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HOUSE BILL NO. 1006

Offered January 9, 2008

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A *BILL to amend and reenact §§ 37.2-808 and 37.2-809 of the Code of Virginia, relating to the evidence a magistrate may consider in deciding emergency custody orders and temporary detention orders.*

 Patron—Bell

 Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That §§ 37.2-808 and 37.2-809 of the Code of Virginia are amended and reenacted as follows:**

§ 37.2-808. Emergency custody; issuance and execution of order.

A. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when he has probable cause to believe that any person within his judicial district (i) has mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

B. *When considering whether there is probable cause to issue an emergency custody order pursuant to subsection A, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.*

BC. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

CD. 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. Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include transportation to a medical facility for a medical evaluation if a physician at the hospital in which the person subject to the emergency custody order may be detained requires a medical evaluation prior to admission.

DE. The magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board or behavioral health authority that designated the person to perform the evaluation required in subsection BC to execute the order and provide transportation. If the community services board or behavioral health authority serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's or behavioral health authority'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.

EF. 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 emergency custody order pursuant to this section.

FG. 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 or treatment without prior authorization. Such evaluation shall be conducted immediately.

GH. 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.

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

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

64 § 37.2-809. Involuntary temporary detention; issuance and execution of order.

65 A. For the purposes of this section:

66 "Designee of the local community services board" means an examiner designated by the local
67 community services board or behavioral health authority who (i) is skilled in the assessment and
68 treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii)
69 is able to provide an independent examination of the person, (iv) is not related by blood or marriage to
70 the person being evaluated, (v) has no financial interest in the admission or treatment of the person
71 being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under
72 this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans
73 Affairs, is not employed by the facility.

74 "Employee" means an employee of the local community services board or behavioral health authority
75 who is skilled in the assessment and treatment of mental illness and has completed a certification
76 program approved by the Department.

77 "Investment interest" means the ownership or holding of an equity or debt security, including shares
78 of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or
79 debt instruments.

80 B. A magistrate may issue, upon the sworn petition of any responsible person or upon his own
81 motion and only after an in-person evaluation by an employee or a designee of the local community
82 services board, a temporary detention order if it appears from all evidence readily available, including
83 any recommendation from a physician or clinical psychologist treating the person, that the person (i) has
84 mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so
85 seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization
86 or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or
87 treatment. The magistrate shall also consider the recommendations of any treating or examining
88 physician licensed in Virginia if available either verbally or in writing prior to rendering a decision.

89 C. *When considering whether to issue a temporary detention order pursuant to subsection B, the*
90 *magistrate may, in addition to the petition, consider (i) the recommendations of any treating or*
91 *examining physician licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past*
92 *mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical records*
93 *available, (vi) any affidavits submitted, and (vii) any other information available that the magistrate*
94 *considers relevant to the determination of whether to issue a temporary detention order.*

95 CD. A magistrate may issue a temporary detention order without an emergency custody order
96 proceeding. A magistrate may issue a temporary detention order without a prior in-person evaluation if
97 (i) the person has been personally examined within the previous 72 hours by an employee or a designee
98 of the local community services board or (ii) there is a significant physical, psychological, or medical
99 risk to the person or to others associated with conducting such evaluation.

100 DE. An employee or a designee of the local community services board shall determine the facility of
101 temporary detention for all individuals detained pursuant to this section. The facility of temporary
102 detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be
103 identified on the preadmission screening report and indicated on the temporary detention order. Except
104 as provided in § 37.2-811 for defendants requiring hospitalization in accordance with subdivision A 2 of
105 § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged
106 with criminal offenses.

107 EF. Any facility caring for a person placed with it pursuant to a temporary detention order is
108 authorized to provide emergency medical and psychiatric services within its capabilities when the facility
109 determines that the services are in the best interests of the person within its care. The costs incurred as a
110 result of the hearings and by the facility in providing services during the period of temporary detention
111 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the
112 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance
113 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by
114 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

115 FG. The employee or the designee of the local community services board who is conducting the
116 evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention
117 order, the insurance status of the person. Where coverage by a third party payor exists, the facility
118 seeking reimbursement under this section shall first seek reimbursement from the third party payor. The
119 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances
120 covered by the third party payor have been received.

121 GH. The duration of temporary detention shall not exceed 48 hours prior to a hearing. If the 48-hour
122 period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained,
123 as herein provided, until the next day that is not a Saturday, Sunday, or legal holiday.

124 HI. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter
125 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office
126 of the clerk of the issuing court or, if the office is not open, to any magistrate thereof. Subsequent
127 orders may be issued upon the original petition within 96 hours after the petition is filed. However, a
128 magistrate must again obtain the advice of an employee or a designee of the local community services
129 board prior to issuing a subsequent order upon the original petition. Any petition for which no
130 temporary detention order or other process in connection therewith is served on the subject of the
131 petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the
132 clerk of the issuing court.

133 IJ. The chief judge of each general district court shall establish and require that a magistrate, as
134 provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing
135 the duties established by this section. Each community services board or behavioral health authority
136 shall provide to each general district court and magistrate's office within its service area a list of its
137 employees and designees who are available to perform the evaluations required herein.