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HOUSE BILL NO. 173

Offered January 9, 2008

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A *BILL to amend and reenact §§ 37.2-808 and 37.2-810 of the Code of Virginia, relating to execution of emergency custody orders; sheriffs.*

Patron—Ware, O.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 37.2-808 and 37.2-810 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. 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~~ *and either the primary law-enforcement agency or sheriff of such 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 *or sheriff* 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 *or sheriff* 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 *or sheriff* from the jurisdiction where the person is presently located to execute the order and provide transportation.

E. A law-enforcement officer *or sheriff's deputy* 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 *or sheriff's deputy* 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 *or sheriff's deputy* 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.

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

§ 37.2-810. Transportation of person in the temporary detention process.

A. The magistrate issuing the temporary detention order shall specify the ~~law-enforcement agency~~

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59 ~~and~~ jurisdiction *and either the law-enforcement agency or sheriff of such jurisdiction* that shall execute
60 the temporary detention order and provide transportation. The magistrate shall specify in the temporary
61 detention order the law-enforcement agency *or sheriff* of the jurisdiction in which the person resides to
62 execute the order and provide transportation. However, if the nearest boundary of the jurisdiction in
63 which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which
64 the person is located, the law-enforcement agency *or sheriff* of the jurisdiction in which the person is
65 located shall execute the order and provide transportation. The order may include transportation of the
66 person to such other medical facility as may be necessary to obtain further medical evaluation or
67 treatment prior to placement as required by a physician at the admitting temporary detention facility.
68 Nothing herein shall preclude a law-enforcement officer *or sheriff's deputy* from obtaining emergency
69 medical treatment or further medical evaluation at any time for a person in his custody as provided in
70 this section. Such medical evaluation or treatment shall be conducted immediately in accordance with
71 state and federal law.

72 B. A law-enforcement officer *or sheriff's deputy* may lawfully go to or be sent beyond the territorial
73 limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose
74 of executing any temporary detention order pursuant to this section. Law-enforcement agencies may
75 enter into agreements to facilitate the execution of temporary detention orders and provide transportation.