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HOUSE BILL NO. 2610

Offered January 10, 2001

A BILL to amend and reenact §§ 37.1-67.3 and 37.1-134.18 of the Code of Virginia, relating to authority for release of mental health information for concealed handgun permit issuance.

Patron—Abbitt

Referred to Committee on Militia and Police

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-67.3 and 37.1-134.18 of the Code of Virginia are amended and reenacted as follows:

§ 37.1-67.3. Same; involuntary admission and treatment.

The commitment hearing shall be held within forty-eight hours of the execution of the temporary detention order as provided for in § 37.1-67.1; however, 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, but in no event may the person be detained for a period longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday.

The judge, in commencing the commitment hearing, shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission and treatment as provided for in § 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall ascertain if such person is then willing and capable of seeking voluntary admission and treatment. If the person is capable and willingly accepts voluntary admission and treatment, the judge shall require him to accept voluntary admission for a minimum period of treatment and after such minimum period, not to exceed seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital, during which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or § 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and the requirement for prescreening by a community services board or community mental health clinic as provided in § 37.1-65.

If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge shall inform such person of his right to a commitment hearing and right to counsel. The judge shall ascertain if a person whose admission is sought is represented by counsel, and if he is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

A written explanation of the involuntary commitment process and the statutory protections associated with the process shall be given to the person and its contents explained by an attorney prior to the commitment hearing. The written explanation shall include, at a minimum, an explanation of the person's right to retain private counsel or be represented by a court-appointed attorney, to present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, to be present during the hearing and testify, to appeal any certification for involuntary admission to the circuit court, and to have a jury trial on appeal. The judge shall ascertain whether the person whose admission is sought has been given the written explanation required herein.

To the extent possible, during or before the commitment hearing, the attorney for the person whose admission is sought shall interview his client, the petitioner, the examiner described below, the community services board staff, and any other material witnesses. He shall also examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing and the person whose admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

Notwithstanding the above, the judge shall require an examination of such person by a psychiatrist or a psychologist who is licensed in Virginia by either the Board of Medicine or the Board of Psychology who is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not

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59 available, any mental health professional who is (i) licensed in Virginia through the Department of
60 Health Professions and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be
61 able to provide an independent examination of the person. The examiner shall not be related by blood or
62 marriage to the person, shall not be responsible for treating the person, shall have no financial interest in
63 the admission or treatment of the person, shall have no investment interest in the hospital detaining or
64 admitting the person under this article, and, except for employees of state hospitals and of the U.S.
65 Department of Veterans Affairs, shall not be employed by such hospital. For purposes of this section,
66 investment interest means the ownership or holding of an equity or debt security, including, but not
67 limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes,
68 or other equity or debt instruments.

69 All such examinations shall be conducted in private. The judge shall summons the examiner who
70 shall certify that he has personally examined the individual and has probable cause to believe that the
71 individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or
72 (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and
73 (iii) requires or does not require involuntary hospitalization or treatment. Alternatively, the judge, in his
74 discretion, may accept written certification of the examiner's findings if the examination has been
75 personally made within the preceding five days and if there is no objection sustained to the acceptance
76 of such written certification by the person or his attorney. The judge shall not render any decision on
77 the petition until such examiner has presented his report either orally or in writing.

78 Except as otherwise provided in this section, prior to making any adjudication that such person is
79 mentally ill and shall be confined to an institution pursuant to this section, the judge shall require from
80 the community services board which serves the political subdivision where the person resides a
81 prescreening report, and the board or clinic shall provide such a report within forty-eight hours or within
82 seventy-two hours if the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. If it
83 is impossible or impractical to obtain a prescreening report from the community services board which
84 serves the political subdivision where the person resides, the judge may obtain such report from the
85 community services board of the political subdivision where the person is located. The report shall be
86 admissible as evidence of the facts stated therein and shall state whether the person is deemed to be so
87 seriously mentally ill that he is substantially unable to care for himself, an imminent danger to himself
88 or others as a result of mental illness and in need of involuntary hospitalization or treatment, whether
89 there is no less restrictive alternative to institutional confinement and what the recommendations are for
90 that person's care and treatment. In the case of a person sentenced and committed to the Department of
91 Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge may
92 proceed to adjudicate whether the person is mentally ill and should be confined pursuant to this section
93 without requesting a prescreening report from the community services board.

94 After observing the person and obtaining the necessary positive certification and any other relevant
95 evidence which may have been offered, if the judge finds specifically (i) that the person presents an
96 imminent danger to himself or others as a result of mental illness or has been proven to be so seriously
97 mentally ill as to be substantially unable to care for himself, and (ii) that alternatives to involuntary
98 confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive
99 alternative to institutional confinement and treatment, the judge shall by written order and specific
100 findings so certify and order that the person be placed in a hospital or other facility for a period of
101 treatment not to exceed 180 days from the date of the court order. Such placement shall be in a hospital
102 or other facility designated by the community services board which serves the political subdivision in
103 which the person was examined as provided in this section. If the community services board does not
104 provide a placement recommendation at the commitment hearing, the person shall be placed in a
105 hospital or other facility designated by the Commissioner.

106 After observing the person and obtaining the necessary positive certification and any other relevant
107 evidence which may have been offered, if the judge finds specifically (i) that the person presents an
108 imminent danger to himself or others as a result of mental illness or has been proven to be so seriously
109 mentally ill as to be substantially unable to care for himself, and (ii) that less restrictive alternatives to
110 institutional confinement and treatment have been investigated and are deemed suitable, and if,
111 moreover, the judge finds specifically that (i) the patient has the degree of competency necessary to
112 understand the stipulations of his treatment, (ii) the patient expresses an interest in living in the
113 community and agrees to abide by his treatment plan, (iii) the patient is deemed to have the capacity to
114 comply with the treatment plan, (iv) the ordered treatment can be delivered on an outpatient basis, and
115 (v) the ordered treatment can be monitored by the community services board or designated providers,
116 the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital,
117 outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.21, or such other
118 appropriate course of treatment as may be necessary to meet the needs of the individual. Upon failure of
119 the patient to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon
120 notice to the patient and after a commitment hearing, order involuntary commitment for treatment at a

hospital. The community services board which serves the political subdivision in which the person resides shall recommend a specific course of treatment and programs for provision of such treatment. The community services board shall monitor the person's compliance with such treatment as may be ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this section.

The judge shall make or cause to be made a tape or other audio recording of the hearing and shall submit such recording to the appropriate district court clerk to be retained in a confidential file. Such recordings shall only be used to document and to answer questions concerning the judge's conduct of the hearing. These recordings shall be retained for at least three years from the date of the relevant commitment hearing. The judge shall also order that copies of the relevant medical records of such person be released to the facility or program in which he is placed upon request of the treating physician or director of the facility or program. Except as provided in this section, the court shall keep its copies of relevant medical records, reports, and court documents pertaining to the hearings provided for in this section confidential if so requested by such person, or his counsel, with access provided only upon court order for good cause shown. Such records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such person shall be released at the expiration of 180 days unless involuntarily committed by further petition and order of a court as provided herein or such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.

The procedures required by this section shall be followed at such commitment hearing. The judge shall render a decision on such petition after the appointed examiner has presented his report, either orally or in writing, and after the community services board which serves the political subdivision where the person resides has presented a prescreening report, either orally or in writing, with recommendations for that person's placement, care and treatment. These reports, if not contested, may constitute sufficient evidence upon which the court may base its decision.

The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order for involuntary commitment to a hospital. The copy of the form and the order shall be kept confidential in a separate file and used only for the purpose of conducting a firearms transaction record check authorized by § 18.2-308.2:2 *or determining eligibility for a concealed handgun license pursuant to § 18.2-308.*

§ 37.1-134.18. Clerk to index findings of incapacity or restoration; notice to Commissioner, commissioner of accounts, Secretary of Board of Elections and CCRE.

A. A copy of the findings of the court, if the person is found to be incapacitated, or restored to capacity, 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 properly index the same in the index to deed books by reference to the order book and page whereon such order is spread and shall immediately notify the Commissioner in accordance with § 37.1-147, the commissioner of accounts in order to ensure compliance by a conservator with the duties imposed pursuant to §§ 37.1-137.2 through 37.1-137.5 and 37.1-144 and the Secretary of the State Board of Elections with such information as required by § 24.2-410. If a guardian is appointed, the clerk shall forward a copy of the court order to the local department of social services of the jurisdiction where the person then resides. If a guardianship is terminated or otherwise modified, the clerk shall forward a copy of the court order to the local department of social services to which the original order of appointment was forwarded and, if different, to the local department of social services in the jurisdiction where the person then resides.

B. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order adjudicating a person incapacitated under this article and any order of restoration of capacity under § 37.1-134.16. The copy of the form and the order shall be kept confidential in a separate file and used only for the purpose of conducting a firearms transaction record check authorized by § 18.2-308.2:2 *or determining eligibility for a concealed handgun license pursuant to § 18.2-308.*

2. That an emergency exists and this act is in force from its passage.