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SENATE BILL NO. 440

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend and reenact §§ 19.2-169.6, 19.2-176, and 19.2-177.1 of the Code of Virginia, relating to emergency psychiatric treatment for inmates.

Patrons—McEachin and Miller, Y.B.; Delegate: Jones, D.C.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.6, 19.2-176, and 19.2-177.1 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-169.6. Emergency treatment prior to trial.

A. Any defendant who is not subject to the provisions of § 19.2-169.2 may be hospitalized for psychiatric treatment prior to trial if:

1. The court with jurisdiction over the defendant's case, *only after a face-to-face evaluation by an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809,* finds clear and convincing evidence that the defendant (i) is being properly detained in jail prior to trial; (ii) has mental illness and ~~is imminently dangerous to himself or others~~ *that there exists a substantial likelihood that, as a result of that mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm,* in the opinion of ~~a qualified mental health professional~~ *an employee or the designee of the community services board*; and (iii) requires treatment in a hospital rather than the jail in the opinion of a qualified mental health professional; or

2. The person having custody over a defendant who is awaiting trial has reasonable cause to believe that (i) the defendant has mental illness and ~~is imminently dangerous to himself or others~~ *that there exists a substantial likelihood that, as a result of that mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm* and (ii) requires treatment in a hospital rather than jail and the person having such custody arranges for ~~an evaluation of the defendant by a person skilled in the diagnosis and treatment of mental illness~~ *a face-to-face evaluation by an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809,* provided a district court judge or a special justice, as defined in § 37.2-100 or, if a judge or special justice is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, subsequently issues a temporary detention order for treatment in accordance with the procedures specified in §§ 37.2-809 through 37.2-813. In no event shall the defendant have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.2-805 or 37.2-814.

If the defendant is committed pursuant to subdivision 1 of this subsection, the attorney for the defendant shall be notified that the court is considering hospitalizing the defendant for psychiatric treatment and shall have the opportunity to challenge the findings of the qualified mental health professional. If the defendant is detained pursuant to subdivision 2 of this subsection, the court having jurisdiction over the defendant's case and the attorney for the defendant shall be given notice prior to the detention pursuant to a temporary detention order or as soon thereafter as is reasonable. Upon detention pursuant to subdivision 2 of this subsection, a hearing shall be held, upon notice to the attorney for the defendant, either (i) before the court having jurisdiction over the defendant's case or (ii) before a district court judge or a special justice~~,~~ as defined in § 37.2-100, in accordance with the provisions of § 37.2-820, in which case the defendant shall be represented by counsel as specified in § 37.2-814; the hearing shall be held within 48 hours of execution of the temporary order to allow the court that hears the case to make the findings, based upon clear and convincing evidence, that are specified in subdivision 1 of this subsection. If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained for the same period allowed for detention pursuant to a temporary detention order issued pursuant to §§ 37.2-809 through 37.2-813.

In any case in which the defendant is hospitalized pursuant to this section, the court having jurisdiction over the defendant's case may provide by order that the admitting hospital evaluate the defendant's competency to stand trial and his mental state at the time of the offense pursuant to

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§§ 19.2-169.1 and 19.2-169.5.

B. A defendant subject to this section shall be treated at a hospital designated by the Commissioner as appropriate for treatment and evaluation of persons under criminal charge. The director of the hospital shall, within 30 days of the defendant's admission, send a report to the court with jurisdiction over the defendant addressing the defendant's continued need for treatment for a mental illness and being imminently dangerous to himself or others and, if so ordered by the court, the defendant's competency to stand trial, pursuant to subsection D of § 19.2-169.1, and his mental state at the time of the offense, pursuant to subsection D of § 19.2-169.5. Based on this report, the court shall (i) find the defendant incompetent to stand trial pursuant to subsection E of § 19.2-169.1 and proceed accordingly, (ii) order that the defendant be discharged from custody pending trial, (iii) order that the defendant be returned to jail pending trial, or (iv) make other appropriate disposition, including dismissal of charges and release of the defendant.

C. A defendant may not be hospitalized longer than 30 days under this section unless the court which has criminal jurisdiction over him or a district court judge or a special justice, as defined in § 37.2-100, holds a hearing at which the defendant shall be represented by an attorney and finds clear and convincing evidence that the defendant continues to (i) have a mental illness~~, (ii) be imminently dangerous to himself or others~~ *and that there continues to exist a substantial likelihood that, as a result of that mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm*, and ~~(iii)~~ *(ii)* be in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for periods of 60 days, but in no event may such hospitalization be continued beyond trial, nor shall such hospitalization act to delay trial, so long as the defendant remains competent to stand trial.

§ 19.2-176. Evaluation of defendant for mental illness after conviction but before sentence; hearing, hospitalization.

A. If, after conviction and before sentence of any person, the judge presiding at the trial finds reasonable ground to question such person's mental state, he may order an evaluation of such person's mental state ~~by at least one psychiatrist or clinical psychologist who is qualified by training and experience to perform such evaluations~~ *by an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809*. If the judge, based on the evaluation, and after hearing representations of the defendant's counsel, finds clear and convincing evidence that the defendant (i) is mentally ill, and (ii) requires treatment in a mental hospital rather than the jail, he may order the defendant hospitalized in a facility designated by the Commissioner as appropriate for treatment of persons convicted of crime. The time such person is confined to such hospital shall be deducted from any term for which he may be sentenced to any penal institution, reformatory or elsewhere.

B. If it appears from all evidence readily available that the defendant is mentally ill and ~~poses an imminent danger to himself or others if not immediately hospitalized~~ *has been provided medical and psychiatric treatment, but that there exists a substantial likelihood that, as a result of that mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm*, a temporary order of detention may be issued in accordance with subdivision A 2 of § 19.2-169.6 and a hearing shall be conducted in accordance with subsections A and C within ~~forty-eight~~ *48* hours of execution of the temporary order of detention, or if the ~~forty-eight~~ *48*-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such person may be detained for the same period allowed for detention pursuant to an order for temporary detention issued pursuant to §§ 37.2-809 to 37.2-813.

C. A defendant may not be hospitalized longer than ~~thirty~~ *30* days under this section unless the court which has criminal jurisdiction over him, or a court designated by such court, holds a hearing, at which the defendant shall be represented by an attorney, and finds clear and convincing evidence that the defendant continues to be (i) mentally ill~~, (ii) imminently dangerous to self or others~~ *and that there exists a substantial likelihood that, as a result of that mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm*, and ~~(iii)~~ *(ii)* in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for periods of 180 days, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired had he received the maximum sentence for the crime charged.

§ 19.2-177.1. Determination of mental illness after sentencing; hearing.

A person convicted of a crime who is in the custody of a local correctional facility after sentencing may be the subject of a commitment hearing for involuntary admission in accordance with the procedures provided in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Such hearing shall be commenced upon petition of the person having custody over the prisoner. If the person having custody over the prisoner has reasonable cause to believe that (i) the prisoner has mental illness and ~~is imminently~~

~~dangerous~~ ~~to~~ ~~himself~~ ~~or~~ ~~others~~ *that there exists a substantial likelihood that, as a result of that mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm* and (ii) requires treatment in a hospital rather than a local correctional facility and *only after* the person having such custody arranges for ~~an~~ ~~evaluation~~ ~~of~~ ~~the~~ ~~prisoner~~ ~~by~~ ~~a~~ ~~person~~ ~~skilled~~ ~~in~~ ~~the~~ ~~diagnosis~~ ~~and~~ ~~treatment~~ ~~of~~ ~~mental~~ ~~illness~~ *a face-to-face evaluation by an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809*, then a district court judge or a special justice, as defined in § 37.2-100 or, if a judge is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, may issue a temporary detention order for treatment in accordance with the procedures specified in subdivision A 2 of § 19.2-169.6.

In all other respects, the involuntary admission procedures specified in Chapter 8 of Title 37.2 shall be applicable, except:

1. Any involuntary admission shall be only to a facility designated for this purpose by the Commissioner;

2. In no event shall the prisoner have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.2-805 or 37.2-814;

3. The time that such prisoner is confined to a hospital shall be deducted from any term for which he may be sentenced, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired;

4. Any prisoner hospitalized pursuant to this section who has not completed service of his sentence upon discharge from the hospital shall serve the remainder of his sentence.