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HOUSE BILL NO. 1144

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 28, 2008)

(Patrons Prior to Substitute—Delegates Fralin [HB 1139] and Caputo [HB 737])

A *BILL to amend and reenact §§ 37.2-809 and 37.2-817 of the Code of Virginia, relating to the evidence a magistrate may consider in deciding emergency custody orders and temporary detention orders.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-809 and 37.2-817 of the Code of Virginia are amended and reenacted as follows:

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

A. For the purposes of this section:

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

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

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

B. A magistrate may issue, upon the sworn petition of any responsible person or upon his own motion and only after an in-person evaluation by an employee or a designee of the local community services board, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (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. The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision.

C. *When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician or psychologist 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, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.*

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

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

EF. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the

60 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance
61 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by
62 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

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

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

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

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

86 § 37.2-817. Involuntary admission and outpatient treatment orders.

87 A. The district court judge or special justice shall render a decision on the petition for involuntary
88 admission after the appointed examiner has presented his report, orally or in writing, pursuant to
89 § 37.2-815 and after the community services board or behavioral health authority that serves the county
90 or city where the person resides or, if impractical, where the person is located has presented a
91 preadmission screening report, orally or in writing, with recommendations for that person's placement,
92 care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient
93 evidence upon which the district court judge or special justice may base his decision.

94 B. After observing the person and obtaining the necessary positive certification and considering ~~any~~
95 ~~other relevant evidence that may have been offered~~ (i) *the recommendations of any treating or*
96 *examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person,*
97 *(iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health*
98 *records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may*
99 *have been admitted*, if the judge or special justice finds by clear and convincing evidence that ~~(i)~~ (a) the
100 person presents an imminent danger to himself or others as a result of mental illness or has been proven
101 to be so seriously mentally ill as to be substantially unable to care for himself and ~~(ii)~~ (b) alternatives to
102 involuntary inpatient treatment have been investigated and deemed unsuitable and there is no less
103 restrictive alternative to involuntary inpatient treatment, the judge or special justice shall by written order
104 and specific findings so certify and order that the person be admitted involuntarily to a facility for a
105 period of treatment not to exceed 180 days from the date of the court order. Such involuntary admission
106 shall be to a facility designated by the community services board or behavioral health authority that
107 serves the city or county in which the person was examined as provided in § 37.2-816. If the community
108 services board or behavioral health authority does not designate a facility at the commitment hearing, the
109 person shall be involuntarily admitted to a facility designated by the Commissioner. The person shall be
110 released at the expiration of 180 days unless he is involuntarily admitted by further petition and order of
111 a court or such person makes application for treatment on a voluntary basis as provided for in
112 § 37.2-805.

113 C. After observing the person and obtaining the necessary positive certification and considering ~~any~~
114 ~~other relevant evidence that may have been offered~~ (i) *the recommendations of any treating or*
115 *examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person,*
116 *(iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health*
117 *records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may*
118 *have been admitted*, if the judge or special justice finds by clear and convincing evidence that ~~(i)~~ (a) the
119 person presents an imminent danger to himself or others as a result of mental illness or has been proven
120 to be so seriously mentally ill as to be substantially unable to care for himself, ~~(ii)~~ (b) less restrictive
121 alternatives to involuntary inpatient treatment have been investigated and are deemed suitable, ~~(iii)~~ (c)

122 the person ~~(a)~~ (1) has the degree of competency necessary to understand the stipulations of his
123 treatment, ~~(b)~~ (2) expresses an interest in living in the community and agrees to abide by his treatment
124 plan, and ~~(c)~~ (3) is deemed to have the capacity to comply with the treatment plan, and ~~(iv)~~ (d) the
125 ordered treatment can be delivered on an outpatient basis and be monitored by the community services
126 board, behavioral health authority or designated provider, the judge or special justice shall order
127 outpatient treatment, which may include day treatment in a hospital, night treatment in a hospital,
128 outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et
129 seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. The
130 community services board or behavioral health authority that serves the city or county in which the
131 person resides shall recommend a specific course of treatment and programs for the provision of
132 involuntary outpatient treatment. The community services board, behavioral health authority, or
133 designated provider shall monitor the person's compliance with the treatment ordered by the court under
134 this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the
135 court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this
136 section. Upon failure of the person to adhere to the terms of the outpatient treatment order, the judge or
137 special justice may revoke it and, upon notice to the person and after a commitment hearing, order
138 involuntary admission to a facility.