

37.1

REVISION OF TITLE 37 OF THE CODE OF VIRGINIA

**REPORT OF THE
VIRGINIA CODE COMMISSION**

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



House Document 11

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1967

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REVISION OF TITLE 37 OF THE CODE OF VIRGINIA

REPORT OF THE VIRGINIA CODE COMMISSION TO THE
GOVERNOR AND THE GENERAL ASSEMBLY
OF VIRGINIA

Richmond, Virginia, November 13, 1967.

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly at its Regular Session of 1966 directed the Virginia Code Commission, by Chapter 206 of the Acts of that Session, to revise Title 37 of the Code of Virginia, relating to insane, epileptic, feeble-minded and inebriate persons.

Extracts from Chapter 206 follow:

"Whereas, the Commission on Mental Hygiene, in its report to the Governor and General Assembly dated October 29, 1963, indicated that an overall revision of Title 37 of the Code of Virginia is needed in order for the State to have a simple, complete and modern body of law in the field of mental hygiene; now, therefore,

"Be it enacted by the General Assembly of Virginia:

"§ 1. The Code of Virginia shall be gradually revised by revising one title at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions shall be printed and circulated among interested persons and their comments solicited.

"§ 2. The Commission shall undertake the revision of Title 37, and submit to the Governor and the General Assembly on or before October one, nineteen hundred sixty-seven, a report of its recommendations, together with suggested legislation necessary to carry such recommendations into effect."

Cyril D. Calley, Esquire, of the Alexandria City Bar was retained as Counsel to assist in the revision of this Title.

Counsel examined the provisions of this Title in detail and conferred with officials of the State Department of Mental Hygiene and Hospitals and also with persons having special interest and knowledge in the field. The Code Commission met with Counsel and such officials and persons on several occasions, and discussed in detail changes recommended by members of the Commission, by Counsel and by such officials and persons.

As a result of its efforts, the Commission considered it desirable that there be a general reenumeration of the sections, the deletion of certain obsolete sections, and the amendment of other sections. We are of the opinion that this can be better accomplished by the repeal of Title 37 and the enactment of Title 37.1 in lieu thereof.

Included in this Report is the Report of Counsel to the Commission on Title 37. Also, following each section of the draft of Title 37.1 are Counsel's notes identifying the source of the provisions of the section and commenting upon any changes therein. Furthermore, preceding the draft of Title 37.1 there is set forth a table of comparable sections, for the purpose of tracing each of the provisions of Title 37 into proposed Title 37.1. This table also indicates those sections of Title 37 which have been deleted. Those who are interested in the major features of the Revision should read the Report of Counsel and the notes following the several sections of Title 37.1, to which reference is hereby made.

RECOMMENDATIONS

The Code Commission submits this Report, and recommends that the Legislature enact the attached bills in 1968.

The Commission wishes to express appreciation for the valuable assistance rendered by Counsel in the preparation of this Revision, and for the cooperation of those officials and interested persons who gave their time in conferring with Counsel and the Commission.

Respectfully submitted,
JAMES M. THOMSON, *Chairman*
E. ALMER AMES, JR., *Vice-Chairman*
FRED W. BATEMAN
JOHN WINGO KNOWLES
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Alexandria, Virginia

November 13, 1967.

The Honorable James M. Thomson, *Chairman*
The Honorable E. Almer Ames, Jr.
The Honorable Fred W. Bateman
The Honorable Albert L. Philpott
The Honorable Robert D. McIlwaine, III
The Honorable John Wingo Knowles
The Honorable G. McIver Lapsley

Virginia Code Commission
State Capitol
Richmond, Virginia

Gentlemen:

Pursuant to your instructions, I have prepared and am sending to you a draft of revision of Title 37 of the Code of Virginia, relating to Institutions for Mental Illness.

This draft has been prepared in the usual form, i.e., a bill suitable for introduction at the 1968 Session of the General Assembly of Virginia, together with a table of contents and a table of comparable sections.

The bill is designed to repeal present Title 37 and to provide in substitution a Title 37.1. This is done (1) to provide appropriate orderliness and accessibility to existing statutes relating to "Mental Hygiene and Hospitals"; (2) to minimize conflicts, redundancy and obsolescence; and (3) to provide admission, hearing and retention procedures for persons mentally ill in keeping with the advances of psychiatry and law. To illustrate the facts considered to determine the requirement, Title 37 consisted of Chapters 1 through 11; subsequently Chapters 6 and 7 were repealed almost in their entirety and Chapters 1, 2 and 3 were altered extensively. Many individual sections in the Title were repealed, many more were added and amendments were even greater in number.

In addition to a general reenumeration of chapters, articles and sections to provide an orderly sequence of materials, the following illustrate the numerous changes considered desirable which appear in Title 37.1:

The replacement throughout Title 37 of the terms commitment, commission, inmate, detention and furlough with admission, patient, retention and convalescent leave wherever feasible.

The combination of Chapter 1, "State Institutions in General" and Chapter 2, "State Hospital Board; Department and Commissioner of Mental Hygiene and Hospitals" of Title 37 into Chapter 1 of Title 37.1, "State Hospital Board; Department and Commissioner of Mental Hygiene and Hospitals" to provide orderliness and eliminate redundancy in the sections dealing with the establishment and powers of the Board, Department and Commissioner;

The replacement of Chapter 3 of Title 37 "Commitment, Admission and Disposition in General" with Chapter 2 of Title 37.1 "Admissions and

Disposition in General" to eliminate the requirement of a commission being convened in order to admit a patient to a hospital. In order to provide appropriate safeguards in the admission of the mentally ill to a hospital, several new sections were added to Chapter 2 of Title 37.1. Chapter 2 of Title 37.1 contains also alternate sections for §§ 37.1-66, 37.1-67 and 37.1-69 which sections pertain to admissions. The alternate sections are provided in light of a recent lower New York State court decision requiring that the patient be advised of his legal rights before being examined by a doctor. Several articles of Chapter 3 of Title 37 are deleted and several more articles added with the intention of providing continuity and orderliness to Chapter 2 of Title 37.1;

The deletion of Chapter 6, "Provisions Applicable Solely to Inebriates and Drug Addicts" and Chapter 7, "Provisions Applicable Solely to the Mentally Deficient, Epileptics and Inebriates" of Title 37 which are obsolete in light of Chapter 2 of Title 37.1;

The remaining Chapters of Title 37 are presented as Chapters in Title 37.1 with conforming changes and deletion of sections deemed obsolete or redundant;

The addition of Chapter 9 of Title 37.1, "Interstate Compact" which is needed in order that the Commissioner may co-operate with approximately thirty-five states in the transfer of non-resident patients to their respective States; and

The addition of Chapter 10 of Title 37.1, "Community Mental Health and Mental Retardation Services" which is needed in order to promote more active participation of the communities of the State in mental health and mental retardation programs.

In counsel's opinion, special studies should be made of the following topics which are presented or referred to in Title 37.1: the application of the principal of reimbursement for the expense of care, treatment and maintenance of patients; the mentally ill charged with crime; and certain terms, i.e., insane and feeble-minded, as used in the Constitution of Virginia as well as throughout the remainder of the Code of Virginia. In addition, there are hundreds of sections throughout the Constitution and Titles of the Code of Virginia which are related to Title 37 through the use of certain terminology or by reference. A thorough study should be made in order to conform these sections with the definitions and changes proposed in Title 37.1.

Numerous provisions of Title 37 refer to other sections of the same Title, as well as to provisions found in other Titles of the Code. In some instances the references are to outside materials. In the preparation of this draft, counsel has attempted to conform these references with the prospective enactment of Title 37.1 and with other appropriate references as they have come to his attention.

For convenience, following each section of counsel's draft of Title 37.1 there may be found both a reference to the source of the provisions of that section and an explanation of the differences, if any, between the section and the provisions it is to replace.

However, the accompanying bill and all other proposed legislation introduced at the 1968 Session of the General Assembly relating to the same subject matter must be carefully compared and coordinated to avoid conflicts and thereby realize maximum benefits of the Commission's efforts.

Counsel has endeavored to conform with the instructions and desires expressed by the Virginia Code Commission at its various meetings in the

preparation of the text of Title 37.1. Careful consideration was given to the recommendations of the Commissioner of Mental Hygiene and Hospitals, the mental health and mental retardation associations in the State, and the several doctors in attendance at the Commission's meetings and to the Commission's discussions thereof as well as its actions with respect thereto.

Although many persons, both in and out of government, made valuable contributions to this undertaking, counsel wishes to give special recognition to the Honorable John Wingo Knowles, Richard N. Harris, Esquire, Assistant Attorney General, and Hugh R. Thompson, Jr., Esquire, General Counsel to the Commission, for their patience, understanding and cooperation in working with counsel as a subcommittee of the Commission on the particular problems of admission and retention procedures.

In conclusion, counsel recommends the accompanying draft of Title 37.1 as a substantial improvement over the present Title 37 and suggests its submission to the Governor and the General Assembly for introduction at the 1968 Session.

Respectfully,

CYRIL D. CALLEY

TABLE OF CONTENTS

TITLE 37.1 INSTITUTIONS FOR THE MENTALLY ILL

CHAPTER 1

State Hospital Board; Department and Commissioner of Mental Hygiene and Hospitals

- Article 1. The Board
§§ 37.1-1 through 37.1-38
- Article 2. The Department and Commissioner
§§ 37.1-39 through 37.1-48
- Article 3. State Sanatoria
§§ 37.1-49 through 37.1-54
- Article 4. Virginia Institute of Psychiatry
§§ 37.1-55 through 37.1-57
- Article 5. Virginia Treatment Center for Children
§§ 37.1-58 through 37.1-62

CHAPTER 2

Admissions and Dispositions in General

- Article 1. Admissions
§§ 37.1-63 through 37.1-70
- Article 2. Transportation
§§ 37.1-71 through 37.1-78
- Article 3. Retention of Patients
§§ 37.1-79 through 37.1-90
- Article 4. Special Types of Patients
§§ 37.1-91 through 37.1-95
- Article 5. Residence
§§ 37.1-96 through 37.1-97
- Article 6. Discharge
§§ 37.1-98 through 37.1-102
- Article 7. Testing Legality of Detention
§ 37.1-103 through 37.1-104
- Article 8. Expenses of Care, Treatment and Maintenance
§§ 37.1-105 through 37.1-119

CHAPTER 3

Mentally Disordered Persons Not Confined in Hospitals 37.1-120 through 37.1-126

CHAPTER 4

Committees and Trustees

- Article 1. Appointment**
§§ 37.1-127 through 37.1-134
- Article 2. Powers, Duties and Liabilities**
§§ 37.1-135 through 37.1-147

CHAPTER 5

Miscellaneous and Penal Provisions
§§ 37.1-148 through 37.1-155

CHAPTER 6

Sexual Sterilization
§§ 37.1-156 through 37.1-171

CHAPTER 7

Extradition of Persons of Unsound Mind
§§ 37.1-172 through 37.1-178

CHAPTER 8

Licensing Private Institutions
§§ 37.1-179 through 37.1-189

CHAPTER 9

Interstate Compact
§§ 37.1-190 through 37.1-193

CHAPTER 10

**Community Mental Health and Mental
Retardation Services**
§§ 37.1-194 through 37.1-202

TABLE OF COMPARABLE SECTIONS

TITLE 37	THIS REPORT	TITLE 37	THIS REPORT
37-1	37.1-34	37-25.5	37.1-62
37-1.1	37.1-1	37-25.6	37.1-62
37-2	37.1-34	37-26	37.1-2
37-3	37.1-35	37-27	37.1-3
37-4	37.1-34	37-28	37.1-4
37-5	37.1-34	37-29	37.1-5
37-6	Repealed	37-30	37.1-6
37-6.1	Deleted	37-31	37.1-7
37-7	37.1-48	37-32	37.1-8
37-8	Deleted	37-33	37.1-9
37-9	37.1-36	37-34	37.1-10
37-10	Repealed	37-34.1	37.1-11
37-11	Repealed	37-34.2	37.1-12
37-12	Repealed	37-34.2:1	37.1-1
37-13	37.1-37	37-34.2:2	37.1-13
37-14	37.1-24	37-34.2:3	37.1-14
37-15	37.1-148	37-34.2:4	37.1-15
37-16	37.1-150	37-34.2:5	37.1-16
37-16.1	Reserved	37-34.2:6	37.1-17
37-16.2	37.1-38	37-34.2:7	37.1-18
37-17	37.1-49	37-34.3	37.1-47
37-18	37.1-50	37-35	37.1-19
37-19	37.1-51	37-36	37.1-20
37-20	37.1-52	37-36.1	37.1-21
37-21	37.1-53	37-37	37.1-22
37-22	37.1-54	37-38	37.1-23
37-23	37.1-55	37-38.1	37.1-24
37-24	37.1-56	37-39	37.1-25
37-25	37.1-57	37-40	37.1-26
37-25.1	37.1-58	37-41	37.1-25
37-25.2	37.1-59	37-42	Deleted
37-25.3	37.1-60	37-42.1	Deleted
37-25.4	37.1-61	37-43	Repealed

TABLE OF COMPARABLE SECTIONS—(Continued)

TITLE 37	THIS REPORT	TITLE 37	THIS REPORT
37-44	Deleted	37-71.3	Deleted
37-45	37.1-27	37-71.4	37.1-80
37-46	37.1-27	37-72	Deleted
37-47	37.1-29	37-73	37.1-93
37-48	37.1-30	37-74	37.1-94
37-48.1	37.1-28	37-75	37.1-89
37-49	37.1-31	37-76	Deleted
37-50	37.1-32	37-77	Deleted
37-51	Deleted	37-78	37.1-73
37-52	37.1-37	37-79	37.1-71 and 37.1-72
37-53	37.1-39		
37-54	37.1-40	37-80	Deleted
37-55	37.1-41	37-81	37.1-74
37-56	37.1-42	37-82	Repealed
37-57	37.1-43	37-83	Deleted
37-58	37.1-44	37-84	Deleted
37-59	37.1-45	37-85	37.1-75
37-60	37.1-46	37-86	Deleted
37-61	37.1-67	37-86.1	Deleted
37-61.1	37.1-64	37-86.2	37.1-68
37-61.2	37.1-88	37-87	37.1-78
37-62	Deleted	37-88	Deleted
37-62.1	37.1-80	37-89	Deleted
37-63	Deleted	37-90	37.1-70
37-64	Deleted	37-91	37.1-91
37-65	Deleted	37-91.1	37.1-92
37-66	Deleted	37-91.2	Deleted
37-67	37.1-64	37-92	Deleted
37-68	Deleted	37-92.1	37.1-101
37-69	Deleted	37-93	37.1-102
37-70	Deleted	37-94	37.1-98
37-71	37.1-71	37-95	37.1-96
37-71.1	37.1-84	37-96	37.1-97
37-71.2	37.1-85		

TABLE OF COMPARABLE SECTIONS—(Continued)

TITLE 37	THIS REPORT	TITLE 37	THIS REPORT
37-97	37.1-76	37-125	37.1-104
37-97.1	37.1-77	37-125.1	37.1-105
37-98	37.1-95	37-125.2	37.1-106
37-99	Deleted	37-125.3	37.1-107
37-100	Deleted	37-125.4	37.1-108
37-101	Deleted	37-125.5	37.1-109
37-102	Deleted	37-125.6	37.1-110
37-103	Deleted	37-125.7	Repealed
37-104	Deleted	37-125.8	37.1-111
37-105	Deleted	37-125.9	37.1-112
37-106	Deleted	37-125.10	37.1-113
37-107	Deleted	37-125.11	37.1-114
37-108	Deleted	37-125.12	37.1-115
37-109	Deleted	37-125.13	37.1-116
37-110	Repealed	37-125.14	37.1-117
37-110.1	Repealed	37-125.15	37.1-118
37-111	Deleted	37-126	37.1-120
37-112	Deleted	37-126.1	37.1-48
37-113	37.1-65	37-127	Deleted
37-114	Deleted	37-128	37.1-121
37-115	Deleted	37-129	37.1-122
37-116	37.1-71	37-130	37.1-119
37-117	Deleted	37-130.1	37.1-123
37-118	Repealed	37-131	37.1-124
37-119	Deleted	37-132	37.1-125
37-120	37.1-100	37-132.1	Deleted
37-121	37.1-64	37-133	Deleted
37-121.1	Deleted	37-134	Deleted
37-121.2	Deleted	37-135	37.1-126
37-121.3	Deleted	37-135.1	37.1-126
37-122	37.1-103	37-136	37.1-127
37-123	37.1-103	37-136.1	37.1-128
37-124	Deleted	37-136.2	37.1-129

TABLE OF COMPARABLE SECTIONS—(Continued)

TITLE 37	THIS REPORT	TITLE 37	THIS REPORT
37-137	37.1-130	37-166	Repealed
37-138	Repealed	37-167	Repealed
37-139	37.1-131	37-168	Repealed
37-139.1	Deleted	37-169	Deleted
37-140	37.1-132	37-170	Deleted
37-141	37.1-134	37-171	Repealed
37-142	Deleted	37-172	Repealed
37-143	Deleted	37-173	Repealed
37-144	37.1-135	37-174	Repealed
37-144.1	37.1-136	37-175	Repealed
37-145	37.1-137	37-176	Repealed
37-146	37.1-138	37-177	Repealed
37-147	37.1-139	37-178	Repealed
37-148	37.1-140	37-179	Repealed
37-149	37.1-141	37-180	Repealed
37-150	37.1-142	37-181	Repealed
37-150.1	37.1-143	37-182	Repealed
37-151	37.1-144	37-183	Repealed
37-152	37.1-145	37-184	Repealed
37-153	37.1-146	37-185	Repealed
37-153.1	37.1-147	37-186	Repealed
37-154	Repealed	37-187	Repealed
37-155	Repealed	37-188	Deleted
37-156	Repealed	37-189	Repealed
37-157	Repealed	37-190	Repealed
37-158	Repealed	37-191	37.1-96
37-159	Repealed	37-192	Deleted
37-160	Repealed	37-193	Repealed
37-161	Repealed	37-194	Repealed
37-162	Repealed	37-195	Repealed
37-163	Repealed	37-196	Repealed
37-164	Repealed	37-197	Repealed
37-165	Repealed	37-198	Repealed

TABLE OF COMPARABLE SECTIONS—(Continued)

TITLE 37	THIS REPORT	TITLE 37	THIS REPORT
37-199	Repealed	37-230	37.1-153
37-200	Repealed	37-230.1	37.1-33
37-201	Repealed	37-230.2	37.1-154
37-202	Repealed	37-231	37.1-156
37-203	Repealed	37-231.1	Deleted
37-204	Repealed	37-232	37.1-157
37-204.1	37.1-85	37-233	37.1-158
37-205	Repealed	37-234	37.1-159
37-206	Repealed	37-235	37.1-160
37-207	Repealed	37-236	37.1-161
37-208	Repealed	37-237	37.1-162
37-209	Repealed	37-238	37.1-163
37-210	Deleted	37-239	37.1-164
37-211	Deleted	37-240	37.1-165
37-212	Repealed	37-241	37.1-166
37-213	Deleted	37-242	37.1-167
37-214	Repealed	37-243	37.1-168
37-215	Repealed	37-244	37.1-169
37-215.1	Repealed	37-245	37.1-170
37-216	Deleted	37-246	37.1-171
37-217	Repealed	37-247	37.1-172
37-218	Repealed	37-248	37.1-173
37-219	Repealed	37-249	37.1-174
37-220	Repealed	37-250	37.1-175
37-221	Repealed	37-251	37.1-176
37-222	Repealed	37-252	37.1-177
37-223	Deleted	37-253	37.1-178
37-224	Repealed	37-254	37.1-179
37-225	Repealed	37-254.1	37.1-1
37-226	Repealed	37-255	37.1-180
37-227	37.1-149	37-256	37.1-181
37-228	37.1-151	37-257	37.1-182
37-229	37.1-152	37-257.1	37.1-183

TABLE OF COMPARABLE SECTIONS—(Continued)

TITLE 37	THIS REPORT	TITLE 37	THIS REPORT
37-257.2	Repealed	New	37.1-79
37-258	37.1-184	New	37.1-81
37-258.1	37.1-185	New	37.1-82
37-258.2	37.1-186	New	37.1-83
37-258.3	37.1-187	New	37.1-86
37-259	37.1-188	New	37.1-87
37-260	37.1-189	New	37.1-90
New	37.1-63	New	37.1-99
New	37.1-69	New	37.1-155
		New	37.1-190 Through 37.1-202

A BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to insane, epileptic, feeble-minded and inebriate persons; to that end to repeal Title 37 of the Code of Virginia, which title includes Chapters 1 to 11 and §§ 37-1 to 37-260, inclusive, of the Code of Virginia, as amended, and relates to insane, epileptic, feeble-minded and inebriate persons; to amend the Code of Virginia by adding thereto, in lieu of the foregoing title, chapters and sections of the Code repealed by this act, a new title numbered 37.1 which new title includes new chapters numbered 1 to 10, inclusive, and new sections numbered §§ 37.1-1 to 37.1-202, inclusive, relating to institutions for the mentally ill; and to prescribe when such revision and recodification shall become effective.

Be it enacted by the General Assembly of Virginia:

1. That Title 37 of the Code of Virginia, which title includes chapters 1 to 11 and §§ 37-1 to 37-260, inclusive, of the Code of Virginia, as amended, is repealed.
2. That the Code of Virginia be amended by adding thereto, in lieu of the title, chapters and sections of the Code herein repealed, a new title numbered 37.1, new chapters numbered 1 to 10, inclusive, and new sections numbered 37.1-1 to 37.1-202, inclusive, which new title, chapters and sections are as follows:

TITLE 37.1

INSTITUTIONS FOR THE MENTALLY ILL.

CHAPTER 1.

STATE HOSPITAL BOARD;

DEPARTMENT AND COMMISSIONER

OF MENTAL HYGIENE AND HOSPITALS.

Article 1.

The Board.

§ 37.1-1. **Definitions.**—As used in this title except where the context requires a different meaning or where it is otherwise provided, the following words shall have the meaning ascribed to them:

- (1) “Board” means the State Hospital Board;
- (2) “Boarding Home” means a home having a minimum of fifteen beds which provides twenty-four hour custodial care, which has been and is duly licensed pursuant to provisions of this title;
- (3) “Commissioner” means the Commissioner of Mental Hygiene and Hospitals;
- (4) “Department” means the Department of Mental Hygiene and Hospitals;
- (5) “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 family;
- (6) “Epileptic” means a person subject to convulsive seizures associated with mental illness;

(7) "Feeble-minded" means a person who has been adjudicated legally incompetent by a court of record or other constituted authority because of mental deficiency under chapter 4 of this title;

(8) "Hospital" or "hospitals" when not modified by the words "state" or "private" shall be deemed to include both State hospitals and private hospitals devoted to or with facilities for the care and treatment of the mentally ill or mentally deficient;

(9) "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 his family;

(10) "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 4 (§§ 37.1-127 et seq.) of this title;

(11) "Justice" includes only the judges, associate judges and substitute judges of county and municipal courts as defined in § 16.1-5 and of juvenile and domestic relations courts within the meaning of chapter 8 (§§ 16.1-139 et seq.) of Title 16.1 of this code, as well as the special justices authorized by § 37.1-88, and shall not include a justice of the peace or mayor;

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

(13) "Mental retardation" means subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior;

(14) "Mentally deficient" means any person afflicted with mental defectiveness from birth or early childhood to such an 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;

(15) "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; provided, that, for the purposes of Chapter 2 of this title, the term "mentally ill" shall be deemed to include any person who is afflicted with mental deficiency or mental retardation or is an epileptic, drug addict or inebriate;

(16) "Patient" means a person certified or admitted to a hospital according to the provisions of this title;

(17) "Private hospital" means a hospital, institution or sanatorium which is duly licensed pursuant to the provisions of this title;

(18) "Private institution" except as used in chapter 8 (§ 37.1-179 et seq.) of this title, means an establishment which is not operated by the Board and which is licensed under such chapter for the care or treatment of mentally ill, mentally deficient 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;

(19) "Property" as used in §§ 37.1-12 through 37.1-18 includes land and structures thereon;

(20) "State hospital" means a state hospital, training school, colony, sanatorium or other such state institution for the care and treatment of the mentally ill or mentally deficient;

(21) "Superintendent" means the chief executive officer of a hospital;

(22) "System of hospitals" or "hospital system" means the entire system of hospitals as defined in this section under the general supervision and control of the Department.

Source: §§ 37-1.1, 37-34.2:1 and 37-254.1.

Note: The following definitions are added to this section: boarding home, hospital or hospitals, mental retardation, patient, private hospital, property, state hospital, superintendent and system of hospitals or hospital system.

Mentally-ill is amended by adding the proviso.

"Feeble-minded" is amended by substituting "deficiency" for "defectiveness" in the last line of the definitions. Also, in this definition, "chapter 5" is changed to "chapter 4" to conform with internal changes.

References to "trial justices" and to "police justices or civil and police justice of cities" are deleted and the language reordered under the definition of "Justice."

The word "resided" is substituted for "lived" and the word "continuously" is added after "State" in the definition of "Legal resident."

The phrase "from birth or early childhood" is inserted between the words "defectiveness" and "to such" in the definition of "mentally deficient."

The words "private institution" are placed first in the definition of "private institution." The word "deficient" is substituted for "defective" and the words "which is" are added to the first line of the definition in two places.

§ 37.1-2. **Creation.**—For the supervision, management and control of the several State hospitals mentioned in § 37.1-34, and such other similar hospitals as may hereafter be established, all of which hospitals, whether heretofore or hereafter established, are hereinafter referred to as State hospitals, there shall be a single board of directors, to be known and referred to as the State Hospital Board.

Source: § 37-26.

Note: The word "hospitals" is substituted for "institutions" and the sections numbers are conformed to internal changes.

§ 37.1-3. **Appointment and terms of members.**—The Board shall consist of seven members to be appointed by the Governor, subject to confirmation by the General Assembly, if in session when such appointment is made, and if not in session, then at its next succeeding session. Appointments shall be made for terms of four years each, to run from the expiration of the respective terms of the present incumbents, except appointments to fill vacancies, which shall be for the unexpired terms. No person shall be eligible to serve more than two successive terms; provided that persons heretofore or hereafter appointed to fill vacancies may serve two additional successive terms. Incumbency during a current term when this amendment becomes effective shall constitute the first of the two successive terms with respect to eligibility for appointment.

Source: § 37-27.

Note: No change.

§ 37.1-4. **Suspension or removal of members; vacancies in office.**—Members of the Board may be suspended or removed by the Governor at his pleasure. Vacancies in the membership of the Board shall be filled by

the Governor subject to confirmation by the General Assembly as hereinbefore provided.

Source: § 37-28.

Note: No change.

§ 37.1-5. **Chairman and secretary.**—The Board shall select one of its members as chairman who shall receive no additional compensation as such. It shall also appoint its secretary, who shall not be a member of the Board, and fix his compensation. The secretary shall perform the duties required of him by the Board.

Source: § 37-29.

Note: No change.

§ 37.1-6. **Office and records.**—The Board shall maintain an office in the city of Richmond where all records of the Board shall be kept, except such as it finds necessary to be kept at the respective State hospitals.

Source: § 37-30.

Note: No change.

§ 37.1-7. **Meetings and quorum.**—The Board shall meet quarterly in the city of Richmond, and at such other times and places as it deems proper. Four members shall constitute a quorum.

Source: § 37-31.

Note: No change.

§ 37.1-8. **Visiting hospitals.**—The Board or some duly authorized agent shall visit and inspect the several hospitals under its supervision and control at least once each year.

Source: § 37-32.

Note: The words "and colonies" are deleted from the catch line and the section.

§ 37.1-9. **Compensation and expenses; provision for payment.**—The members of the Board shall receive no salaries, but shall be paid their necessary traveling and other expenses incurred in attendance upon meetings, or while otherwise engaged in the discharge of their duties, and the sum of twenty-five dollars a day for each day or portion thereof in which they are engaged in the performance of their duties, provided that such per diem shall not exceed fifteen hundred dollars a year for each member.

The compensation and expenses authorized to be paid to the members of the Board, the secretary and its chief executive officer shall be paid by the State Treasurer out of funds appropriated to the Board, and the several hospitals under its supervision, on warrants of the Comptroller issued upon vouchers signed by it for such purpose.

Source: § 37-33.

Note: The per diem rate is changed from "twenty" to "twenty-five" per day with an increase in the yearly maximum from "twelve" to "fifteen" hundred dollars per year.

§ 37.1-10. **Duties in general.**—The Board, in addition to other powers, functions and duties elsewhere conferred and imposed upon it, shall have full supervision, management and control of the State hospitals. All the rights, powers and duties formerly vested in and conferred and imposed upon special boards of directors of the State hospitals, the general

board of directors and the Commissioner of State Hospitals for the Insane are hereby transferred to, vested in and conferred and imposed upon the Board.

Source: § 37-34.

Note: The words "State Hospital" are deleted in the last line of the section.

§ 37.1-11. Board duties relative to new construction.—The Board, subject to the approval of the Governor, shall select the site of any new State hospital and any land to be taken or purchased by the Commonwealth for the purposes of any new or existing State hospital. It shall have charge of the construction of any new building at any such State hospital, shall determine the design thereof, and for this purpose may employ architects and other experts or hold competitions for plans and designs. If any land or property is taken or purchased by the Board, title shall be taken in the name of the Commonwealth.

Source: § 37-34.1.

Note: No change.

§ 37.1-12. Board authorized to tear down buildings.—If any building standing on property under the supervision and control of the Board is in such a state of dilapidation or disrepair as to be, in the opinion of the Board, dangerous to patients, employees of the Board or other persons frequenting such property, the Board may, with the approval of the Governor, cause such building to be torn down or razed. For such purpose the Board may contract with any person on such terms as it deems expedient and may sell or otherwise dispose of the materials composing such building.

Source: § 37-34.2.

Note: The words "under the supervision and control of" are substituted for the words "to which title is vested in."

§ 37.1-13. Disposal of surplus property by Board; examination of properties, certain property not to be disposed of.—The Board is hereby authorized to examine the condition of properties under its control from time to time in the light of the practices and methods employed by such Board in the care and treatment of persons committed to it in accordance with law. No property which is being used for the care and treatment of patients and which is required for such purpose or which is reasonably related to the present and reasonable future needs of the Board for care and treatment of patients shall be disposed of under the provisions hereof.

Source: § 37-34.2:2.

Note: The words "Disposal of surplus property by Board" are added to the catch line of the source section.

§ 37.1-14. Same; notice to Governor and public.—Whenever the Board finds that there is any property under its control which is not being used and is not required for the care and treatment of patients it shall notify the Governor of its findings.

Source: § 37-34.2:3.

Note: The words "of its findings" are substituted for the words after Governor.

§ 37.1-15. Same; notice and public hearing.—Not less than forty-five and not more than seventy days after such notification to the Governor, the Board shall hold a public hearing at some reasonably convenient

place near the property to be disposed of. Notice of such public hearing shall be given the Governor and in statements released to newspapers and other media of public information at least thirty days prior to the time of the hearing. At the time and place of such hearing any citizen may appear and state his views concerning the action of the Board in declaring such property surplus.

Source: § 37-34.2:4.

Note: No change.

§ 37.1-16. Same; declaring property surplus; notice and sale.—After such hearing, the Board may declare such property surplus and may, with the approval of the Governor in writing first obtained, proceed to sell the same, either at public auction or by securing sealed bids in the discretion of the Board. Notice of the time and place of sale, if by public auction, and notice of sale, if sealed bids are to be sought, shall be given by advertisement in at least three newspapers published and having general circulation in the State, at least one of which shall have general circulation in the county or city in which the property to be sold is located. At least sixty days shall elapse between publication of such notice and the auction or date on which sealed bids will be opened.

Source: § 37-34.2:5.

Note: No change.

§ 37.1-17. Same; rejection or acceptance of bids; notice to Governor of acceptance; conveyance or lease of property.—The Board shall have the right to reject any and all bids received either at public auction or through sealed bids when in the opinion of the Board the price is inadequate in relation to the value of such property. If the Board deems the bid, in either case, fair and adequate in relation to the value of the property, it may accept such bid and shall notify the Governor of its acceptance. The deed conveying such property to the purchaser shall be executed by the Board and shall be in form approved by the Attorney General. The terms of the conveyance shall be subject to the approval of the Governor in writing. In lieu of sale of any such property, the Board may, with the written approval of the Governor, lease the same to any responsible person on such terms as shall be fair and adequate in relation to the value of such property. The provisions of this article requiring that disposition of such property shall be through the medium of sealed bids or public auction shall not apply to any lease thereof. The provisions of §§ 37.1-13 through 37.1-15 shall apply mutatis mutandis to any proposed lease of any such property. The deed of lease to such property shall be in a form approved by the Attorney General and shall be executed by the Board. The terms of any such lease shall be subject to the approval of the Governor in writing.

Source: § 37-34.2:6.

Note: The words "State Hospital" and "or firm or corporation" are deleted. The word "written" is added before the phrase "approval of the Governor."

§ 37.1-18. Same; disposition of proceeds.—The proceeds from all such sales or leases shall be paid into the general fund of the State Treasury to be expended as provided by law; provided, however, proceeds from the sale or lease of lands or personal property bequeathed or donated to any State hospital for special purposes shall be held and administered by the Board as provided in § 37.1-22 of the Code, and further provided that proceeds from the sale or lease of lands or personal property belonging to

an institution supported entirely from a special fund shall be paid into such special fund to be expended as provided by law.

Source: § 37-34.2:7.

Note: The word "State" is added before "hospital." The words "or colony under the supervision of the Board" are deleted.

§ 37.1-19. **Members not eligible for hospital positions.**—No member of the Board shall be eligible for any other position in any State hospital during the term for which he is appointed, or for twelve months thereafter.

Source: § 37-35.

Note: No change.

§ 37.1-20. **Establishing system of administration, employing persons and adopting rules and regulations.**—The Board is authorized and empowered to establish such system of administration, effect such organization, employ such persons, and adopt such rules and regulations, as it may deem proper to enable it to exercise the powers and discharge the duties conferred and imposed by law upon the Board. The compensation of such employees shall be fixed by the Board within the limits of appropriations made by the General Assembly, and such compensation shall be subject to the provisions of Chapter 10 (§§ 2.1-110 et seq.) of Title 2 of this Code.

Source: § 37-36.

Note: No change.

§ 37.1-21. **Additional compensation of hospital employees in counties and cities.**—The governing body of any county or city may appropriate and pay funds to the superintendent and other persons employed in hospitals operated by the Board in or near such counties or cities in excess of that fixed by the Board; provided, however, that such additional compensation shall be paid wholly from the funds of such county or city. Any such governing body may also appropriate funds to the Board and provide that such funds shall be paid by the Board to specified individuals employed in any such hospital.

Source: § 37-36.1.

Note: The population limitations are deleted. The words "State Hospital" are deleted from the phrase "State Hospital Board." The words "or city" are added after "county" in the first line. The word "local" is deleted in line three.

§ 37.1-22. **Receiving gifts and endowments.**—The Board may receive gifts, bequests and endowments to or for the respective hospitals in their names or to or for any patient in the custody of such hospitals and when such gifts, bequests and endowments are accepted by the Board it shall well and faithfully administer such trusts.

Source: § 37-37.

Note: The words "State Hospital" are deleted before the word "Board" in the second line. The first clause is deleted entirely.

§ 37.1-23. **Establishing and maintaining mental hygiene clinics.**—The Board is authorized to establish and maintain out-patient mental hygiene clinics for the purpose of advising, counseling, directing, and otherwise treating patients. It may extend its clinic services to such

former patients as may make application therefor and to other persons in need of psychiatric advice, counsel, and guidance.

Source: § 37-38.

Note: This section is changed to give the Board broader authority for establishment and maintenance of mental hygiene clinics.

§ 37.1-24. Research into causes of mental illness and mental deficiency.—The Board is hereby directed to conduct at the several State hospitals, research into the causes of mental illness and mental deficiency. The Board shall encourage the superintendents and their staffs in the investigation of all subjects relating to mental diseases and defects and mental hygiene. In such research programs the Board shall make use, insofar as practicable, of the services and facilities of the Medical School of the University of Virginia and the Medical College of Virginia, and the hospitals allied with each such medical school.

Source: §§ 37-14 and 37-38.1.

Note: The word "directed" is substituted for "authorized" and the words "State hospitals" are substituted for "institutions under its control" in the first sentence. The two sections are combined to clarify the authority of the Board to conduct research.

§ 37.1-25. Cooperation of communities, etc.; programs of public information.—The Board shall seek and encourage cooperation and active participation of communities, organizations, agencies, and individuals in the effort to establish and maintain mental health and mental retardation programs and services. For the purpose above mentioned the Board shall develop programs of public information and education.

Source: §§ 37-39 and 37-41.

Note: The two catch lines are combined and the language of § 37-41 is replaced by the second sentence of the section.

§ 37.1-26. Long range plans.—The Board shall initiate and direct the development of long range programs and plans with respect to mental hygiene and hospital services provided by the State, to the end that these services may grow and improve in a steady, coordinated manner.

Source: § 37-40.

Note: No change.

§ 37.1-27. Board to prescribe system of records, accounts and reports; annual reports.—The Board shall prescribe and cause to be established and maintained at all of the State hospitals a uniform, proper, and approved system of keeping the records and the accounts of money received and disbursed and of making reports thereof. The Board or its duly authorized agent shall at all times have access to the records, accounts and reports required to be kept under the provisions of this title. The Board shall report at least annually on such statistical information as may be requested by the Governor or the General Assembly.

Source: §§ 37-45 and 37-46.

Note: The two sections are combined in their entirety. The last sentence is added to require an annual report.

§ 37.1-28. Board authorized to receive and expend social security, etc., payments for patients in State hospitals.—The Board, under such regulations as the Administrator of the Federal Security Agency, the Civil Service Commission or the Railroad Retirement Board, respectively, may

prescribe and with the approval of the Governor, may be appointed or function as the agency to which payments under the provisions of the Federal Social Security Act as amended, any act providing retirement benefits for employees of the Federal Government or any of its agencies, or the Railroad Retirement Act, may be made on behalf of any beneficiary patients under its control. Such payments shall be expended for the use and benefit of such patient, to whom they would otherwise be payable, and the residue, if any, resulting from such payments shall be set aside in a special fund to the credit of the patient on whose account such payment is made. The charges provided for by law for the care of the patient shall be defrayed from such payment. The provisions of § 37.1-31 shall apply to any payments received under this section.

Source: § 37-48.1.

Note: The words "State hospitals" are substituted for "institutions under its control" in the catch line. The phrases "in an institution" and "in any such institutions, are deleted from the first and third sentences respectively. The words "Old Age and Survivors Insurance" are deleted in the first sentence.

§ 37.1-29. **Private funds provided for patients.**—The Board is hereby authorized and empowered, in its discretion, to provide for the deposit with the superintendent or other proper officer of any State hospital, of any money given or provided for the purpose of supplying extra comforts, conveniences or services to any patients therein and any money otherwise received and held from, for or on behalf of any such patient.

Source: § 37-47.

Note: The word "State" is added before "hospital" and the words "under the supervision, management and control of such Board" are deleted.

§ 37.1-30. **How such funds disbursed.**—All funds so provided or received shall be deposited to the credit of such hospital in a special fund in a bank or banks designated by the Board, and shall be disbursed as may be required by the respective donors, or, in the absence of such requirement, as directed by the superintendent.

Source: § 37-48.

Note: The words "by the officer" are deleted after "disbursed" and the words "in the absence of such requirement" are added in the fourth line.

§ 37.1-31. **Annual statements relative to funds; investments by Board.**—The superintendent of each State hospital shall furnish the Board annually a statement showing the amount so received and deposited, the amount expended, and the amount remaining in such special funds at the end of such year, and the Board shall have authority to invest so much as it may deem proper of the amount so remaining, in United States Government Bonds, or other securities authorized by law for the investment of fiduciary funds. The interest from such investments may in the discretion of the Board be expended as a part of a patients' welfare fund.

Source: § 37-49.

Note: The word "State" is substituted for "such" in the first line. The word "welfare" is substituted for "amusement" in the last line.

§ 37.1-32. **Disposition of unexpended balances of funds belonging to former patients.**—If any patient for whose benefit any such fund has heretofore or shall hereafter be provided, has departed or shall hereafter depart from any such hospital, leaving any unexpended balance in such fund, and the superintendent in the exercise of reasonable diligence, has been or shall be unable to find the person or persons entitled to such unex-

pending balance, the Board may, in its discretion and after the lapse of three years from the date of such departure, authorize the use of such balance for the benefit of all or any part of the patients then in such hospital.

Source: § 37-50.

Note: The words "or colony" are deleted. The words "of the hospital" are deleted after the word "superintendent."

§ 37.1-33. Disposal of unclaimed personal property of certain patients in State hospitals.—If any patient dies, is released or escapes and leaves any article or articles of personal property, including bonds, money and any intangible assets, in custody of a State hospital the superintendent thereof may, in his discretion, after the lapse of three years from the date of such death, release or escape, if no claim therefor has been made, sell such personal property either at public or private sale. Whenever such sale or sales are made, the superintendent shall deposit the net proceeds thereof in the patients' welfare fund and the same shall become a part of such fund.

Source: § 37-230.1.

Note: The words "and colonies" and "or colony" are deleted from the catch line and the first sentence of the section, respectively. Several language changes were made in order to broaden the superintendent's ability to dispose of unclaimed personal property.

§ 37.1-34. State Hospitals continued.—The State hospitals heretofore established under whatever name are hereby continued under the management of the Board.

Source: §§ 37-1, 37-2, 37-4 and 37-5.

Note: The source sections are combined into one section continuing State Hospitals. The names of the institutions continued are Eastern State Hospital, Western State Hospital, Southwestern State Hospital, Central State Hospital, Lynchburg Training School and Hospital and Petersburg Training School.

§ 37.1-35. Use of departments for criminal mentally ill.—The departments for the criminal mentally ill at Southwestern State Hospital and Central State Hospital shall be used for the purpose of holding in custody and caring for such persons as are declared mentally ill or mentally deficient after conviction of any crime and while serving sentence therefor in the penitentiary, or in any other penal institution or elsewhere; persons in custody charged with crime who prior to trial or sentencing are adjudged mentally ill or mentally deficient; such persons in custody charged with crime as the court in its discretion orders there for proper care and observation pending the determination of their mental condition; persons who have been adjudged mentally ill or mentally deficient at the time, when, but for such adjudication, they should have been tried, and such patients as in the opinion of the superintendent require confinement in such departments, provided that the confinement of each of those in the last mentioned classification shall be reported by the superintendent together with his reasons for their confinement to the Board at its next meeting following.

Source: § 37-3.

Note: The words "charged with crime" are substituted for language referring to indictments and complaints. The locations of the departments are added to the first line of the section. The words "State Hospital" are deleted from the phrase "State Hospital Board."

§ 37.1-36. Appointment, qualifications and compensation of superintendent.—The Board shall appoint quadrennially, for terms to commence at the expiration of the terms of the present incumbents, a superintendent for each State hospital who shall be a physician skilled in the diagnosis and treatment of mental illness.

Source: § 37-9.

Note: The words “for the mentally ill and each colony for epileptics and the mentally deficient” are deleted. The words “skilled in the diagnosis and treatment of mental illness” are substituted for “skilled.”

§ 37.1-37. Members of Board, Superintendents, etc., not to be interested in contracts.—Members of the Board, Commissioner, superintendents, officers or employees of the Board or State hospitals shall not become interested, directly or indirectly, in any contract, or in the profits of any contracts, made by or with any officer, agent, superintendent or other person on behalf of any State hospital or in any contract, fee, commission, premium or profit therefrom, paid in whole or part, by the Board or any State hospital, commission or agency thereof, or in the sale or furnishing of supplies or materials to such hospital.

The term “contract” as herein used, shall not be held to include the depositing of funds under Board control in banks in which a member of the Board, superintendent, officer, or employee may be a director or officer or have a stock interest.

Source: §§ 37-13 and 37-52.

Note: This section is expanded to better define the persons as well as the situations intended to be covered.

§ 37.1-38. Employment of special counsel to defend officer or employee of Department of Mental Hygiene and Hospitals in criminal cases.—If any officer, attendant or other employee employed by and acting under the supervision of the Department shall be arrested, indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Commissioner may employ special counsel, to be approved by the Attorney General, to defend such officer, attendant or other employee. The compensation for such special counsel employed pursuant to this section, shall, subject to approval of the Attorney General, be paid out of funds appropriated to the Department of Mental Hygiene and Hospitals.

Source: § 37-16.2.

Note: This section is changed to substitute the approval of the Attorney General for the approval of the Governor in the employment of counsel. The approval of the Attorney General with respect to compensation is added.

Article 2.

The Department and Commissioner.

§ 37.1-39. Creation and supervision of Department.—The Department of Mental Hygiene and Hospitals is established under the supervision, management and control of the Board.

Source: § 37-53.

Note: The words “State Hospital” are deleted from the phrase “State Hospital Board.”

§ 37.1-40. Appointment of Commissioner.—A Commissioner of Mental Hygiene and Hospitals shall be appointed by the Governor; sub-

ject to confirmation by the General Assembly, if in session when such appointment is made, and if not in session, than at its next succeeding session.

Source: § 37-54.

Note: No change.

§ 37.1-41. Term of office and vacancy therein.—The Commissioner shall hold office at the pleasure of the Governor for a term coincident with that of each Governor making the appointment, or until his successor shall be appointed and qualified. Vacancies shall be filled in the same manner as original appointments are made.

Source: § 37-55.

Note: No change.

§ 37.1-42. Qualifications of Commissioner.—No person shall be appointed Commissioner unless he be a person of proved executive ability and a doctor of medicine, and unless he shall have had special education and substantial experience in the treatment of mental illness.

Source: § 37-56.

Note: The words "of Mental Hygiene and Hospitals" are deleted from the phrase "Commissioner of Mental Hygiene and Hospitals." The word "illness" is substituted for "diseases" in the last line.

§ 37.1-43. Devotion of full time to duties; compensation; may act as secretary of Board.—The Commissioner shall devote his full time to his duties and shall hold no other office except that of secretary of the Board if he be appointed as such by the Board. He shall receive such compensation as may be appropriated for the purpose. If he acts as secretary of the Board, he shall receive no additional compensation as such.

Source: § 37-57.

Note: The words "State Hospital" are deleted from the phrase "State Hospital Board."

§ 37.1-44. Oath and bond of Commissioner.—Before entering upon the discharge of his duties, the Commissioner shall take the oath of office and give bond with corporate surety in such penalty as may be fixed by the Governor conditioned upon the faithful discharge of his duties, the premium of which bond shall be paid out of the moneys appropriated to the Board.

Source: § 37-58.

Note: See note to preceding section.

§ 37.1-45. Commissioner to be chief executive of Board.—The Commissioner shall be the chief executive officer of the Board.

Source: § 37-59.

Note: See note to the two preceding sections.

§ 37.1-46. Duties of Commissioner.—The Commissioner shall perform such duties and exercise such powers as may be imposed or conferred upon him by the Board by general rule or special order, within the limitations of the Board's legal powers.

Source: § 37-60.

Note: See note to the three preceding sections.

§ 37.1-47. **Business manager.**—There shall be a business manager for the Department. The powers, duties and functions of the business manager shall be prescribed by the Commissioner. The business manager shall be appointed by the Commissioner and serve at his pleasure.

Source: § 37-34.3.

Note: The section is amended to conform to the definitions of "Department" and "Commissioner."

§ 37.1-48. **Transfer of patients from one institution to another.**—A patient admitted to any State hospital may be transferred by order of the Commissioner to any hospital and when so transferred is hereby declared to be a lawfully admitted patient of the hospital to which he is transferred.

Source: §§ 37-7 and 37-126.1.

Note: The words "or colonies" and "or colony" are deleted. The exception "except one committed by court order to one of the departments for the criminally mentally ill" and the proviso "provided no white person shall be transferred to an institution used exclusively for colored persons or vice versa" are deleted. The word "admitted" is substituted for "committed" and the word "State" is added before "hospital" in line one.

Article 3.

State Sanatoria.

§ 37.1-49. **Independent unit of Department.**—DeJarnette State Sanatorium and any similar units shall be under the control, supervision and direction of the Board in the same manner as other State hospitals. The Board is authorized and directed to establish, construct, and equip independent units within the Department similar to DeJarnette State Sanatorium, for pay patients.

Source: § 37-17.

Note: This section is amended to authorize other units similar to DeJarnette.

§ 37.1-50. **Purpose of Sanatorium.**—The purpose of the Sanatorium shall be to furnish to residents of Virginia, affected with nervous or mental diseases, alcoholism or drug addiction, modern sanatorium care and treatment at the approximate cost of maintenance and operation of the Sanatorium.

Source: § 37-18.

Note: The reference to "white" is deleted.

§ 37.1-51. **Persons admitted as patients.**—Any person applying for admission to the Sanatorium may be received therein as a patient if he is mentally capable of affixing his signature to the papers of admission, or of giving his consent to the signing of the papers of admission by a relative or next friend, with knowledge of the consequences of such act, and who, in the opinion of the superintendent of the Sanatorium is able to and agrees to pay for his care and treatment as a patient in such Sanatorium.

The superintendent is also authorized to receive into a Sanatorium as patients, persons who, in his opinion, are by reason of their mental condition rendered incapable of applying for admission and of affixing their signatures to, or of consenting to the signing of the papers of admission. In every such case the application for admission shall be made and the admission papers signed by a relative or next friend of the person for whom admission is sought, which relative or next friend shall agree to

pay for the care and treatment of such person and, in the opinion of the superintendent, be financially able to pay for such care and treatment. In such event such papers shall constitute a contract binding on the relative or friend signing the same. But no person shall be admitted or received into a Sanatorium as a patient unless such person is admitted or received for treatment for mental or nervous diseases or conditions arising from inebriety, or the use of drugs.

Under no circumstances shall any nonresident of the State of Virginia be admitted as a patient in a Sanatorium.

Source: § 37-19.

Note: The reference to "white" is deleted.

§ 37.1-52. **Monthly report of superintendent.**—The superintendent shall report monthly to the Board the condition of the Sanatorium. Such report shall show the financial condition of the Sanatorium at the end of the month, the number of patients received, discharged, furloughed, died or removed by other causes during such month, and such other information as may be required by the Board.

Source: § 37-20.

Note: No change.

§ 37.1-53. **Board to fix rates.**—The Board shall fix and regulate from time to time, as may be necessary, the rates and charges to be charged for the care and treatment of persons admitted to a Sanatorium, including reasonable interest charges on the investment and depreciation on the buildings. Such rates and charges shall be sufficient to provide and maintain in the Sanatorium, without any appropriations from the State for the cost of the maintenance and operation of such Sanatorium, a standard of care and treatment equal to that of efficient and well managed private Sanatoriums.

Source: § 37-21.

Note: No change.

§ 37.1-54. **Disposition of money received by Sanatorium.**—All moneys collected or received by the Sanatorium, or by the Board, for and on behalf of the Sanatorium shall be paid into the State treasury. Such moneys shall be set aside and constitute a special fund for the maintenance and operation of the Sanatorium, and are hereby specifically appropriated for such purposes to be paid out by the State Treasurer on warrants of the Comptroller issued on vouchers signed by the superintendent of the Sanatorium or some agent duly authorized by him for such purpose.

Source: § 37-22.

Note: No change.

Article 4.

Virginia Institute of Psychiatry.

§ 37.1-55. **Establishment, maintenance and control.**—There shall be established and maintained institutions for the study, research, prevention and treatment of mental disorders, and designated Virginia Institutes of Psychiatry. The Institutes shall be operated by the Department but shall be under the control, management and direction of the Board, and shall be located at a place or places adjacent to any medical colleges now or hereafter established. The Institutes shall be equipped with facilities for teaching and research, and shall have accommodations

for bed patients. The Institutes shall maintain out-patient clinics for individual and family guidance.

Source: § 37-23.

Note: The section is amended to conform to the definitions of "Department" and "Board." The word "teaching" is substituted for "complex, high" and the words "one hundred" and "both white and negro" appearing before and after the words "bed patients" are deleted in the third sentence. The word "small" is deleted in the fourth sentence. The words "any medical colleges now or hereafter established" are substituted for "one of the State medical colleges." The remainder of the source section is deleted. The word "Institute" is pluralized throughout.

§ 37.1-56. **Patients.**—Patients at the Institutes shall be those voluntarily admitted or those who have been admitted to one of the State hospitals and who shall be transferred to the Institutes by order of the Commissioner.

Source: § 37-24.

Note: This section is changed to give the Commissioner a wider range from which he may select patients.

§ 37.1-57. **Cooperation with State agencies.**—The Institutes shall cooperate with the State Board of Education by providing an application of proper psychological procedures and, aiding the schools in the treatment and education of emotionally unstable, exceptional, and retarded children and giving appropriate instruction to teachers and parents in proper child guidance procedures. The Institutes shall also cooperate in such manner as may be found practicable with Department of Health and the Department of Welfare and Institutions, hospitals, medical schools and institutions.

Source: § 37-25.

Note: The words "and other State" are deleted in the last line before the word "hospitals." Reference to the Department of Health is added in the last sentence.

Article 5.

Virginia Treatment Center for Children.

§ 37.1-58. **Establishment and location.**—The Board is authorized and directed to establish, construct and equip, when funds are available, treatment centers to provide for study, treatment and care, and for research into methods of treatment, of emotionally disturbed and mentally ill children. These centers shall be located on State-owned property within the vicinity of a State-supported medical teaching center. The center at Richmond shall be known as the Virginia Treatment Center for Children.

Source: § 37-25.1.

Note: This section is rewritten as a general enabling section.

§ 37.1-59. **Supervision and control of the Board.**—The Treatment Centers shall be under the supervision and control of the Board, which shall determine the policies to be followed in the operation and management of the Centers and may adopt rules and regulations with respect thereto and concerning the admission of patients to the Centers.

Source: § 37-25.2.

Note: All references to "Center" are made plural. The words "State Hospital" are deleted from the phrase "State Hospital Board."

§ 37.1-60. Director and other personnel.—The Commissioner shall appoint, subject to the approval of the Board, a director of each treatment center, who shall be a physician who is a graduate of a medical school approved by the American Medical Association and who has been engaged in the practice of psychiatry for at least five years. The director shall perform such duties as the Board or the Commissioner shall prescribe. Subject to the provisions of chapter 10 (§§ 2.1-100 et seq.) of Title 2.1 of the Code, the director may recommend for appointment by the Commissioner all other officers and employees of the treatment center.

Source: § 37-25.3.

Note: Conforming changes to definition of "Commissioner," section references are made. The word "each" is substituted for "the" in the second line of the section.

§ 37.1-61. Admissions and transfers.—(a) Only mentally ill or emotionally disturbed children under sixteen years of age shall be admitted or transferred to a treatment center.

(b) Voluntary admissions may be made, in the discretion of the director, upon application signed by the parent or parents or legal guardian of the child.

(c) Transfers to the centers may be made as provided in § 37.1-49 with respect to transfers between other institutions under the control of the Board. Upon application made by any State department, institution or agency having custody of any child who is mentally ill or emotionally disturbed, such child may, with the approval of the Commissioner, be admitted for study, care and treatment at the Center.

Source: § 37-25.4.

Note: Internal section reference was conformed as was the definition of "Board." That portion of subparagraph (b) following the words "of the child" is deleted.

§ 37.1-62. Duration of care and treatment; children to be in custody and control of director; liability for cost.—No admission or transfer to the Center shall be for a period longer than three months; provided, however, that the director, with the approval of the Commissioner, may discharge or otherwise release a patient as provided by law with respect to other institutions under the control of the Board; or may, with such approval, extend the period of study, care and treatment from time to time if necessary. In no event shall a child remain in a center for more than twelve consecutive months. All children admitted or transferred to the Center shall be in the custody and under the control of the director, who may impose such restraints on any such child as he may deem necessary for the welfare of the child or the proper conduct of the Center. The expense for care, treatment and maintenance in the Center shall be fixed as provided in § 37.1-105.

Source: §§ 37-25.5 and 37-25.6.

Note: The last sentence of this section was added to replace § 37-25.6.

CHAPTER 2.
ADMISSIONS AND DISPOSITIONS IN GENERAL.

Article 1.

Admissions.

§ 37.1-63. **Applicability of Chapter.**—In the application of the provisions of this Chapter to any person to whom the terms mentally deficient, mentally retarded, epileptic, inebriate, or drug addict are applicable, such appropriate term or terms shall be used in any determination, certification, order or record relating to such person.

Source: New section.

Note: This section is added to cover persons in need of hospitalization other than the mentally ill.

§ 37.1-64. **Admission procedures.**—(a) Any person alleged to be mentally ill to a degree which warrants hospitalization in a hospital as defined in § 37.1-1 of this Title and who is not in confinement on a criminal charge may be admitted to and retained as a patient in a hospital by compliance with any one of the following admission procedures:

- (1) Voluntary admission;
- (2) Medical certification;
- (3) Judicial certification;

(b) The Board shall prescribe and prepare the forms required in procedures for admission as approved by the Attorney General. These forms, which shall be the legal forms used in such admissions, shall be distributed by the Board to the clerks of the circuit and corporation courts of the various counties and cities of the State and to the superintendents of the respective State hospitals.

Source: §§ 37-61.1, 37-67 and 37-121.

Note: This section and the following five sections comprise a complete revision of the methods of admission to the State hospital system of the mentally ill. This revision is intended to facilitate the patient's treatment under hospital supervision. All reference to commitments and commitment procedure have been deleted. Paragraph (b) of this section is taken from source paragraph § 37-67. The approval by the Attorney General of the forms to be used in admissions was added.

§ 37.1-65. **Voluntary Admission.**—Any hospital may admit as a patient any person requesting admission who, having been examined by a physician on the staff of such hospital, is deemed to be in need of hospitalization for mental illness. Any such person under twenty-one years of age may be admitted on the request of the parent or any person standing in *loco parentis* to such infant.

Source: § 37-113.

Note: See last prior note.

§ 37.1-66. **Medical Certification.**—Any hospital may admit any person as a patient upon receipt of a petition, executed by such person or by some responsible person in his behalf, in form prescribed by the Board; provided, that if such person be under the age of twenty-one, the petition shall be executed by the parent or any person standing in *loco parentis* to

such infant. Such petition shall contain a statement of facts upon which the allegations of mental illness and need for hospitalization are based and shall be accompanied by the certificates of two physicians licensed in Virginia who are not related by blood or marriage to the individual for whom the petition is filed and who have no interest in his estate, to the effect that they have examined the individual and that they have sufficient cause to believe that he is mentally ill and requires hospitalization. Only one of such examining physicians may be a physician on the staff of the hospital to which admission is sought. Every such examination shall have been accomplished within not more than fifteen days prior to presentation of the allegedly mentally ill person for admission.

Source: New section.

Note: See note under § 37.1-64.

Alternate § 37.1-66. Medical Certification.—Any hospital may admit any person as a patient upon receipt of a petition, executed by such person or by some responsible person in his behalf, in form prescribed by the Board; provided, that if such person be under the age of twenty-one, the petition shall be executed by the parent or any person standing in *loco parentis* to such infant. Such petition shall contain a statement of facts upon which the allegations of mental illness and need for hospitalization are based and shall be accompanied by the certificates of two physicians licensed in Virginia who are not related by blood or marriage to the individual for whom the petition is filed and who have no interest in his estate, to the effect that they have examined the individual and that they have sufficient cause to believe that he is mentally ill and requires hospitalization. Only one of such examining physicians may be a physician on the staff of the hospital to which admission is sought. Every such examination shall have been accomplished within not more than fifteen days prior to presentation of the allegedly mentally ill person for admission. Each such petition shall contain an endorsement by a justice as defined in § 37.1-1, stating that the person to be admitted as a patient has been informed of his right to a hearing and to counsel of his own choice or to appointed counsel if he is indigent. The justice shall, if requested to do so, appoint an attorney at law to represent any such indigent person.

Source: New section.

Note: This section is an alternate to § 37.1-66. It adds the last two sentences in order to provide additional legal protection of a hearing and counsel for persons prior to admission on medical certificate. This alternate is proposed due to a lower New York State court decision which raised a constitutional question in regard to a statute similar to § 37.1-66.

§ 37.1-67. Judicial Certification.—Any justice as defined in § 37.1-1, when any person in his county or city is alleged to be mentally ill, upon the verified petition of any responsible person, shall issue forthwith his order requiring the allegedly mentally ill persons to be brought before him. The officer executing the order may do so without having the order in his possession. If such justice, having observed the person so produced, shall find that there is sufficient cause to believe that such person is or may be mentally ill, he shall so certify and order such person removed to the hospital or other facility designated by the Commissioner for receipt of persons allegedly mentally ill who may come before such justice.

Source: § 37-61.

Note: See note under § 37.1-64.

Alternate § 37.1-67. Judicial Certification.—Any justice as defined in § 37.1-1, when any person in his county or city is alleged to be mentally

ill, upon the verified petition of any responsible person, shall issue forthwith his order requiring the allegedly mentally ill person to be brought before him. The officer executing the order may do so without having the order in his possession. The justice, when the person is so produced, shall inform the person of his right to counsel of his own choice or to appointed counsel if he is indigent and to summons witnesses in his behalf. If such justice, having observed the person so produced, shall find that there is sufficient cause to believe that such person is or may be mentally ill, he shall so certify and order such person removed to the hospital or other facility designated by the Commissioner for receipt of persons allegedly mentally ill who may come before such justice. The justice shall, if requested to do so, appoint an attorney at law to represent any such indigent person.

Source: § 37-61.

Note: This section is an alternate to § 37.1-67. It adds the third sentence in order to provide additional legal protection for the person to be admitted by a judicial certification. This alternate is proposed due to a lower New York State court decision which raised a constitutional question in regard to a similar statute.

§ 37.1-68. Examination of papers by superintendents; return for correction.—Upon the receipt of any certificate or order for admission of any allegedly mentally ill person; the superintendent of the hospital shall carefully examine the same and if they are found to be in conformity with the law and contain evidence tending to show that such person is mentally ill, the superintendent shall forthwith receive such person into the hospital. If the admission papers do not conform to law and do not contain satisfactory and sufficient evidence of mental illness, the superintendent shall return such papers for correction or amendment.

Source: § 37-86.2.

Note: See note under § 37.1-64.

§ 37.1-69. Detention by Officers.—Any officer authorized to make arrests may take and detain in protective custody any person conducting himself in a disorderly manner and who reasonably appears to be mentally ill and may cause such person to be removed forthwith to the appropriate hospital designated by the Commissioner for the receipt of persons so taken and detained.

Source: New section.

Note: See note under § 37.1-64.

Alternate § 37.1-69. Detention by Officers.—Any officer authorized to make arrests may take and detain in protective custody any person conducting himself in a disorderly manner and who reasonably appears to be mentally ill and may cause such person to be removed forthwith to the appropriate hospital designated by the Commissioner for the receipt of persons so taken and detained. The officer shall as soon as practical inform a justice of the presence of such person at the hospital. The justice shall then proceed as required in § 37.1-67.

Source: New section.

Note: This section is an alternate to § 37.1-69. The last two sentences were added to provide any person so detained with the protection of the court. This alternate is proposed due to a constitutional question raised by a lower New York court.

§ 37.1-70. Examination of admitted persons.—Any person admitted to a hospital pursuant to §§ 37.1-66, 37.1-67, or 37.1-69 shall forthwith,

and not later than twenty-four hours after arrival, be examined by one or more of the physicians on the staff thereof. In the event such examination does not reveal sufficient cause to believe that such person is or may be mentally ill, such person forthwith shall be returned to the place at which the petition was initiated. If such examination does reveal sufficient cause to believe that such person is or may be mentally ill, such person shall be retained at the hospital and the procedure prescribed in Article 3 of this chapter thereafter shall be followed.

Source: § 37-90.

Note: This section is rewritten to conform with the overall revision of admission procedure.

Article 2.

Transportation.

§ 37.1-71. Admissions; transportation to hospitals.—When a person has been certified for admission to a hospital under §§ 37.1-66 or 37.1-67, or is detained under § 37.1-69, such person may be delivered to the care of the sheriff of the county or sergeant of the city who shall forthwith on the same day deliver such person to the proper hospital. When this is impossible such person shall be kept and cared for by the sheriff or sergeant in some convenient institution approved by the Board, until such person is conveyed to the proper hospital. The cost of care and transportation of any person so certified for admission or detained pursuant to §§ 37.1-66, 37.1-67 and 37.1-69 pending his delivery to a State Hospital to which the patient is subsequently admitted shall be paid from the State Treasury from the same funds as for care in jail. The cost of care and transportation of a person certified for admission to or to be detained in a private hospital shall be paid by the petitioner.

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

Source: §§ 37-71, 37-79 and 37-116.

Note: Reference to medical and judicial certifications is substituted for the language referring to the finding of the Commission. The requirement that the petitioner pay cost of care and transportation is added. The last sentence is added. The last paragraph of § 37-79 is added to this section.

§ 37.1-72. Transportation of admitted persons.—Any justice who shall certify an admission under this chapter may order that such person be placed in the custody of any responsible person or persons for the sole purpose of transporting such person to the proper hospital.

Source: § 37-79, second paragraph.

Note: References to commitment proceeding and bond are deleted.

§ 37.1-73. Detention in jail after certification.—It shall be unlawful for any sheriff, sergeant or other officer to use any jail or other place of confinement for criminals as a place of detention for any person in his custody for transportation to a hospital unless the detention therein of such person is specifically authorized by a justice. Notice of such action shall be given by telephone or telegraph to the Commissioner.

Source: § 37-78.

Note: The reference to certification is substituted for commitment. The words "mentally ill, mentally deficient, epileptic or inebriate" are deleted. The wording was rearranged for clarity.

§ 37.1-74. Not to be confined in cells with criminals.—In no case shall any sheriff, sergeant, or jailor confine any mentally ill person in a cell or room with prisoners charged with or convicted of crime.

Source: § 37-81.

Note: The words "epileptic, mentally deficient or inebriate" are deleted.

§ 37.1-75. Escape, sickness, death or discharge of certified person while in custody; warrant for person escaping.—If any person who has been certified for admission to a hospital, while in the custody of a sheriff, sergeant or other person, shall escape, become too sick to travel, die, or be discharged by due process of law, the sheriff, sergeant, or other person shall immediately notify the Commissioner of that fact. If any person with whose custody a sheriff, sergeant, or other person has been charged under the provisions of this chapter shall escape, the sheriff, sergeant, or other person having such individual in custody shall immediately secure a warrant from any officer authorized to issue warrants charging the individual with escape from lawful custody, directing his apprehension and stating what disposition shall be made of such person upon arrest.

Source: § 37-85.

Note: The words "certified for admission" were substituted for "committed." The words "or colony" and "the internal cross reference" were deleted. The word "chapter" was substituted for "section."

§ 37.1-76. Arrest and confinement after escape.—If any person confined in any hospital escape therefrom, the superintendent shall forthwith issue a warrant directed to any officer authorized to make arrests, who shall arrest such escaped person and carry him back to the hospital or to such other place as is designated by the superintendent or his authorized agent, and the officer to whom the warrant is directed may execute the same in any part of the Commonwealth.

Source: § 37-97.

Note: The words "or colony" are deleted wherever they appeared. The phrase "there to be delivered to the superintendent or his authorized agent" is deleted.

§ 37.1-77. Arrest without warrant.—Any officer authorized to make arrests is authorized to make such an arrest under a warrant issued under the provisions of § 37.1-75 or § 37.1-76, without having such warrant in his possession, provided the same has been issued and the arresting officer has been advised of the issuance thereof by telegram, radio or teletype message containing the name of the person wanted, directing the disposition to be made of the person when apprehended, and stating the basis of the issuance of the warrant.

Source: § 37-97.1.

Note: Internal section reference is conformed. Language changes are made for clarity.

§ 37.1-78. Attendants to conduct persons to hospitals.—When application is made to the superintendent of a hospital for admission pursuant to § 37.1-65, he may send an attendant from the hospital to conduct such person to the hospital. Female attendants may be assigned to convey female persons to the hospital. If for any reason it is impracticable to employ an attendant for this purpose, then the superintendent may appoint some suitable person for the purpose, or may request the sheriff or sergeant of the county or city in which the person resides to convey him to the hospital. The sheriff or sergeant, or other person appointed for

the purpose shall receive only his necessary expenses for conveying any person admitted to the hospital. Expenses authorized herein shall be paid by the Board.

Source: § 37-87.

Note: Several language changes are made to make this section permissive rather than mandatory. Two sentences dealing with certificates of transportation are deleted. The section is changed to provide payment of necessary expenses.

Article 3.

Retention of Patients.

§ 37.1-79. **Retention.**—Whenever any patient shall have been admitted to a hospital under the provisions of this chapter, except as provided in § 37.1-70, such patient may be retained for a period not to exceed fifteen days, within which time the superintendent shall: (1) permit a voluntary patient to remain for further treatment; (2) order the patient's discharge and release; or (3) in the superintendent's discretion, retain the patient for further treatment on an involuntary basis, in which case he shall cause notice of such determination to be served upon such person, upon the legal counsel, if any, who represented such person upon admission and, if the petitioner was other than the patient, also upon the petitioner. Such notice shall be served in the manner prescribed by chapter 4 of Title 8 of this Code for the service of process in actions at law.

Source: New section.

Note: This section is written to conform with the revised procedures of admission, certifications, and hearing.

§ 37.1-80. **Superintendent to advise patients of their rights.**—At or prior to the service of the notice required by § 37.1-79, the superintendent shall inform the patient of his right to a hearing on the issue of his continued retention and to representation by an attorney of his own choice or by an attorney to be appointed by the justice or court of appropriate jurisdiction of the county or city wherein the patient is retained; and that any time thereafter, upon request of the patient or of any one on the patient's behalf, the patient shall be permitted to communicate with such attorney with respect to any proceeding authorized or required by this article.

Source: § 37-71.4.

Note: See last prior note.

§ 37.1-81. **Procedure when a hearing is requested.**—If at any time prior to the expiration of sixty days from the date of admission the patient, the attorney who represented him before the certifying justice or any relative or friend shall make a request in writing to the Commissioner or superintendent, as the case may be, for a hearing on the question of the need for continued hospitalization, a hearing shall be held, as herein provided. The superintendent, upon receiving such request for a hearing, shall acknowledge receipt thereof in writing and forthwith forward a copy of the request, together with a copy of the pertinent portions of the hospital record of the patient, to a justice or court having jurisdiction of such cases in the county or city wherein such hospital is located. The justice or court which receives the request and record shall fix a date for hearing at a time no later than five days from the date the request and record are received and cause the patient or other person requesting the hearing, the superintendent of the hospital in which the patient is detained, and such

other persons as the justice or court may determine, to be advised of such date. If the patient is not represented by counsel, the justice or court shall appoint an attorney at law to represent the patient in the proceeding. For services rendered in connection with the proceeding, the attorney shall receive a fee and expenses as provided in § 37.1-89. Upon the date set for hearing, or upon such other date to which the proceeding may be adjourned, the justice or court shall hear testimony and examine the person alleged to be mentally ill, and shall render a decision in writing as to the patient's mental condition and his need for continued hospitalization. The justice or court shall forthwith issue an order authorizing the release or retention of such patient.

Source: New section.

Note: See last prior note.

§ 37.1-82. **Compliance with court orders.**—If the justice or court shall order the release of the patient, such order shall state in writing the reasons therefor and the patient shall forthwith be released. The superintendent of the hospital shall be furnished a copy of the order.

Source: New section.

Note: See last prior note.

§ 37.1-83. **Court authorization to retain a patient.**—When no application for a hearing shall have been made by a patient, or by any one on behalf of such patient, within sixty days of the initial admission of such patient pursuant to this article, if the commissioner or superintendent shall determine that the condition of the patient requires his continued hospitalization and if such patient does not agree to remain in such hospital as a voluntary patient, the commissioner or superintendent, prior to the expiration of six months from the initial admission of the patient, shall apply to a justice or court in the county or city wherein the hospital is located for an order authorizing retention of such patient. The commissioner or superintendent shall cause notice of such application to be served upon the persons and in the manner provided by § 37.1-79. If no application is made for a hearing on behalf of the patient within five days, excluding Sundays and holidays, from the date such notice of application was served upon such persons, the justice or court receiving the application may, without a hearing, if satisfied that the patient requires continued hospitalization, issue an order authorizing retention of such patient. Upon his own motion or upon application of the patient or of any one on the patient's behalf, the justice shall fix a date for a hearing upon the application, which hearing shall be conducted *mutatis mutandis*, as provided in § 37.1-81.

Source: New section.

Note: See last prior note.

§ 37.1-84. **Review of judicial order to retain.**—When any person is retained under any order of a justice or court pursuant to this article, such person, or any relative or friend in his behalf, may, within thirty days after such order is entered, appeal therefrom to the circuit court of the county or the corporation court of the city wherein such order was entered, and the proceedings upon such appeal shall be the same *mutatis mutandis* as in actions at law, except that the issue shall be whether such person should be retained in or by the hospital, which determination must be supported by competent medical evidence. If such appeal be made by any person other than the patient, such other person shall give bond before the clerk of such court for the payment of the

costs and expenses of the appeal, which bond shall be forfeited to the extent necessary if continued retention is ordered. If the judgment of the court be that such person should not be so retained, the court forthwith shall discharge him; otherwise, the court shall order retention of the patient. The clerk of the court forthwith shall forward to the commissioner and superintendent duly attested copies of the court's order. Execution of any such order requiring discharge shall not be stayed pending any appeal to the Supreme Court of Appeals of Virginia, except upon an order of a Justice of the Supreme Court of Appeals.

Source: § 37-71.1.

Note: See last prior note.

§ 37.1-85. Treatment of person admitted while appeal is pending.—Whenever the superintendent of any hospital reasonably believes that treatment is necessary to protect the life, health, or safety of a patient, such treatment may be given during the period allowed for any appeal unless prohibited by order of a court of record in the county or city wherein the appeal is pending.

Source: § 37-71.2.

Note: This section is rewritten to clarify the authority granted to the superintendent to treat admitted persons while an appeal is pending.

§ 37.1-86. Transfer of patients.—Whenever any patient is retained in or by a state hospital, the commissioner may transfer any such patient to any other hospital or Veterans' Administration Facility, or vice versa and such other hospital or Veterans' Administration Facility may retain such patient under the authority of the admission or order applicable to the hospital from which such patient was transferred. No such transfer shall alter any right of a patient under the provisions of this chapter nor shall such transfer divest a justice or court, before which a hearing or request therefor is pending, of jurisdiction to conduct such hearing.

Source: New section.

Note: See next to last prior note.

§ 37.1-87. Patient's rights.—The admission of any person to a hospital shall not, of itself, create a presumption of legal incapacity or incompetency.

Source: New section.

Note: This section is written to protect a patient's rights, since an admission is not a legal adjudication of the mental condition of the patient.

§ 37.1-88. Special Justices to perform duties of Justice under this title.—The authority having the power to appoint the justice defined in § 37.1-1 may appoint one or more special justices, for the purpose of performing the duties required of the justice by this title, whose qualifications shall be the same, mutatis mutandis, as those required in §§ 16.1-8 and 16.1-9 for judges of courts not of record. Such special justice or justices, when so appointed, shall have all the powers and jurisdiction conferred upon the justice by this title. Special justices shall serve under the supervision and at the pleasure of the authority making the appointment. Special justices shall collect the fees prescribed in this title for such service and shall retain fees unless the governing body of

the county or city in which such services are performed shall provide for the payment of an annual salary for such services, in which event such fees shall be collected and paid into the treasury of such county or city.

Source: § 37-61.2.

Note: The phrase "who shall be licensed, practicing attorneys at law" is deleted. The portion of the first sentence starting "whose qualifications" is added. In several places the words "special justices" are substituted for "special justice or justices."

§ 37.1-89. Fees and expenses.—Any justice appointed pursuant to the provisions of § 37.1-88 shall receive a fee of \$10.00 for considering and reporting upon a verified petition for judicial certification as provided in § 37.1-67. Any such justice shall receive a fee of \$25.00 for any hearing over which he presides pursuant to the provisions of §§ 37.1-81 and 37.1-83. For each order authorizing retention issued without a hearing by any such justice pursuant to § 37.1-83 he shall receive a fee of \$5.00. Every physician or clinical psychologist not regularly employed by the State of Virginia, or, if regularly employed by the State of Virginia but on authorized leave therefrom, who is required to serve as a witness for the State in any proceeding under this chapter shall receive a fee of \$50.00 for each day during which he is required to serve. Other witnesses regularly summoned before a justice under the provisions of this chapter shall receive such compensation for their attendance and mileage as is allowed witnesses summoned to testify before grand juries. Each justice, attorney appointed under § 37.1-81, physician or clinical psychologist shall receive like mileage. Any attorney appointed under § 37.1-81 shall receive a fee of \$25.00 and his necessary expenses. Except as hereinafter provided, all expenses incurred, including the fees, attendance and mileage aforesaid, shall be paid by the county or city in which such person was residing immediately prior to admission; 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 be confined in any state supported institution other than a hospital, such fee shall be paid by the State; nevertheless, all such expenses, fees and allowances accruing in connection with any hearing required by this chapter by any justice appointed under the provisions of § 37.1-88 in the city or county wherein is located the hospital in which the subject of the hearing is a patient, initially shall be paid by the State from the appropriation for criminal charges, subject to reimbursement by the county or city in which the patient resided immediately prior to admission. Any such fees, costs and expenses incurred in connection with an examination for a judicial determination in carrying out the provisions of this chapter, 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 certification was requested or the proceedings were instituted, in an appropriate action or proceeding for such purpose; provided, no such fees or costs shall be recovered from any person or his estate when no good cause for either certification or retention exists or when the recovery would create an undue financial hardship.

Source: § 37-75.

Note: This section is completely rewritten to conform with the revised procedures for certification and hearing. If alternate §§ 37.1-66 and 37.1-67 are adopted, the seventh sentence of this section should be amended to read: "Any attorney appointed under the provisions of §§ 37.1-66, 37.1-67 or 37.1-81 shall receive a fee of twenty-five dollars and his necessary expenses."

§ 37.1-90. Place of Hearing.—Any hearing held by a justice pursuant to the provisions of this Article may be held in any courtroom available within the county or city wherein the hospital is located or in any appropriate place, open to the public, which may be made available by the Commissioner and approved by the justice. Nothing herein shall be construed as prohibiting the place of hearing being on the grounds of the hospital.

Source: New section.

Note: See last prior note.

Article 4.

Special Types of Patients.

§ 37.1-91. Disposition of non-residents.—If it appears that the person examined is mentally ill and a non-resident of this State, the same proceedings shall be had with regard to him as if he were a resident of the State and if the non-resident be admitted to a State hospital under these proceedings, a statement of the fact of his non-residence and of the place of his domicile or residence, or from whence he came, as far as known, shall accompany any petition respecting him. The Commissioner shall, as soon as practicable, cause him to be returned to his family or friends, if known, or the proper authorities of the state or county from which he came, if ascertained and such return is deemed expedient by the Commissioner.

Source: § 37-91.

Note: This section is changed to conform to the deletion of commissions and references to colonies. The words "or court" are deleted from the second sentence. The last sentence dealing with transportation expenses is deleted in its entirety, since chapter 9 is the "Interstate Compact" and covers non-resident transfers.

§ 37.1-92. Admission of aliens. Whenever any person shall be admitted to a State hospital, or any other State institution which is supported wholly or in part by public funds, it shall be the duty of the Commissioner to inquire forthwith into the nationality of such person, and if it shall appear that such person is an alien, to notify immediately the United States immigration officer in charge of the district in which such institution is located.

Upon the official request of the United States immigration officer, in charge of the territory or district in which is located any court or justice certifying or ordering any alien for admission to such institution, it shall be the duty of the clerk of such court to furnish, without charge, a certified copy, in duplicate, of any record pertaining to the case of the admitted alien. Such information shall be deemed confidential.

Source: § 37-91.1.

Note: This section is changed to delete information concerning various matters of which the Commissioner would not necessarily have knowledge.

§ 37.1-93. Admission of veteran to, or transfer to or from, a Veterans' Administration Facility.—Whenever it appears that the person found to be mentally ill is a veteran eligible for treatment in a Veterans' Administration Facility, the justice may, upon receipt of a certificate of eligibility from the Facility concerned, certify or order the person to the Facility regardless of whether the person is a legal resident of this State. Any veteran who heretofore has been, or hereafter is, a patient in a

State Hospital, and is eligible for treatment in a Facility may with the written consent of the manager of the Facility, be transferred to the Facility. Any veteran heretofore or hereafter admitted to a Facility, if he be a legal resident of this State, who is otherwise eligible for treatment in a State hospital, may with the written authorization of the Commissioner, be transferred to the State hospital.

Source: § 37-73.

Note: This section is changed to conform with the deletion of references to commitment, colony, mentally deficient, epileptic and inebriate. Changes also are made in grammatical construction.

§ 37.1-94. Veterans admitted or transferred to Facility subject to rules; power and authority of medical officer in charge.—Every veteran, after admission to a Facility, either upon initial admission or transfer, shall be subject to the rules and regulations of the Facility, and the medical officer in charge of the Facility to which the veteran is admitted or transferred is vested with the same powers authorized by law to be exercised by the superintendent of a State hospital with reference to retention, custody, furlough, and discharge of the veteran so admitted or transferred. Any discharge given by such medical officer upon a certificate of sanity shall be of the same effect as one granted by the superintendent of a State hospital.

Source: § 37-74.

Note: See last prior note.

§ 37.1-95. Receiving and maintaining federal prisoners in State hospitals.—The Board shall be authorized to enter into a contract with the United States, through the Director of the United States Bureau of Prisons or other authorized agent of the United States, for the reception, maintenance, care and observation in the State hospitals, or in such of them as may be designated by the Board for the purpose, of any persons charged with crime in the courts of the United States sitting in Virginia and committed by such courts to such State hospitals for such purposes. All persons so admitted shall remain subject to the jurisdiction of the court by whom they were committed, and may be returned to such court at any time for hearing or trial.

Any such contract shall require that the United States remit to the State Treasurer for each prisoner so admitted specified per diem or other payments, or both, such payments to be fixed by such contract.

It shall be the duty of the superintendent of any State hospital to which a prisoner of the United States is so admitted to observe the patient, and, as soon as may be, report in writing to the court by which he is certified or committed as to his mental condition or such other matters as the court may direct.

No contract made pursuant to this section shall obligate the Commonwealth or the Board to receive a federal prisoner into any State hospital in which all available accommodations are needed for patients otherwise admitted, or in any other case where, in the opinion of the superintendent, the admission of such prisoner would interfere with the care and treatment of other patients or the proper administration of the State hospital.

Source: § 37-98.

Note: See last prior note.

Article 5.

Residence.

§ 37.1-96. Residence of patients in hospitals and school age children in State hospitals generally.—In any hospital each patient shall be deemed a resident of the county, city or town of which he was a legal resident at the time of his removal to the hospital, and not of the county, city or town in which the hospital is located. Provided, that the children of school age within the population of any State hospital shall be enumerated in the school census of the district and county in which the State hospital is located, as a part of the school population of the Commonwealth, and annually the State hospital shall be entitled to receive from the State Board of Education an appropriation for the support of such school, based on its population, such as is made to the Bon Air School for Girls, and like institutions.

Source: §§ 37-95 and 37-191.

Note: Reference to colony was deleted. The word "town" was added to the first line of the section. The two sections are combined in their entirety.

§ 37.1-97. Children born in State hospitals.—Any child born in a State hospital shall be deemed a resident of the county, city or town in which the mother had legal residence at the time of admission. Such child shall be removed from such hospital as soon after birth as the health and well-being of the child permit, and delivered to its father, or other member of its family. If unable to effect the child's removal as aforesaid, the superintendent shall cause the filing of a petition in the juvenile court of the county or city wherein the child is present, requesting adjudication of the care and custody of the child, under the provisions of § 16.1-178 of the Code. If the mother has been a patient continuously for ten months the Department of Welfare and Institutions shall be required to care for the child. The judge of such court shall take appropriate action to effect prompt removal of the child from the State hospital.

Source: § 37-96.

Note: See last prior note. The next to last sentence is added to require the Department of Welfare and Institutions to care for children born to women who are in the hospital continuously for more than ten months.

Article 6.

Discharge.

§ 37.1-98. Discharge, conditional release, and convalescent status of patients.—The superintendent of a State hospital, upon filing his written certificate with the Department, may discharge any patient, except one held upon an order of a court or judge for a criminal proceeding, as follows:

- a. Any patient who, in his judgment, is recovered.
- b. Any patient who, in his opinion, is not mentally ill.
- c. Any patient who is not recovered but whose discharge, in the judgment of the superintendent, will not be detrimental to the public welfare, or injurious to the patient.
- d. The superintendent may grant convalescent status to a patient in accordance with rules prescribed by the commissioner.

The State hospital granting a convalescent status to a patient shall not be liable for his expenses during such period. Such liability shall devolve

upon the relative, committee, person to whose care the patient is entrusted while on convalescent status, or the proper public welfare official of the county or city of which the patient was a resident at the time of admission.

e. Because he is not a proper case for treatment within the purview of this chapter, such patient shall, if necessary for his welfare, be received and cared for by the public welfare agency of the county or city of his residence.

Source: § 37-94.

Note: This section is completely rewritten to give the superintendent maximum latitude in granting discharges.

§ 37.1-99. Discharge of patients from a private hospital.—The person in charge of a private hospital, upon filing his written certificate with the department, may discharge any patient who is recovered, or, if not recovered, whose discharge will not be detrimental to the public welfare, or injurious to the patient. The person in charge of such institution may, subject to the approval of the Commissioner, refuse to discharge any patient, if, in his judgment, such discharge will be detrimental to the public welfare or injurious to the patient, and if the guardian, committee or relatives of such patient refuse to provide properly for his care and treatment, the person in charge of such institution may apply to the Commissioner for the transfer of the patient to a State hospital.

The person in charge of a private hospital may grant a convalescent status to a patient in accordance with rules prescribed by the Commissioner.

Source: New section.

Note: This section is written to give superintendents of private hospitals authority to discharge patients.

§ 37.1-100. Discharge of non-resident.—The Commissioner may discharge a non-resident admitted under § 37.1-65 and shall do so whenever it is necessary to accommodate a resident patient.

Source: § 37-120.

Note: Changes in grammatical construction only.

§ 37.1-101. Providing drugs or medicines for certain persons released from State hospitals.—When any patient is released from a State hospital, if such patient or the person legally liable for his care and treatment is financially unable to pay for drugs or medicines which are prescribed for him by a member of the medical staff of the State hospital in order to mitigate or prevent a recurrence of the condition for which he has received care and treatment in such institution, the Department may, from funds appropriated to the Department, provide such patient from time to time with such drugs and medicines. Such medication shall be dispensed only in accordance with law.

Source: § 37-92.1.

Note: The requirements that the patient be under the continuing control of the Department and that the Department purchases the medicines are deleted.

§ 37.1-102. Mentally ill persons charged with or convicted of crime and restored to sanity; duties of Superintendent.—When any person, confined in the department for the criminal mentally ill at a hospital and charged with crime subject to be tried therefore, or convicted of crime, shall be restored to sanity, the superintendent shall give notice thereof

to the judge by whose order he was confined, and deliver him as thereafter ordered; provided, that no person who has been convicted of a crime punishable by death shall be so delivered until the superintendent of one of the other State hospitals, to be designated by the Commissioner, concurs in the opinion that the person has been restored to sanity. When any person charged with or indicated for any offense which may be punishable by death has been adjudged mentally ill both at the time of the offense and the time when, but for such adjudication he would have been tried, and has been ordered by the court to be committed to the department for the criminal mentally ill at a hospital, such person shall not be discharged therefrom until the superintendent of that hospital and the superintendents of two other hospitals, designated by the Commissioner, shall be satisfied, after thorough examination, that such person has been restored to sanity and may be discharged without danger to himself and others; provided that no person shall, in any case, be denied the right of a trial by jury as to his sanity or mentality, if he so elects.

This section shall be so construed as to apply to a mentally deficient as well as to a mentally ill person, and in its application to a mentally deficient person, the term "adjudged mentally ill" shall mean adjudged "mentally deficient" and the term "restored to sanity" shall mean such improvement of mental condition that such mentally deficient person could be discharged without danger to himself or others.

Source: § 37-93.

Note: The requirement that the Board approve the discharge of a person adjudged mentally ill both at the time of the offense and the time of trial is deleted. The provisions of this section as well as related sections in Title 19.1 are suitable subjects for a separate, special study commission.

Article 7.

Testing Legality of Detention.

§ 37.1-103. **Habeas corpus as means.**—Any person held in custody as mentally ill may by petition for a writ of habeas corpus have the question of the legality of his detention determined by a court of competent jurisdiction. The court or judge thereof in vacation shall in some court room of such county or city, or in some other convenient public place in such county or city determine whether such person be sane or mentally ill.

Source: §§ 37-122 and 37-123.

Note: This section combines § 37-122 with the last three lines of § 37-123.

§ 37.1-104. **Duty of attorney for Commonwealth.**—In any case to test the legality of the detention of such person whether by habeas corpus or otherwise, the attorney for the Commonwealth of the county or city in which the hearing is had shall on request of the superintendent of the hospital having or claiming custody of such person represent the Commonwealth in opposition to any such petition, appeal or procedure for the discharge of such persons from custody.

Source: § 37-125.

Note: See last prior note.

Article 8.

Expenses of Care, Treatment and Maintenance.

§ 37.1-105. **Who liable for expenses—amount.**—Any person who has been or who may be admitted to any State hospital, or the estate of any

such person or the person legally liable for the support of any such person, shall be liable for the expenses of his care, treatment and maintenance in such hospital. Such expenses shall not exceed the actual per capita cost of maintenance except as hereinafter provided for the Virginia Treatment Center for Children and shall be fixed by the Board, but in no event shall recovery be permitted for amounts more than five years past due.

The expense for care, treatment and maintenance in the Virginia Treatment Center for Children shall be fixed by the Board as follows:

- (1) For out-patients, an amount not to exceed fifteen dollars per day;
- (2) For in-patients, an amount not to exceed thirty dollars per day;
- (3) For day care patients, an amount not to exceed twenty-five dollars per day.

Source: § 37-125.1.

Note: "Board" is substituted for "Department." Title 20 of the Code of Virginia establishes the responsible parties for support of dependent persons.

§ 37.1-106. Collections payable into State treasury.—All funds collected by the Department pursuant to this article shall be paid into the general fund of the State treasury.

Source: § 37-125.2.

Note: No change.

§ 37.1-107. Nonresidents.—Nothing in this title shall be construed to forbid any hospital to charge for the removal, care and maintenance of any nonresident mentally ill, epileptic, inebriate or mentally deficient who has been admitted to such hospital, and whose committee or next friend has contracted with such hospital for the care and maintenance of such person, nor shall it be construed to permit the admission or retention of any nonresident to the exclusion of a resident of the Commonwealth.

Source: § 37-125.3.

Note: No change.

37.1-108. Department to investigate financial ability to pay expenses.—The Department shall make investigation and ascertain which of the patients, or which of the parents, guardians, trustees, committees, or other persons legally responsible therefor, are financially able to pay the expenses of the care, treatment and maintenance, and such patient, parent, guardian, trustee, committee, or other person legally responsible therefor shall be notified of such expenses and, in general, of the provisions of this article.

Source: § 37-125.4.

Note: No change.

§ 37.1-109. Assessments and contracts by Department.—The Department may assess or contract with any patient, patient's parent, guardian, trustee, committee, or the person legally liable for his support and maintenance, and in arriving at the amount to be paid, the Department shall have due regard for the financial condition and estate of the 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 assess or agree to accept a monthly sum for his

maintenance less than the actual per capita cost of his maintenance; provided, however, that the estate of such patient other than income shall not be depleted below the sum of two thousand five hundred dollars. Nothing contained in this title shall be construed as making any such contract permanently binding upon the Department or prohibiting it from periodically reevaluating the actual per capita cost of care, treatment, and maintenance and the financial condition and estate of any patient, his present and future needs and the present and future needs of his lawful dependents and entering into a new agreement with the patient, patient's parent, guardian, trustee, committee, or the person liable for his support and maintenance, increasing or decreasing the sum to be paid for the patient's care, treatment, and maintenance.

All contracts made by and between the Department and any person acting in a fiduciary capacity for any patient adjudicated to be insane or feeble-minded under the provisions of Chapter 4 of this Title and all assessments made by the Department upon such patients or their fiduciaries, providing for payment of the expenses of such patient in any State hospital, shall be subject to the approval of any court of record having jurisdiction over the incompetent's estate or for the county or city of which he is a legal resident or from which he was admitted to said hospital.

Source: § 37-125.5.

Note: The paragraph is changed to incorporate a minimum sum other than income below which the patient's estate shall not be depleted. Language is added to provide the Department with the right to seek adjustment in the assessment or contract as the actual per capita cost or the patient's ability to pay increases or decreases.

§ 37.1-110. Application for order to compel payment of expenses.—Upon the failure of any patient, or of his parent, guardian, committee, trustee or other person legally responsible for his expenses, to make payment of the same, or enter into an agreement for such payment, and whenever it appears from investigation that such patient, his parent, guardian, committee, trustee, or other person legally liable for the support of such person, has sufficient estate, or there is evidence of liability to pay such expenses, the Department shall apply to any court mentioned in § 37.1-109, or to any court having jurisdiction for the county or city in which the person legally liable for the support of such patient resides, for an order to compel payment of such expenses by persons liable therefor and in the following order:

First, by the patient or his estate; and second, by the person legally liable for the support of such patient. The Department shall collect such part or all of such expenses from the several sources as appears proper under the circumstances and may proceed against all of such sources. The proceedings for the collection of such expenses shall conform to the procedure for collection of debts due the Commonwealth.

Source: § 37-125.6.

Note: Internal reference conformed.

§ 37.1-111. Notice of hearing.—Notice of any hearing, on such application or petition of the Department for an order to compel payment of such expenses, shall be served on the patient, and his committee or trustee, or upon the person legally responsible for the support of the patient, or upon the person against whom the proceedings are instituted,

at least fifteen days prior to the hearing, and in the manner provided for the service of civil process.

Source: § 37-125.8.

Note: No change.

§ 37.1-112. Hearing and order; matters for consideration.—At such hearing the court shall hear the allegations and proofs of the parties and shall by order require payment of maintenance or any part thereof by the parties liable therefor, if of sufficient ability, having due regard for the financial condition and estate of the patient, his present and future needs, and the present and future needs of his lawful dependents, if such proceeding is to charge the patient with such expenses; and if such proceeding is to charge any other person legally liable for such expenses, the court shall have due regard for the financial condition and estate of such person, his present and future needs, and the present and future needs of his lawful dependents.

Source: § 37-125.9.

Note: The words “or inmate” are deleted.

§ 37.1-113. Modification of order; notice and procedure.—Upon application of any interested party and upon like notice and procedure, the court may at any time modify such order. If the application is made by any party other than the Department, the notice shall be served on the Commissioner.

Source: § 37-125.10.

Note: No change.

§ 37.1-114. Appeal from order or judgment.—Any party aggrieved by such order or by the judgment of the court may appeal therefrom in the manner provided by law.

Source: § 37-125.11.

Note: No change.

§ 37.1-115. Effect and enforcement of order or judgment.—Any order or judgment rendered by the court hereunder shall have the same force and effect and shall be enforceable in the same manner and form as any judgment recovered in favor of the Commonwealth.

Source: § 37-125.12.

Note: No change.

§ 37.1-116. When collection of expenses not required.—This article shall not be held or construed to require the Department to collect the expenses of the care, treatment, and maintenance of any indigent patient from such person, or to collect such expenses from any person legally liable therefor, where investigation discloses that such person legally liable for the support is without financial means, or that such payment would work a hardship on such person or his family. Neither shall it be the duty or obligation of the Department to institute any proceedings provided for in this article to effect such collection where investigation discloses that such proceedings would be without effect, or would work a hardship on such patient, or the person legally liable for his support.

Source: § 37-125.13.

Note: The words “or inmate” are deleted.

§ 37.1-117. **Liability of estate of patient.**—The estate of any patient dying in such hospital shall be liable only for such amounts as remain unpaid under an assessment made by the Department or under an agreement entered into by him or by and between the Department and his parent, guardian, trustee, committee or person acting in a fiduciary capacity for him, or the unsatisfied portion of any judgment rendered by a court in a proceeding had under this article, provided, however, that in the event such agreement was reached by fraud, or concealment on the part of that person or persons representing the estate of the patient, or that person or persons legally liable for the support of the patient, by which the ability to pay was understated, then the Department may recover such amount as may be proportionate to the true ability to pay, not to exceed the amount set out in § 37.1-105, provided, however, that in no event shall recovery be permitted for amounts more than five years past due which would have been collected had there been no fraud or concealment.

Source: § 37-125.14.

Note: The language "under an assessment made by the Department or" is added in the third line of the section. The words "parent, guardian," are added to the fifth line of the section.

§ 37.1-118. **Statement forms to be completed by persons liable for support of patient.**—The Commissioner may prescribe statement forms which shall be completed by those persons legally liable under § 37.1-105 for the support of the patient. Such statement shall be sworn to by such person and returned to the Commissioner within thirty days from the time such statement was mailed to such person. Should such person fail to return such statement to the Commissioner, properly completed, within thirty days, the Commissioner shall send another statement by registered mail and if the statement, properly completed, is not then returned within thirty days the person to whom it was sent by registered mail shall be assessed five dollars for each week, or part of each week, in excess of the thirty-day period that the statement is overdue, which sum or sums shall be collected by the Department in the same manner as other sums due for the care, treatment and maintenance of patients from the persons whose duty it was to complete each statement, and, when collected, such sum or sums shall be paid into the same fund into which other collections are paid under this article.

A copy of this section shall be placed in a prominent place, in bold face type, upon each statement form.

Source: § 37-125.15.

Note: Internal reference is conformed.

§ 37.1-119. **Payment of bills monthly.**—The bills for the support of patients who are placed at board in families under the provisions of Chapter 3 (§§ 37.1-120 et seq.) of this title shall be payable monthly.

Source: § 37-130.

Note: Internal reference is conformed.

CHAPTER 3

PERSONS NOT CONFINED IN STATE HOSPITALS.

§ 37.1-120. **Admission to private institution; payment of costs.**—Any person admitted to a private institution as provided in Chapter 2 (§§ 37.1-64 et seq.) shall be confined until discharged in accordance with regulations of the 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, attorney, physician or clinical psychologist shall be ordered to be paid by those making the complaint.

Source: § 37-126.

Note: The word "attorney" is inserted before the word "physician" in the second sentence.

§ 37.1-121. Board with private families; costs and expenses.—The superintendent of each State hospital may, subject to the approval of the Commissioner, place at board in a suitable family in this State approved by the Board and under such rules and regulations as to it appear proper, any patient in the hospital or who has been admitted thereto but not in residence, 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 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 in the general fund of the State treasury. The provisions of article 8 (§§ 37.1-105 et seq.) of Chapter 2 of this title shall apply, mutatis mutandis, to collections authorized by this section.

Source: § 37-128.

Note: This section is changed to conform to the deletion of commitments. Internal references are conformed.

§ 37.1-122. Homes with provision for special training.—The superintendent of each State hospital may place at board under his direction and supervision in private or boarding homes, with provisions for special training, such patients as he believes may be benefited from a period of training. The number of patients as well as the homes in which they are placed, shall be approved by the Board, and the cost to the Commonwealth for such patients shall not be limited by the amount specified in the preceding section, but shall be upon terms prescribed by the Board.

Source: § 37-129.

Note: This section is changed to conform to the deletion of reference to colony. The words "or boarding" are inserted before the word "homes" in the first sentence.

§ 37.1-123. Placing patient in nursing home; costs.—In lieu of placing a patient at board in a private home, the superintendent of a hospital 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 § 37.1-121.

Source: § 37-130.1.

Note: See last prior note. Internal references are conformed.

§ 37.1-124. Visiting and investigation of condition of persons in private homes and nursing homes.—The 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 superintendent 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.

Source: § 37-131.

Note: Language change is made to conform with definition of "Board."

§ 37.1-125. Commitment to responsible person on bond prior to removal.—If, either before admission, or after admission to a hospital or Veterans' Administration Facility and before removal thereto some responsible person will give bond, with sufficient surety, to be approved by the judge or justice, payable to the Commonwealth, with condition to restrain and take proper care of a mentally-ill person without cost to the Commonwealth, until conveyed to a hospital, Veterans' Administration Facility, or otherwise discharged from custody, then the judge or justice may, in his discretion, commit such mentally-ill person to the custody of such person. If the person giving the bond mentioned in this section, or his representative, shall deliver the mentally-ill person therein mentioned to the sheriff of the county or sergeant of the city, according to the condition of the bond, such sheriff or sergeant shall carry such person before a judge or justice of his county or corporation, and the same proceeding shall be thereupon had as in the case of a person brought before a judge or justice under his warrant under § 37.1-67.

Source: § 37-132.

Note: Language changes made to conform to definitions of admission and mentally-ill. Internal reference conformed.

§ 37.1-126. Trial visits; discharge during such period.—The superintendent of any hospital may grant convalescent leave to any patient therein and place him under the care of his committee, relative, friend or other responsible or proper person, or without such care, for a period to be determined by the superintendent, and may receive him into the hospital when returned by any such committee, relative, friend or other person having charge of him, or upon his own application within the period for which he was granted convalescent leave without any further order of admission. The superintendent of such hospital may require as a condition of such convalescent leave that the person in whose charge the patient is placed, shall make reports to him at stated periods of the patient's condition, that he exercise proper care over such patient and deliver him safely to the hospital when required to do so by the superintendent without expense to the hospital. Should any patient granted convalescent leave under this section fail to return to the hospital when required by the superintendent to do so, he may be deemed by the superintendent an escapee and all the laws applicable to escaped patients in any hospital shall apply thereto, except all costs and expenses incident to the arrest of such person and his

return to the hospital shall be collected of the patient, his committee, friend or other person in whose charge he was granted convalescent leave. Any patient who has remained on trial visit for one year with the consent of the superintendent of the hospital which placed him on trial visit shall be discharged; provided, that, upon written authorization of the Commissioner obtained prior to such patient's entitlement to discharge, the trial visit may be extended by the superintendent from time to time for periods not exceeding six months at any one time. No person admitted by the Department as criminal mentally-ill shall be granted convalescent leave.

Source: §§ 37-135 and 37-135.1.

Note: The two source sections are combined. Language is changed to conform with definition of admission. The term "convalescent leave" is substituted for the term "furlough" throughout the section.

CHAPTER 4.

COMMITTEES AND TRUSTEES.

Article 1.

Appointment.

§ 37.1-127. When person adjudicated insane or feeble-minded.—If a person be adjudicated insane or feeble-minded by a court of record as hereinafter provided, or in a court in which he is charged with crime, the circuit court of the county or the corporation or circuit court of the city in which he is an inhabitant, or such other courts in such city as have jurisdiction to appoint committees for insane and feeble-minded persons shall appoint a committee for him. The Chancery Court shall have exclusive jurisdiction of such matters in the City of Richmond, but nothing herein contained shall apply to or affect the present jurisdiction of the Hustings Court, Part Two, of the City of Richmond. Such appointments may be made by the court or the judge thereof in vacation. Nothing in this chapter shall invalidate the appointment of any person as committee prior to July one, nineteen hundred and fifty-four.

Source: § 37-136.

Note: No change with the exception that all references to "colony" have been deleted throughout this section and chapter.

§ 37.1-128. Proceedings in courts of record to determine legal competency.—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 or private institution under legal admission 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 defective-

ness 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.

Source: § 37-136.1.

Note: No change. The language has not been changed as the same terminology ("insane" and "feeble-minded") is used in numerous sections throughout the Code of Virginia. The use of this terminology should be the subject of a special study commission.

§ 37.1-129. Clerk to record findings of legal incompetency; public inspection not allowed; notice to Commissioner.—A copy of the findings of the court, if the person be found to be legally incompetent, shall be filed by the judge with the clerk of the court of the county or city in which deeds are admitted to record. 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, but shall immediately notify the Commissioner in accordance with § 37.1-147.

Source: § 37-136.2.

Note: Internal reference conformed and superfluous language deleted.

§ 37.1-130. When no committee appointed within one month of adjudication.—If no person shall be appointed a committee within one month from the adjudication the court, or the judge thereof in vacation, on motion of any interested person, may appoint a committee, or he shall commit the estate of the legally incompetent person to the sheriff of the county or sergeant of the city, who shall be committee, and he and the sureties on his official bond shall be bound for the faithful performance of the trust.

Source: § 37-137.

Note: No change.

§ 37.1-131. For nonresidents.—If a person residing out of the State but having property within the State, be suspected of being legally incompetent due to mental illness or mental deficiency, the circuit court of the county or corporation or circuit court of the city or such other courts in such city as have jurisdiction to appoint committees for legally incompetent persons, except that the Chancery Court shall have exclusive jurisdiction of such matters in the City of Richmond, wherein such property or greater part of it is, shall, upon like application and being satisfied that he is legally incompetent, appoint a committee for him. The appointment may be made by the court of the judge thereof in vacation.

No person against whom proceedings under this section are authorized shall be proceeded against unless and until he shall have been given at least fifteen days' notice by registered mail posted to his last known address. Any person proceeded against under the provisions of this section shall

have the right of appeal at any time from the finding of being legally incompetent due to mental illness or mental deficiency provided that he had no notice as herein provided of the application for appointment of a committee hereunder.

Source: § 37-139.

Note: The phrase "within the State" is substituted for the word "therein" in the second line of the first sentence.

§ 37.1-132. Person because of age or impaired health incapable of taking care of person or property.—On petition of any person in interest to the circuit court of the county, or to any court having jurisdiction for the appointment of guardians or committees of infants or mentally-ill persons of the city, in which any person who by reason of advanced age or impaired health, or physical disability, has become mentally or physically incapable of taking proper care of his person or properly handling and managing his estate, resides, the court or the judge in vacation, after reasonable notice to such person and after hearing on the petition is convinced that he is incapacitated to the extent above-mentioned, may appoint some suitable person to be the guardian or committee of his person or property, and the guardian or committee shall have the same rights and duties which pertain to committees and trustees appointed under §§ 37.1-127 or 37.1-134, and shall give such bond as is required by the court or judge. On the hearing of every such petition a guardian ad litem shall be appointed to represent the interest of the person for whom a committee or guardian is requested and he shall be paid such fee as is fixed by the court or judge to be taxed as part of the costs of the proceeding.

The Chancery Court of the City of Richmond or the judge thereof in vacation shall have exclusive jurisdiction to appoint a guardian or committee under this section for any person who resides in any part of the territory of the City of Richmond which lies on the north side of the James River.

Source: § 37-140.

Note: Internal references are conformed.

§ 37.1-133. Person because of age or impaired health desiring appointment of committee.—On petition of any person to the circuit court of the county, or to any court having jurisdiction for the appointment of guardians or committees of infants or mentally-ill persons of the city in which the person resides, the court or judge may appoint some suitable person to be committee for such person.

The Chancery Court of the City of Richmond or the judge thereof in vacation shall have exclusive jurisdiction to appoint a guardian or committee under this section for any person who resides in any part of the territory of the City of Richmond which lies on the north side of the James River.

Source: New section.

Note: This section was added to enable persons because of age or impaired health desiring appointment of committee to have a voice in determining who should be appointed their committee.

§ 37.1-134. Trustees for incompetent ex-service persons and their beneficiaries.—Whenever any former soldier, sailor or marine, or other ex-service person of the United States, or beneficiary of any ex-service person is found to be incompetent by the medical authorities of the Veterans' Administration or any person in interest, accompanied by a

certificate of the Administrator of Veterans' Affairs or his duly authorized representative, certifying that such person has been rated incompetent by the Veterans' Administration, and that the appointment of a trustee is a condition precedent to the payment of any monies due such ex-service person or any beneficiary of such ex-service person, after reasonable notice to such person, the circuit court of the county or the corporation or Hustings Court of the city of which such ex-service person or beneficiary of such ex-service person is a legal resident, or such other courts in such city as have jurisdiction to appoint committees for mentally-ill persons, or the judges thereof in vacation, except that the Chancery Court of the City of Richmond or the judge thereof in vacation shall have exclusive jurisdiction of such matters under this section for any person who resides in that part of the City of Richmond which lies on the north side of the James River, in lieu of appointing a committee, or adjudging such ex-service person, or beneficiary of such ex-service person, mentally-ill, shall appoint a trustee for such ex-service person, or beneficiary of such ex-service person, where it appears to the court that a trustee is needed for the purpose of receiving and administering such benefits of pension, compensation or insurance as might be paid by the United States government. Upon his qualification, such trustee, in addition to administering the funds payable through the Veterans' Administration, shall administer the entire estate of such ex-service person or beneficiary of such ex-service person regardless of the source from which it is derived, and in such administration shall have the same powers and duties and be subject to the same liabilities as are vested in or imposed upon a committee in the administration of his ward's estate. Such trustee, in addition to such duties and obligations imposed upon him under his trust by the federal government, shall be subject to such State laws as are now in force or hereafter enacted applicable to the appointment and administration of committees for mentally-ill persons.

Any person for whom a trustee has been appointed under the provisions of this section may thereafter be adjudged competent by the court or judge thereof in vacation which appointed the trustee.

Source: § 37-141.

Note: No change.

Article 2.

Powers, Duties and Liabilities.

§ 37.1-135. **Bond required.**—The court, or judge thereof in vacation, making an appointment of a fiduciary pursuant to the provisions of this chapter, shall take from such a bond in such penalty and with such surety as it may deem sufficient.

Source: § 37-144.

Note: This section and the remaining sections of this article are changed to show the use of the word "fiduciary" in place of all similar words.

§ 37.1-136. **Taking of bond by clerk of court.**—Whenever in this title provision is made for the appointment of a fiduciary by a court of record or the judge thereof, the clerk of such court shall also have the authority to take the required bond, and pass upon the sufficiency of the surety thereon.

Source: § 37-144.1.

Note: See last prior note.

§ 37.1-137. Effect of refusal to give bond or accept trust.—If any person so appointed a fiduciary under this title refuses the trust or fails to give bond as required within one month from the date of his appointment, the court, or the judge thereof in vacation, on motion of any person interested, may appoint some other person as fiduciary, taking from such fiduciary the bond required, or shall commit the estate of the person to the sheriff of the county or sergeant of the city of which he is an inhabitant, who shall be the fiduciary, and he and the sureties in his official bond shall be bound for the faithful performance of the trust.

Source: § 37-145.

Note: Language is changed to conform to definition of mentally-ill. See last prior note.

§ 37.1-138. Fiduciary entitled to control and custody of person of ward.—The fiduciary appointed under the provisions of this chapter shall be entitled to the custody and control of the person of his ward when he resides in the State, and is not confined in a hospital or serving a term of penal servitude.

Source: § 37-146.

Note: See last prior note.

§ 37.1-139. Taking possession of ward's estate and suits relative thereto; retaining for his own debt.—The fiduciary shall take possession of his ward's estate, and may sue and be sued in respect to all claims or demands of every nature in favor of or against his ward, and any other of his ward's estate, and he shall have the same right of retaining for his own debt as an administrator would have.

Source: § 37-147.

Note: See last prior note.

§ 37.1-140. Actions not permitted against ward.—No action or suit on any such claim or demand shall be instituted by or against the ward of such fiduciary after admission and until he is discharged.

Source: § 37-148.

Note: Language changed to conform to deletion of "commitment." See last prior note.

§ 37.1-141. Fiduciary to prosecute and defend.—All actions or suits to which the ward is a party at the time of his admission shall be prosecuted or defended, as the case may be, by the fiduciary, after ten days' notice of the pendency thereof, which notice shall be given by the clerk of the court in which the same are pending.

Source: § 37-149.

Note: See last prior note.

§ 37.1-142. Preservation and management of ward's estate.—The fiduciary shall take care of and preserve the ward's estate and manage it to the best advantage. He shall apply the personal estate, or so much as may be necessary, to the payment of the debts of his ward, and the rents and profits of the residue of his estate, real and personal, and the residue of the personal estate, or so much as may be necessary, to the maintenance of such person and of his family, if any.

Source: § 37-150.

Note: See last prior note.

§ 37.1-143. Payments from Veterans' Administration.—Monthly payments of pension, compensation, insurance or other benefits from the Veterans' Administration made to a trustee or committee shall be considered as income and not principal; provided that the accumulation of monthly payments of pension, compensation, insurance or other benefits received from the Veterans' Administration by a trustee or committee and in his hands at the end of the accounting year, which accumulation amounts to two hundred dollars or more, may be carried over as principal and converted into the corpus of the estate.

Source: § 37-150.1.

Note: No change. See last prior note.

§ 37.1-144. Surrender of ward's estate.—The fiduciary shall surrender the ward's estate, or so much as he may be accountable for, to the ward, if he shall be restored, or the real estate to his heirs or devisees, and the personal estate to his executors or administrators, in case of his death without having been restored, but nothing in this section or §§ 37.1-138 to 37.1-142 shall be construed as affecting in any way the provisions of § 37.1-145 relative to supplying comforts and luxuries for persons committed.

Source: § 37-151.

Note: Internal references conformed. See last prior note.

§ 37.1-145. Use of income by fiduciary to provide comforts and luxuries.—When the rights of creditors will not be affected, the fiduciary of any person lawfully admitted to any hospital may, after making adequate provision for those dependent on such person or his estate for support, apply the whole or any part of the residue of the income from his estate to the purpose of providing such comforts and luxuries to such person as may be permitted by the superintendent of such hospital; and may pay the same to such superintendent. Each superintendent receiving money as prescribed in this section shall annually on or before the first day of July, after such sum or sums have been paid, render to the committee of the aforementioned person an itemized statement showing the receipts and disbursements of money received from such committee, accompanied by his certificate that such expenditures were authorized by him and that none of the expenditures were for anything in the ordinary maintenance of such person.

Source: § 37-152.

Note: Language changed to conform to deletion of references to "colony." "Superintendent" and "admitted" are substituted for "steward" and "committed" respectively. See last prior note.

§ 37.1-146. Same; not limited by article relating to expenses.—Nothing in §§ 37.1-105 to 37.1-117 shall be construed to relieve the fiduciary of any patient in a State hospital from paying to any hospital a sum for extra comforts, of persons confined in such hospital; nor to make it unlawful for any such fiduciary to make voluntary gifts which the fiduciary may deem conducive to the happiness and comfort of such persons so confined.

Source: § 37-153.

Note: Internal reference conformed. See last prior note.

§ 37.1-147. Department to be notified in certain cases.—In any suit or action for the appointment of a fiduciary who is to have the management and control of funds belonging to any person who has been admitted to any State hospital, the Department shall receive notice of such suit or

action and the clerk of any court in which such suit or action is pending shall notify the Commissioner of that fact.

Source: § 37-153.1.

Note: Language changed to conform to definition of "mentally-ill." See last prior note. Reference to "opium eater" is deleted.

CHAPTER 5.

MISCELLANEOUS AND PENAL PROVISIONS.

§ 37.1-148. **Officers to be conservators of the peace.**—The superintendent, resident officers, policemen and firemen of any hospital shall be conservators of the peace on the hospital property with all the powers of conservators of the peace under the laws of the Commonwealth.

Source: § 37-15.

Note: No change.

§ 37.1-149. **Penalty for offenses by officers.**—It shall be unlawful for any clerk of a court, sheriff or other officer to fail to perform any duty required of him in this title, or offend against any prohibition contained in this title.

Source: § 37-227.

Note: This section and the following five sections have been changed to conform with the last section of this chapter.

§ 37.1-150. **Mistreatment of patients in hospital.**—It shall be unlawful for any officer or employee or other person to maltreat or misuse any patient confined in any hospital or one lawfully admitted to a hospital, who may be absent on convalescent leave.

Source: § 37-16.

Note: See last prior note. Terminology changed to conform to overall revision.

§ 37.1-151. **Aiding and abetting in escapes.**—It shall be unlawful for any officer or employee of any hospital or any other person to aid or abet in the escape or secretion of any lawfully admitted patient of any hospital, either while in the hospital or on convalescent leave, bond or escapement, or who having given written obligation to return a patient on convalescent leave under his care and custody to any hospital in which he is a patient shall when directed in writing to do so by the superintendent of such hospital, wilfully fail or refuse to do so.

Source: § 37-228.

Note: See note under § 37.1-149. Terminology changed to conform with overall revision.

§ 37.1-152. **Disorderly conduct on grounds and interference with officers.**—It shall be unlawful for any person to conduct himself in an insulting or disorderly manner on the grounds of any hospital, or in any way resist or interfere with any officer or employee of any hospital in discharge of his duty, whether on the grounds of the hospital or elsewhere in the Commonwealth.

Source: § 37-229.

Note: See note under § 37.1-149.

§ 37.1-153. **Providing intoxicating liquor for patients.**—It shall be unlawful for any person to sell or give to any patient of any hospital, or

bring on the premises of such hospital, any ardent spirits or administer same to the patient or place or cause same to be placed where any such patient may receive the same, except it be prescribed by the superintendent or physicians of such hospital.

Source: § 37-230.

Note: See last prior note. Reference to drugs is deleted from this section since Title 54 covers that subject.

§ 37.1-154. Contriving or conspiring to maliciously procure admission of person.—It shall be unlawful for any person to knowingly and maliciously contrive or conspire to procure the admission of any person to any hospital.

Source: § 37-230.2.

Note: See note under § 37.1-149. The section is reworded for clarity and to conform terminology.

§ 37.1-155. Penalty.—Any person found guilty of violating any provision of this chapter shall be fined not exceeding one thousand dollars or confined in jail not exceeding one year, either or both in the discretion of the jury or the court trying the same.

Source: New section.

Note: This section was added to provide for increased penalties for violations of this chapter.

CHAPTER 6.

SEXUAL STERILIZATION.

§ 37.1-156. Authority of superintendents.—Whenever the superintendent of a State hospital shall be of the opinion that it is for the best interests of the patient and of society that any patient of the State hospital under his care should be sexually sterilized, such superintendent is hereby authorized to perform, or cause to be performed by some capable physician or surgeon, the operation of sterilization on any such patient afflicted with the hereditary forms of mental illness that are recurrent, mental deficiency or epilepsy; provided that such superintendent shall have first complied with the requirements of this chapter.

Source: § 37-231.

Note: This section and the following fifteen sections have been changed only to conform with definition changes.

§ 37.1-157. Delegation to member of rights and duties of State Hospital Board.—The Board may in its discretion in respect to any one or more of the State hospitals, from time to time designate one or more of its members to exercise the rights and powers, and to perform the duties, vested in the Board by this chapter. In such event all the rights, powers, and duties vested in the Board under this chapter shall be vested in the member or members so designated by the Board.

Source: § 37-232.

Note: See last prior note.

§ 37.1-158. Superintendent to petition Board for order.—The superintendent of a State hospital shall first present to the Board, a petition stating the facts of the case and the grounds of his opinion, verified by his affidavit to the best of his knowledge and belief, and praying that an order may be entered by the Board requiring him to perform or to have performed by some competent physician to be designated by him in his petition

or by the Board in its order, upon the patient of his State hospital named in such petition, the operation of vasectomy if upon a male and of salpingectomy if upon a female.

Source: § 37-233.

Note: See last prior note.

§ 37.1-159. Copy of petition and notice of hearing served on patient.—A copy of such petition must be served upon the patient together with a notice in writing designating the time and place in the institution, not less than thirty days before the presentation of such petition to the Board, when and where the Board may hear and act upon such petition.

Source: § 37-234.

Note: See last prior note.

§ 37.1-160. Service on guardian or committee, and parents; appointment of guardian.—A copy of the petition and notice shall also be so served upon the legal guardian or committee of the patient if such guardian or committee is known to the superintendent, and if there is no such guardian or committee or none such is known to the superintendent, then the superintendent shall apply to the circuit court of the county or city in which his State hospital is situated, or to the judge thereof in vacation, who by a proper order entered in the common-law order book of the court shall appoint some suitable person to act as guardian of the patient during and for the purposes of proceedings under this chapter, to defend the rights and interests of the patient. The guardian so appointed shall be paid by the Board a fee of not exceeding twenty-five dollars as may be determined by the judge of the court for his services under such appointment. Such guardian shall be served likewise with a copy of the petition and notice. Such guardian may be removed or discharged at any time by the court or the judge thereof in vacation and a new guardian appointed and substituted in his place.

If the patient be an infant having a living parent or parents whose names and addresses are known to the superintendent, they or either of them as the case may be shall be served likewise with a copy of the petition and notice.

Source: § 37-235.

Note: See last prior note.

§ 37.1-161. Hearing and consideration of petition and evidence; right of patient to attend.—After the notice required by this chapter shall have been so given, the Board at the time and place named therein, with such reasonable continuances from time to time and from place to place as the Board may determine, shall proceed to hear and consider the petition and the evidence offered in support of and against the same, provided that the Board shall see to it that the patient shall have opportunity and leave to attend the hearings in person if desired by him or if requested by his committee, guardian or parent served with the notice and petition aforesaid.

Source: § 37-236.

Note: See last prior note.

§ 37.1-162. What may be received as evidence.—The Board may receive and consider as evidence at the hearing the admission papers and other records of the said patient with or in any hospital as certified by the

superintendent or superintendents thereof, together with such other legal evidence as may be offered by any party to the proceedings.

Source: § 37-237.

Note: See last prior note.

§ 37.1-163. Oaths and depositions.—Any member of the Board shall have power to administer oaths to any witnesses at such hearing. Depositions may be taken by any party after due notice and read in evidence if otherwise pertinent.

Source: § 37-238.

Note: See last prior note.

§ 37.1-164. Records.—The Board shall preserve and keep all record evidence offered at such hearings and shall have reduced to writing in duplicate all oral evidence so heard to be kept with its records.

Source: § 37-239.

Note: See last prior note.

§ 37.1-165. Right to representation by counsel.—Any party to the proceedings shall have the right to be represented by counsel at such hearings.

Source: § 37-240.

Note: See last prior note.

§ 37.1-166. Findings and order of the Board.—The Board may deny the prayer of the petition or if it shall find that the patient is mentally-ill, mentally-deficient, or epileptic, and by the laws of heredity is the probable potential parent of socially inadequate offspring likewise afflicted, that the patient may be sexually sterilized without detriment to his or her general health, and that the welfare of the patient and of society will be promoted by such sterilization, the Board may order such superintendent to perform or to have performed by some competent physician to be named in such order, upon the patient, after not less than thirty days from the date of such order, the operation of vasectomy if a male or of salpingectomy if a female.

Source: § 37-241.

Note: See last prior note.

§ 37.1-167. Castration or removal of sound organs not authorized.—Nothing in this chapter shall be construed to authorize the operation of castration nor the removal of sound organs from the body.

Source: § 37-242.

Note: See last prior note.

§ 37.1-168. Appeal to Circuit Court.—From any order so entered by the Board the superintendent or the patient or his committee or guardian or parent or next friend shall within thirty days after the date of such order have an appeal of right to the circuit court of the county or city in which the State hospital is situated, which appeal may be taken by giving notice thereof in writing to any member of the Board and to the other parties to the proceedings, whereupon the superintendent shall forthwith cause a copy of the petition, notice, evidence, and orders of the Board certified by the Chairman or in his absence by any other member thereof,

to the clerk of the circuit court, who shall file the same and docket the appeal to be heard and determined by the court as soon thereafter as may be practicable.

The circuit court in determining such appeal may consider the record of the proceedings before the Board, including the evidence therein appearing together with such other legal evidence as the court may consider pertinent and proper that may be offered to the court by any party to the appeal.

Upon such appeal the circuit court may affirm, revise or reverse the orders of the Board appealed from and may enter such order as it deems just and right and which it shall certify to the Board. The pendency of such appeal shall stay proceedings under the order of the Board until the appeal be determined.

Source: § 37-243.

Note: See last prior note.

§ 37.1-169. Appeal to Supreme Court of Appeals.—Any party to such appeal in the circuit court may within ninety days after the date of the final order therein, apply for an appeal to the Supreme Court of Appeals, which may grant or refuse such appeal and shall have jurisdiction to hear and determine the same upon the record of trial in the circuit court and to enter such order as it may find that the circuit court should have entered.

The pendency of an appeal in the Supreme Court of Appeals shall operate as a stay of proceedings, under any orders of the Board or of the circuit court until the appeal be determined by the Supreme Court of Appeals.

Source: § 37-244.

Note: See last prior note.

§ 37.1-170. Legal participation in execution of chapter creates no liability.—Neither any of such superintendents nor any other person legally participating in the execution of the provisions of this chapter shall be liable either civilly or criminally on account of such participation.

Source: § 37-245.

Note: See last prior note.

§ 37.1-171. Treatment incidentally involving destruction of reproductive functions.—Nothing in this chapter shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this State, by a physician or surgeon licensed by this State, which treatment may incidentally involve the nullification or destruction of the reproductive functions.

Source: § 37-246.

Note: See last prior note.

CHAPTER 7.

EXTRADITION OF PERSONS OF UNSOUND MIND.

§ 37.1-172. Citation of chapter.—This chapter may be cited as the Uniform Act for the Extradition of Persons of Unsound Minds.

Source: § 37-247.

Note: No change.

§ 37.1-173. Definitions.—The terms “flight” and “fled” as used in this chapter shall be construed to mean any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter mentioned may have been instituted and are still pending, with the effect of avoiding, impeding or delaying the action of the court in which such proceedings may have been instituted or be pending, or any such departure from the State where the person demanded then was, if he then was under detention by law as a person of unsound mind and subject to detention.

The word “State” wherever used in this chapter shall include states, territories, districts and insular and other possessions of the United States.

The words “executive authority”, “governor”, and “chief magistrate”, respectively, as applied to a request to return any person within the purview of this act to or from the District of Columbia, shall include a justice of the supreme court of the District of Columbia and other authority.

Source: § 37-248.

Note: No change.

§ 37.1-174. Persons subject to chapter.—This chapter is applicable to any person alleged to be of unsound mind found in this State, who has fled from another state, in which at the time of flight:

(a) He was under detention by law in a hospital, asylum or other institution for the mentally ill as a person of unsound mind; or

(b) He has been theretofore determined by legal proceedings to be of unsound mind, the finding being unreversed and in full force and effect, and the control of his person having been acquired by a court of competent jurisdiction of the state from which he fled; or

(c) He was subject to detention in such state, being then his legal domicile, personal service of process having been made, based on legal proceedings there pending to have him declared of unsound mind.

Source: § 37-249.

Note: No change.

§ 37.1-175. Delivery on demand of executive of foreign state.—Any person within the terms of the preceding section shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed thereto.

Source: § 37-250.

Note: No change.

§ 37.1-176. Procedure.—Whenever the executive authority of any state demands of the executive authority of this State any fugitive within the purview of the preceding section and produces a copy of the commitment, decree or other judicial process and proceedings, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled, with an affidavit made before a proper officer showing the person to be such a fugitive, it shall be the duty of the executive authority of this State to cause him to be apprehended and secured, if found in this State, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the apprehension, the

fugitive may be discharged. All costs and expenses incurred in the apprehending, securing, maintaining and transmitting the fugitive to the state making such demand shall be paid by such state. Any agent so appointed who receives the fugitive into his custody shall be empowered to transmit him to the state from which he has fled. The executive authority of this State is hereby vested with the power, on the application of any person interested, to demand the return to this State of any fugitive within the purview of this chapter.

Source: § 37-251.

Note: No change.

§ 37.1-177. **Limitation.**—Any proceedings under this chapter shall be begun with one year after the flight referred to in this chapter.

Source: § 37-252.

Note: No change.

§ 37.1-178. **Interpretation.**—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

Source: § 37-253.

Note: No change.

CHAPTER 8.

LICENSING PRIVATE INSTITUTIONS.

§ 37.1-179. **Authority of Board to grant licenses.**—The 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 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.

Source: § 37-254.

Note: Language is changed to conform to definition of mentally ill. The subject matter of this chapter is suitable for a separate, special study commission.

§ 37.1-180. **Qualifications of licensee.**—No such license shall be granted for the care or treatment of mentally ill persons unless the Board is satisfied, after investigation, that the person applying therefor is a legally qualified practitioner of medicine in the State of Virginia, and has had practical experience in the care and treatment of such patients. No license shall be granted for the care and treatment of persons addicted to the intemperate use of narcotic drugs, alcohol, or other stimulants unless the Board is satisfied, after investigation, that the person applying therefor is a graduate of a legally chartered medical school or college and holds a certificate or license to practice medicine in Virginia, and that he has been in the actual practice of medicine for the three years next preceding the time at which he applies for a license; nor unless his standing, character and professional knowledge of inebriety are satisfactory to the Board.

Source: § 37-255.

Note: See last prior note.

§ 37.1-181. **Expiration of license; renewal; license fees.**—Licenses granted under this chapter shall expire with the last day of the year in

which they are issued, but may be renewed by the Board. The Board may fix a reasonable fee not in excess of ten dollars for each license so issued, and for any renewal thereof. All funds received by the Board under this chapter shall be paid into the general fund in the State Treasury.

Source: § 37-256.

Note: No change.

§ 37.1-182. **Inspections.**—All institutions, hospitals and homes operated under any such license shall be subject to the supervision and control of the Board, and to inspection at any reasonable time by any authorized inspector or agent of the Board. The Board shall inspect all such licensed institutions, hospitals and homes; provided that the Board shall call upon other state or local departments to assist in said inspections and such departments shall render an inspection report to the Board. After receipt of all inspection reports, the Board shall make the final determination with respect to the condition of the institution, hospital or home so inspected. The Board may adopt and enforce such reasonable rules and regulations as may be necessary or proper to carry out the general purposes of this chapter.

Source: § 37-257.

Note: This section was amended to require the Board to inspect all licensed institutions and to make a determination as to the condition of the institutions.

§ 37.1-183. **Necessity for license.**—No person shall be involuntarily placed in the custody of any private hospital, institution or sanitarium under the provisions of this title unless it be duly licensed by the Board.

Source: § 37-257.1.

Note: The word "involuntarily" is substituted for the words "committed or" in the first line of the section.

§ 37.1-184. **Necessity for supervision of licensed persons.**—It shall be unlawful for any person to maintain or operate any private institution, hospital, or home for the care or treatment of mentally ill persons, or for the care or treatment of persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants, unless such institution, hospital or home is under the direct personal supervision of a person duly licensed hereunder; provided, that this section shall not apply to any person operating an institution devoted solely to the care or treatment of persons addicted to the use of alcohol.

Source: § 37-258.

Note: Language changed to conform to definition of mentally ill. The proviso is added to conform to a 1964 amendment of § 37-254 (§ 37.1-179 herein).

§ 37.1-185. **Revocation or suspension of licenses; resumption of operation.**—(a) The Board is authorized to revoke or suspend any license issued hereunder, on any of the following grounds: (1) violation of any provision of this chapter or of any applicable and valid rule or regulation made pursuant to such provisions; (2) permitting, aiding, or abetting the commission of an illegal act in such private institution, hospital or home; (3) conduct or practices detrimental to the welfare of any patient in such private institution, hospital or home.

(b) Before any license issued under this chapter is so revoked or suspended, thirty days' written notice must be given the licensee of the date set for hearing of the complaint and he must be furnished with a copy of the complaint and shall be entitled to be represented by legal counsel at the hearing. The notice shall be given by the Board by registered mail.

(c) If a license is revoked as herein provided, a new application for license may be considered by the Board if, when, and after the conditions upon which revocation was based have been corrected and satisfactory evidence of this fact has been furnished. A new license may then be granted after proper inspection has been made and all provisions of this chapter and applicable rules and regulations made thereunder have been complied with and recommendations to such effect has been made by the Commissioner upon basis of an inspection by any authorized inspector or agent of the Board.

(d) Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines, upon basis of such an inspection, that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.

Source: § 37-258.1.

Note: The words "or inmate" are deleted from item (3) of subparagraph (a).

§ 37.1-186. Review of Board's refusal, revocation or suspension of license.—Any person aggrieved by the refusal of the Board to issue a license or by its revocation or suspension of a license may, within thirty days after receipt of notice of such action or within a reasonable time after its failure to take action upon a completed application for a license, obtain a review by any court having equity jurisdiction in the county or city in which such private institution, hospital or home is or is proposed to be located and a copy of the petition for review shall be filed with the Board. Within five days after receipt of the copy, the Board shall transmit to the court all of the original papers pertaining to the matter to be reviewed, and the matter shall be thereupon heard by the court or judge in vacation as promptly as circumstances will reasonably permit. The court may enter such orders pending the proceeding as are deemed necessary or proper in accordance with the principles of equity jurisprudence and procedure. The hearing may be upon the record so transmitted, but the court may hear such additional evidence as it deems proper, and upon the conclusion of the hearing, the court may affirm, vacate or modify the order appealed from. Costs may be ordered to be paid as the court or judge deems proper in accordance with principles of equity. Any party to the proceeding may appeal from the decision of the court to the Supreme Court of Appeals, in the same manner as appeals are taken from courts of equity generally.

Source: § 37-258.2.

Note: No change.

§ 37.1-187. Proceeding to prevent unlawful operation of institution.—In case any such private institution, hospital or home is being operated in violation of the provisions of this chapter or of any applicable rules and regulations made under such provisions, the Board, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful operation and to restrain, correct or abate such violation or violations. Such action or proceeding shall be instituted in a court of record having equity jurisdiction in the county or city where such private institution, hospital or home is located, and such court shall have jurisdiction to enjoin such unlawful operation or such violation or violations.

Source: § 37-258.3.

Note: No change.

§ 37.1-188. **Cure by mental or spiritual means without use of drugs or material remedy.**—Nothing in this chapter contained shall be construed to authorize or require a license of a person to establish, maintain, and operate, or to have charge of, any private institution, hospital or home for the care or treatment of persons by the practice of the religious tenets of any church in the ministrations to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided the statutes and regulations on sanitation are complied with.

Source: § 37-259.

Note: No change.

§ 37.1-189. **Penalty.**—Any person violating any provision of this chapter or any applicable rule and regulation made under such provisions shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, and each day, or part thereof, of continuation of any such violation shall constitute a separate offense.

Source: § 37-260.

Note: No change.

CHAPTER 9.

INTERSTATE COMPACT.

§ 37.1-190. **Enactment of Compact.**—The Interstate Compact on Mental Health is hereby recognized and enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH.

The contracting states solemnly agree that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability of furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted required care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state, whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patient, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of an incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the department, agencies, and officers

of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Article VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, cor-

response, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the state affected as to all severable matters.

Source: New section.

Note: This section and the following three sections are added to provide the State with a workable method of transferring non-residents to their respective States and receiving residents into State hospitals from other States. Approximately 35 states have adopted this Interstate Compact.

§ 37.1-191. **Compact Administrator; Powers.**—Pursuant to said compact, the Commissioner of Mental Hygiene and Hospitals shall be the compact administrator who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this state thereunder.

Source: New section.

Note: See last prior note.

§ 37.1-192. **Supplementary Agreements.**—The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

Source: New section.

Note: See last prior note.

§ 37.1-193. **Discharge of financial obligations.**—The compact administrator may make or arrange for any payments necessary to discharge any financial obligations upon this state by the compact or by any supplementary agreement entered into thereunder.

Source: New section.

Note: See last prior note.

CHAPTER 10.

COMMUNITY MENTAL HEALTH AND MENTAL RETARDATION SERVICES.

§ 37.1-194. **Purpose; Services to be provided.**—The Department, for the purposes of establishing, maintaining, and promoting the development of mental health and mental retardation services in the State, may make matching grants to assist any county having a population of approximately fifty thousand or more or any city having a population of approximately seventy-five thousand or more, or any combination of counties or counties and cities having a combined population of approximately fifty thousand or more, in the establishment and operation of local mental health programs to provide:

(a) Collaborative and co-operative services with public health and other groups for programs of prevention of mental illness, other psychiatric disabilities, and mental retardation.

(b) Informational and education services to the general public, and lay and professional groups.

(c) Consultative services to courts, public schools, health and welfare agencies available to the public.

(d) Outpatient diagnostic and treatment services.

(e) Rehabilitative services for patients suffering from mental or emotional disorders, other psychiatric conditions and mental retardation.

(f) Inpatient diagnostic and treatment services.

(g) Research and training of personnel.

(h) Aftercare for the patient released from a mental hospital.

Source: New section.

Note: This section and the following eight sections are added to enable the communities of the State to more actively participate in mental health and mental retardation programs. Several of the following sections provide for State grants to the participating localities.

§ 37.1-195. Community Mental Health Services Board; Appointment, and Membership.—Every city, county or combination of counties or counties and cities establishing a community mental health services program, before it may come within the provisions of this act, shall establish a single community mental health services board, with neither less than five nor more than fifteen members. When any city or county singly establishes a program, the board shall be appointed by the mayor of the city or by the chairman of the county board of supervisors. When any combination of counties or counties and cities establishes a community mental health services program, the chairman of the board of supervisors of each county in the case of counties or mayor in the case of cities shall establish the size of the board between five and fifteen members, and shall select and appoint the members of said board.

Source: New section.

Note: See last prior note.

§ 37.1-196. Same; Term, Vacancies, Removal.—The term of office of each member of the community mental health board shall be for three years from the first day of January of the year of appointment, except that of the members first appointed, several shall be appointed for terms of one year each, several for terms of two years each, and the remaining members of the board for terms of three years each. The selection of members for one, two, and three year terms shall be as nearly equal as possible with regard to the total number of members on the board. Vacancies shall be filled for unexpired terms in the same manner as original appointments. Any member of a board may be removed by the appointing authority for cause, after being given a written statement of the causes and an opportunity to be heard thereon.

Source: New section.

Note: See last prior note.

§ 37.1-197. Same; Powers and Duties.—Every community mental health board shall:

(a) Review and evaluate community mental health and mental retardation services and facilities, both public and private, available to serve the community.

(b) Submit to the governing body or bodies of each political subdivision, of which it is an agency, a program of community mental health and mental retardation services and facilities.

(c) Within amounts appropriated thereon, execute such program and maintain such services as may be authorized under such appropriations.

(d) Enter into contracts for rendition or operation of services or facilities.

(e) Make rules or regulations concerning the rendition or operation of services and facilities under its direction or supervision, subject to applicable standards or regulations of the Department.

(f) Appoint a director of community mental health services whose qualifications meet the standards fixed by the Department and prescribe his duties. The compensation of such director shall be fixed by the board within the amounts made available by appropriation therefor.

(g) Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and for the manner of collection of the same; provided, however, that all collected fees shall be deposited with the treasurer of the political subdivision of which the board is an agency, or, in the case of a joint board, with the treasurer of the political subdivision specified by agreement; provided further, that such collected fees shall be used only for community mental health purposes.

(h) Accept or refuse gifts, donations, bequests or grants of money or property from any source and utilize the same as authorized by the governing body or bodies of the political subdivision or subdivisions of which it is an agency.

(i) Seek and accept funds through Federal grants.

Source: New section.

Note: See last prior note.

§ 37.1-198. Mental Health Programs; Approval of Plan and Budget; Application for Grant.—Any city, county or combination of counties or counties and cities which establishes a community mental health board administering a mental health services program may apply for the assistance as provided in this act by submitting annually to the Department its plan and budget for the next fiscal year together with the recommendations of the community mental health board thereon. No program shall be eligible for a grant hereunder unless its plan and budget have been approved by the Department.

Source: New section.

Note: See last prior note.

§ 37.1-199. Same; Allocation of Funds by Department; Withdrawal.—At the beginning of each fiscal year the Department may allocate available funds to the community mental health and mental retardation programs for disbursement during the fiscal year in accordance with such approved plans and budgets. From time to time during the fiscal year, the Department shall review the budgets and expenditures of the various programs and if funds are not needed for a program to which they were allocated, it may withdraw such funds as are unencumbered, after reasonable notice and opportunity for hearing, and reallocate them to other programs. It may withdraw funds from any program which is not being administered in accordance with its approved plan and budget.

Source: New section.

Note: See last prior note.

§ 37.1-200. Same; Withdrawal of County or City; State Matching Grants.—No county or city participating in a joint community mental health program shall withdraw therefrom without two years' notice to the

other participating counties or cities unless the other counties or cities consent to an earlier withdrawal. State matching grants for any program shall be fifty percent of the total local expenditures, less collected fees, for salaries, contract facilities and services; operation, maintenance and service costs; travel expense of members of community mental health boards and other expenditures specifically approved and authorized by the Department.

Source: New section.

Note: See last prior note.

§ 37.1-201. Same; Construction and Mental Health Services Grants.—The State may grant up to fifty percent of local expenditures for construction of facilities to be used in community mental health programs. Grants may be made for expenditures for mental health services whether such services are provided by operation of a local facility or through contract with other public or private agencies.

Source: New section.

Note: See last prior note.

§ 37.1-202. Same; Staff Grants.—The State may grant up to seventy-five percent of local expenditures for staff members in community mental health programs.

Source: New section.

Note: See last prior note.

3. All acts and parts of acts inconsistent with the provisions of this act are repealed to the extent of such inconsistency.

4. The repeal of Title 37 effective as of October one, nineteen hundred sixty-eight, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such date, or any prosecution, suit or action pending on that date. Except as in this act otherwise provided, neither the repeal of Title 37 of the Code of Virginia nor the enactment of Title 37.1 shall apply to offenses committed prior to October one, nineteen hundred sixty-eight, and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this act, an offense was committed prior to October one, nineteen hundred sixty-eight, if any of the essential elements of the offense occurred prior thereto.

5. Whenever in Title 37.1 any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 37, as such title existed prior to October one, nineteen hundred sixty-eight, are transferred in the same or in modified form to a new section, article or chapter of Title 37.1, and whenever any such former section, article or chapter of Title 37 is given a new number in Title 37.1, all references to any such former section, article or chapter of Title 37 appearing elsewhere in the Code of Virginia than in Title 37.1 shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

6. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

7. This act shall become effective on October one, nineteen hundred sixty-eight.

A BILL To amend and reenact §§ 19.1-233, and 19.1-239 as amended, of the Code of Virginia, relating to compensation and expenses, of physicians in proceedings on question of insanity, and commitment and release procedures when defendant acquitted by reason of insanity or feeble-mindedness.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.1-233, and 19.1-239 as amended, of the Code of Virginia, be amended and reenacted, as follows:

§ 19.1-233. Expenses of physicians, etc.—**Each expert or physician skilled in the diagnosis of insanity or feeble-mindedness or * other physician appointed by the court to render * professional service pursuant to § 19.1-228 or to subparagraphs (1) and (2) of § 19.1-239, who is not regularly employed by the State of Virginia, or, if regularly employed by the State of Virginia but on authorized leave therefrom, shall * receive a fee of fifty dollars * for each examination and report thereof to the court * and, if he be required to appear as a witness in any hearing held pursuant to such sections, shall receive mileage * and a fee of fifty dollars for each day during which he is required so to serve.* Itemized account of expense, duly sworn to, must be presented to the court, and when allowed shall be certified to the Comptroller for payment out of the State treasury, and be by him charged against the appropriation made to pay criminal charges. Allowance for the *fee and for the per diem* authorized shall also be made by order of the court, duly certified to the Comptroller for payment out of the appropriation to pay criminal charges.

§ 19.1-239. Verdict of acquittal by reason of insanity to state the fact; commitment; release.—(1) 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, *and the court shall place him in temporary custody of the Commissioner of Mental Hygiene and Hospitals, hereinafter referred to as the Commissioner, and appoint three physicians, skilled in the diagnosis of insanity and feeble-mindedness, to examine the defendant and make such investigation as they may deem necessary in order to determine whether or not, at the time of their examination, he is insane or feeble-minded and to determine whether his discharge would be dangerous to the public peace and safety or to himself and to report their findings to the court. If the court is satisfied by the report, or such testimony of the examining physicians as it deems necessary, that the defendant is insane or feeble-minded or that his discharge would be dangerous to the public peace and safety or to himself, the court shall order him to be committed to the * custody of the Commissioner. Otherwise, the defendant forthwith shall be discharged and released.*

(2) If the superintendent of the State mental * hospital in which a person is * confined under paragraph (1) of this section is of the * opinion that a person committed to his custody, pursuant to paragraph (1) of this section, *is not insane or feeble-minded and may be discharged or released * without danger to * the public peace and safety or to himself, he shall make application for the discharge or release of such person in a report to the court by which such person was committed and shall transmit a copy of such application and report to the Commonwealth's attorney * for the city or county from which the defendant was committed. * Upon receipt of * such application for discharge or release, the court forthwith shall * appoint at least two qualified psychiatrists, one of whom shall be the superintendent of a State mental in-*

stitution other than the one in which the person is confined, to examine such person and to report within sixty days * their opinion as to his mental condition. To facilitate such examination and the proceedings thereon, the * Commissioner shall transfer such person to * the appropriate State mental institution located nearest the place where the court sits.*

(3) If the court is satisfied by the *application and report* seeking the release or discharge of the committed person filed pursuant to paragraph (2) of this section and by the report or such testimony of the reporting psychiatrists, appointed pursuant to paragraph (2) of this section, as the court deems necessary, that the committed person * is not insane or feeble-minded and that his discharge or release will not be dangerous to the public peace and safety or to himself, the court shall order his discharge or * release. * If the court is not so satisfied, it shall promptly order a hearing to determine whether * the committed person * is at that time insane or feeble-minded and to determine whether his discharge would be dangerous to the public peace and safety or to himself. Any such hearing shall be deemed a civil proceeding and the burden shall be * on the committed person to prove that he * is not insane or feeble-minded and that his discharge would not be dangerous to the public peace and safety or to himself. According to the determination of the court upon * such hearing, the committed person shall thereupon be discharged or released * or shall be recommitted to the custody of the * Commissioner. It shall be the * duty of the superintendent of the institution in which such person is confined, at yearly intervals commencing six months after the date of confinement, to make a report of * such person's condition to the court from which * he was committed.*

* * *

(5) At yearly intervals commencing six months after the date of confinement, and not more frequently, a committed person may make application to the court by which he was committed for his discharge or release and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the superintendent of the * institution in which such person is * confined.

(6) No trial court in this Commonwealth, other than the court which ordered the commitment of a person committed pursuant to paragraph (1) of this * section, shall have jurisdiction to entertain any action seeking the release of such person committed pursuant to paragraph (1), whether the release is sought through application for a writ of habeas corpus or otherwise. Errors committed or allowed by the court having jurisdiction over the release proceedings set forth in paragraphs (2), (3) and (5) of this * section shall be appealable to the Supreme Court of Appeals as in other civil cases except appeals of right.

(7) Costs of the services of physicians * required by this * section shall be * paid by the State as provided in § 19.1-233.