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SENATE BILL NO. 143

Offered January 9, 2008

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A BILL to amend and reenact §§ 37.2-809, 37.2-814, and 37.2-816 of the Code of Virginia, relating to temporary detention order; extend time period.

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-809, 37.2-814, and 37.2-816 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-809. Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board or behavioral health authority who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii) is able to provide an independent examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department.

"Investment interest" means the ownership or holding of an equity or debt security, including shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

B. A magistrate may issue, upon the sworn petition of any responsible person or upon his own motion and only after an in-person evaluation by an employee or a designee of the local community services board, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (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. The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision.

C. A magistrate may issue a temporary detention order without an emergency custody order proceeding. A magistrate may issue a temporary detention order without a prior in-person evaluation if (i) the person has been personally examined within the previous 72 hours by an employee or a designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

D. An employee or a designee of the local community services board shall determine the facility of temporary detention for all individuals detained pursuant to this section. The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. Except as provided in § 37.2-811 for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.

E. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

F. The employee or the designee of the local community services board who is conducting the

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59 evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention
60 order, the insurance status of the person. Where coverage by a third party payor exists, the facility
61 seeking reimbursement under this section shall first seek reimbursement from the third party payor. The
62 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances
63 covered by the third party payor have been received.

64 G. The duration of temporary detention shall not exceed 4896 hours prior to a hearing. If the
65 ~~48-hour~~96-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person
66 may be detained, as herein provided, until the next day that is not a Saturday, Sunday, or legal holiday.

67 H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter
68 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office
69 of the clerk of the issuing court or, if the office is not open, to any magistrate thereof. Subsequent
70 orders may be issued upon the original petition within 96 hours after the petition is filed. However, a
71 magistrate must again obtain the advice of an employee or a designee of the local community services
72 board prior to issuing a subsequent order upon the original petition. Any petition for which no
73 temporary detention order or other process in connection therewith is served on the subject of the
74 petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the
75 clerk of the issuing court.

76 I. The chief judge of each general district court shall establish and require that a magistrate, as
77 provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing
78 the duties established by this section. Each community services board or behavioral health authority
79 shall provide to each general district court and magistrate's office within its service area a list of its
80 employees and designees who are available to perform the evaluations required herein.

81 § 37.2-814. Commitment hearing for involuntary admission; written explanation; right to counsel;
82 rights of petitioner.

83 A. The commitment hearing for involuntary admission shall be held within 4896 hours of the
84 execution of the temporary detention order as provided for in § 37.2-809; however, if the
85 ~~48-hour~~96-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on
86 which the court is lawfully closed, the person may be detained, as herein provided, until the next day
87 that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

88 B. At the commencement of the commitment hearing, the district court judge or special justice shall
89 inform the person whose involuntary admission is being sought of his right to apply for voluntary
90 admission and treatment as provided for in § 37.2-805 and shall afford the person an opportunity for
91 voluntary admission. The judge or special justice shall ascertain if the person is then willing and capable
92 of seeking voluntary admission and treatment. If the judge or special justice finds that the person is
93 capable and willingly accepts voluntary admission and treatment, the judge or special justice shall
94 require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours.
95 After such minimum period of treatment, the person shall give the hospital 4896 hours' notice prior to
96 leaving the hospital. During this notice period, the person shall not be discharged except as provided in
97 § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as
98 provided in § 37.2-829 and the requirement for preadmission screening by a community services board
99 or behavioral health authority as provided in § 37.2-805.

100 C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the
101 judge or special justice shall inform the person of his right to a commitment hearing and right to
102 counsel. The judge or special justice shall ascertain if the person whose admission is sought is
103 represented by counsel, and, if he is not represented by counsel, the judge or special justice shall
104 appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel,
105 the judge or special justice shall give him a reasonable opportunity to employ counsel at his own
106 expense.

107 D. A written explanation of the involuntary admission process and the statutory protections
108 associated with the process shall be given to the person, and its contents shall be explained by an
109 attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the
110 person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present
111 any defenses including independent evaluation and expert testimony or the testimony of other witnesses,
112 (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the
113 circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the
114 person whose involuntary admission is sought has been given the written explanation required herein.

115 E. To the extent possible, during or before the commitment hearing, the attorney for the person
116 whose involuntary admission is sought shall interview his client, the petitioner, the examiner described
117 in § 37.2-815, the community services board or behavioral health authority staff, and any other material
118 witnesses. He also shall examine all relevant diagnostic and other reports, present evidence and
119 witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. A
120 health care provider shall disclose or make available all such reports, treatment information, and records

concerning his client to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

F. The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

§ 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

The district court judge or special justice shall require a preadmission screening report from 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. The report shall be admissible as evidence of the facts stated therein and shall state (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, (ii) whether the person is in need of involuntary inpatient treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the recommendations for that person's placement, care, and treatment. The board or authority shall provide the preadmission screening report within 48~~96~~ hours or if the ~~48-hour~~96-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. In the case of a person who has been sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person has mental illness and should be involuntarily admitted without requesting a preadmission screening report from the community services board or behavioral health authority.