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SENATE BILL NO. 102

Offered January 9, 2008

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A BILL to amend and reenact §§ 37.2-808, 37.2-810, 37.2-829, and 37.2-830 of the Code of Virginia, relating to three-tier transportation model.

Patron—Cuccinelli

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-808, 37.2-810, 37.2-829, and 37.2-830 of the Code of Virginia is 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 (i) the primary law-enforcement agency and jurisdiction to execute the emergency custody order and ~~provide transportation~~ (ii) *the means of transportation of the person under the emergency custody order. Transportation may be provided by family member or friend, a representative of the community services board or behavioral health authority that serves the jurisdiction in which the person is located, a representative of the facility to which the person will be transported for evaluation, an unmarked ambulance or other emergency vehicle attended by personnel trained to provide such transportation in a safe manner, or by a law-enforcement officer. The emergency custody order shall identify the specific person designated to provide transportation. No person shall be required to provide transportation without his consent.* 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~~ *Where transportation is required to be provided by a law-enforcement officer, the* magistrate shall order the primary law-enforcement agency 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 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 from the jurisdiction where the person is presently located to execute the order and provide transportation.

E. A law-enforcement officer 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 *or, where transportation is required to be provided by the law-enforcement officer, for the purposes of transporting a person under the emergency custody order.*

F. A law-enforcement officer 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~~ *arrange for the transportation of* that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization. *Transportation may be provided by a family member or friend, a representative of the community*

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59 *services board or behavioral health authority that serves the jurisdiction in which the person is located,*
60 *a representative of the facility to which the person will be transported for evaluation, public*
61 *transportation, an unmarked ambulance or other emergency services vehicle, or by law enforcement.*
62 ~~Such~~ The evaluation shall be conducted immediately.

63 G. Nothing herein shall preclude a law-enforcement officer *or other person transporting a person*
64 *who has been taken into custody pursuant to this section* from obtaining emergency medical treatment or
65 further medical evaluation at any time for a person in his custody as provided in this section.

66 H. The person shall remain in custody until a temporary detention order is issued or until the person
67 is released, but in no event shall the period of custody exceed four hours.

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

71 § 37.2-810. Transportation of person in the temporary detention process.

72 A. The magistrate issuing the temporary detention order shall specify (i) the law-enforcement agency
73 and jurisdiction that shall execute the temporary detention order and ~~transportation~~ (ii) *the means of*
74 *transportation of the person who is the subject of the temporary detention order. Transportation may be*
75 *provided by a family member or friend, a representative of the community services board or behavioral*
76 *health authority serving the jurisdiction in which the person is located, a representative of the facility in*
77 *which the person is temporarily placed during the temporary detention period, public transportation,*
78 *unmarked ambulance or other emergency vehicle attended by personnel trained to provide such*
79 *transportation in a safe manner, or by a law-enforcement officer. The temporary detention order shall*
80 *identify the specific person designated to provide transportation. No person or provider shall be*
81 *required to provide transportation without his consent. The magistrate may consult with the person's*
82 *treating mental health professional and any involved community services board or behavioral health*
83 *authority staff, including the employee or designee of the community services board or behavioral health*
84 *authority conducting an evaluation pursuant to § 37.2-808, regarding the person's dangerousness and*
85 *the appropriateness of the transportation alternatives available prior to rendering a decision regarding*
86 *the means of transportation.*

87 ~~The~~ Where transportation is required to be provided by a law-enforcement officer, the magistrate shall
88 specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the
89 person resides to execute the order and provide transportation. However, if the nearest boundary of the
90 jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the
91 jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the
92 person is located shall execute the order and provide transportation.

93 ~~The~~ An order for the transportation of a person who is the subject of a temporary detention order
94 may include transportation of the person to such other medical facility as may be necessary to obtain
95 further medical evaluation or treatment prior to placement as required by a physician at the admitting
96 temporary detention facility. Nothing herein shall preclude a ~~law-enforcement officer~~ *person providing*
97 *transportation* from obtaining emergency medical treatment or further medical evaluation at any time for
98 a person ~~in his custody~~ *who is the subject of a temporary detention order* as provided in this section.
99 Such medical evaluation or treatment shall be conducted immediately in accordance with state and
100 federal law.

101 B. A law-enforcement officer *who is required to provide transportation* may lawfully go to or be
102 sent beyond the territorial limits of the county, city, or town in which he serves to any point in the
103 Commonwealth for the purpose of executing any temporary detention order *or providing transportation*
104 *pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution*
105 *of temporary detention orders and to provide transportation.*

106 § 37.2-829. Transportation of person in civil admission process.

107 When a person has been ordered to be admitted to a facility under §§ 37.2-814 through 37.2-821, a
108 determination shall be made by the judge or special justice regarding the transportation of that person to
109 the proper facility. *Transportation may be provided by a family member or friend, a representative of*
110 *the community services board or behavioral health authority that serves the jurisdiction in which the*
111 *person is located, a representative of the facility in which the person has been temporarily placed*
112 *during the temporary detention period, a representative of the facility to which the person has been*
113 *ordered pursuant to an involuntary inpatient commitment order, public transportation, unmarked*
114 *ambulance or other emergency vehicle, or by a sheriff or other law enforcement officer. The judge or*
115 *special justice may consult with the person's treating mental health professional and any involved*
116 *community services board or behavioral health authority staff regarding the person's dangerousness and*
117 ~~whether the sheriff should transport or whether transportation alternatives as provided in § 37.2-830 may~~
118 ~~be utilized~~ *the appropriateness of the transportation alternatives available. If the judge or special justice*
119 *determines that the person requires transportation by the sheriff or other law-enforcement officer, the*
120 *person may be delivered to the care of the sheriff or other law-enforcement officer, as specified in this*

section, who shall transport the person to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff *or other law-enforcement officer* of the judge's or special justice's order.

If the judge or special justice determines that the person requires transportation by the sheriff or other law-enforcement officer, the sheriff or other law-enforcement agency serving the jurisdiction where the person is a resident shall be responsible for transporting the person unless the sheriff's or other law-enforcement agency's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff or other law-enforcement agency serving the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff or other law-enforcement agency of the latter jurisdiction to transport the person. The cost of transportation of any person ordered to be admitted pursuant to §§ 37.2-814 through 37.2-821 shall be paid by the Commonwealth from the same funds as for care in jail.

If any state hospital has become too crowded to admit any such person, the Commissioner shall give notice of the fact to all sheriffs *and other law-enforcement agencies* and shall designate the facility to which they shall transport such persons.

§ 37.2-830. Custody of person ordered to be admitted for purpose of transportation.

Any judge or special justice may order that a person admitted pursuant to this chapter be placed in the custody of any responsible person, including *a family member or friend, a representative of the community services board or behavioral health authority serving the jurisdiction in which the person is located, a representative of the facility in which the person is temporarily placed during the temporary detention period, a representative of the facility to which the person has been ordered to be admitted, or an unmarked ambulance or other emergency vehicle* for the sole purpose of transporting the person to the proper facility.