

During the 2026 General Assembly Session, legislators sought to strengthen coordination among health care, public safety, and education systems. Enacted measures addressed custody and liability during medical temporary detention order evaluations, information sharing at hospital discharge for minors, and alternative transportation. This document provides a summary of the changes to law and provides background and guidance to assist you in compliance.

If you have any questions or require additional information, please contact Brent Rawlings brawlings@vhha.com or Julie Dime jdime@vhha.com.

Summary

AMENDS EXISTING LAW

HB309 (Hope) provides that while the physician is seeking the issuance of a medical temporary detention order (mTDO), the person for whom such order is being sought shall remain at the facility where he is located for up to two hours, and any available security personnel shall, at the direction of the physician, take reasonable measures to ensure that such person does not leave the facility. The legislation also provides that any licensed health professional or licensed hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, administering treatment, or providing testing, or detention pursuant to the court's or magistrate's authorization, or any licensed health professional, licensed hospital, or security personnel assisting a licensed health professional involved in the detention of a person pursuant to such mTDO shall have no liability arising out of a claim to the extent the claim is based on lack of consent to the treatment, testing, or detention. **The law is effective July 1, 2026.**

SB171 (Favola) requires if a minor admitted to inpatient treatment is a student at an elementary or secondary school and the facility to which the minor is admitted deems that additional educational services are needed or the minor poses a threat of violence or physical harm to self or others at the time of the discharge, the facility shall notify the mental health professional or school counselor at such minor's school prior to or at the time of discharge, but discharge from a facility may not be withheld solely for the purpose of this disclosure. It also requires that prior to providing notification of any discharge information to an elementary or secondary school's mental health professional or school counselor, each facility shall provide reasonable notice to the minor's parent of the parent's right to decline disclosure, except in such disclosures made in accordance with the law (duty to warn disclosure). **There is a delayed enactment until January 2027** to allow the Department of Education to create guidelines to place safeguards around proper use of student discharge planning information disclosed to elementary or secondary schools to prevent further disclosure of the discharge plan beyond the purpose for which such disclosure was made.

SB75 (Lucas) clarifies that the term "law-enforcement officer" as used in relevant law relating to emergency and involuntary civil transportation includes retired law-enforcement officers for the purposes of laws related to emergency custody and involuntary temporary detention. The legislation also permits an alternative transportation provider to provide transportation of a person in the temporary detention process in a safe manner if the alternative transportation provider is (i) an employee of, or the person providing services pursuant to a contract with, the Department of Behavioral Health and Developmental Services or (ii) an employee of a private or state hospital within the confines of the Commonwealth. The legislation provides that, for purposes of transporting a minor during the temporary detention process, an alternative transportation provider is deemed available if it states it is available to take custody from law enforcement within six hours of issuance of the temporary detention order or an order changing the transportation provider. The legislation also provides the alternative transportation provider shall maintain custody from the time custody is transferred by the primary law-enforcement agency until custody is transferred to the temporary detention facility, including while awaiting transport and during transport. The legislation also specifies when a law-enforcement agency or alternative transportation provider providing transportation of a minor in the temporary detention process may transfer custody of such minor to a facility or location where the minor is awaiting transport if such facility or location (i) agrees to accept custody of the minor and (ii) is capable of providing the level of security necessary to protect the minor and others from harm. When a bed becomes available at the temporary detention facility, the legislation provides that facility or location shall notify the law-enforcement agency or alternative transportation provider specified on the order, which shall then return to transport the minor to the facility of temporary detention. **The law is effective July 1, 2026.**

Action Required

HB309

Evaluate the need for any changes to existing policies and procedures related to medical temporary detention orders (mTDO) to ensure they address how staff will maintain custody as necessary to comply with requirements of the law.

SB171

Evaluate the need for any changes to existing policies and procedures related to sharing discharge summaries with schools and the process of seeking consent from the parent and/or guardian as necessary to comply with the requirements of the law.

SB75

Evaluate the need for any changes to existing policies and procedures related to the possibility of taking custody of minors while waiting to be transferred to the accepting facility as necessary to comply with requirements of the law.

Background Information

HB309

The intent of this legislation is to clarify what legal authority hospitals and hospital staff have to ensure that a patient does not leave the hospital during the time the physician is seeking a medical TDO and clarifies when a health professional or licensed hospital is not liable. The Virginia College of Emergency Physicians sought changes to the code due to uncertainty on what authority the hospitals have to maintain custody while the physician is seeking the TDO from the magistrate and to ensure the safety of patients if there are delays in that process.

SB171

The intent of the legislation is to ensure that the school is aware of any educational or behavioral health needs a student may have in an effort to be able to support the student once they return to school. This legislation has been introduced for the past two sessions and is a result of an incident with a patient that returned to school after discharge and the school being unaware of the student's behavioral health needs.

SB75

The intent of the legislation is to make technical changes to the role and capabilities of the alternate transportation provider as it relates to emergency and temporary detention orders for minors. It also specifies when a law-enforcement agency or alternative transportation provider providing transportation of a minor in the temporary detention process may transfer custody of a minor to a facility or location where the minor is awaiting transport. The need for this legislation resulted from long wait times for children and adolescents to find an available bed, which requires law enforcement to remain in the emergency department with the patient, and seeks to allow use of a medical model for custody rather than law enforcement in certain circumstances.

Statutory Text

(NOTE: The language in *italics* and ~~strike through~~ are the only changes to the law. All other language and requirements under the law remain unchanged.)

HB309

1. That §§ 37.2-1104 and 37.2-1106 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-1104. Temporary detention in hospital for testing, observation, or treatment.

...

C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order. *While the physician is seeking the issuance of an order pursuant to this subsection, the person for whom such order is being sought shall remain at the facility where he is located for up to two hours, and any available security personnel shall, at the direction of the physician, take reasonable measures to ensure that such person does not leave the facility. However, if (i) an order pursuant to this subsection is not issued; (ii) prior to the issuance of an order the physician determines that the person does not meet the requirements of this section; or (iii) a guardian, an agent, or any other individual legally authorized to make an informed decision on the person's behalf refuses to consent to such person's continued detention at the facility or the testing, observation, or treatment, then the person shall be permitted to leave the facility immediately.*

...

§ 37.2-1106. When health professional or licensed hospital not liable.

Any licensed health professional or licensed hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, administering treatment, or providing testing, or detention pursuant to the court's or magistrate's authorization as provided in this chapter or any licensed health professional, licensed hospital, or security personnel assisting a licensed health professional involved in the detention of a person pursuant to subsection C of § 37.2-1104 shall have no liability arising out of a claim to the extent the claim is based on lack of consent to the treatment, testing, or detention. Any such professional or hospital administering treatment with the consent of the person receiving or being offered treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent, if a court or a magistrate has denied a petition hereunder to authorize the treatment and the denial was based on an affirmative finding that the person was capable of making and communicating an informed decision regarding the proposed treatment.

SB171

1. That § 16.1-346.1 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-346.1. Discharge plan; certain disclosures to certain school personnel upon discharge.

A. Prior to discharge of any minor admitted to inpatient treatment, including a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court or in a state hospital or training center as set forth in subdivision A 3 of § 37.2-505, a discharge plan shall be formulated, shall be provided and explained to the minor, and copies thereof shall be sent (i) to the minor's parents or; (ii) if the minor is in the custody of the local department of social services, to the department's director or the director's designee; or (iii) to the minor's parents and (a) if the juvenile is to be housed in a detention home upon discharge, to the court in which the petition has been filed and the facility superintendent; or (b) if the minor is in custody of the local department of social services, to the department.

A copy of the discharge plan shall also be provided, upon request, to the minor's attorney and guardian ad litem. If the minor was admitted to a state facility, the discharge plan shall be contained in a uniform discharge document developed by the Department of Behavioral Health and Developmental Services. The plan shall, at a minimum, ~~(i)~~ (1) specify the services required by the released minor in the community to meet his needs for treatment, housing, nutrition, physical care, and safety; ~~(ii)~~ (2) specify any income subsidies for which the minor is eligible; ~~(iii)~~ (3) identify all local and state agencies which that will be involved in providing treatment and support to the minor; and ~~(iv)~~ (4) specify services which that would be appropriate for the minor's treatment and support in the community but which that are currently unavailable. A minor in detention or shelter care prior to admission to inpatient treatment shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice within 24 hours by the sheriff serving the jurisdiction where the minor was detained upon release

from the treating facility, unless the juvenile and domestic relations district court having jurisdiction over the case has provided written authorization for release of the minor, prior to the scheduled date of release.

B. In the event that the facility to which a minor elementary or secondary school student is admitted to inpatient treatment determines that such minor student requires additional educational services upon discharge from the facility, the parents of such student may opt in to the disclosure, prior to or at the time of such minor student's discharge from the facility, of such determination by the facility to a mental health professional employed in such minor student's school or, if applicable, by the school division in which the student is enrolled.

C. In the event that the facility to which a minor elementary or secondary school student is admitted to inpatient treatment determines, based on communications from such minor student to a mental health service provider at such facility, that the student poses a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons at the time of the student's discharge from the facility, the facility shall disclose, prior to or at the time of discharge in accordance with the requirements set forth in subsection B of § 54.1-2400.1, such determination to a mental health professional employed in such minor student's school or, if applicable, by the school division in which the student is enrolled.

D. No facility shall withhold the discharge of a minor elementary or secondary student from the facility solely for the purpose of making a disclosure described in subsection B or C.

2. That the Department of Education shall create guidelines to place safeguards around proper use of student discharge planning information disclosed to elementary or secondary schools to prevent further disclosure of the discharge plan beyond the purpose for which such disclosure was made.

3. That the provisions of this act shall become effective on January 1, 2027.

SB75

1. That § 16.1-340.2 and §§ 37.2-808 and 37.2-810, as they are currently effective and as they shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 16.1-340.2. Transportation of minor in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the minor resides to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the order and provide transportation. However, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the temporary detention order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is (i) available to provide transportation, (ii) willing to provide transportation, and (iii) able to provide transportation in a safe manner.

1. An alternative transportation provider shall be deemed to be available to provide transportation for the purposes of this subsection if the alternative transportation provider states that it is available to take custody of the individual from the law-enforcement agency within six hours of issuance of the temporary detention order or an order changing the transportation provider pursuant to subsection E. An alternative transportation provider shall be deemed to be able to provide transportation in a safe manner for the purposes of this subsection if such alternative

transportation provider is an employee of or person providing services pursuant to a contract with the Department of Behavioral Health and Developmental Services, or an employee of a private or state hospital within the Commonwealth.

2. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order. *Such alternative transportation provider shall maintain custody of the minor from the time it obtains custody from the primary law-enforcement agency until the minor is transferred to the temporary detention facility, including (i) any time prior to the initiation of transportation of the minor from a facility to which he was transported pursuant to § 16.1-340 and (ii) at all times while transportation is provided pursuant to this section.*

3. In ~~such cases~~ any case in which a magistrate authorizes transportation of a minor subject to a temporary detention order by an alternative transportation provider, a copy of the temporary detention order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

4. The *temporary detention* order may include transportation of the minor to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a minor in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

...

F. *A law-enforcement agency or alternative transportation provider providing transportation pursuant to this section may transfer custody of the minor to a facility or location where the minor is awaiting transport if such facility or location (i) agrees to accept custody of the minor and (ii) is capable of providing the level of security necessary to protect the minor and others from harm.*

1. *If transportation is provided pursuant to this section by a law-enforcement agency, such law-enforcement agency may transfer custody of the minor to a facility or location pursuant to this subsection if, in addition to the other requirements in this subsection, such facility or location has entered into an agreement or memorandum of understanding with such law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody.*

2. *When a bed at the facility of temporary detention becomes available, the facility or location where the minor is awaiting transport pursuant to this subsection shall notify the law-enforcement agency or alternative transportation provider identified on the temporary detention order, and such law-enforcement agency or alternative transportation provider shall transport the minor to the facility of temporary detention.*

G. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

~~G.~~ H. *An employee or contractor of an entity providing alternative transportation services pursuant to a contract with the Department of Behavioral Health and Developmental Services who has completed training approved by the Department of Behavioral Health and Developmental Services in the proper and safe use of restraint may use restraint if (i) such restraint is necessary to ensure the safety of the minor or others or to maintain custody of the minor and (ii) less restrictive techniques have been determined to be ineffective to ensure the safety of the minor or others or to maintain custody of the minor.*

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

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

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

...

C. The magistrate or court issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate or court shall authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate or court, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate or court deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. *An alternative transportation provider shall be deemed to be able to provide transportation in a safe manner if the alternative transportation provider is an employee of, or the person providing services pursuant to a contract with, the Department or is an employee of a private or state hospital within the confines of the Commonwealth.*

...

S. For purposes of this section:

"Certified evaluator" means the same as that term is defined in § 37.2-809.

"Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731.

"Law-enforcement officer" includes (i) an auxiliary police officer appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733 and (ii) a retired law-enforcement officer authorized by a local law-enforcement agency, except for the purposes of subsection G.

"Retired law-enforcement officer" means an officer who within 10 years immediately prior to receiving authorization by a local law-enforcement agency (i) was (a) an active law-enforcement officer as defined in § 9.1-101 in the Commonwealth, (b) an auxiliary police officer appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, or (c) employed by a law-enforcement agency of the United States or any state or political subdivision thereof and his duties were substantially similar to those of a law-enforcement officer as defined in § 9.1-101 and (ii) retired or resigned from his position as a law-enforcement officer in good standing.

§ 37.2-810. (Effective July 1, 2026) Transportation of person in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to provide transportation, to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall (i) specify the law-enforcement agency to execute the order and (ii) designate a transportation provider. In determining the transportation provider, the magistrate shall authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the temporary detention order, a representative of the community services board, an employee of or person providing services pursuant to a contract with the Department, or other transportation provider with personnel trained to provide transportation in a safe manner. Upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that an alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall designate such alternative transportation provider to provide transportation of the person. An alternative transportation provider shall be deemed to be available if the alternative transportation provider states that it is available to take custody of the individual from law enforcement within six hours of issuance of the temporary detention order or an order changing the transportation provider pursuant to subsection E. *An alternative transportation provider shall be deemed to be able to provide transportation in a safe manner if the alternative transportation provider is an employee of, or the person providing services pursuant to a contract with, the Department or is an employee of a private or state hospital within the confines of the Commonwealth.* If (a) no alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner or (b) the law-enforcement agency elects to provide transportation, the magistrate shall designate the primary law-enforcement agency and jurisdiction designated to execute the temporary detention order to provide transportation of the person.

When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. The primary law-enforcement agency may transfer custody of the person to the alternative transportation provider immediately upon execution of the temporary detention order based on the availability of alternative transportation providers. The alternative transportation provider shall maintain custody of the person from the time custody is transferred to the alternative transportation provider by the primary law-enforcement agency until such time as custody of the person is transferred to the temporary detention facility, including during any period prior to the initiation of transportation of the person from the facility to which he was transported pursuant to § 37.2-808 and while transportation is being provided pursuant to this section.

In such cases, a copy of the temporary detention order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

The order may include transportation of the person to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

...

I. For purposes of this section:

"Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731.

"Law-enforcement officer" includes (i) an auxiliary police officer appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733 and (ii) a retired law-enforcement officer authorized by a local law-enforcement agency.

"Retired law-enforcement officer" means an officer who within 10 years immediately prior to receiving authorization by a local law-enforcement agency (i) was (a) an active law-enforcement officer as defined in § 9.1-101 in the Commonwealth, (b) an auxiliary police officer appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, or (c) employed by a law-enforcement agency of the United States or any state or political subdivision thereof and his duties were substantially similar to those of a law-enforcement officer as defined in § 9.1-101 and (ii) retired or resigned from his position as a law-enforcement officer in good standing.

Disclaimer: The contents of this document and any attachments or links to other documents contained herein do not constitute legal advice. The document is presented to VHHA members for informational purposes only and is not intended to be used as a substitute for specific legal advice or opinions. No recipients of content from this document should act or refrain from acting on the basis of content of the document without seeking appropriate legal advice or other professional counseling. VHHA expressly disclaims all liability relating to actions taken or not taken based on any or all contents of this document.