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## HOUSE BILL NO. 1473

Offered January 24, 2000

*A BILL to amend and reenact § 37.1-67.1 of the Code of Virginia, relating to involuntary temporary detention.*

\_\_\_\_\_  
Patron—Hall

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Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:****1. That § 37.1-67.1 of the Code of Virginia is amended and reenacted as follows:**

§ 37.1-67.1. Involuntary temporary detention; issuance and execution of order.

For the purposes of this section, a designee of a community services board is defined as an examiner able to provide an independent examination of the person who is not related by blood or marriage to the person, who has no financial interest in the admission or treatment of the person, who has no investment interest in the hospital detaining or admitting the person under this article and, except for employees of state hospitals and of the U.S. Department of Veterans Affairs, who is not employed by such hospital. For purposes of this section, investment interest means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

A magistrate may, upon the sworn petition of any responsible person or upon his own motion, and only after an in-person evaluation by an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department, issue an order of temporary detention if it appears from all evidence readily available, including any recommendation from a physician treating the person or from a clinical psychologist treating the person, that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, and the person is incapable of volunteering or unwilling to volunteer for treatment. Such order may include transportation of the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement. *Any physician or clinical psychologist, whose recommendation for a temporary detention order on a person that he is treating is denied by a magistrate based on a negative evaluation by an employee of the local community services board or its designee, may appeal such denial to a judge.*

A magistrate may issue such order of temporary detention without an emergency custody order proceeding. A magistrate may issue an order of temporary detention without a prior in-person evaluation if (i) the person has been personally examined within the previous seventy-two hours by an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department or (ii) there is a significant physical, psychological or medical risk, to the person or to others, associated with conducting such evaluation.

An employee of the local community services board or its designee shall determine the facility of temporary detention for all individuals detained pursuant to this section. The facility shall be identified on the prescreening report and indicated on the temporary detention order. The Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention. The institution or other place of detention shall be approved pursuant to regulations of the Board of Mental Health, Mental Retardation and Substance Abuse Services. The employee of the community services board or its designee who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Except as provided herein for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, such person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.

A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any order for temporary detention pursuant to this section. The duration of temporary detention shall not exceed forty-eight hours prior to a hearing. If the forty-eight-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday or legal holiday. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a

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HB1473

60 person in his custody as provided in this section.

61 In any case in which temporary detention is ordered pursuant to this section upon petition of a  
62 person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate  
63 executing the order of temporary detention shall place such person in a hospital designated by  
64 § 19.2-169.6 B, or if such facility is not available, the defendant shall be detained in a jail or other place  
65 of confinement for persons charged with criminal offenses and shall be transferred to such hospital as  
66 soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant,  
67 either (i) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined  
68 in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be  
69 represented by counsel as specified in § 37.1-67.3. In any case in which temporary detention is ordered  
70 pursuant to this section upon petition for involuntary commitment of a minor, the petition shall be filed  
71 and the hearing scheduled in accordance with the provisions of § 16.1-341.

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

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

90 The chief judge of each general district court shall establish and require that a magistrate, as  
91 provided by this section, be available seven days a week, twenty-four hours a day, for the purpose of  
92 performing the duties established by this section. Each community services board shall provide to each  
93 general district court and magistrate's office within its jurisdiction a list of its employees and designees  
94 who are available to perform the evaluations required herein.