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HOUSE BILL NO. 560

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 28, 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 the 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.

B. An employee or a designee of the local community services board, as defined in § 37.2-809, that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Where a hearing is held outside of the service area of the community services board that prepared the preadmission screening report, and it is not practicable for a representative of the board to attend or participate in the hearing, arrangements shall be made by the board for an employee or designee of the board serving the area in which the hearing is held to attend or participate on behalf of the board that prepared the preadmission screening report. The community services board that prepared the preadmission screening report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board attending the hearing. At least 12 hours prior to the hearing, the court shall provide to the community services board that prepared the preadmission screening report the time and location of the hearing. If the representative of the community services board will be present by telephonic means, the court shall provide the telephone number to the board.

BC. After observing the person and obtaining the necessary positive certification and considering (i) the recommendations of any treating 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) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, (vii) the preadmission screening report, and (viii) 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 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. The 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 by further petition and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order, or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805, or is ordered to mandatory outpatient treatment pursuant to subsection D.

CD. After observing the person and obtaining the necessary positive certification and considering (i)

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60 *the recommendations of any treating physician or psychologist licensed in Virginia, if available, (ii) any*
61 *past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's*
62 *certification, (v) any health records available, (vi) any affidavits submitted, if the witness is unavailable*
63 *and it so states in the affidavit, (vii) the preadmission screening report, and (viii) any other relevant*
64 *evidence that may have been offered, if the judge or special justice finds by clear and convincing*
65 *evidence that (i) the person presents an imminent danger to himself or others as a result of mental*
66 *illness or has been proven to be so seriously mentally ill as to be substantially unable to care for*
67 *himself, (ii) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity*
68 *for improvement of the person's condition have been investigated and are deemed suitable, (iii) are*
69 *determined to be appropriate, and (iii) the person (a) has the degree of competency necessary sufficient*
70 *capacity to understand the stipulations of his treatment, (b) expresseshas expressed an interest in living*
71 *in the community and agreeshas agreed to abide by his treatment plan, and (c) is deemed to have the*
72 *capacity to comply with the treatment plan and understand and adhere to conditions and requirements*
73 *of the treatment and services, and (iv) the ordered treatment can be delivered on an outpatient basis and*
74 *be monitored by the community services board, behavioral health authority or designated provider, the*
75 *judge or special justice shall by written order and specific findings so certify and order that the person*
76 *be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be*
77 *determined to be appropriate unless the services are actually available in the community and providers*
78 *of the services have actually agreed to deliver the services.*

79 *E. Mandatory outpatient treatment, which may include day treatment in a hospital, night treatment in*
80 *a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11*
81 *(§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of*
82 *the person. The community services board or behavioral health authority that serves the city or county*
83 *in which the person resides shall recommend a specific course of treatment and programs for the*
84 *provision of involuntary outpatient treatment. The community services board, behavioral health authority,*
85 *or designated provider shall monitor the person's compliance with the treatment ordered by the court*
86 *under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by*
87 *the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this*
88 *section. Upon failure of the person to adhere to the terms of the outpatient treatment order, the judge or*
89 *special justice may revoke it and, upon notice to the person and after a commitment hearing, order*
90 *involuntary admission to a facility.*