

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 458

An Act to amend and reenact § 37.1-67.3 of the Code of Virginia, relating to the involuntary commitment process for persons with mental illness; standard of proof.

[H 2110]

Approved March 21, 2005

Be it enacted by the General Assembly of Virginia:

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

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

A. The commitment hearing shall be held within 48 hours of the execution of the temporary detention order as provided for in § 37.1-67.1; however, if the 48-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, such person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

B. 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 72 hours, to give the hospital 48 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.

C. 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.

D. 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.

E. 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. A health care provider shall disclose or make available all such reports, treatment information and records concerning his client to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

F. 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.

G. 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 available, any mental health professional who is (i) licensed in Virginia through the Department of Health Professions and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be able to provide an independent examination of the person. The examiner shall not be related by blood or marriage to the person, shall not be responsible for treating the person, shall have no financial interest in the admission or treatment of the person, shall have 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, shall not be 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.

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

H. Except as otherwise provided in this section, prior to making any adjudication that such person is mentally ill and shall be confined to an institution pursuant to this section, the judge shall require from the community services board which serves the political subdivision where the person resides a prescreening report, and the board or clinic shall provide such a report within 48 hours or if the 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. If it is impossible or impractical to obtain a prescreening report from the community services board which serves the political subdivision where the person resides, the judge may obtain such report from the community services board of the political subdivision where the person is located. The report shall be admissible as evidence of the facts stated therein and shall state whether the person is deemed to be so seriously mentally ill that he is substantially unable to care for himself, an imminent danger to himself or others as a result of mental illness and in need of involuntary hospitalization or treatment, whether there is no less restrictive alternative to institutional confinement and what the recommendations are for that person's care and treatment. In the case of a person sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should be confined pursuant to this section without requesting a prescreening report from the community services board.

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

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

K. 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 (§ 2.2-3700 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.

L. 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 that 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.

M. 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 to determine a person's eligibility to possess, purchase or transfer a firearm.