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**SENATE BILL NO. 739**

Offered January 10, 2007

Prefiled October 11, 2006

*A BILL to amend and reenact §§ 16.1-336, 16.1-339, 16.1-341, 16.1-345.1, 16.1-348, 37.2-803, and 37.2-804 of the Code of Virginia, relating to Psychiatric Inpatient Treatment of Minors Act; special justices.*

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 Patron—Cuccinelli
 

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-336, 16.1-339, 16.1-341, 16.1-345.1, 16.1-348, 37.2-803, and 37.2-804 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-336. Definitions.

When used in this article, unless the context otherwise requires:

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor fourteen years of age or older and by a parent or a legally authorized custodian.

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the State Mental Health, Mental Retardation and Substance Abuse Services Board to be substantially similar to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

"Judge" means a juvenile and domestic relations district judge. In addition, "judge" includes a retired judge, substitute judge, or special justice authorized by § 37.2-803 who has completed a minimum training program regarding the provisions of this article, prescribed by the Executive Secretary of the Supreme Court.

"Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the minor or others from physical injury.

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior. Mental retardation, head injury, a learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness within the meaning of this article.

"Minor" means a person less than eighteen years of age.

"Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director of the local department of social services, or his designee, may stand as the minor's parent when the minor is in the legal custody of the local department of social services.

"Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology who is skilled in the diagnosis and treatment of mental illness in minors and familiar with the provisions of this article. If such psychiatrist or psychologist is unavailable, any mental health professional (i) licensed in Virginia through the Department of Health Professions or (ii) employed by a community services board who is skilled in the diagnosis and treatment of mental illness in minors and who is familiar with the provisions of this article may serve as the qualified evaluator.

"Treatment" means any planned intervention intended to improve a minor's functioning in those areas which show impairment as a result of mental illness.

§ 16.1-339. Parental admission of an objecting minor 14 years of age or older.

A. A minor 14 years of age or older who objects to admission may be admitted to a willing facility for up to 72 hours, pending the review required by subsections B and C of this section, upon the

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SB739

59 application of a parent. If admission is sought to a state hospital, the community services board or  
60 behavioral health authority serving the area in which the minor resides shall provide the examination  
61 required by subsection B of § 16.1-338 and shall ensure that the necessary written findings, except the  
62 minor's consent, have been made before approving the admission.

63 B. A minor admitted under this section shall be examined within 24 hours of his admission by a  
64 qualified evaluator designated by the community services board or behavioral health authority serving  
65 the area where the facility is located who is not and will not be treating the minor and who has no  
66 significant financial interest in the minor's hospitalization. The evaluator shall prepare a report that shall  
67 include written findings as to whether:

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

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

75 3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified  
76 evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction  
77 in which the facility is located.

78 C. Upon admission of a minor under this section, the facility shall immediately file a petition for  
79 judicial approval with the juvenile and domestic relations district court for the jurisdiction in which the  
80 facility is located. A copy of this petition shall be delivered to the minor's consenting parent. Upon  
81 receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the ~~juvenile and~~  
82 ~~domestic relations district court~~ judge shall appoint a guardian ad litem for the minor. The court and the  
83 guardian ad litem shall review the petition and evaluator's report and shall ascertain the views of the  
84 minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. The court shall  
85 conduct its review in such place and manner, including the facility, as it deems to be in the best  
86 interests of the minor. Based upon its review and the recommendations of the guardian ad litem, the  
87 court shall order one of the following dispositions:

88 1. If the court finds that the minor does not meet the criteria for admission specified in subsection B,  
89 the court shall issue an order directing the facility to release the minor into the custody of the parent  
90 who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms  
91 and provisions of any valid court order of custody affecting the minor.

92 2. If the court finds that the minor meets the criteria for admission specified in subsection B, the  
93 court shall issue an order authorizing continued hospitalization of the minor for up to 90 days on the  
94 basis of the parent's consent.

95 Within 10 days after the admission of a minor under this section, the director of the facility or the  
96 director's designee shall ensure that an individualized plan of treatment has been prepared by the  
97 provider responsible for the minor's treatment and has been explained to the parent consenting to the  
98 admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem. The  
99 minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with  
100 his ability to understand and participate, and the minor's family shall be involved to the maximum extent  
101 consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and  
102 aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional  
103 goals against which the success of treatment may be measured.

104 3. If the court determines that the available information is insufficient to permit an informed  
105 determination regarding whether the minor meets the criteria specified in subsection B, the court shall  
106 schedule a commitment hearing that shall be conducted in accordance with the procedures specified in  
107 §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to 72 additional hours  
108 pending the holding of the commitment hearing.

109 D. A minor admitted under this section who rescinds his objection may be retained in the hospital  
110 pursuant to § 16.1-338.

111 E. If the parent who consented to a minor's admission under this section revokes his consent at any  
112 time, the minor shall be released within 48 hours to the parent's custody unless the minor's continued  
113 hospitalization is authorized pursuant to § 16.1-340 or 16.1-345.

114 § 16.1-341. Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

115 A. A petition for the involuntary commitment of a minor may be filed with the juvenile and  
116 domestic relations district court serving the jurisdiction in which the minor is located by a parent or, if  
117 the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including  
118 the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile  
119 and domestic relations district court. The petition shall include the name and address of the petitioner  
120 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.

Any recommendation made by a state mental health facility or state hospital regarding the minor's involuntary commitment may be admissible during the course of the hearing.

§ 16.1-345.1. Use of electronic communication.

A. Petitions and orders for emergency custody pursuant to § 37.2-808, temporary detention pursuant to § 37.2-809, and involuntary commitment pursuant to § 16.1-341 of minors may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.

B. Any juvenile and domestic relations court judge may conduct proceedings pursuant to § 16.1-344 using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses. Any two-way electronic video and audio communication system used to conduct a proceeding shall meet the standards set forth in subsection B of § 19.2-3.1. When a witness whose testimony would be helpful to the conduct of the proceeding is not able to be physically present, his testimony may be received using a telephonic communication system.

§ 16.1-348. Availability of judge.

The chief judge of every juvenile and domestic relations district court shall establish and require that a judge be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this article. *Such judge shall have the authority to perform the duties established by this article.*

§ 37.2-803. Special justices to perform duties of judge.

The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of performing the duties required of a judge by this chapter, Chapter 11 (§ 37.2-1100 et seq.), and §§ 16.1-69.28, 16.1-339, 19.2-169.6, 19.2-174.1, 19.2-177.1, 19.2-182.9, 53.1-40.1, 53.1-40.2, and 53.1-40.9. *The chief judge of the 2nd Judicial Circuit and the chief judge of the 19th Judicial Circuit may appoint one or more special justices, for the purpose of performing the duties required of a judge by §§ 16.1-335 through 16.1-348.* Each special justice shall be a person licensed to practice law in the Commonwealth or a retired or substitute judge in good standing and shall have all the powers and jurisdiction conferred upon a judge. The special justice shall serve under the supervision and at the pleasure of the chief judge making the appointment. Within six months of appointment, each special justice appointed on or after January 1, 1996, shall complete a minimum training program prescribed by the Executive Secretary of the Supreme Court. Special justices shall collect the fees prescribed in this chapter for their service and shall retain those fees, unless the governing body of the county or city in which the services are performed provides for the payment of an annual salary for the services, in which case the fees shall be collected and paid into the treasury of that county or city.

§ 37.2-804. Fees and expenses.

A. Any special justice, *retired judge*, or any district court substitute judge who presides over hearings pursuant to the provisions of §§ 37.2-809 through 37.2-820, or §§ 16.1-335 through 16.1-348 shall receive a fee of \$86.25 for each commitment hearing for involuntary admission thereunder and his necessary mileage and \$43.25 for each certification hearing and each order under Chapter 11 (§ 37.2-1100 et seq.) ruling on competency or treatment and his necessary mileage.

B. Any physician, psychologist or other mental health professional, or any interpreter, appointed

182 pursuant to § 37.2-802 for persons who are deaf, who is not regularly employed by the Commonwealth  
183 and is required to serve as a witness or as an interpreter in any proceeding under this chapter shall  
184 receive a fee of \$75 and his necessary expenses for each commitment hearing for involuntary admission  
185 in which he serves and \$43.25 and necessary expenses for each certification hearing in which he serves.

186 C. Other witnesses regularly summoned before a judge or special justice under the provisions of this  
187 chapter shall receive the compensation for their attendance and mileage that is allowed witnesses  
188 summoned to testify before grand juries.

189 D. Every attorney appointed under § 37.2-806 or §§ 37.2-809 through 37.2-820 shall receive a fee of  
190 \$75 and his necessary expenses for each ~~commitment hearing for involuntary admission thereunder~~ and  
191 \$43.25 and his necessary expenses for each certification hearing and each proceeding under Chapter 11  
192 (§ 37.2-1100 et seq.).

193 E. Except as hereinafter provided, all expenses incurred, including the fees, attendance, and mileage  
194 aforesaid, shall be paid by the Commonwealth. When any such fees, costs, and expenses, incurred in  
195 connection with an examination or hearing for an admission pursuant to § 37.2-806 or §§ 37.2-809  
196 through 37.2-820, to carry out the provisions of this chapter or in connection with a proceeding under  
197 Chapter 11 (§ 37.2-1100 et seq.), are paid by the Commonwealth, they shall be recoverable by the  
198 Commonwealth from the person who is the subject of the examination, hearing, or proceeding or from  
199 his estate. Collection or recovery may be undertaken by the Department. When the fees, costs, and  
200 expenses are collected or recovered by the Department, they shall be refunded to the Commonwealth.  
201 No fees or costs shall be recovered, however, from the person who is the subject of the examination or  
202 hearing or his estate when no good cause for his admission exists or when the recovery would create an  
203 undue financial hardship.

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

205 **3. That the costs of any special justices appointed under § 37.2-803 of the Code of Virginia to**  
206 **perform duties under §§ 16.1-335 through 16.1-348 of the Code of Virginia shall be paid by the**  
207 **locality in which the special justice was appointed.**