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SENATE BILL NO. 440

AMENDMENT IN THE NATURE OF A SUBSTITUTE

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

(Patron Prior to Substitute—Senator McEachin)

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.

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 an in-person or by two-way electronic video and audio communication system 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~~ *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*, in the opinion of a ~~qualified mental health professional~~ *an employee or the designee of the community services board*; and (iii) requires psychiatric 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~~ *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* and (ii) requires psychiatric 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~~ *an in-person or by two-way electronic video and audio communication system 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~~ *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*, 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

60 defendant's competency to stand trial and his mental state at the time of the offense pursuant to
61 §§ 19.2-169.1 and 19.2-169.5.

62 B. A defendant subject to this section shall be treated at a hospital designated by the Commissioner
63 as appropriate for treatment and evaluation of persons under criminal charge. The director of the hospital
64 shall, within 30 days of the defendant's admission, send a report to the court with jurisdiction over the
65 defendant addressing the defendant's continued need for treatment for a mental illness and ~~being~~
66 ~~imminently dangerous that he has been provided medical and psychiatric treatment, but that there~~
67 ~~continues to exist a substantial likelihood that, as a result of mental illness, the defendant will, in the~~
68 ~~near future, cause serious harm to himself or others as evidenced by recent behavior causing,~~
69 ~~attempting or threatening harm, and, if so ordered by the court, the defendant's competency to stand~~
70 ~~trial, pursuant to subsection D of § 19.2-169.1, and his mental state at the time of the offense, pursuant~~
71 ~~to subsection D of § 19.2-169.5. Based on this report, the court shall (i) find the defendant incompetent~~
72 ~~to stand trial pursuant to subsection E of § 19.2-169.1 and proceed accordingly, (ii) order that the~~
73 ~~defendant be discharged from custody pending trial, (iii) order that the defendant be returned to jail~~
74 ~~pending trial, or (iv) make other appropriate disposition, including dismissal of charges and release of~~
75 ~~the defendant.~~

76 C. A defendant may not be hospitalized longer than 30 days under this section unless the court
77 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
78 § 37.2-100, holds a hearing at which the defendant shall be represented by an attorney and finds clear
79 and convincing evidence that the defendant continues to (i) have a mental illness; ~~(ii) be imminently~~
80 ~~dangerous to himself or others and has been provided medical and psychiatric treatment, but that there~~
81 ~~continues to exist a substantial likelihood that, as a result of that mental illness, the defendant will, in~~
82 ~~the near future, cause serious physical harm to himself or others as evidenced by recent behavior~~
83 ~~causing, attempting or threatening harm, and (iii) (ii) be in need of psychiatric treatment in a hospital.~~
84 Hospitalization may be extended in this manner for periods of 60 days, but in no event may such
85 hospitalization be continued beyond trial, nor shall such hospitalization act to delay trial, so long as the
86 defendant remains competent to stand trial.

87 § 19.2-176. Evaluation of defendant for mental illness after conviction but before sentence; hearing,
88 hospitalization.

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

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

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

121 § 19.2-177.1. Determination of mental illness after sentencing; hearing.

122 A person convicted of a crime who is in the custody of a local correctional facility after sentencing
123 may be the subject of a commitment hearing for involuntary admission in accordance with the
124 procedures provided in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Such hearing shall be commenced
125 upon petition of the person having custody over the prisoner. If the person having custody over the
126 prisoner has reasonable cause to believe that (i) the prisoner has mental illness and is ~~imminently~~
127 ~~dangerous to himself or others~~ *has been provided medical and psychiatric treatment, but that there*
128 *exists a substantial likelihood that, as a result of that mental illness, the defendant will, in the near*
129 *future, cause serious physical harm to himself or others as evidenced by recent behavior causing,*
130 *attempting or threatening harm* and (ii) requires psychiatric treatment in a hospital rather than a local
131 correctional facility and *only after* the person having such custody arranges for ~~an evaluation of the~~
132 ~~prisoner by a person skilled in the diagnosis and treatment of mental illness~~ *an in-person or by two-way*
133 *electronic video and audio communication system evaluation by an employee of the local community*
134 *services board or its designee who is skilled in the assessment and treatment of mental illness and who*
135 *has completed a certification program approved by the Department as provided in § 37.2-809*, then a
136 district court judge or a special justice, as defined in § 37.2-100 or, if a judge is not available, a
137 magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, may
138 issue a temporary detention order for treatment in accordance with the procedures specified in
139 subdivision A 2 of § 19.2-169.6.

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

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

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

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

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