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SENATE BILL NO. 276

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 28, 2008)

(Patron Prior to Substitute—Senators Cuccinelli and Howell [SB 245])

*A BILL to amend and reenact §§ 16.1-338, 16.1-339, 16.1-340, and 16.1-341 of the Code of Virginia, relating to psychiatric inpatient treatment of minors; timing of petition and hearing.***Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-338, 16.1-339, 16.1-340, and 16.1-341 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-338. Parental admission of minors younger than 14 and nonobjecting minors 14 years of age or older.

A. A minor younger than 14 years of age may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent. A minor 14 years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parent.

B. Admission of a minor under this section shall be approved by a qualified evaluator who has conducted a personal examination of the minor within 48 hours after admission and has made the following written findings:

1. The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and

2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and

3. If the minor is 14 years of age or older, that he has been provided with an explanation of his rights under this Act as they would apply if he were to object to admission, and that he has consented to admission; and

4. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide the examination required by this section and shall ensure that the necessary written findings have been made before approving the admission. A copy of the written findings of the evaluation required by this section shall be provided to the consenting parent and the parent shall have the opportunity to discuss the findings with the evaluator.

C. Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured. A copy of the plan shall be provided to the minor and to his parents.

D. If the parent who consented to a minor's admission under this section revokes his consent at any time, or if a minor 14 or older objects at any time to further treatment, the minor shall be discharged within 48 hours to the custody of such consenting parent unless the minor's continued hospitalization is authorized pursuant to § 16.1-339, 16.1-340, or 16.1-345. *If the 48-hour time period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.*

E. Inpatient treatment of a minor hospitalized under this section may not exceed 90 consecutive days unless it has been authorized by appropriate hospital medical personnel, based upon their written findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the minor and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the minor's condition.

F. Any minor admitted under this section while younger than 14 and his consenting parent shall be informed orally and in writing by the director of the facility for inpatient treatment within 10 days of his fourteenth birthday that continued voluntary treatment under the authority of this section requires his consent.

G. Any minor 14 years of age or older who joins in an application and consents to admission

60 pursuant to subsection A, shall, in addition to his parent, have the right to access his health information.
61 The concurrent authorization of both the parent and the minor shall be required to disclose such minor's
62 health information.

63 § 16.1-339. Parental admission of an objecting minor 14 years of age or older.

64 A. A minor 14 years of age or older who objects to admission may be admitted to a willing facility
65 for up to 72 96 hours, pending the review required by subsections B and C of this section, upon the
66 application of a parent. If admission is sought to a state hospital, the community services board or
67 behavioral health authority serving the area in which the minor resides shall provide the examination
68 required by subsection B of § 16.1-338 and shall ensure that the necessary written findings, except the
69 minor's consent, have been made before approving the admission.

70 B. A minor admitted under this section shall be examined within 24 hours of his admission by a
71 qualified evaluator designated by the community services board or behavioral health authority serving
72 the area where the facility is located who is not and will not be treating the minor and who has no
73 significant financial interest in the minor's hospitalization. The evaluator shall prepare a report that shall
74 include written findings as to whether:

75 1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent
76 that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is
77 experiencing a serious deterioration of his ability to care for himself in a developmentally
78 age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of
79 functioning in hydration, nutrition, self-protection, or self-control;

80 2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit
81 from the proposed treatment; and

82 3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified
83 evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction
84 in which the facility is located.

85 C. Upon admission of a minor under this section, the facility shall ~~immediately~~ file a petition for
86 judicial approval *no sooner than 24 hours and no later than 96 hours after admission* with the juvenile
87 and domestic relations district court for the jurisdiction in which the facility is located. A copy of this
88 petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the
89 evaluator's report submitted pursuant to subsection B, the judge shall appoint a guardian ad litem for the
90 minor. The court and the guardian ad litem shall review the petition and evaluator's report and shall
91 ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending
92 psychiatrist. The court shall conduct its review in such place and manner, including the facility, as it
93 deems to be in the best interests of the minor. Based upon its review and the recommendations of the
94 guardian ad litem, the court shall order one of the following dispositions:

95 1. If the court finds that the minor does not meet the criteria for admission specified in subsection B,
96 the court shall issue an order directing the facility to release the minor into the custody of the parent
97 who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms
98 and provisions of any valid court order of custody affecting the minor.

99 2. If the court finds that the minor meets the criteria for admission specified in subsection B, the
100 court shall issue an order authorizing continued hospitalization of the minor for up to 90 days on the
101 basis of the parent's consent.

102 Within 10 days after the admission of a minor under this section, the director of the facility or the
103 director's designee shall ensure that an individualized plan of treatment has been prepared by the
104 provider responsible for the minor's treatment and has been explained to the parent consenting to the
105 admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem. The
106 minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with
107 his ability to understand and participate, and the minor's family shall be involved to the maximum extent
108 consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and
109 aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional
110 goals against which the success of treatment may be measured.

111 3. If the court determines that the available information is insufficient to permit an informed
112 determination regarding whether the minor meets the criteria specified in subsection B, the court shall
113 schedule a commitment hearing that shall be conducted in accordance with the procedures specified in
114 §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to 72 96 additional
115 hours pending the holding of the commitment hearing.

116 D. A minor admitted under this section who rescinds his objection may be retained in the hospital
117 pursuant to § 16.1-338.

118 E. If the parent who consented to a minor's admission under this section revokes his consent at any
119 time, the minor shall be released within 48 hours to the parent's custody unless the minor's continued
120 hospitalization is authorized pursuant to § 16.1-340 or 16.1-345. *If the 48-hour time period expires on a*
121 *Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 48 hours shall extend*

to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

§ 16.1-340. Emergency admission.

A minor, including a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations court, may be taken into custody and admitted for inpatient treatment pursuant to the procedures specified in Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2. If the minor is admitted to a willing facility in accordance with § 37.2-809, the temporary detention order shall be effective until such time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is located schedules a hearing. The juvenile and domestic relations district court serving the jurisdiction in which the minor is located shall schedule a hearing pursuant to § 16.1-341 no sooner than 24 hours and no later than ~~72~~ 96 hours from the time of the issuance of the temporary detention order *or filing of the petition pursuant to § 16.1-341, whichever occurs later*. If the ~~72-hour~~ 96-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the ~~72~~ 96 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

§ 16.1-341. Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

A. A petition for the involuntary commitment of a minor may be filed with the juvenile and domestic relations district court serving the jurisdiction in which the minor is located by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court. The petition shall include the name and address of the petitioner and the minor and shall set forth in specific terms why the petitioner believes the minor meets the criteria for involuntary commitment specified in § 16.1-345. The petition shall be taken under oath.

If a commitment hearing has been scheduled pursuant to subdivision 3 of subsection C of § 16.1-339, the petition for judicial approval filed by the facility under subsection C of § 16.1-339 shall serve as the petition for involuntary commitment as long as such petition complies in substance with the provisions of this subsection.

B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic relations district court serving the jurisdiction in which the minor is located may schedule a hearing which shall occur no sooner than 24 hours and no later than ~~72~~ 96 hours from the time the petition was filed. If the ~~72-hour~~ 96-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the ~~72~~ 96 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. The attorney for the minor, the attorney for the Commonwealth in the jurisdiction giving rise to the detention, and the juvenile and domestic relations district court having jurisdiction over any minor in detention or shelter care shall be given notice prior to the hearing.

If the petition is not dismissed *or withdrawn*, copies of the petition, together with a notice of the hearing, shall be served immediately upon the minor and the minor's parents, if they are not petitioners. No later than 24 hours before the hearing, the court shall appoint counsel to represent the minor, unless it has determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause shown, and after notice to the petitioner and all other persons receiving notice of the hearing, the court may continue the hearing once for a period not to exceed ~~72~~ 96 hours.

Any recommendation made by a state mental health facility or state hospital regarding the minor's involuntary commitment may be admissible during the course of the hearing.