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HOUSE BILL NO. 560

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 25, 2008)

(Patron Prior to Substitute—Delegate Bell)

A BILL to amend and reenact § 37.2-817 of the Code of Virginia relating to availability of community services board representative and treating physician at commitment hearing.

Be it enacted by the General Assembly of Virginia:

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

§ 37.2-817. Involuntary admission and mandatory 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 required by § 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. The examiner, if not physically present at the hearing, and the treating physician at the facility of temporary detention shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized by § 37.2-804.1. An employee or a designee of the community services board as defined in subsection A of § 37.2-809 that prepared the prescreening report shall attend the hearing, either in person or via a two-way electronic video and audio communication system as authorized in § 37.2-804.1 or by telephonic means. Where a hearing is held outside of the jurisdiction of the community services board that prepared the prescreening report, and it is not reasonably possible for a representative of the community services board to attend the hearing, arrangements shall be made by the community services board for an employee or designee of the community services board serving the jurisdiction in which the hearing is held to attend the hearing on behalf of the community services board or behavioral health authority that prepared the preadmission screening report. The community services board that prepared the prescreening report shall remain responsible for the person subject to the hearing and shall send, prior to the hearing through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means the prescreening report to the community services board that is providing the attendee.

Twelve hours prior to the commitment hearing, the court shall provide to the community services board who conducted the preadmission evaluation, the time and location of the commitment hearing. If the community services board will be present by telephonic means, the telephone number for the telephonic presence will be provided.

B. After observing the person and obtaining the necessary positive certification and considering the appointed examiner's certification, the preadmission screening report, and 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) all available less restrictive treatment alternatives to involuntary inpatient treatment pursuant to subsection C that would offer an opportunity for the improvement of the person's condition have been investigated and deemed unsuitable and there is no less restrictive alternative to involuntary inpatient treatment and determined to be inappropriate, 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. Upon the expiration of any order for involuntary admission, the person shall be released at the expiration of 180 days unless he is involuntarily admitted, for a period not to exceed 180 days, 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 the appointed examiner's certification, the preadmission screening report, and 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

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60 proven to be so seriously mentally ill as to be substantially unable to care for himself, (ii) less restrictive
61 alternatives to involuntary inpatient treatment *that would offer an opportunity for improvement of his*
62 *condition* have been investigated and ~~are deemed suitable~~, (iii) *are determined to be appropriate, and*
63 (iii) the person (a) has ~~the degree of competency necessary~~ *sufficient capacity* to understand the
64 stipulations of his treatment, (b) ~~expresses~~ *has expressed* an interest in living in the community and
65 ~~agrees~~ *has agreed* to abide by his treatment plan, and (c) is deemed to have the capacity to comply with
66 the treatment plan *and understand and adhere to conditions and requirements of the treatment and*
67 *services*, and (iv) the ordered treatment can be delivered on an outpatient basis ~~and be monitored~~ by the
68 community services board, behavioral health authority or designated provider, the judge or special
69 justice shall *by written order and specific findings so certify and order that the person be admitted*
70 *involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to*
71 *be appropriate unless the services are actually available in the community and providers of the services*
72 *have actually agreed to deliver the services.* ~~outpatient~~ Outpatient treatment, which may include day
73 treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic
74 medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may
75 be necessary to meet the needs of the person. The community services board or behavioral health
76 authority that serves the city or county in which the person resides shall recommend a specific course of
77 treatment and programs for the provision of involuntary outpatient treatment. The community services
78 board, behavioral health authority, or designated provider shall monitor the person's compliance with the
79 treatment ordered by the court under this section, and the person's failure to comply with involuntary
80 outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held
81 pursuant to the provisions of this section. Upon failure of the person to adhere to the terms of the
82 outpatient treatment order, the judge or special justice may revoke it and, upon notice to the person and
83 after a commitment hearing, order involuntary admission to a facility.