patient is **incapable of making an informed decision** may apply to a particular health care decision, to a specified set of health care decisions, or to all health care decisions. No person shall be deemed **incapable of making an informed decision** based solely on a particular clinical diagnosis.

B. Prior to providing, continuing, withholding, or withdrawing health care pursuant to an authorization that has been obtained or will be sought pursuant to this article and prior to, or as soon as reasonably practicable after initiating health care for which authorization has been obtained or will be sought pursuant to this article, and no less frequently than every 180 days while the need for health care continues, the attending physician shall, in addition to his own written certification, obtain written certification that the patient is **incapable of making an informed decision** regarding health care from a physician or licensed clinical psychologist that shall be based on a personal examination of the patient. The second physician or licensed clinical psychologist shall not be otherwise currently involved in the treatment of the person assessed, unless such an independent physician or clinical psychologist is not reasonably available. The cost of the

assessment shall be considered for all purposes a cost of the patient's health care.

C. If, at any time, a patient is determined to be **incapable of making an informed decision**, the patient shall be notified, as soon as practical and to the extent he is capable of receiving such notice, that such determination has been made before providing, continuing, withholding, or withdrawing health care as authorized by this article. Such notice shall also be provided, as soon as practical, to the patient's agent or person authorized by § [54.1-2986](#) to make health care decisions on his behalf.

D. A single physician may, at any time, upon personal evaluation, determine that a patient who has previously been determined to be **incapable of making an informed decision** is now **capable of making an informed decision**, provided such determination is set forth in writing.

§ [54.1-2985](#).
(For contingent
expiration date -

An advance directive may be revoked at any time by the declarant who is capable of understanding the nature and consequences of his actions⁷ (i) by a signed, dated writing; (ii) by physical cancellation or destruction of the

⁷ The Bill defines the phrase and the method of determining the existence of a person, "**incapable of making an informed decision**" as follows in the definition clause of the statute, § [54.1-2982](#).:

"**Incapable of making an informed decision**" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder which precludes communication or impairs judgment and which has been diagnosed and certified in writing by his attending physician and a second physician or licensed clinical psychologist after personal examination of such patient, to make an informed decision about providing, continuing, withholding or withdrawing a specific ~~medical~~ health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed ~~medical~~ health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. The second physician or licensed clinical psychologist shall not be otherwise currently involved in the treatment of the patient, unless such an independent physician or licensed clinical psychologist is not reasonably available. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered **incapable of making an informed decision**.

In the form at § [54.1-2984](#), the declarant is told:

*The phrase "**incapable of making an informed decision**" means unable to understand the nature, extent and probable consequences of a proposed health care decision or unable to make a rational evaluation of the risks and benefits of a proposed health care decision as compared with the risks and benefits of alternatives to that decision, or unable to communicate such understanding in any way.*

The Bill does not define the phrase "*capable of understanding the nature and consequences of his actions.*" Whether it is the same test (which would appear odd) is critical if the Ulysses clause is to be given effect, since the protest which invokes the use of the power of attorney by the agent has no effect an involuntary admission under a psychiatric power of attorney, while a revocation of the instrument, including even a "partial revocation," vitiates the authority of the agent to consent.

see Editor's notes)
Revocation of an advance directive.

advance directive by the declarant or another in his presence and at his direction; or (iii) by oral expression of intent to revoke. *A declarant may make a partial revocation of his advance directive, in which case any remaining and nonconflicting provisions of the advance directive shall remain in effect. In the event of the revocation of the designation of an agent, subsequent decisions about health care shall be made consistent with the provisions of this article.* Any such revocation shall be effective when communicated to the attending physician. No civil or criminal liability shall be imposed upon any person for a failure to act upon a revocation unless that person has actual knowledge of such revocation.

GUARDIAN

GUARDIAN'S INVOLUNTARY ADMISSION FOR TREATMENT

§ [37.2-805.1](#).
Admission of incapacitated persons pursuant to advance directives or by guardians.

B. A guardian who has been appointed for an incapacitated person pursuant to Chapter 10 (§ [37.2-1000](#) et seq.) may consent to admission of that person to a facility for no more than 10 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is in **capable of making an informed decision**, as defined in § [54.1-2982](#), regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the guardianship order specifically authorizes the guardian to consent to the admission of such person to a facility, pursuant to § [37.2-1009](#). In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located.

§ [37.2-805.1](#).
Admission of incapacitated persons pursuant to advance directives or by guardians.

C. A person admitted to a facility pursuant to this section shall be discharged no later than 10 calendar days after admission unless, within that time, the person's continued admission is authorized under other provisions of law.

§ [37.2-1009](#).
Court order of

Unless the guardian has a professional relationship with the incapacitated person⁸ or is employed by or affiliated with a facility where the person

⁸ This prohibits a psychiatrist who has a treatment relationship with the incapacitated person from exercising this power. Does it prohibit a professional (a CPA, a lawyer, etc.) serving as guardian from

appointment; *resides, the court's order may authorize the guardian to consent to the*
limited *admission of the person to a facility pursuant to § 37.2-805.1, upon finding*
guardianships *by clear and convincing evidence that (i) the person has severe and*
and *persistent mental illness that significantly impairs the person's capacity to*
conservatorships *exercise judgment or self-control, as confirmed by the evaluation of a*
licensed psychiatrist; (ii) such condition is unlikely to improve in the
foreseeable future; and (iii) the guardian has formulated a plan for
providing ongoing treatment of the person's illness in the least restrictive
*setting suitable for the person's condition.*⁹

852

853 **SB 1228 Community services board; removes provision allowing**
854 **employment if convicted of assault of family.**

855 A BILL to amend and reenact § 37.2-506 of the Code of Virginia, relating to eligibility
856 for employment with community services board; removing provision allowing
857 employment of person convicted of assault and battery of a family member.

858 091145840

859 *Summary as introduced:*

860 **Eligibility for employment with community services board; removes provision**
861 **allowing employment of person convicted of assault and battery of a family**
862 **member.** Eliminates provision authorizing employment of a person convicted of assault
863 and battery of a family member at an adult substance abuse or adult mental health
864 treatment program by a community services board.

865 01/13/09 Senate: Prefiled and ordered printed; offered 01/14/09 091145840

866 01/13/09 Senate: Referred to Committee on Education and Health

867 01/19/09 Senate: Assigned Education sub: Health Care

868 01/29/09 Senate: Impact statement from DPB (SB1228)

869 02/05/09 Senate: Left in Education and Health (13-Y 0-N)

870 **SB 1260 Health insurance; mandated coverage for autism spectrum**
871 **disorder.**

exercising this power? Does it matter that the professional had no previous relationship with the patient, such as the case in which a lawyer represents a nursing home, hospital, etc., in securing a guardianship in which the lawyer's firm (or member) is appointed as the guardian?

⁹ Guardianship pleadings requesting this authority must include an allegation of severity and at least an evaluation report (if not live testimony) of a licensed psychiatrist (*although not the patient's treating psychiatrist*) and a "plan for providing ongoing treatment of the person's illness in the least restrictive setting suitable for the person's condition." **Will this subject the guardian to personal liability, either to the incapacitated person or third parties, for failure to exercise the power of involuntary admission under the provisions of § 37.2-1020 Duties and powers of guardian, (A), which provides that "A guardian shall not be liable for the acts of the incapacitated person, unless the guardian is personally negligent?"**

872 A BILL to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the
873 Code of Virginia by adding a section numbered 38.2-3418.15, relating to health insurance
874 coverage for autism spectrum disorder.

875 097809338

876 *Summary as introduced:*

877 **Health insurance; mandated coverage for autism spectrum disorder.** Requires health
878 insurers, health care subscription plans, and health maintenance organizations to provide
879 coverage for the diagnosis and treatment of autism spectrum disorder in individuals under
880 age 21. Coverage is subject to an annual maximum benefit of \$36,000.

881 02/10/09 Senate: Committee amendment rejected

882 02/10/09 Senate: Motion to recommit to committee agreed to

883 02/10/09 Senate: Recommitted to Finance

884 02/11/09 Senate: Left in Finance

885 02/12/09 Senate: Impact statement from SCC (SB1260S1)

886 **SB 1294 Crisis intervention team programs; established, report.**

887 An Act to amend and reenact § 9.1-102 of the Code of Virginia and to amend the Code of
888 Virginia by adding in Chapter 1 of Title 9.1 an article numbered 13, consisting of
889 sections numbered 9.1-187 through 9.1-190, relating to crisis intervention teams.

890 *Summary as passed Senate:*

891 **Crisis intervention team programs for persons with mental illness.** Provides that the
892 Department of Criminal Justice Services and the Department of Mental Health, Mental
893 Retardation and Substance Abuse Services shall support the development and
894 establishment of crisis intervention team programs in areas throughout the
895 Commonwealth. Areas may be composed of any combination of one or more counties,
896 cities, towns, or colleges or universities contained therein that may have law-enforcement
897 officers or campus police officers. The crisis intervention teams shall assist law-
898 enforcement officers in responding to crisis situations involving persons with mental
899 illness, substance abuse problems, or both.

900 02/28/09 House: Signed by Speaker

901 03/04/09 Senate: Signed by President

902 03/11/09 Senate: Impact statement from DPB (SB1294ER)

903 03/30/09 Governor: Approved by Governor-Chapter 715 (effective 7/1/09)

904 03/30/09 Governor: Acts of Assembly Chapter text (CHAP0715)

905 **SB 1303 Involuntary commitment; court may appoint counsel for a minor**
906 **in proceedings seeking approval.**

907 A BILL to amend and reenact §§ 16.1-339, 16.1-341, 37.2-803, and 37.2-817 through
908 37.2-818 of the Code of Virginia, relating to involuntary mental health commitment.

909 096588250

910 *Summary as introduced:*
911 **Involuntary mental health commitment.** Provides that a court may, in its discretion,
912 appoint counsel for a minor in proceedings seeking judicial approval of the admission by
913 the parents of a minor 14 years of age or older who is **incapable of making an**
914 **informed decision** or who objects to the admission and provides that a court may,
915 in its discretion, appoint a guardian ad litem for a minor who is the subject of an
916 involuntary commitment petition. Currently, the court is required to appoint both a
917 guardian ad litem and counsel in both circumstances. The bill also removes authority for
918 monitoring compliance with mandatory outpatient treatment from special justices and
919 places it with district court judges (currently it can be done by either) and allows
920 recordings of hearings to be electronic or digital.

921 01/14/09 Senate: Prefiled and ordered printed; offered 01/14/09 096588250
922 01/14/09 Senate: Referred to Committee for Courts of Justice
923 01/15/09 Senate: Assigned Courts sub: Mental Health
924 02/04/09 Senate: Passed by indefinitely in Courts of Justice (8-Y 7-N)

925 **SB 1432 Notification of family member; disclosure of information**
926 **regarding patient's location and condition.**

927 A BILL to amend and reenact §§ 32.1-127.1:03 and 37.2-804.2 of the Code of Virginia,
928 relating to notification of family member of person involved in the commitment process.

929 093254216

930 *Summary as introduced:*
931 **Notification of family member of person involved in commitment process.**
932 Authorizes disclosure of information regarding a patient's location and general condition
933 to a family member or personal representative of the person. This bill was incorporated
934 into SB 1077.

935 01/16/09 Senate: Presented and ordered printed 093254216
936 01/16/09 Senate: Referred to Committee on Education and Health
937 01/21/09 Senate: Impact statement from DPB (SB1432)
938 01/27/09 Senate: Assigned Education sub: Special on Mental Health
939 02/05/09 Senate: Incorporated by Education and Health (SB1077-Howell) (15-Y 0-N)

940 **SB 1433 Right to notify; consumer in mental health facility to have person**
941 **of choice notified of condition.**

942 A BILL to amend and reenact § 37.2-400 of the Code of Virginia, relating to consumers;
943 right to notify.

944 093253216

945 *Summary as introduced:*
946 **Consumers; right to notify.** Provides that a consumer in a mental health facility shall
947 have the opportunity to have an individual of his choosing notified of his general

948 condition, location, and transfer to another facility. This bill was incorporated into SB
949 1076.

950 01/16/09 Senate: Presented and ordered printed 093253216

951 01/16/09 Senate: Referred to Committee on Education and Health

952 01/21/09 Senate: Impact statement from DPB (SB1433)

953 01/27/09 Senate: Assigned Education sub: Special on Mental Health

954 02/05/09 Senate: Incorporated by Education and Health (SB1076-Howell) (15-Y 0-N)

955 **SB 1467 Certificate of public need; exempts requirements up to 10 beds for**
956 **inpatient psychiatric services.**

957 A BILL to amend and reenact § 32.1-102.1 of the Code of Virginia, relating to exempting
958 certain inpatient psychiatric beds from the certificate of public need requirements.

959 094118316

960 *Summary as introduced:*

961 **Certificate of public need; exemption.** Exempts from the certificate of public need
962 requirements up to 10 beds for the delivery of inpatient psychiatric services in a critical
963 access hospital.

964 01/20/09 Senate: Presented and ordered printed 094118316

965 01/20/09 Senate: Referred to Committee on Education and Health

966 02/04/09 Senate: Impact statement from DPB (SB1467)

967 02/05/09 Senate: Passed by indefinitely in Education and Health (14-Y 1-N)

968 **SB 1501 Mental Retardation Medicaid Waiver, etc.; elimination of waiting**
969 **lists.**

970 An Act relating to elimination of waiting lists for the Mental Retardation Medicaid
971 Waiver and Individual and Family Developmental Disabilities and Support Medicaid
972 Waiver within 10 years.

973 *Summary as passed:*

974 **Medicaid; eliminate MR and IFDDS Waiver waiting lists.** Expresses the intent of the
975 General Assembly to eliminate the waiting lists for the Mental Retardation Medicaid
976 Waiver and the Individual and Family Developmental Disabilities and Support Medicaid
977 Waiver. Beginning July 1, 2010, and each year thereafter, the Department of Medical
978 Assistance Services shall add at least 400 funded slots for MR Waivers, and at least 67
979 funded slots for IFDDS Waivers, until the waiting lists for both have been eliminated.

980 ***This bill is identical to*** HB 2674.

981 03/09/09 Senate: Signed by President

982 03/11/09 House: Signed by Speaker

983 03/12/09 Senate: Impact statement from DPB (SB1501ER)

984 03/27/09 Governor: Approved by Governor-Chapter 303 (effective 7/1/09)

985 03/27/09 Governor: Acts of Assembly Chapter text (CHAP0303)

986 **SB 1503 Mental health court; Executive Secretary of the Supreme Court to**
987 **establish in City of Richmond.**

988 **A BILL to establish a mental health court in the Thirteenth Judicial Circuit.**

989 **098793273**

990 *Summary as introduced:*

991 **Mental health court; Richmond.** Requires the Executive Secretary of the Supreme
992 **Court to establish a mental health court in the Thirteenth Circuit, Richmond City.**

993 **01/23/09 Senate: Presented and ordered printed 098793273**

994 **01/23/09 Senate: Referred to Committee for Courts of Justice**

995 **01/27/09 Senate: Assigned Courts sub: Mental Health**

996 **02/04/09 Senate: Incorporated by Courts of Justice (SB854-Edwards) (15-Y 0-N)**

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