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SENATE BILL NO. 310

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 25, 2006)

(Patrons Prior to Substitute—Senators Cuccinelli and Edwards [SB 360])

A BILL to amend and reenact §§ 19.2-169.6, 19.2-176 and 19.2-177.1 of the Code of Virginia, relating to mentally ill defendants.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.6, 19.2-176 and 19.2-177.1 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-169.6. Emergency treatment prior to trial.

A. Any defendant who is not subject to the provisions of § 19.2-169.2 may be hospitalized for psychiatric treatment prior to trial if:

1. ~~The~~ After obtaining a preadmission screening report from the community services board or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located, the court with jurisdiction over the defendant's case finds clear and convincing evidence that the defendant (i) is being properly detained in jail prior to trial; (ii) has mental illness and is imminently dangerous to himself or others *or is so seriously mentally ill as to be substantially unable to care for himself* in the opinion of a qualified mental health professional; and (iii) has been provided medical and psychiatric treatment but requires treatment in a hospital rather than the jail in the opinion of a qualified mental health professional; or

2. The person having custody over a defendant who is awaiting trial has reasonable cause to believe that (i) the defendant has mental illness and is imminently dangerous to himself or others *or is so seriously mentally ill as to be substantially unable to care for himself* and (ii) *has been provided medical and psychiatric treatment but* requires treatment in a hospital rather than jail and the person having such custody arranges for an *in-person* evaluation of the defendant by a ~~person skilled in the diagnosis and treatment of mental illness~~ an employee or designee of the local community services board as defined in § 37.2-809, provided a district court judge or a special justice, as defined in § 37.2-100 or, if a judge or special justice is not available, a magistrate, upon the advice of a ~~person skilled in the diagnosis and treatment of mental illness~~ an employee or designee of the community services board, subsequently issues a temporary detention order for treatment in accordance with the procedures specified in §§ 37.2-809 through 37.2-813. In no event shall the defendant have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.2-805 or 37.2-814.

If the defendant is committed pursuant to subdivision 1 of this subsection, the attorney for the defendant shall be notified that the court is considering hospitalizing the defendant for psychiatric treatment and shall have the opportunity to challenge the findings of the qualified mental health professional. If the defendant is detained pursuant to subdivision 2 of this subsection, the court having jurisdiction over the defendant's case and the attorney for the defendant shall be given notice prior to the detention pursuant to a temporary detention order or as soon thereafter as is reasonable. Upon detention pursuant to subdivision 2 of this subsection, a 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 district court judge or a special justice, as defined in § 37.2-100, in accordance with the provisions of § 37.2-820, in which case the defendant shall be represented by counsel as specified in § 37.2-814; the hearing shall be held within 48 hours of execution of the temporary order to allow the court that hears the case to make the findings, based upon clear and convincing evidence, that are specified in subdivision 1 of this subsection. If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained for the same period allowed for detention pursuant to a temporary detention order issued pursuant to §§ 37.2-809 through 37.2-813.

In any case in which the defendant is hospitalized pursuant to this section, the court having jurisdiction over the defendant's case may provide by order that the admitting hospital evaluate the defendant's competency to stand trial and his mental state at the time of the offense pursuant to §§ 19.2-169.1 and 19.2-169.5.

B. A defendant subject to this section shall be treated at a hospital designated by the Commissioner as appropriate for treatment and evaluation of persons under criminal charge. The director of the hospital shall, within 30 days of the defendant's admission, send a report to the court with jurisdiction over the defendant addressing the defendant's continued need for treatment for a mental illness and being imminently dangerous to himself or others *or substantially unable to care for himself* and, if so ordered by the court, the defendant's competency to stand trial, pursuant to subsection D of § 19.2-169.1, and his

60 mental state at the time of the offense, pursuant to subsection D of § 19.2-169.5. Based on this report,
61 the court shall (i) find the defendant incompetent to stand trial pursuant to subsection E of § 19.2-169.1
62 and proceed accordingly, (ii) order that the defendant be discharged from custody pending trial, (iii)
63 order that the defendant be returned to jail pending trial, or (iv) make other appropriate disposition,
64 including dismissal of charges and release of the defendant.

65 C. A defendant may not be hospitalized longer than 30 days under this section unless the court
66 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
67 § 37.2-100, holds a hearing at which the defendant shall be represented by an attorney and finds clear
68 and convincing evidence that the defendant continues to (i) have a mental illness, (ii) be imminently
69 dangerous to himself or others *or so seriously mentally ill as to be substantially unable to care for*
70 *himself*, and (iii) be in need of psychiatric treatment in a hospital. Hospitalization may be extended in
71 this manner for periods of 60 days, but in no event may such hospitalization be continued beyond trial,
72 nor shall such hospitalization act to delay trial, so long as the defendant remains competent to stand
73 trial.

74 § 19.2-176. Determination of insanity after conviction but before sentence; hearing.

75 A. If, after conviction and before sentence of any person, the judge presiding at the trial finds
76 reasonable ground to question such person's mental state, he may order an evaluation of such person's
77 mental state by at least one psychiatrist or clinical psychologist who is qualified by training and
78 experience to perform such evaluations. If the judge, based on the evaluation, and after *obtaining a*
79 *preadmission screening report from the community services board or behavioral health authority that*
80 *serves the county or city where the person resides or, if impractical, where the person is located and*
81 hearing representations of the defendant's counsel, finds clear and convincing evidence that the defendant
82 (i) is ~~mentally ill~~ *has mental illness*, and (ii) *is imminently dangerous to himself or others or is so*
83 *seriously mentally ill as to be substantially unable to care for himself and (iii) has been provided*
84 *medical and psychiatric treatment but requires treatment in a mental hospital rather than the jail*, he may
85 order the defendant hospitalized in a facility designated by the Commissioner as appropriate for
86 treatment of persons convicted of crime. The time such person is confined to such hospital shall be
87 deducted from any term for which he may be sentenced to any penal institution, reformatory or
88 elsewhere.

89 B. If, *after obtaining an in-person evaluation of the defendant by an employee or designee of the*
90 *local community services board as defined in § 37.2-809*, it appears from all evidence readily available
91 that the defendant is ~~mentally ill~~ and (i) *has mental illness*, and (ii) poses an imminent danger to
92 himself or others if not immediately hospitalized *or is so seriously mentally ill as to be substantially*
93 *unable to care for himself*, and (iii) *has been provided medical and psychiatric treatment but requires*
94 *treatment in a mental hospital rather than the jail*, a temporary order of detention may be issued in
95 accordance with subdivision A 2 of § 19.2-169.6 and a hearing shall be conducted in accordance with
96 subsections A and C within ~~forty-eight~~ 48 hours of execution of the temporary order of detention, or if
97 the ~~forty-eight~~ 48-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such
98 person may be detained for the same period allowed for detention pursuant to an order for temporary
99 detention issued pursuant to §§ 37.2-809 through 37.2-813.

100 C. A defendant may not be hospitalized longer than ~~thirty~~ 30 days under this section unless the court
101 which has criminal jurisdiction over him, or a court designated by such court, holds a hearing, at which
102 the defendant shall be represented by an attorney, and finds clear and convincing evidence that the
103 defendant continues to ~~be~~ (i) ~~mentally ill~~ *have mental illness*, (ii) *be* imminently dangerous to ~~self~~
104 *himself* or others *or so seriously mentally ill as to be substantially unable to care for himself*, and (iii)
105 *be* in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for
106 periods of 180 days, but in no event may such hospitalization be continued beyond the date upon which
107 his sentence would have expired had he received the maximum sentence for the crime charged.

108 § 19.2-177.1. Determination of mental illness after sentencing; hearing.

109 A person convicted of a crime who is in the custody of a local correctional facility after sentencing
110 may be the subject of a commitment hearing for involuntary admission in accordance with the
111 procedures provided in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Such hearing shall be commenced
112 upon petition of the person having custody over the prisoner. If the person having custody over the
113 prisoner has reasonable cause to believe that (i) the prisoner has mental illness and is imminently
114 dangerous to himself or others *or is so seriously mentally ill as to be substantially unable to care for*
115 *himself* and (ii) *has been provided medical and psychiatric treatment but requires treatment in a hospital*
116 *rather than a local correctional facility and the person having such custody arranges for an evaluation of*
117 *the prisoner by a person skilled in the diagnosis and treatment of mental illness an employee or designee*
118 *of the local community services board as defined in § 37.2-809*, then a district court judge or a special
119 justice, as defined in § 37.2-100 or, if a judge is not available, a magistrate, upon the advice of a ~~person~~
120 ~~skilled in the diagnosis and treatment of mental illness an employee or designee of the community~~
121 ~~services board~~, may issue a temporary detention order for treatment in accordance with the procedures

specified in subdivision A 2 of § 19.2-169.6.

In all other respects, the involuntary admission procedures specified in Chapter 8 of Title 37.2 shall be applicable, except:

1. Any involuntary admission shall be only to a facility designated for this purpose by the Commissioner;

2. In no event shall the prisoner have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.2-805 or 37.2-814;

3. The time that such prisoner is confined to a hospital shall be deducted from any term for which he may be sentenced, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired;

4. Any prisoner hospitalized pursuant to this section who has not completed service of his sentence upon discharge from the hospital shall serve the remainder of his sentence.