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HOUSE BILL NO. 267

Offered January 9, 2008

Prefiled January 2, 2008

A BILL to amend and reenact § 37.2-817 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 37.2-816.1, relating to involuntary commitment; outpatient monitoring.

Patrons—Albo, Athey, Carrico, Cole, Cosgrove, Gilbert, Lingamfelter, May, Morgan and Sherwood

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-817 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 37.2-816.1 as follows:

§ 37.2-816.1. Commitment hearing for involuntary admission; relevant testimony.

The district court judge or special justice shall allow, when available, testimony from individuals closely associated with the person who is the subject of the hearing, including immediate family members, as to (i) whether the person presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill that he is substantially unable to care for himself and (ii) how the person's history of mental illness relates to the person's current condition. Such testimony shall be sworn and may be either oral or written.

§ 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, and after any immediate family members or other individuals closely associated with the subject of the hearing have given sworn testimony pursuant to § 37.2-816.1. 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, if the judge or special justice finds by clear and convincing evidence that (i) 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) 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. If the director of any facility in which a person is detained pursuant to an involuntary commitment order entered in accordance with subsection B concludes (i) that the person satisfies the criteria for involuntary outpatient treatment set forth in subsection D and (ii) that the person's mental illness would be more effectively treated by outpatient treatment, he may petition the judge or special justice to order that the person be transferred from involuntary inpatient commitment to outpatient treatment. Any petition filed pursuant to this subsection shall be accompanied by an affidavit of a psychiatrist or psychologist who is licensed in Virginia by the Board of Medicine or the Board of Psychology stating that he has personally examined the person subject to the involuntary commitment order within the five days preceding the filing of the petition and that he recommends that the person be transferred to outpatient treatment. Upon receipt of a petition to transfer a person from involuntary inpatient commitment to outpatient treatment, the judge or special justice shall conduct a commitment hearing in accordance with the provisions of this article, except for the provisions of § 37.2-814 setting the time for the hearing. Instead, a hearing under this subsection shall be held within 10 days of the filing of the petition; however, if the 10-day period herein specified terminates on a Saturday, Sunday,

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59 *legal holiday, or day on which the court is lawfully closed, the hearing will be held on the next day that*  
60 *is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.*

61 *Nothing in this subsection shall affect the ability of a director of a facility to discharge or transfer*  
62 *persons pursuant to Article 7 (§ 37.2-837 et seq.) of this chapter.*

63 *CD.* After observing the person and obtaining the necessary positive certification and considering any  
64 other relevant evidence that may have been offered, if the judge or special justice finds by clear and  
65 convincing evidence that (i) the person *either (a) presents an imminent danger to himself or others as a*  
66 *result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to*  
67 *care for himself, or (b) has been previously diagnosed with psychoses, has been prescribed antipsychotic*  
68 *or psychotropic medication, has failed to properly take such medication as prescribed, resulting in*  
69 *patient commitment in the past two years, and without such medication will present an imminent danger*  
70 *to himself or others as a result of mental illness or will likely be so seriously mentally ill as to be*  
71 *substantially unable to care for himself,* (ii) less restrictive alternatives to involuntary inpatient treatment  
72 have been investigated and are deemed suitable, (iii) the person (a) has the degree of competency  
73 necessary to understand the stipulations of his treatment, (b) expresses an interest in living in the  
74 community and agrees to abide by his treatment plan, and (c) is deemed to have the capacity to comply  
75 with the treatment plan, and (iv) the ordered treatment can be delivered on an outpatient basis and be  
76 monitored by the community services board, behavioral health authority or designated provider, the  
77 judge or special justice shall order outpatient treatment, which may include day treatment in a hospital,  
78 night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to  
79 Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet  
80 the needs of the person. The community services board or behavioral health authority that serves the city  
81 or county in which the person resides shall recommend a specific course of treatment and programs for  
82 the provision of involuntary outpatient treatment. The community services board, behavioral health  
83 authority, or designated provider shall monitor the person's compliance with the treatment ordered by the  
84 court under this section, and the person's failure to comply with involuntary outpatient treatment as  
85 ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the  
86 provisions of this section. ~~Upon failure of the person to adhere to the terms of the outpatient treatment~~  
87 ~~order, the judge or special justice may revoke it and, upon notice to the person and after a commitment~~  
88 ~~hearing, order involuntary admission to a facility.~~

89 *E.* *The community services board, behavioral health authority, or designated provider shall report*  
90 *any material noncompliance with the outpatient treatment order to the judge or special justice. Copies*  
91 *of this report shall be sent to the person subject to the treatment order and to the person's counsel, if*  
92 *any. Upon receipt of such report, the judge or special justice may issue a temporary detention order in*  
93 *accordance with the provisions of § 37.2-808 and may direct the appropriate law-enforcement agency to*  
94 *take the person into custody. After the issuance of the temporary detention order, the judge or special*  
95 *justice may proceed with an involuntary commitment hearing in accordance with the provisions of this*  
96 *article. Upon a finding of material noncompliance with the involuntary outpatient treatment order, the*  
97 *judge or special justice may order involuntary admission to a facility.*

98 *For purposes of this subsection, "material noncompliance" shall include, but not be limited to, a*  
99 *person's failure to, without good cause, take medication, refusing to take, or failing a blood test,*  
100 *urinalysis, or alcohol or drug test, or not maintaining reasonable contact with outpatient treatment*  
101 *monitors or care providers. Such material noncompliance shall be civil contempt of court.*