

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 37.1-67.01, 37.1-67.1 and 37.1-71 of the Code of Virginia, relating to transportation under emergency custody and temporary detention orders.

[H 589]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-67.01, 37.1-67.1 and 37.1-71 of the Code of Virginia are amended and reenacted as follows:

§ 37.1-67.01. Emergency custody; issuance and execution of order.

A. Based upon probable cause to believe 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, any magistrate may, upon the sworn petition of any responsible person or upon his own motion, issue an emergency custody order requiring any person within his judicial district who is incapable of volunteering or unwilling to volunteer for treatment to be taken into custody and transported to a convenient location to be evaluated by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department in order to assess the need for hospitalization.

B. *The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. The magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board that designated the person to perform the evaluation required in subsection A to execute the order and provide transportation. If the community services board serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person is presently located to execute the order and provide transportation. Transportation under this section shall include transportation to such medical facility as may be necessary to obtain emergency medical evaluation or treatment. Such evaluation or treatment shall be conducted immediately in accordance with state and federal law.*

C. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization without prior authorization. Such evaluation shall be conducted immediately.

D. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours.

E. 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 an order for emergency custody pursuant to this section. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

F. If an order of emergency custody is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any judge or magistrate thereof.

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

A. 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.

B. 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

ENROLLED

HB589ER

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.

C. The magistrate issuing the temporary detention order shall specify the law-enforcement agency and jurisdiction that shall execute the temporary detention order and provide transportation. The magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides to execute the order and provide transportation; however, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation. 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. Such evaluation or treatment shall be conducted immediately in accordance with state and federal law.

D. 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~~ 72 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.

E. 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.

F. 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.

G. The duration of temporary detention shall not exceed ~~forty-eight~~ 48 hours prior to a hearing. If the ~~forty-eight~~ 48-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 person in his custody as provided in this section.

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

I. On such petition and prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341, the judge may release such person on his personal recognizance or bond set by the judge if it appears from all evidence readily available that such person will not pose an imminent danger to himself or others. In the case of a minor, the judge may release the minor to his parent. The director of the hospital in which the

person is detained may release such person prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that the person would not present an imminent danger to self or others if released.

J. If an order of temporary detention is not executed within ~~twenty-four~~ 24 hours of its issuance, or within such shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or if such office is not open, to any judge or magistrate thereof. Subsequent orders may be issued upon the original petition within ~~ninety-six~~ 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee of the local community services board or its designee who is skilled in the diagnosis or treatment of mental illness and who has completed a certification program approved by the Department prior to issuing a subsequent order upon the original petition. Any petition for which no order of temporary detention or other process in connection therewith is served on the subject of the petition within ~~ninety-six~~ 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

K. The chief judge of each general district court shall establish and require that a magistrate, as provided by this section, be available seven days a week, ~~twenty-four~~ 24 hours a day, for the purpose of performing the duties established by this section. Each community services board shall provide to each general district court and magistrate's office within its jurisdiction a list of its employees and designees who are available to perform the evaluations required herein.

§ 37.1-71. Transportation of person in civil commitment process.

A. When a person is the subject of an emergency custody order pursuant to § ~~37.1-67.01~~ or a temporary detention order pursuant to § ~~37.1-67.1~~, the magistrate shall direct the transportation of that person by a law enforcement officer from a specified agency and jurisdiction to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to the placement of the individual in the temporary detention facility.

B. When a person has been certified for admission to a hospital under §§ 37.1-67.3, 37.1-67.4 or § 37.1-67.6, a determination shall be made by the judge regarding the transportation of that person to the proper hospital. The judge may consult with the person's treating mental health professional and any involved community services board staff regarding the person's dangerousness and whether the sheriff should transport or whether transportation alternatives as provided in § 37.1-72 may be utilized. If the judge determines that the person requires transportation by the sheriff, such person may be delivered to the care of the sheriff, as specified in this section, who shall transport such person to the proper hospital. In no event shall transport commence later than six hours after notification to the sheriff of such certification.

The sheriff of the jurisdiction where the person is a resident shall be responsible for transporting the person unless the sheriff's office of such jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person. The cost of transportation of any person so applying or certified for admission pursuant to § 37.1-67.3 or § 37.1-67.4 shall be paid by the Commonwealth from the same funds as for care in jail.

If any state 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 shall designate the hospital to which they shall transport such persons.