

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 346

An Act to amend and reenact §§ 16.1-340, 16.1-341, 16.1-342, 16.1-345, and 16.1-346.1 of the Code of Virginia, relating to emergency treatment of juveniles prior to trial.

[S 1070]

Approved March 21, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-340, 16.1-341, 16.1-342, 16.1-345, and 16.1-346.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-340. Emergency admission.

A minor, *including a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations court*, may be taken into custody and admitted for inpatient treatment pursuant to the procedures specified in § 37.1-67.01 or § 37.1-67.1. If the minor is admitted to a willing facility in accordance with § 37.1-67.1, the temporary detention order shall be effective until such time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is located or resides schedules a hearing. The juvenile and domestic relations district court serving the jurisdiction in which the minor is located or resides shall schedule a hearing pursuant to § 16.1-341 no sooner than 24 hours and no later than 72 hours from the time of the issuance of the temporary detention order. If the 72-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 72 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

§ 16.1-341. Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

A. A petition for the involuntary commitment of a minor may be filed with the juvenile and domestic relations district court serving the jurisdiction in which the minor is located by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, *including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court*. The petition shall include the name and address of the petitioner and the minor and shall set forth in specific terms why the petitioner believes the minor meets the criteria for involuntary commitment specified in § 16.1-345. The petition shall be taken under oath.

If a commitment hearing has been scheduled by a juvenile and domestic relations district judge pursuant to subdivision 3 of subsection C of § 16.1-339, the petition for judicial approval filed by the facility under subsection C of § 16.1-339 shall serve as the petition for involuntary commitment as long as such petition complies in substance with the provisions of this subsection.

B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic relations district court serving the jurisdiction in which the minor is located may schedule a hearing which shall occur no sooner than 24 hours and no later than 72 hours from the time the petition was filed. If the 72-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 72 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. *The attorney for the minor, the attorney for the Commonwealth in the jurisdiction giving rise to the detention, and the juvenile and domestic relations district court having jurisdiction over any minor in detention or shelter care shall be given notice prior to the hearing.*

If the petition is not dismissed, copies of the petition, together with a notice of the hearing, shall be served immediately upon the minor and the minor's parents, if they are not petitioners. No later than 24 hours before the hearing, the court shall appoint counsel to represent the minor, unless it has determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause shown, and after notice to the petitioner and all other persons receiving notice of the hearing, the court may continue the hearing once for a period not to exceed 72 hours.

§ 16.1-342. Involuntary commitment; clinical evaluation.

Upon the filing of a petition for involuntary commitment, the juvenile and domestic relations district court shall direct the community services board serving the area in which the minor is located to arrange for an evaluation, if one has not already been performed pursuant to subsection B of § 16.1-339, by a qualified evaluator who is not and will not be treating the minor and who has no significant financial interest in the facility to which the minor would be committed. *In conducting a clinical evaluation of a minor in detention or shelter care, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in § 16.1-345, the evaluator shall recommend that the minor meets the criteria for involuntary commitment.* The petitioner, all public agencies, and all providers or programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of

treatment or education of the minor. At least ~~twenty-four~~ 24 hours before the scheduled hearing, the evaluator shall submit to the court a written report which includes the evaluator's opinion regarding whether the minor meets the criteria for involuntary commitment specified in § 16.1-345. The evaluator shall attend the hearing as a witness.

§ 16.1-345. Involuntary commitment; criteria.

The court shall order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed ~~ninety~~ 90 days if it finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. If inpatient treatment is ordered, such treatment is the least restrictive alternative that meets the minor's needs. If the court finds that inpatient treatment is not the least restrictive treatment, the court may order the minor to participate in outpatient or other clinically appropriate treatment.

A minor who has been hospitalized while properly detained for a criminal offense by a juvenile and domestic relations district court shall be returned to the detention home following completion of a period of inpatient treatment, unless the court having jurisdiction over the criminal case orders that the minor be released from custody.

In conducting an evaluation of a minor who has been properly detained, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in § 16.1-345, the evaluator shall recommend that the minor meets the criteria for involuntary commitment.

In no event shall a minor who has been properly detained by a juvenile and domestic relations district court, and who meets criteria for involuntary commitment, have the right to make application for voluntary admission and treatment as may otherwise be provided for in this section.

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, or normal development, and that issuance of a removal order or protective order is authorized by § 16.1-252 or § 16.1-253.

Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § 16.1-342. If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. The judge shall order the sheriff to transport the minor to the designated mental health facility as specified in § 37.1-71. The transportation of the committed minor by the minor's parent may be authorized at the discretion of the judge.

§ 16.1-346.1. Predischarge plan.

Prior to discharge of any minor admitted to inpatient treatment, *including a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court*, a predischarge plan shall be formulated, provided and explained to the minor, and copies thereof shall be sent (i) to the minor's parents or (ii) if the minor is in the custody of the local department of social services, to the department's director or the director's designee or (iii) to the minor's parents and (a) if the juvenile is to be housed in a detention home upon discharge, to the court in which the petition has been filed and the facility superintendent, or (b) if the minor is in custody of the local department of social services, to the department. If the minor was admitted to a state facility, the predischarge plan shall be prepared and implemented in accordance with § 37.1-98.2. The plan shall, at a minimum, (i) specify the services required by the released patient in the community to meet the minor's needs for treatment, housing, nutrition, physical care, and safety; (ii) specify any income subsidies for which the minor is eligible; (iii) identify all local and state agencies which will be involved in providing treatment and support to the minor; and (iv) specify services which would be appropriate for the minor's treatment and support in the community but which are currently unavailable. *A minor in detention or shelter care prior to admission to inpatient treatment shall be returned to the detention home by appropriate law enforcement upon release from the treating facility, unless the juvenile and domestic relations district court having jurisdiction over the case has provided written authorization for release of the minor, prior to the scheduled date of release.*