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HOUSE BILL NO. 1144

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Cuccinelli
on March 4, 2008)

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

A BILL to amend and reenact §§ 37.2-808, 37.2-809 and 37.2-817 of the Code of Virginia, relating to the evidence a magistrate or special justice or judge may consider in deciding emergency custody orders, temporary detention orders and commitment hearings.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-808, 37.2-809 and 37.2-817 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.

When considering whether there is probable cause to issue an emergency custody 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 an emergency custody order.

B. 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.

C. 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.

D. 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 B 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.

E. 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.

F. 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.

G. 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.

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

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

63 § 37.2-809. Involuntary temporary detention; issuance and execution of order.

64 A. For the purposes of this section:

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

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

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

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

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

95 D. 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 E. 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 F. 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 G. 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 H. The duration of temporary detention shall not exceed 48 hours prior to a hearing. If the 48-hour

period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, or legal holiday.

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

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

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

A. The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented his report, orally or in writing, pursuant to § 37.2-815 and after 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 has presented a preadmission screening report, orally or in writing, with recommendations for that person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient evidence upon which the district court judge or special justice may base his decision.

B. After observing the person and obtaining the necessary positive certification and considering ~~any other relevant evidence that may have been offered~~ *(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 examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted,* if the judge or special justice finds by clear and convincing evidence that ~~(i) (a)~~ *(a)* 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) (b)~~ *(b)* alternatives to involuntary inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to involuntary inpatient treatment, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 180 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board or behavioral health authority that serves the city or county in which the person was examined as provided in § 37.2-816. If the community services board or behavioral health authority does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. The person shall be released at the expiration of 180 days unless he is involuntarily admitted by further petition and order of a court or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805.

C. After observing the person and obtaining the necessary positive certification and considering ~~any other relevant evidence that may have been offered~~ *(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 examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted,* if the judge or special justice finds by clear and convincing evidence that ~~(i) (a)~~ *(a)* 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, ~~(ii) (b)~~ *(b)* less restrictive alternatives to involuntary inpatient treatment have been investigated and are deemed suitable, ~~(iii) (c)~~ *(c)* the person ~~(a)~~ *(1)* has the degree of competency necessary to understand the stipulations of his treatment, ~~(b)~~ *(2)* expresses an interest in living in the community and agrees to abide by his treatment plan, and ~~(c)~~ *(3)* is deemed to have the capacity to comply with the treatment plan, and ~~(iv) (d)~~ *(d)* the ordered treatment can be delivered on an outpatient basis and be monitored by the community services board, behavioral health authority or designated provider, the judge or special justice shall order outpatient treatment, which may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. The community services board or behavioral health authority that serves the city or county in which the

183 person resides shall recommend a specific course of treatment and programs for the provision of
184 involuntary outpatient treatment. The community services board, behavioral health authority, or
185 designated provider shall monitor the person's compliance with the treatment ordered by the court under
186 this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the
187 court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this
188 section. Upon failure of the person to adhere to the terms of the outpatient treatment order, the judge or
189 special justice may revoke it and, upon notice to the person and after a commitment hearing, order
190 involuntary admission to a facility.