VIRGINIA'S LAWS ON MENTAL HYGIENE

REPORT OF
THE COMMISSION ON MENTAL HYGIENE
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
RICHMOND
1963

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THE COMMISSION ON MENTAL HYGIENE
TO THE
GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA

Richmond, Virginia, October 29, 1963.

To:

HONORABLE A. S. HARRISON, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Virginia's laws dealing with the care and treatment, and detention and release, of persons of unsound mind have evolved gradually over a period of many decades. They have been modernized and brought more in line with present day psychiatric thought in some respects but the statutes still abound in antiquated nomenclature—such as the use of the terms "dotard" and "opium eater"—and because of the piecemeal way in which they have been adopted, they contain overlapping and sometimes contradictory provisions. These have led to a lack of uniformity in operation and some difficulties in administration. For this reason, the General Assembly directed that a review be made of the provisions of Title 37 of the Code and of cognate statutes and to this end adopted, at its 1962 Session, the following resolution:

SENATE JOINT RESOLUTION NO. 7

Creating a Commission to study the laws relating to mental hygiene.

Whereas, mental hygiene is of great and increasing importance to the welfare of this Commonwealth; and

Whereas, there appears to be some confusion and overlapping in the administration of the existing laws by the various State agencies; and

Whereas, the laws relating to mental hygiene may not in all respects be in keeping with advances made in the science of mental hygiene; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That a Commission is hereby created to make a study and report on the laws of this State on mental hygiene in the light of medical knowledge most recently available and what deficiencies, if any, exist in our present laws and in the administration of such laws by the various State agencies. The Commission shall recommend any changes in such laws which appear desirable in the light of such medical knowledge and which may facilitate a proper administration of such laws by the various State agencies.

The Commission shall be composed of fifteen members, ten to be appointed by the Governor, of whom one shall be a member of the Virginia State Bar, one a member of the Medical Society of Virginia, one a judge of a juvenile court, one a member of the Neuropsychiatric Society of Virginia, one a representative of the Department of Welfare and

Institutions, one a representative of the State Health Department, one a representative of the Department of Mental Hygiene and Hospitals, and one a representative of the State Department of Education; two to be appointed by the President of the Senate from the membership of the Senate, and three to be appointed by the Speaker of the House of Delegates from the membership of the House.

All agencies of the State shall assist the Commission in its study. The Commission shall conclude its study and make its report to the Governor and the General Assembly not later than October one, nineteen hundred sixty-three.

The members of the Commission shall receive no compensation for their services but shall be paid for their necessary expenses, for which, and for such secretarial and other expenses as the Commission may incur, there is hereby authorized to be expended from the contingent fund of the General Assembly the sum of twenty-five hundred dollars.

Pursuant to the Resolution, the President of the Senate appointed the following members of that body to the Commission: John H. Temple of Petersburg and Edward E. Willey of Richmond. The Speaker of the House of Delegates appointed the following members of the House: Matt G. Anderson of Oilville, Earle M. Brown of Lynchburg and Robert R. Gwathmey, III, of Hanover County. The following members were appointed by the Governor: W. K. Barnett, Director of Elementary and Special Education, State Department of Education, Richmond; Emory L. Carlton, Commonwealth's Attorney, Essex County, Tappahannock; Hiram W. Davis, Commissioner, Department of Mental Hygiene and Hospitals, Richmond; W. Clyde Dennis, Attorney at Law, Grundy; Richard W. Garnett, Jr., Charlottesville, representing the Neuropsychiatric Society of Virginia; S. P. Hair, Chief, Bureau of Child Care, Department of Welfare and Institutions; William T. Muse, Dean, T. C. Williams School of Law, University of Richmond; Hugh Reid, Judge, Juvenile and Domestic Relations Court, Arlington; John R. Saunders, Richmond, representing the Medical Society of Virginia; and Mack I. Shanholtz, State Health Commissioner.

The Committee organized by electing Senator Willey as Chairman and Dean Muse as Vice-Chairman. John B. Boatwright, Jr. and G. M. Lapsley were appointed Secretary and Recording Secretary, respectively, to the Commission.

The Commission gave intensive study to the provisions of Title 37 of the Code of Virginia and to other statutes bearing upon problems affecting persons suffering from mental disorders and the rights of persons admitted or committed to institutions for the care and treatment of the mentally ill and the mentally deficient. It received suggestions from doctors, lawyers, and judges who have first hand familiarity with the subject. It had the benefit of a study which had been conducted by members of the staff of the Department of Mental Hygiene and Hospitals. After consideration of this material, it formulated tentative conclusions and recommendations and publicized these, after which a public hearing was held at which citizens of the State were given the opportunity to express their views. The Commission desires to express its appreciation to all those who assisted it by furnishing constructive criticism and helpful recommendations.

The Commission has now completed its deliberations and submits the following Report.

Summary of Recommendations

1. The present provisions of law should be strengthened to insure that a person whose commitment is sought will have the benefit of the active assistance of counsel of his choice and a personal examination by any physician whose testimony is to be relied on in the commitment proceeding.

2. The automatic forfeiture of the right to operate a motor vehicle on admission or commitment to an institution because of a mental disorder should be modified.

3. Marriages should be voidable on the grounds of insanity or feeblemindedness only when the condition has been established by a proper proceeding in a court of record.

4. Commitment of "epileptics" should be limited to cases where the convulsive disorders are accompanied by a mental condition which would of itself justify commitment.

5. Detention in jail of committed persons prior to admission to an institution should be prohibited unless authorized for good cause by the presiding judge, with notice to the Commissioner of Mental Hygiene and Hospitals.

6. The multiple statutes relating to commitment should be consolidated in the interest of clarity and uniformity.

7. Persons accused or convicted of crime and suspected of mental illness or mental deficiency should be sent for observation only to the State hospitals having departments for the criminally mentally ill; and provision should be made for determination of the person's mental condition by a commission rather than a jury, preserving the right to a jury trial when insanity is pleaded as a defense.

8. The forty-five day period for which a patient can be held under an observation commitment for mental illness should be extended to ninety days; and provision should be made for a simplified commitment procedure to private institutions of inebriates and drug addicts, for a period not to exceed ten days.

9. Detention of potentially dangerous patients in institutions for not exceeding forty-eight hours should be provided for.

10. The use of out-patient care for patients of the State mental hospitals should be facilitated.

11. The statute fixing fees to be allowed in commitment proceedings should be amended to make it plain that the fees are not contingent on the commitment of the person proceeded against, and responsibility for payment of these fees should be clarified in cases where the commitment proceedings are had when a patient is already in an institution.

12. Licensing of institutions treating alcoholics only should be transferred to the State Health Department.

13. The desirability of a revision of the whole of Title 37 of the Code to modernize its language and provide for more orderly arrangement of its provisions should be brought to the attention of the General Assembly.

Reasons for Recommendations

The specific recommendations which we will discuss in some detail in the remainder of this Report fall into three broad general categories,

with the exception of Recommendation No. 13 which deals with the Title as a whole. A number of suggestions were made to the Commission for changes in terminology which is used throughout the entire Title. For instance, it was suggested that the word "colony" be eliminated; that all references to epilepsy and epileptics be deleted; even that the terms "mental illness" and "mental deficiency", which were adopted in 1950 to conform to the language used generally in psychiatric literature, be changed to nomenclature which it was thought would carry less unpleasant connotations.

The adoption of these suggestions would have required the amendment of a majority of the sections embraced in Title 37. The Commission did not feel that it had the time to undertake such a project. It further felt that to attempt such a revision might militate against adequate consideration of the substantive changes which it believed to be more important. Consequently it was decided to present the Commission's recommendations in the form of amendments to the applicable sections of the Code.

The words "insane" and "feeble-minded" were generally eliminated from the laws relating to mental hygiene in 1950 and it was strongly urged that these words be deleted wherever they appear in the Title as it presently exists. This suggestion was not followed because the Commission felt that the use of these terms in their specific legal connotations is desirable. This terminology runs throughout the fabric of constitutional, statute and case law in Virginia. The Commission felt that, in the statutes which it had under consideration, restriction of the terms "insane" and "feeble-minded" to a meaning related to a court of record adjudication of incompetency would clarify the effect of the law on the civil rights of one who, for example, entered a State hospital voluntarily for needed treatment for a mental disorder which might or might not have any valid relation to his competency to exercise these rights.

In two instances however, the Commission believed that the form of the statute would have some effect on substance. The section which provides a penalty for unlawful commitments is presently contained in a chapter of the Title headed "Provisions Applicable Solely to the Mentally-Deficient, Epileptics and Inebriates". It is recommended that this section be repealed and that it be reenacted as § 37-230.2 which is contained in the chapter dealing with penal provisions.

Similarly §§ 37-165 and 37-166, which permit an inquiry into the fitness of a private hospital or sanitarium to which it is proposed to commit the person proceeded against, and allow an appeal on the question of the fitness of the hospital, are contained in the chapter headed "Provisions Applicable Solely to Inebriates and Drug Addicts". The Commission did not feel that the applicability of these sections should be so restricted and recommends their repeal and their reenactment in Chapter 3 of the Title which, in the suggested revision, will apply to commitment for any reason.

The Commission is aware that with the repeal of many sections recommended and the retention of only a few in certain of the chapters, the arrangement of the provisions of the Title will leave much to be desired. It, accordingly, calls the attention of the General Assembly to the need for an overall revision of Title 37 in order that the State may have a simple, complete, and modern body of law in this field.

We discuss below the other recommendations in the order in which they appear in the summary above.

Rights of Persons Admitted or Committed to Mental Institutions

1. The law now requires that a person whose commitment to a mental institution is sought be given the opportunity to be represented by counsel of his own choosing. The law further provides that a person may not be committed unless, in the judgment of two competent physicians, such is shown to be necessary. In practice, however, we have been advised that in some cases attorneys conceive their duties to be more in the nature of those of a guardian ad litem and restrict their participation in the proceedings to insuring technical compliance with the statute. It is also possible for a physician to satisfy himself as to the patient's condition solely by what is, in fact, hearsay evidence. Commitment to a mental institution deprives a person of his liberty as effectively as incarceration in a penal institution and we feel that every safeguard should be given to the person proceeded against in such cases. We accordingly recommend that any person serving as counsel in a commitment proceeding be required to consult personally with his client and that any physician whose testimony is relied upon, make a personal examination of the patient. We further recommend that the proceedings be held in the presence of the person proceeded against. However, we realize that because of his mental condition, in some cases the individual involved could derive no benefit from consultation with his attorney or from presence at the hearing and in some instances his presence might actually be detrimental to him; we therefore recommend that the presiding justice be empowered to dispense with these requirements in proper cases.

2. Considerable confusion exists as to the effect on the civil rights and privileges of a citizen who becomes a patient in a mental institution for any reason. Questions have been raised such as whether a person who has been committed for mental illness can thereafter validly make a will; whether a person who has been committed is for that reason to be considered "insane" so as to lose his right to vote under the provisions of the Constitution; and whether admission to an institution of necessity implies that the patient has become unfit to operate a motor vehicle.

Opinions of psychiatrists which have been presented to us indicate that there is no necessary correlation between being admitted for treatment in a mental institution and incompetency to exercise the rights and privileges of citizenship. We realize, on the other hand, that there are some differences of opinion, particularly as to the right to operate a motor vehicle, and it is in this latter field that the most widespread and pressing problems occur. The vast majority of our population have occasion to drive automobiles and in many cases the right to do so is essential to the earning of a living. It is obvious that, confronted with the loss of his operator's license if he becomes even a voluntary patient in one of the State hospitals, a person who may need and sincerely desires treatment may nevertheless feel that the loss of his license is too great a price to pay.

In addition, the present law imposes on the Commissioner of the Division of Motor Vehicles in many cases the burden of making what is, essentially, a medical decision. When, in carrying out his mandatory duties, he has suspended the operator's license of a person who has been admitted to an institution, he is faced with the decision as to its restoration when the patient is released, and must make an investigation in each case and base his action on whatever information he can obtain.

The Commission has considered several approaches to this problem. It has been suggested that all references to admission or commitment to

mental institutions be deleted from the motor vehicle laws, inasmuch as there is no necessary correlation between admission or commitment and ability to drive. Limitation of the applicability of the refusal and revocation provisions to those adjudicated insane or feeble-minded, or to those formally committed to institutions, has also been considered.

We feel that all of these proposals have the disadvantage of inflexibility, in that they may or may not be appropriately applicable in individual cases. We favor a positive approach to the problem. The best estimate as to the effect of a person's mental condition on his ability to drive can obviously be made by those who have made psychiatric examinations of him. We therefore recommend that, ten days prior to the release of a patient on any terms from a State hospital or private institution, the official in charge of the institution be required to advise the Division of Motor Vehicles if in his judgment the patient's license should be suspended or revoked. (Inasmuch as the State cannot require such reports from federal facilities or institutions located outside of this State, the word "release" should include transfer to such a facility or institution.)

This will insure that each patient's case will be given consideration on its merits, by persons trained for such evaluations. It will facilitate voluntary admissions by assuring those seeking treatment that they will not automatically forfeit the privilege of driving. It will allow patients released temporarily on furlough to be permitted to drive, eliminating a factor which has in some cases been an impediment to the patients' readjustment to society. It will relieve the Commissioner of Motor Vehicles from the necessity of making decisions as to all persons who have been in mental institutions, but will preserve his discretionary power to suspend or revoke operators' licenses in proper cases.

3. The laws relating to marriages of persons who are mentally ill or who have been judged insane, epileptic or feeble-minded have not been changed during the last forty years. There is a discrepancy between two of these statutes which appears unwarranted. The language of § 20-47 make certain marriages absolutely void without any decree of divorce or any other legal process whereas under § 20-45 a marriage where one of the parties was insane is void only from the time it is declared to be so by a decree of divorce or nullity. It is recommended that the prohibitions of these sections apply only where an individual has been adjudicated incompetent by a court of record and that the marriage be voidable by court action only.

Commitment and Release

4. Throughout Title 37 the word "epileptic" appears along with the designations of other mental conditions for which commitment to an institution may be had. As a practical matter, however, persons with convulsive seizures are no longer committed to mental institutions. There are persons with epilepsy in the mental institutions but they are there because of a concomitant mental conditions requiring such treatment. It has been suggested that all reference to epilepsy should be deleted from Title 37 and in case of a bulk revision this might be desirable. However, in the absence of such a revision, we recommend that the law be conformed to facts, and that epilepsy be defined as a condition where the convulsive disorders are associated with mental illness.

5. It is generally recognized that detention of a mentally ill person in jail is a devastating experience which inhibits his recovery and the law now prohibits this, but with an exception which, in practice, results

in some cases in the use of jails to detain mental cases after commitment. We recommend that the prohibition be made absolute as to the jailors, but that authority be vested in the committing justice to permit such detention in emergency cases for good cause shown, provided notice is given to the Commissioner of Mental Hygiene and Hospitals.

6. Chapter 3 of Title 37 of the Code is the generally applicable basic statute under which commitments for mental illness, mental deficiency, inebriety or addiction are had, but Chapter 6 contains provisions relating to inebriates and drug addicts and Chapter 7 contains provisions as to mentally deficient, epileptics, and inebriates. There are some minor variations between the provisions of these several chapters and the result has been unnecessary confusion. We recommend that the procedural provisions all be placed in Chapter 3 of this Title so that there will be a single, uniform statute applicable to all types of commitments to all types of institutions, both public and private, this chapter to include the special provisions which are necessary relating to different types of cases.

7. Only two of the State hospitals have maximum security facilities suitable for the detention of persons who are mentally ill and are accused, or have been convicted, of crimes. Nevertheless, some courts have committed such persons for observation or otherwise to one of the other State hospitals. It is therefore recommended that the statute be amended to make Southwestern State Hospital and Central State Hospital the only ones to which such persons can be committed. There are relatively few such cases and with modern communications this will not entail any serious hardship. At the same time, it will prevent the disruption of the orderly functioning of the other institutions which occurs when a criminally mentally ill person is committed there.

The affected statutes refer, in some instances, to "feeble-minded" as well as to "insane" persons. This should be made uniform; however, since the training schools do not have proper facilities for persons charged with crime, and both training schools are overcrowded, commitment should in all such cases be to the Southwestern or Central State Hospitals.

The statutes now provide that the question of the accused's sanity at the time of trial can, in the discretion of the court, be determined by a jury. We feel that the accused should in such cases have the benefit of a psychiatric examination, and have so provided. If the accused is thought to be of unsound mind, he should come before a regular commission, which can pass upon the question of whether his mental conditions is such that he should be committed. Even after conviction and before sentence the court may, under present law, provide for a determination of his sanity by a commission and take appropriate action based thereon. *It should be emphasized, however, that this section does not affect the right of the accused to plead insanity as a defense, if he is brought to trial.* He would still be entitled, as a matter of right, to a jury trial on this issue.

8. Title 37 of the Code now provides for commitment for observation, either by a commission or on the certificate of two physicians, of persons who are mentally ill or mentally deficient. A person so committed may be detained for a maximum of forty-five days. No provision is made for any commitment for inebriety or drug addiction except by a commission.

It has been found that the forty-five day period is frequently too short for treatment and in many cases it has been necessary for patients to undergo the upsetting experience of a formal commitment proceeding; such a person might, if the hospital had been able to keep him for a longer period initially, have been released after treatment without delay. It is

accordingly recommended that the forty-five day period be increased to ninety days in the case of a commitment for observation, whether by a commission or on the certificate of two physicians.

In the case of inebriates and drug addicts, it is not thought desirable to facilitate their entry into the State hospitals, where they prove a disturbing element and inhibit the treatment of mentally ill patients. However, it is recommended that commitment of such persons to private institutions on the certificate of two physicians be permitted but that the period of detention be limited to ten days, during which time the institution will have had an opportunity to observe the patient and will be in a position to take whatever further action appears appropriate.

9. All too frequently symptoms of mental disorder appear suddenly and at times when it is not possible to assemble the members of a commission. In such cases the individual's friends or family may place him in an institution, although the person is mentally incapable of understanding what is being done for him or of giving consent. The patient may be dangerous to himself or to others and yet a mental institution cannot legally detain him if he recovers sufficiently to demand his release. Detention for a period not to exceed forty-eight hours, with notice being given immediately to the person's guardian or relative or other responsible person, would allow the authorities of the institution time to take the necessary steps to protect the public and the patient. Such a statute would meet a real need which is being experienced by both public and private institutions.

Administrative Matters

10. § 37-128 of the Code now permits the Superintendent of a State hospital to place at board in a suitable family approved by the State Hospital Board a patient "who is quiet and not dangerous", the cost of his board and lodging up to twenty dollars a week to be paid by the particular institution. This has proved beneficial in assisting such patients to make an adjustment toward re-entry into civilian life and makes the hospital bed formerly occupied by such patient available for one needing more intensive therapy. Since the cost, however, is borne by the hospital concerned it in effect is increasing its expenditures; this is because in addition to the payment of the board of the released patient, it must pay the cost of maintaining the patient who replaces him in the institution. It is recommended that the use of out-patient care be made more readily available by the making of an appropriation for the purpose to the Department of Mental Hygiene and Hospitals, and by eliminating the unrealistic limitation of twenty dollars a week on costs. It is further recommended that the superintendents of the State institutions be authorized in appropriate circumstances to place patients in nursing homes or similar institutions provided that the regulations of the State Board of Health are amended to permit such licensed institutions to accept mental patients.

11. In some jurisdictions there has been a misinterpretation of the provisions of § 37-75, which fixes fees to be paid members of commissions in commitment proceedings, to the effect that such fees are payable only when the person being proceeded against is actually committed. This obviously militates against an impartial attitude on the part of the members of the commissions. Further, there has been some confusion as to the locality which is to be charged with the costs of a commitment proceeding where the person proceeded against is, at the time of the proceeding, in one of the State hospitals. It is recommended that this section be

amended to make it plain that the fees are payable whether or not the individual is actually committed and further, to specify in the case of a patient in an institution that the cost will be borne by the locality in which the patient was residing at the time of commitment or admission to such institution.

12. The present institutions treating inebriates only are required to be licensed by the Department of Mental Hygiene and Hospitals. The State Health Department maintains treatment centers for the study and treatment of persons addicted to excessive use of alcohol, and it appears appropriate that the licensing function be exercised by that Department.

Recommended Bills

We have discussed only generally the purpose of the changes which we recommend in Title 37. We attach bills to carry out these changes, which indicate specifically the amendments, additions, and repeals which we propose. We set forth in a note following each section of the bill the specific changes which are made and the reason therefor.

Respectfully submitted,

EDWARD E. WILLEY, Chairman
WILLIAM T. MUSE, Vice-Chairman
MATT G. ANDERSON
W. K. BARNETT
*EARLE M. BROWN
EMORY L. CARLTON
HIRAM W. DAVIS
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MACK I. SHANHOLTZ
JOHN H. TEMPLE

*See Statement.

STATEMENT OF EARLE M. BROWN

I approve the report generally, but I have serious reservations as to Recommendation Number 9.

EARLE M. BROWN

STATEMENT OF RICHARD W. GARNETT, JR.

§ 37-121.1 providing for 48 hours detention of an uncommitted patient in emergency situations should be lengthened to at least 72 hours in order to allow the hospital sufficient time to arrange and effect commitment notifications, etc. This is necessitated particularly over weekends, holidays and situations in which it is impossible to arrange for commitment because of the judge being unavailable, etc.

RICHARD W. GARNETT, JR.

A BILL *to amend and reenact §§ 37-1.1, 37-61, 37-61.1, 37-62, 37-62.1, 37-63, 37-64, 37-69, 37-72, 37-75, 37-78, 37-79, 37-99, 37-100, 37-102, 37-103, 37-105 through 37-109, 37-111, 37-113 through 37-117, 37-119, 37-126, 37-128, 37-130, 37-131, and 37-136.1 of the Code of Virginia, as severally amended, and to amend the Code of Virginia by adding sections numbered 37-71.2, 37-71.3, 37-98.1, 37-112.1, 37-130.1, and 37-230.2, the amended and new sections relating to the commitment or admission of persons to public and private institutions for the care and treatment of mentally ill and mentally deficient persons, care and treatment of patients in such institutions, and release from such institutions; and to repeal §§ 37-6, 37-110, 37-110.1, 37-118, 37-154, 37-156 through 37-168, 37-171 through 37-187, 37-189, 37-190, 37-193 through 37-209, 37-212, 37-214 through 37-215.1, 37-217 through 37-222, 37-224 and 37-225, as severally amended, relating to the same matters.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 37-1.1, 37-61, 37-61.1, 37-62, 37-62.1, 37-63, 37-64, 37-69, 37-72, 37-75, 37-78, 37-79, 37-99, 37-100, 37-102, 37-103, 37-105 through 37-109, 37-111, 37-113 through 37-117, 37-119, 37-126, 37-128, 37-130, 37-131, and 37-136.1, as severally amended, of the Code of Virginia be amended and reenacted; and that the Code of Virginia be amended by adding sections numbered 37-71.2, 37-71.3, 37-98.1, 37-112.1, 37-130.1, and 37-230.2, the amended and new sections being as follows:

§ 37-1.1. As used in this Title *except where the context requires a different meaning or where it is otherwise provi* the following words shall have the meaning ascribed to them:

(1) "Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, or of the community, he requires care and treatment;

(2) "Mentally deficient" means any person afflicted with mental defectiveness * to such extent that he is incapable of **caring for* himself **or managing* his affairs, who for his own welfare or the welfare of others or of the community requires supervision, control or care and who is not mentally ill * to such an extent as to require his commitment to an institution for the mentally ill;

(3) "Commissioner" means the Commissioner of Mental Hygiene and Hospitals;

(4) "Department" means the Department of Mental Hygiene and Hospitals;

(5) "Board" means the State Hospital Board;

(6) "Legal resident" means any person who has lived in this State for a period of one year without public support for himself or his spouse or minor children;

(7) "Justice" or "trial justice" includes police justices or civil and police justices of cities, *and judges of county, municipal and juvenile and domestic relations courts* but except as hereinafter provided shall not include a justice of the peace or mayor;

*

(9) "Insane" means a person who has been adjudicated legally incompetent by a court of record or other constituted authority because of mental disease *under Chapter 5 of this Title;*

(10) "Feeble-minded" means a person who has been adjudicated legally incompetent by a court of record or other constituted authority because of **mental defectiveness under Chapter 5 of this Title;*

(11) "Hospital" means a *State* hospital for the care and treatment of mentally ill;

(12) "Colony" means the Lynchburg Training School and Hospital, *or* the Petersburg Training School;*

(13) Except as used in Chapter 11 of this Title, "private institution" means an establishment not operated by the Board and licensed under § 37-254 for the care or treatment of mentally ill, mentally defective or epileptic persons, including psychiatric wards of general hospitals, but does not include an establishment solely for care or treatment of persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants.

(14) "Inebriate" means a person who through use of alcoholic liquors has become dangerous to the public or himself or unable to care for himself or his property or family.

(15) "Drug addict" means a person who, through use of habit forming drugs has become dangerous to the public or himself or unable to care for himself or his property or his family.

(16) "Epileptic" means a person subject to convulsive seizures associated with mental illness.

Note: The amendment to this section redefines "mentally deficient" without reference to age, modernizes the definition of "justice", eliminates the obsolete term "dotard", defines the private institutions to which commitments may be made, clarifies the meaning of the terms "insane" and "feeble-minded", and omits obsolete language. It also transfers to this section the definitions of "inebriate" and "drug addict" and defines the word "epileptic" to relate solely to those whose seizures are associated with mental illness.

§ 37-61. Any circuit or corporation judge, or any * justice, *as defined in § 37-1.1,* when any person in his county or city is alleged to be mentally ill, epileptic, mentally deficient or inebriate, upon the written complaint and information of any * *responsible person,* shall issue his warrant, ordering such person to be brought before him. The judge or justice may issue the warrant on his own motion. *

Note: The words "responsible person" have been substituted for "respectable citizen" to clear up the ambiguity as to whether a nonresident could make the complaint. The provision for appointment of a justice of the peace to conduct the proceeding is eliminated as being obsolete in view of the provisions for special justices under § 37-61.2; and the defined term "justice" is used rather than the obsolete words "trial justice".

§ 37-61.1. (a) Any person alleged or certified to be mentally ill or mentally **deficient* and who is not in confinement on a criminal charge, may be admitted to and confined in a State or private institution by compliance with any one of the following procedures:

(1) Voluntary admission.

(2) Commitment for observation.

(3) General commitment.

(b) In any proceeding for commitment under the provisions of this **Title* the person whose commitment is being sought shall have the right

to be represented, at his own expense, by counsel of his choice. The judge upon whose warrant such proceeding is being held shall explain to the person being examined, if he is of such age and mental condition as to be able to understand, the nature and effect of the proceeding, that he has a right to be represented by counsel, and that he may have summoned a physician of his choice as provided by § 37-64.

(c) Any attorney representing any person in any proceeding for commitment under this Title shall prior to such proceeding personally consult with such person, unless the judge presiding at such proceeding certifies that in his opinion such consultation would serve no useful purpose. Such certification shall be made a part of the record of such proceeding.

(d) At any hearing in any proceeding for commitment under this Title the person whose commitment is sought, his attorney, and any physician whose testimony is introduced shall be present unless the judge presiding at the proceeding determines that due to such person's condition his presence at the hearing would not be in his best interest, which determination shall be made a part of the record of the proceeding.

Note: The amendments require that attorneys representing persons in commitment proceedings actually consult with their clients, and that such attorneys, physicians who testify, and the person whose commitment is sought be present at the hearing; in the discretion of the presiding judge, however, such consultation and the presence of such person at the hearing may be dispensed with. The language relating to "mentally defective" is changed to conform with the definition in § 37-1.1.

§ 37-62. The judge or * justice * shall summon two licensed and reputable physicians, one of **whom* shall, when practicable, be the physician of the person who is alleged to be mentally ill, epileptic, mentally deficient, or inebriate. **In case the person is alleged to be mentally deficient, the judge or justice may in his discretion summon, in lieu of one of the physicians, a clinical psychologist certified in accordance with Chapter 6 of Title 54 of the Code. No physician or psychologist so summoned* shall in any manner be related to * *such person* or have an interest in his estate. The judge *or justice* and the two physicians, or the **judge or justice and the physician and psychologist, as the case may be,* shall constitute a commission to inquire whether such person is mentally ill, epileptic, mentally deficient or inebriate and a suitable subject for a hospital **or private institution,* for the care and treatment of mentally ill, epileptic, mentally deficient or inebriate persons, and for that purpose the judge *or* justice * shall summon witnesses to testify under oath as to the condition of such person.

Note: Amended to incorporate the provisions of § 37-193 permitting a clinical psychologist to serve as a member of a commission, and to include a reference to private institutions.

§ 37-62.1. In any proceeding for commitment under this **Title,* the judge upon whose warrant such proceeding is being held shall ascertain if the person whose commitment is sought is represented by counsel. If such person is not represented by counsel such judge shall appoint an attorney at law to represent such person in such proceeding. For his services rendered in connection with the proceeding for commitment such attorney shall receive a fee of ten dollars to be paid as a part of the fees and expenses of commitment as provided in § 37-75 of the Code of Virginia.

Note: The amendment requires that counsel be made available for all types of commitments, not merely for persons subject to "regular" commitments.

§ 37-63. *In any proceeding for commitment under this Title* the physicians, *or physician and clinical psychologist,* shall **make a* personal

examination of such person. *By *such examination and by such other* inquiry *as they deem necessary they shall* satisfy themselves and the judge or justice that the person being examined shows sufficient evidence of being mentally ill, mentally deficient, epileptic, or inebriate to warrant his commitment to a State hospital, **to a colony, or to a private institution.*

Note: Amended to require personal examination of persons whose commitment is sought, to make the section applicable to all commitments, not merely those to State hospitals for observation, and to conform to the provisions of § 37-62 permitting clinical psychologists to serve as commission members in certain cases.

§ 37-64. If the two physicians, *or physician and clinical psychologist,* summoned under § 37-62 do not agree, **another* physician shall be summoned. If the person being examined request it, there shall * be summoned a physician of his choice. **Any physician so summoned shall make a personal examination of such person and thereafter* shall sit with and be a member of the commission; provided, that the fee and expense of **a* physician *summoned at the request of the person being examined* shall be paid by **such* person. *

Note: Amended to require that any additional physician participating in the proceeding make a personal examination of the person whose commitment is sought, and to conform to the provisions of § 37-62 as to clinical psychologists.

§ 37-69. One of such copies shall be transmitted by the judge or justice to the superintendent of the hospital or colony to which admission is sought, and the other copy filed **with* the clerk of the court of the county or city in which deeds are admitted to record; *provided, that if the person whose commitment is sought is, at the time of the proceeding, confined in any institution under the control of the Departments of Health, Mental Hygiene and Hospitals or Welfare and Institutions or private institution, a certified copy of the record required by § 37-68 shall be sent by the judge or justice to the clerk of such court of the county or city in which such person was residing at the time he entered such institution, and be filed in such clerk's office.* The clerk shall enter the copy sent him in a book to be supplied by his county or city, shall properly index the same and shall not permit the same to be kept open to public inspection.

Note: Amended to require copies of records of commitment to be filed in clerk's office of locality of residence, if different from that where proceeding is held.

§ 37-71.2. (a) In any case where commitment to a private institution is sought, the presiding justice shall before making an order of commitment, inquire and ascertain whether the private institution is a fit and proper institution to have the care of such person, and shall in the order of commitment designate the institution to which the person proceeded against is to be committed, and which he finds to be a proper institution to have charge of such person.

(b) The person committed shall have, as a matter of right, the right to appeal from the judgment of the justice in respect to the fitness of the institution to which he may be committed, to the circuit court of the county or to the corporation court of the city in which the proceedings may be had. Upon such appeal the court shall review the question whether the private institution designated by the justice is a fit and proper institution to have the care of the person so committed by him. If the court shall be of opinion that the institution designated by the justice is a fit and proper institution, it shall affirm his judgment in that respect. If the court shall find that the institution designated by the justice is not a fit and proper institution to have the care of the person committed, then the court shall have power to inquire and ascertain some other hospital or private institution proper and fit to take charge of the person pro-

ceeded against, and shall in such case, by its order, designate and appoint such hospital or institution to take charge of such person in lieu and in place of the one designated by the justice.

§ 37-71.3. The person proceeded against shall have the right to be present and be heard in case of any appeal taken by him, and to employ counsel to represent him.

§ 37-72. The sheriff *or city sergeant* shall be responsible for the safekeeping and proper care of any person committed to any State hospital, *colony *or private institution; subject to the provisions of § 37-78, any such person shall be* delivered *forthwith* to the proper institution or its authorized agent.

Note: Amended to conform to the policy of permitting commitments in all cases to private institutions; to include a reference to city sergeants, and to conform the section to the proposed amendment to § 37-78.

§ 37-75. *Whether or not the person being examined be found subject to commitment, any* * physician *or clinical psychologist serving as a member of a commission* shall receive a fee of ten dollars * for **his* services, except that such fee in the city of Richmond shall be fixed by the governing body thereof in an amount not to exceed ten dollars. *Any special justice appointed in accordance with the provisions of § 37-61.2 shall receive a fee of ten dollars for his services. The officer making the arrest and summoning the commission and witnesses shall receive the same fees as are allowed for like services in a felony case. The witnesses regularly summoned before such commission shall receive such compensation for their attendance and mileage as is allowed witnesses summoned to testify before grand juries. **Each special* justice, * physician *or psychologist* shall receive like mileage. All expenses incurred, * including the fees, attendance and mileage aforesaid, shall be paid by the county or city **in* which such person was **residing* at the time of such *proceeding for* commitment, *or if such person is at the time of such proceeding a patient in a State hospital or colony or private institution, by the county or city in which he was residing at the time of commitment or admission to such hospital, colony or institution;* provided, that if such person's residence is not established in the State of Virginia, costs shall be paid by the State, and provided that if any such person, at the time of **such proceeding,* be confined in any State-supported institution *other than a hospital or colony,* such fee shall be paid by the State. Any such fees, costs and expenses incurred in connection with the examination of any person under the provisions of §§ 37-61 to 37-65, when paid by any county, city or the State, shall be recoverable by such county, city or the State from the person so examined, or from his estate, or from the person at whose request the proceedings were instituted, in an appropriate action or proceeding for such purpose; provided, no such fee or costs shall be recovered from any person or his estate when he is found sane or not subject to commitment*.

Note: Amended to clarify the provision that fees are payable whether or not the person is committed; and to impose liability for payment of the costs on the locality in which he was residing at the time he entered a hospital, colony or private institution; and to provide for fees for clinical psychologists who serve as commission members.

§ 37-78. It is unlawful for the sheriff, sergeant or other officer having in his custody any mentally ill, mentally deficient, epileptic or inebriate person after the commitment of such person to any hospital, colony or other institution to use any jail or other place of confinement for criminals, as a place of detention for such person, **unless the detention therein of such person is specifically authorized by the justice pre-*

siding over the commission which commits such person, and notice thereof is given by telephone or telegraph to the Commissioner or his deputy.

Note: This amendment prohibits the holding of any committed person in jail until transferred to a hospital unless authorized by the committing justice, with notice to Commissioner.

§ 37-79. **Upon the day of the commitment, it shall be the duty of the sheriff, sergeant or other officer having custody of any mentally ill, epileptic, mentally deficient or inebriate person to deliver such person to the proper hospital or institution.*

The justice presiding over the commitment proceeding may order such person to be placed in the custody of any responsible person or persons for the sole purpose of transporting the committed person to the proper hospital or institution. In the discretion of the justice, such bond as is prescribed in § 37-132 may be required.

If any hospital or colony has become so crowded that it is impossible to accomodate more such persons therein, the Commissioner shall give notice of the fact to all sheriffs and sergeants, and shall designate the hospitals to which they shall **transport* such persons. *

Note: The amendment would impose on the sheriff or sergeant a duty to take a committed person immediately to the proper institution. Also it would provide that the justice may allow a private citizen to take a committed person to the proper institution, and require bond in his discretion.

§ *37-98.1. Notwithstanding any other provision of this Title, when any patient in a hospital or private institution, who has not been committed or voluntarily admitted thereto would, in the opinion of the medical officer in charge of the hospital or private institution, if released be dangerous to himself or others, such medical officer may cause such patient to be detained for a period of not exceeding forty-eight hours; provided, that immediate notice of such detention is given to the legal or natural guardian, if any, of such patient or to some relative or other person who in the opinion of such officer is capable of assuming responsibility for such patient.*

Note: This section is designed to take care of emergency situations which sometimes occur in which a mental institution under present law must release a patient whom it knows to be dangerous.

§ 37-99. The judge of any circuit or corporation court, or any judge of a county or municipal court upon written request of any **responsible person* accompanied by the certification of a duly licensed physician, who shall if practicable be the person's family physician, upon forms prescribed by the State Hospital Board, may commit to any State hospital *or private institution* for observation as to his mental condition, any suitable person in his county or city who is not an inebriate or drug addict. Such person shall be entitled to be represented by counsel, at his own expense, at the hearing before the judge, and to have a physician of his choice summoned, as provided in § 37-64. A commitment under this section shall not be deemed a final adjudication of the mental condition of the person committed, and shall not affect any right or privilege theretofore possessed by such person under the laws of this Commonwealth.

Note: Amended to permit observation commitments to private institutions (not applicable to inebriates and drug addicts); and to eliminate the citizenship requirement for initiating a commitment.

§ 37-100. A person committed under the preceding section shall not be detained in the hospital, * colony *or private institution* more than **ninety* days, unless he makes application for further care and treatment

as a voluntary patient subject to the provisions of § 37-113, or is committed as provided in § 37-102.

Note: Maximum observation period increased from forty-five to ninety days; made applicable to private institutions.

§ 37-102. Any person in a State hospital *or private institution* admitted under this article for observation may be committed as mentally ill, epileptic or mentally deficient by the judge originally acting in the case *or his successor in office,* upon the duly sworn certificate of the superintendent of **the* hospital *or of the chief medical officer of a private institution* and one or more physicians of the *staff of the* hospital **or private institution* who have made a careful psychiatric study to determine his mental condition, that the patient is mentally ill, epileptic or mentally deficient. The same provisions as to filing and recording are to be observed as in regular commitments. For services rendered under the provisions of this section no fees shall be payable to anyone. Any commitment under this section may be appealed as provided by § 37-71.1.

Note: Amended to permit regular commitment of patients under observation commitment in private institutions.

§ 37-103. The superintendent of any State hospital or colony **or the official in charge of any private institution* may, without an order of a judge or justice, receive into his custody and detain temporarily in the hospital, * colony *or private institution* * a person whose case is certified by two licensed physicians, neither of whom is in any manner related to or connected by marriage with him or as has any interest in his estate, after careful personal examination and inquiry, whose mental condition is found to be such that it would be for his safety and benefit to receive proper * care and treatment, and upon a written petition to the superintendent of the hospital or institution made by some responsible person or persons.

Note: Amended to permit commitment of mentally ill or mentally deficient persons to private institutions on physicians' certificate. (The omitted language "for the care and treatment of the mentally ill" is unnecessary in view of the definitions in § 37-1.1).

§ 37-105. The certificate executed by such physicians shall contain adequate reasons why the alleged mentally ill *or mentally deficient* person should be received in a State hospital, * colony *or private institution.* The examining physicians shall furthermore answer, as far as practicable, from their personal knowledge and from information furnished by competent persons, the interrogatories prescribed by law in the regular form of examination and commitment of mentally ill persons.

Note: Amended to conform to § 37-103, and to include mental deficiency.

§ 37-106. By virtue of the certificate and urgent need of custody and treatment and of the petition, the alleged mentally ill *or mentally deficient* person may be received and detained in the State hospital, *colony,* or **private* institution *for a period not to exceed **ninety* days.

Note: Amended to conform to § 37-103, to increase period of detention permitted from forty-five to ninety days, and to include mental deficiency.

§ 37-107. The superintendent *or chief medical officer* of any such institution may refuse to receive the alleged mentally ill *or mentally deficient* patient upon such certificate and petition, if, in his judgment, the reasons stated in the certificate are not sufficient, or if the mental condition of the patient is not of such nature as to make it necessary that he should receive hospital treatment and care.

Note: Amended to include mentally deficient, and to refer to private institutions.

§ 37-108. If the condition of the alleged mentally ill *or mentally deficient* person seems to the superintendent *or chief medical officer* of the hospital, *colony* or institution to justify it, and upon proper and satisfactory notice by wire, telephone, in person or otherwise to the superintendent *or chief medical officer,* the alleged mentally ill *or mentally deficient* person may be forthwith conveyed to the hospital or institution by the person applying for his admission or some other suitable person, who shall deliver to the superintendent *or chief medical officer* the certificate, the petition and all other written information relating to the case.

Note: Amended to include mentally deficient and to refer to private institutions.

§ 37-109. If any person admitted under §§ 37-103 to 37-106 is found upon observation to be mentally ill, epileptic or mentally deficient within **ninety* days after he is admitted to the hospital, *colony or private institution,* he may be committed as provided in Article 1 of * *this* chapter. *

Note: Amended to permit regular commitment of persons in private institutions and to increase permissible period of detention without commitment from forty-five to ninety days. The present requirement for notification to the judge in the locality of origin is omitted, this being covered by the proposed amendment to § 37-69.

§ 37-111. If any person admitted under §§ 37-103 to 37-106 is not found to be mentally ill, epileptic or mentally deficient within **ninety* days after he is admitted to the hospital or colony, *or private institution* he shall be discharged. In no case shall any such person be held in the hospital, * colony *or private institution* for more than **ninety* days, unless in the meantime he shall make application for further care and treatment as a voluntary patient under the provisions of § 37-113 or is committed as a mentally ill, epileptic or mentally deficient person under 37-61 to 37-98.

Note: Amended to increase permissible period of detention without commitment from forty-five to ninety days, and to make the section applicable to private institutions.

§ 37-112.1. The chief medical officer or medical officer in charge of a private institution may, without an order of a judge or justice, after careful personal examination, receive into custody and detain temporarily in the institution a person, upon a written request made by some responsible person or persons and upon the certificate of two licensed physicians neither of whom is a member of the active staff of the institution or is in any manner related to or connected by marriage with such person, or has any interest in his estate, that such person is an inebriate or drug addict in need of care and treatment. The physicians' certificate shall contain adequate reasons why such person should be received and detained in the institution and the examining physicians shall furthermore answer as far as practicable, from their personal knowledge and from information furnished by competent persons, the interrogatories prescribed by law in the regular form of examination and commitment. No person so admitted to a private institution shall be detained therein longer than ten days unless committed in accordance with the provisions of Article 1 of this chapter.

Note: This section would permit private institutions to admit and detain inebriates and drug addicts on certificate of two physicians, but would limit the period of detention to ten days.

§ 37-113. The superintendent of any * hospital, * colony * *or private institution* may, subject to the rules and regulations established by the State Hospital Board, receive and detain therein, as a patient, any * person who is * mentally ill * *or mentally deficient,* and who voluntarily makes

written application therefor, and whose mental condition is such as to render him competent to make the application, or understand it if made by another for him, *or any person for whom such application is made by his parent if such person is under twenty-one years of age and not emancipated, or by his legal guardian, if any;* provided * *such* admission does not deprive any person who has been committed of care and treatment in the hospital, or other institution for the mentally ill *or mentally deficient.*

Note: Amended to permit voluntary admissions of mentally deficient persons and admissions on application of parents of minors or legal guardians, and to make the section applicable both to State and private institutions.

§ 37-114. A person thus received as a voluntary patient at such hospital or institution shall not be detained under such voluntary agreement more than ten days after notice in writing, given by him or by another for him, with his knowledge and consent, of his intention or desire to leave the hospital, *colony* or *private* institution.

Note: Amended to include the colonies and private institutions.

§ 37-115. The superintendent or physician in charge of a State hospital *or colony* shall, after the admission of a patient by such voluntary agreement, present to the Board at its next meeting, a record of the patient, in accordance with such rules and regulations as are established by the Board.

Note: Amended to include the colonies.

§ 37-116. The cost of transportation of any such voluntary patient to and from the hospital or * *colony* shall not be borne by the hospital or * *colony.* Such voluntary patient shall be required to defray his expenses for care and treatment while in the hospital or * *colony* at a rate fixed by the Board but the charges shall not exceed the actual cost for his care, maintenance and treatment.

Note: Amended to include the colonies and to eliminate the word "institution".

§ 37-117. If, however, the voluntary patient is, in the opinion of the Board, unable financially to defray his * expenses for care, maintenance and treatment, then the Board may, for reasons apparent to them and stated on record, exempt the patient from the payment of these expenses.

Note: Amended to eliminate references to epileptics and inebriates.

§ 37-119. No nonresident mentally ill, * *or* mentally deficient * person shall be admitted or detained in any hospital under any contract with the Board except when there is a vacancy therein not applied for on behalf of any person residing in the State.

Note: Amended to conform to preceding section.

§ 37-126. * *Any* person * *committed to a private institution as provided in Chapter 3 shall be* confined until discharged in accordance with regulations of the State Hospital Board by the physician in charge of the institution. Neither the State nor any county, city, or town thereof shall be liable in any event for any costs or charges of sending a patient to a private * *institution,* or connected with or arising out of his being sent there, *but all costs of the proceedings, including fees payable to a justice, physician or clinical psychologist shall be ordered to be paid by those making the complaint.*

Note: Amended to eliminate the inference that commitments to private institutions can be only "upon request of the person's friends", to conform language to that in Chapter 3, and to clarify the language relating to costs.

§ 37-128. The superintendent of each State hospital * *or* colony may, *subject to the approval of the Commissioner,* place at board in a suitable family in this State approved by the State Hospital Board and under such rules and regulations as to it appear proper, any patient in the hospital or colony *or who has been committed thereto but not admitted, or who has been temporarily released therefrom* who is quiet and not dangerous * . The cost of the board and lodging of such patients shall not exceed * *an amount determined by regulation adopted by the Board.* Any patient so placed at board or the estate of any such patient or the person legally liable for the support of any such patient shall be liable for the cost of the board and lodging of such patient; provided, however, that the State Hospital Board shall ascertain the financial condition and estate of such patient, his present and future needs and the present and future needs of his lawful dependents and, whenever deemed necessary to protect him or his dependents, may agree to accept a sum for his board and lodging less than * the cost *to the State* of his board and lodging, * in *which* case * the remainder of the cost of such board and lodging shall be at the expense of the Commonwealth *and paid from funds appropriated for such purpose.* Bills for board and lodging of any such patient shall be payable monthly by such patient or the person legally liable for his support. Payment thereof shall be made to the * *Department of Mental Hygiene and Hospitals which* shall forthwith pay all funds so collected into the general fund of the State treasury; provided, however, that the estate of such patient shall not be depleted below the sum of two thousand five hundred dollars ($2,500.00). *The provisions of Article 6 of this chapter shall apply, mutatis mutandis, to collections authorized by this section.*

Note: Made applicable to all patients rather than only those presently in the hospital or colony, and regardless of diagnosis; maximum costs to be fixed by the Board; placement to be subject to approval of Commissioner, costs paid from funds appropriated to the Department, and collections to be made by it, in the manner provided for in Article 6.

§ 37-130. The bills for the support of patients who are placed at board in families under the provisions of this chapter shall be payable monthly. *

Note: It is recommended that the institutions no longer make payments to the boarding homes. However, a fund to provide for such payment will have to be created.

§ 37-130.1. In lieu of placing a patient at board in a private home, the superintendent of a hospital or colony may, subject to regulations adopted by the State Board of Health, place such patient in a nursing home or other institution licensed by the State Board of Health; provided, that the cost to the State of such placement shall not exceed the maximum fixed in § 37-128.

Note: Regulations of the State Board of Health now prohibit placement of persons suffering from mental illness in nursing homes. Many of these patients are borderline cases, and the regulation is difficult of enforcement; and in many cases nursing home type of care is the most suitable and beneficial that can be provided. It is accordingly recommended that authority to place such patients in nursing homes be given the State Hospital Board, subject to such regulations as may be adopted by the licensing agency, the State Board of Health.

§ 37-131. The State Hospital Board shall designate some competent person to visit patients who are boarded in * homes *or other institutions* as provided in the preceding sections, who shall visit these patients at intervals of not less than three months, to ascertain the manner in which they are being cared for, and shall make a written report to the super-

intendent of the conditions found to exist. In any instance in which it is found that a patient is neglected, improperly cared for, or abused, he shall be removed.

Note: See § 37-130.1.

§ 37-136.1. Any judge of a court of record, when any person in his county or city is alleged to be legally incompetent because of mental illness or mental * *defectiveness,* upon the written complaint and information of any **responsible person,* shall issue his warrant, ordering such person to be brought before him. The judge * may issue the warrant on his own motion.

If a person is in a * hospital, *colony, or private institution* under legal commitment and he is found by the superintendent *or chief medical officer* thereof after observation and examination to be mentally ill *or mentally deficient* to such a degree that the superintendent *or chief medical officer* believes him to be legally incompetent, the circuit court of the county or corporation or circuit court of the city of his residence, or the Chancery Court of the City of Richmond if he resides in that city north of the James River or upon an island in such river, or the Hustings Court of the City of Richmond, Part Two, if he resides in that city south of the James River, after reasonable notice to such person, shall, on the sworn certificate of the superintendent *or chief medical officer* that such person is believed to be legally incompetent due to either mental illness or mental defectiveness or upon such other evidence as the court may deem proper and require, determine if the person is legally incompetent because of mental illness or mental * *defectiveness.*

The Court, or jury, if one be requested, shall determine if the person is legally incompetent because of mental illness or mental * *defectiveness.* For this purpose the court shall and the person may summon witnesses to testify under oath as to the condition of such person.

If the court finds the person to be legally incompetent because of mental illness it shall adjudicate that person to be insane. If the court finds the person to be legally incompetent because of mental * *defectiveness* it shall adjudicate that person to be feeble-minded.

The person shall have the right to appeal to the Supreme Court of Appeals if he be adjudicated insane or feeble-minded.

Note: Amended to insure that the statute will permit determination of competency of persons committed to colonies or private institutions as well as to "mental hospitals"; to conform language to that of the definitions section, 37-1.1, and to provide for initiation of proceedings by any "responsible person" rather than any "respectable citizen."

§ 37-230.2. Any person who shall knowingly contrive or conspire to commit any person to an institution for the mentally deficient, mentally ill, epileptic or inebriate unlawfully or maliciously shall be guilty of a misdemeanor, and upon conviction, shall be fined not exceeding one thousand dollars, or confined in jail not exceeding one year, or both.

Note: This amendment enacts the present law without change, but places it in the chapter of the Title relating to penal provisions.

2. That §§ 37-6, 37-110, 37-110.1, 37-118, 37-154, 37-156 through 37-168, 37-171 through 37-187, 37-189, 37-190, 37-193 through 37-209, 37-212, 37-214 through 37-215.1, 37-217 through 37-222, 37-224, and 37-225, as severally amended, of the Code of Virginia, are repealed.

3. The validity of any commitment previously had of any mentally ill, mentally deficient, epileptic or inebriate person or person addicted to the

use of habit forming drugs to any institution for the care or treatment of such persons shall not be affected by any provision of this act nor shall this act affect the legal status of any person when such status has been determined or is fixed under any statute. Any proceeding pending on the effective date of this act under any statute in effect prior to such date shall be carried forward and concluded according to the provisions of such statute.

4. If any provision of this act or the applicability thereof to any person or circumstances be held to be invalid by any court of competent jurisdiction, the remainder of this act or the applicability thereof to other persons or circumstances shall not be affected thereby.

A BILL to amend and reenact §§ 19.1-227 through 19.1-231, 19.1-234 and 19.1-239 of the Code of Virginia, relating to persons charged with crime who are, or are suspected of being, insane or feeble-minded; and to amend the Code of Virginia by adding a section numbered 19.1-230.1, to provide for a commission to inquire into the mental condition of such persons under certain conditions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.1-227 through 19.1-231, 19.1-234 and 19.1-239 of the Code of Virginia be amended and reenacted, and that the Code of Virginia be amended by adding a section numbered 19.1-230.1, as follows:

§ 19.1-227. No person shall, while he is insane *or feeble-minded,* be tried for a criminal offense; nor shall any person charged with a felony be committed to any hospital or other institution for the mentally ill except by order of the court of record, or judge thereof, which has, or would have upon certification and indictment, jurisdiction of the trial of the case.

Note: Amended to include feeble-mindedness, in conformity with following sections.

§ 19.1-228. If, prior to * *arraignment* of any person charged with crime, either the court or attorney for the Commonwealth *or counsel for the accused* has reason to believe that such person is in such mental condition that his confinement in a hospital for the insane * is necessary for proper care and observation, *in order for the court to determine whether such person is mentally competent to plead and stand trial,* the court or the judge thereof may, after hearing evidence *or the representations of counsel* on the subject, commit such person, if a white person, to * *the Southwestern State Hospital* and, if a colored person, to the Central State Hospital *for observation and report,* under such limitations as it may order, pending the determination of his mental condition. In any such case the court, in its discretion, may appoint one or more physicians skilled in the diagnosis of insanity, or other qualified physicians, and when any person is alleged to be feeble-minded may likewise appoint persons skilled in the diagnosis of feeble-mindedness, not to exceed three, to examine the defendant before such commitment is ordered, make such investigation of the case as they may deem necessary and report to the court the condition of the defendant at the time of their examination. A copy of the complaint or indictment, attested by the clerk, together with the report of the examining commission, including, as far as possible, a personal history, according to the form prescribed by the * *State Hospital Board,* shall be delivered with such person to the superintendent of the hospital to which he shall have been committed under the provisions of this section. As used in this section the term "court" shall be construed to include courts not of record and courts of record.

Note: Amended for clarification, to permit issue of incompetence to be raised by defense counsel, to permit court to act on representations of counsel without hearing evidence, and to limit commitments in criminal cases to those hospitals maintaining departments for the criminal mentally ill.

§ 19.1-229. If, *at any time after arraignment,* a court in which a person is held for trial see reasonable ground to doubt his sanity or mentality at the time at which, but for such a doubt, he would be tried, * *the court may* suspend the trial, *declare a mistrial,* and * then proceed as prescribed in * § *19.1-228, all of which action shall be without prejudice to the right of the Commonwealth to retry the accused when his mentality has been determined.*

Note: Amended to allow a court, when doubts arise after arraignment as to accused's mental condition *at the time of trial,* to declare a mistrial and proceed to have his mental condition determined.

§ 19.1-230. If any such person * *committed for observation pursuant to §§ 19.1-228 or 19.1-229* to the department for the criminal insane at the proper hospital is, in the opinion of the superintendent, not insane or feeble-minded, or when such person, if insane, has been restored to sanity, the superintendent shall give ten days' notice in writing to the clerk of the court from which such person was committed and shall send such person back to the jail or custody from which he was removed, where he shall be held in accordance with the terms of the process by which he was originally committed or confined.

Note: Amended for clarification.

§ *19.1-230.1. If any such person so committed for observation pursuant to §§ 19.1-228 or 19.1-229 to the department for the criminal insane at the proper hospital is, in the opinion of the superintendent, insane or feeble-minded, the superintendent shall report such finding to the court from which such person was committed but shall retain custody of such person subject to the further order of the court. And upon receiving such report the court may appoint a commission of not to exceed three physicians, any or all of whom may be from the staff of the hospital where the person is committed for observation, who shall inquire into the fact as to the sanity or mentality of such person and report their findings to the court.*

Note: This new section is to fill in a hiatus in the present law to provide for a formal commitment proceeding for a person sent by a court to a State hospital for observation and found by the staff of the institution to be insane or feeble-minded.

§ 19.1-231. If the * commission find the accused to be sane at the time of their * *examination,* they shall make no other inquiry and the trial in chief shall proceed. If the * *commission* find that he is insane or feeble-minded at the time of their * *examination* the court shall order him to be confined in the department for criminal insane at the proper hospital until he is so restored that he can be put upon his trial.

Note: Amended to eliminate reference to determination by jury of patient's mental condition. If he be found able to stand trial, he can still place his sanity at the time of commission of the offense in issue at the trial. The provisions for investigation as to sanity at the time of the offense are omitted, as this is a matter for determination at the time the accused is tried for the offense.

§ 19.1-234. If, after conviction and before sentence of any person, the court see reasonable ground to doubt his sanity or mentality, it may * appoint a commission of insanity to inquire into the fact as to his sanity or mentality and may sentence him to commit him to jail or to * *the proper* hospital for the insane *as set forth in § 19.1-228* according as the * commission may find him to be sane or insane or feeble-minded.

Note: Amended to eliminate determination of mental condition after conviction by a jury and to provide for commitment by courts only to hospitals having departments for criminal mentally ill.

§ 19.1-239. When the defense is insanity or feeble-mindedness of the defendant at the time the offense was committed, the jury shall be instructed, if they acquit him on that ground, to state the fact with their verdict. If the jury so find the court shall thereupon if it deem his discharge dangerous to the public peace or safety, order him to be committed to * the *proper* State hospital for the insane *as set forth in § 19.1-228* and be confined there under special observation and custody until the superintendent of that hospital and the superintendent of any other State hospital or * colony shall pronounce him sane and safe to be at large.

Note: Amended to provide for commitment by courts only to hospitals having departments for criminal mentally ill.

A BILL to amend and reenact §§ 20-45 and 20-47 of the Code of Virginia relating to voidance of certain prohibited marriages and prohibiting marriages with certain patients in State mental institutions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-45 and 20-47 of the Code of Virginia be amended and reenacted as follows:

§ 20-45. All marriages which are prohibited by law on account of consanguinity or affinity between the parties, and all marriages solemnized when either of the parties was * incapable from physical *or mental* causes of entering into the marriage state, *or when either of the parties has been lawfully adjudged to be insane, epileptic or feeble-minded, as provided in Chapter 5 of Title 37,* shall, if solemnized within this State, be void from the time they shall be so declared by a decree of divorce or nullity, or from the time of the conviction of the parties under § 20-40. *

Note: Amended to eliminate reference to "insane", making section apply to persons incapable from mental causes of entering into the marriage state, and to incorporate language now contained in § 20-47, as to persons who have been adjudged incompetent.

§ 20-47. If any man or woman shall knowingly marry any person lawfully adjudged to be insane * or feeble-minded, *as provided in Chapter 5 of Title 37,* and duly admitted as a patient or inmate in any State Hospital or colony for the * *mentally ill or mentally deficient,* whether such person be actually confined in a hospital or colony or in the custody of some person on bond or furlough or at large as an escaped patient or inmate, he or she shall be guilty of a misdemeanor, and on conviction thereof shall be confined in jail not exceeding six months or fined not exceeding five hundred dollars, or both. * Futhermore, if any persons, resident of this State, one of whom *has been so adjudged to be insane or feeble-minded and* is a lawfully committed and undischarged patient or inmate of any State hospital or colony for the * *mentally ill or mentally deficient,* as above provided, shall, with the intention of returning to reside in this State, go into another state or country and there intermarry and return to and reside in this State, cohabiting as man and wife, such marriage shall be governed by the same law, in all respects as if it had been solemnized in this State. *

Note: Amended to make it clear that section applies only to those who have been adjudicated incompetent by courts of record, to eliminate the provision that such marriages shall be void without decree, and to eliminate a provision that hospital superintendents report on oath commitment of such persons of which fact the superintendent may not necessarily be aware. Language modernized as to the institutions and references to "epileptics" deleted.

to amend and reenact §§ 32-298 and 37-254 as amended of the Code of Virginia, relating to definitions under the "Virginia Hospital Licensing and Inspection Law" and to licensing of certain private institutions, hospitals, or homes by the State Hospital Board.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32-298 and 37-254 as amended of the Code of Virginia be amended and reenacted as follows:

§ 32-298. As used in this chapter unless a different meaning or construction is clearly required by the context or otherwise:

(1) "Person" means and includes individual, partnership, association, trust, corporation, municipality, county, and local governmental agencies, and any other legal or commercial entity and every manager or operator of a hospital embraced in this chapter, as requisite, excepting the United States, its departments and employees, and agencies thereof solely owned or directly controlled by it;

(2) "Hospital" means any institution, place, building or agency by or in which facilities for any accommodation are maintained, furnished, conducted, operated or offered for the hospitalization of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical or nursing attention or service as chronics, convalescents, aged, disabled or crippled, including, but not to the exclusion of other particular kinds with varying nomenclature or designation, ordinary hospitals, sanatoriums, sanitariums, rest homes, nursing homes, infirmaries and other related institutions and undertakings, *including institutions solely for care or treatment of persons addicted to the use of alcohol but* exclusive of maternity hospitals to the extent same are included within the scope of the provisions of chapter 10 of this title, so long as the licensing, inspection and supervisory provisions thereof remain in full force and effect but no longer, and exclusive of dispensary or first aid facilities maintained by any commercial or industrial plant, educational institution or convent, and exclusive of those institutions now or hereafter subject to control of the State Hospital Board, or medical or educational institutions of the State, and exclusive also of any home for indigent aged persons owned or operated by a county, city or town, or by two or more political subdivisions jointly;

(3) "Board" means the State Board of Health;

(4) "Commissioner" means the State Health Commissioner;

(5) "Nonrelated" means not related by blood or marriage; ascending or descending or first degree full or half collateral.

Note: The State Board of Health now operates a program for treatment of alcoholism, which is now considered by many persons to be a physical disease as much as a mental condition. It therefore appears appropriate that this agency should license the institutions for alcoholics, rather than the State Hospital Board.

§ 37-254. The State Hospital Board may annually license any suitable person to establish, maintain and operate, or to have charge of any private institution, hospital or home for the care or treatment of mentally ill, epileptic or mentally deficient persons, or persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants; *provided, that no institution devoted solely to the care or treatment of persons addicted to the use of alcohol shall be required to obtain a license from the Board.*

Note: It is contemplated that institutions serving inebriates only would be licensed as sanatoria by the State Board of Health.

A BILL to amend and reenact §§ 46.1-427 and 46.1-429 of the Code of Virginia, relating to suspension of operator's or chauffeur's licenses of mentally ill, epileptic and mentally deficient persons, and to reports to the Commissioner of the Division of Motor Vehicles of persons admitted to mental institutions; and to repeal § 46.1-428 of the Code, as amended, relating to suspension and restoration of licenses of inebriates or habitual users of drugs.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.1-427 and 46.1-429 of the Code of Virginia be amended and reenacted as follows:

§ 46.1-427. (a) The Commissioner, upon receipt of notice that any person has been legally adjudged to be * *insane or feeble-minded, in accordance with § 37-136.1 or that a person released from an institution operated or licensed by the State Hospital Board or transferred to an institution not licensed or operated by such Board is, in the opinion of the authorities of such institution, not competent because of mental illness, mental deficiency, epilepsy, inebriety or drug addiction to operate a motor vehicle with safety to persons or property* shall forthwith suspend his license; but he shall not suspend the license if the person has been adjudged competent by judicial order or decree. *

(b) In any case in which the person's license has been suspended prior to his release it shall not be returned to him unless the Commissioner is satisfied, after an examination such as is required of applicants by § 46.1-369, that such person is competent to operate a motor vehicle with safety to persons and property.

(c) The Clerk of the court in which any such adjudication is made shall forthwith send a certified copy or abstract thereof to the Commissioner.

Note: This amendment limits applicability of the section to persons adjudged insane or feeble-minded by courts of record and those as to whom opinions that they are incompetent to drive safely have been given by the authorities of mental institutions. Since automatic suspension of license on admission to mental hospitals is eliminated, the references to persons being "discharged as recovered" or "found . . . not mentally ill" are omitted.

§ 46.1-429. * *(a) At least ten days, if practicable, prior to the time when any patient is to be released from any institution operated or licensed by the State Hospital Board, if the mental condition of such patient is, because of mental illness, mental deficiency, epilepsy, inebriety or drug addiction, in the judgment of the superintendent or chief medical officer of the institution such as to prevent him from being competent to operate a motor vehicle with safety to persons and property, such superintendent or chief medical officer* shall forthwith report to the Commissioner, in sufficient detail for accurate identification, the * *date of release* of * *such* patient, *together with a statement concerning his ability to operate a motor vehicle.*

(b) As used in this section, the word "release" includes transfer of the patient to any institution not operated or licensed by the State Hospital Board.

Note: This amendment relieves the authorities of mental institutions from the necessity of reporting all admissions thereto, and imposes a duty on such officials to report to the Commissioner of Motor Vehicles, on release of a patient or his transfer to an institution not under the control of the State Hospital Board, whether in their opinion, the patient is competent to operate a motor vehicle safely.

2. That § 46.1-428, as amended, of the Code of Virginia is repealed.