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## HOUSE BILL NO. 2257

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions  
on February 5, 2009)

(Patron Prior to Substitute—Delegate Albo)

A *BILL to amend and reenact § 37.2-814 of the Code of Virginia, relating to voluntary admission; evidence of past compliance or noncompliance with treatment.*

**Be it enacted by the General Assembly of Virginia:****1. That § 37.2-814 of the Code of Virginia are amended and reenacted as follows:**

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

A. The commitment hearing for involuntary admission shall be held after a sufficient period of time has passed to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held within 48 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, if the 48-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

B. At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an opportunity for voluntary admission. The district court judge or special justice shall advise the person whose involuntary admission is being sought that if the person chooses to be voluntarily admitted pursuant to § 37.2-805, such person will be prohibited from possessing or purchasing a firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then willing and capable of seeking voluntary admission for inpatient treatment. *In determining whether a person is capable of consenting to voluntary admission, the judge or special justice may consider evidence regarding the person's past compliance or noncompliance with treatment.* If the judge or special justice finds that the person is capable and willingly accepts voluntary admission for inpatient treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a community services board as provided in § 37.2-805.

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

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

E. To the extent possible, during or before the commitment hearing, the attorney for the person whose involuntary admission is sought shall interview his client, the petitioner, the examiner described in § 37.2-815, the community services board staff, and any other material witnesses. He also shall examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. A 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

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60 extent possible.

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