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SENATE BILL NO. 214

Offered January 9, 2008

Prefiled January 7, 2008

A BILL to amend and reenact §§ 16.1-336 and 37.2-803 of the Code of Virginia, relating to special justices; training.

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-336 and 37.2-803 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-336. Definitions.

When used in this article, unless the context otherwise requires:

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor fourteen years of age or older and by a parent or a legally authorized custodian.

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the State Mental Health, Mental Retardation and Substance Abuse Services Board to be substantially similar to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

"Judge" means a juvenile and domestic relations district judge. In addition, "judge" includes a retired judge sitting by designation pursuant to § 16.1-69.35, substitute judge, or special justice authorized by § 37.2-803 who has completed a training program regarding the provisions of this article, prescribed by the Executive Secretary of the Supreme Court, and any other continuing legal education requirements set forth in § 37.2-803.

"Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the minor or others from physical injury.

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior. Mental retardation, head injury, a learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness within the meaning of this article.

"Minor" means a person less than eighteen years of age.

"Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director of the local department of social services, or his designee, may stand as the minor's parent when the minor is in the legal custody of the local department of social services.

"Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology who is skilled in the diagnosis and treatment of mental illness in minors and familiar with the provisions of this article. If such psychiatrist or psychologist is unavailable, any mental health professional (i) licensed in Virginia through the Department of Health Professions or (ii) employed by a community services board who is skilled in the diagnosis and treatment of mental illness in minors and who is familiar with the provisions of this article may serve as the qualified evaluator.

"Treatment" means any planned intervention intended to improve a minor's functioning in those areas which show impairment as a result of mental illness.

§ 37.2-803. Special justices to perform duties of judge.

The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of performing the duties required of a judge by this chapter, Chapter 11 (§ 37.2-1100 et seq.), and §§ 16.1-69.28, 16.1-335 through 16.1-348, 19.2-169.6, 19.2-174.1, 19.2-177.1, 19.2-182.9, 53.1-40.1,

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59 53.1-40.2, and 53.1-40.9. Each special justice shall be a person licensed to practice law in the
60 Commonwealth or a retired or substitute judge in good standing and shall have all the powers and
61 jurisdiction conferred upon a judge. The special justice shall serve under the supervision and at the
62 pleasure of the chief judge making the appointment for a period of up to six years. The special justice
63 may be reappointed and may serve additional periods of up to six years, at the pleasure of the chief
64 judge. Within six months of appointment *or reappointment*, each special justice ~~appointed on or after~~
65 ~~January 1, 1996~~, shall complete a minimum training program prescribed by the Executive Secretary of
66 the Supreme Court. *In addition to the minimum training program, each special justice shall complete*
67 *annually six hours of continuing legal education directly related to his duties under this chapter and*
68 *under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, and developed or approved by the*
69 *Executive Secretary of the Supreme Court. Any continuing legal education developed or approved by the*
70 *Executive Secretary shall be considered an approved Continuing Legal Education course for the*
71 *purposes of the Mandatory Continuing Legal Education Rule of the Supreme Court of Virginia and*
72 *credit shall be given for the completion of such course.* Special justices shall collect the fees prescribed
73 in this chapter for their service and shall retain those fees, unless the governing body of the county or
74 city in which the services are performed provides for the payment of an annual salary for the services,
75 in which case the fees shall be collected and paid into the treasury of that county or city.