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## HOUSE BILL NO. 1323

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions  
on January 31, 2008

(Patron Prior to Substitute—Delegate Toscano)

*A BILL to amend and reenact § 37.2-809 of the Code of Virginia, relating to temporary detention orders being issued pursuant to the evaluation of an emergency physician.*

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

**1. That § 37.2-809 of the Code of Virginia is 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~~*shall* issue, upon the sworn petition of any responsible person, *treating physician*, 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. 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.

D. 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.

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

F. The employee or the designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The

60 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances  
61 covered by the third party payor have been received.

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

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

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