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HOUSE BILL NO. 2258

Offered January 10, 2001

Prefiled January 10, 2001

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

Patrons—Watts, Baskerville, Brink, Moran and Van Landingham; Senators: Barry and Ticer

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, *an employee or a designee of a community services board is defined as an examiner able to provide an independent examination of the individual alleged to be mentally ill, and skilled in the assessment and treatment of mental illness, and who has completed a certification program approved by the Department. For purposes of this section, a psychiatrist or physician means a medical or osteopathic doctor licensed to practice medicine in the state of Virginia able to provide an independent examination of the person person alleged to be mentally ill. For purposes of this section, such employee or designee of a community services board and such psychiatrist or physician shall be a person who is not related by blood or marriage to the person alleged to be mentally ill, who has no financial interest in the admission or treatment of the person alleged to be mentally ill, who has no investment interest in the hospital detaining or admitting the person alleged to be mentally ill 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 who is the subject of such petition is (i) 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 (ii) is so seriously mentally ill as to be substantially unable to care for self; ~~and the person is~~ . *The person who is the subject of such petition shall also be 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.*

Each petition shall be accompanied by a clinical certificate executed by an independent psychiatrist or physician who personally examined the person who is the subject of such petition within the previous seventy-two hours and a prescreening report recommending involuntary detention prepared by an employee or designee of a local community services board who performed an in-person evaluation of the person within the previous seventy-two hours. A clinical certificate, as required by this section, shall be signed by the examining psychiatrist or physician, shall be dated the day of the personal examination, shall contain the results of the medical examination including any significant or life-threatening medical conditions that require immediate treatment, and shall contain the facts and circumstances upon which the psychiatrist or physician bases his judgment that the person examined is mentally ill and in need of involuntary detention.

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 (a) the person has been personally examined within the previous seventy-two hours by *a psychiatrist or physician and an employee or designee 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 (b) there is a significant physical, psychological or medical risk, to the person or to others, associated with conducting such evaluation.

An employee ~~or designee~~ of the local community services board ~~or its designee~~ shall determine the facility of temporary detention for all individuals detained pursuant to this section *in accordance with the admission criteria of that facility.* The facility shall be identified on the prescreening report and

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59 indicated on the temporary detention order. *If an employee or designee does not have the admission*
60 *criteria of a facility available for review, he shall obtain oral or written approval by the director of the*
61 *facility prior to designating such facility on the prescreening report.* The Board of Medical Assistance
62 Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary
63 detention. The institution or other place of detention shall be approved pursuant to regulations of the
64 Board of Mental Health, Mental Retardation and Substance Abuse Services. The employee of the
65 community services board or its designee who is conducting the evaluation pursuant to this section shall
66 determine, prior to the issuance of the temporary detention order, the insurance status of the person.
67 Except as provided herein for defendants requiring hospitalization in accordance with subdivision A 2 of
68 § 19.2-169.6, such person shall not be detained in a jail or other place of confinement for persons
69 charged with criminal offenses.

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

78 In any case in which temporary detention is ordered pursuant to this section upon petition of a
79 person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate
80 executing the order of temporary detention shall place such person in a hospital designated by
81 § 19.2-169.6 B, or if such facility is not available, the defendant shall be detained in a jail or other place
82 of confinement for persons charged with criminal offenses and shall be transferred to such hospital as
83 soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant,
84 either (i) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined
85 in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be
86 represented by counsel as specified in § 37.1-67.3. In any case in which temporary detention is ordered
87 pursuant to this section upon petition for involuntary commitment of a minor, the petition shall be filed
88 and the hearing scheduled in accordance with the provisions of § 16.1-341.

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

96 If an order of temporary detention is not executed within twenty-four hours of its issuance, or within
97 such shorter period as is specified in the order, the order shall be void and shall be returned unexecuted
98 to the office of the clerk of the issuing court or if such office is not open, to any judge or magistrate
99 thereof. Subsequent orders may be issued upon the original petition within ninety-six hours after the
100 petition is filed. However, a magistrate must again obtain *written certification by an examining*
101 *psychiatrist or physician and the advice of an employee or designee of the local community services*
102 *board or its designee who is skilled in the diagnosis or treatment of mental illness and who has*
103 *completed a certification program approved by the Department* prior to issuing a subsequent order upon
104 the original petition. Any petition for which no order of temporary detention or other process in
105 connection therewith is served on the subject of the petition within ninety-six hours after the petition is
106 filed shall be void and shall be returned to the office of the clerk of the issuing court.

107 The chief judge of each general district court shall establish and require that a magistrate, as
108 provided by this section, be available seven days a week, twenty-four hours a day, for the purpose of
109 performing the duties established by this section. Each community services board shall provide to each
110 general district court and magistrate's office within its jurisdiction a list of its employees and designees
111 *and a list of psychiatrists or physicians available on a twenty-four-hour basis in state hospitals or*
112 *private hospital emergency facilities* who are available to perform the evaluations required herein.