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HOUSE BILL NO. 2460

Offered January 14, 2009

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A BILL to amend and reenact §§ 37.2-808, 37.2-810, 37.2-817.2 and 37.2-829 of the Code of Virginia and to repeal § 37.2-830 of the Code of Virginia, relating to transportation of person under emergency custody order, temporary detention order, or involuntary commitment order.

Patron—O'Bannon

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-808, 37.2-810, 37.2-817.2 and 37.2-829 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-808. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. *However, in cases in which the emergency custody order is based upon a finding that the person who is the subject of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, the magistrate may authorize transportation by an alternative transportation provider, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner upon determining, following consideration of (i) information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person and (ii) information provided by the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of emergency custody order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the person or facility responsible for conducting the evaluation. The person*

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59 *or facility conducting the evaluation shall return a copy of the emergency custody order to the court*
60 *designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement*
61 *officer or alternative transportation provider and return of an order to the court may be accomplished*
62 *electronically or by facsimile.*

63 Transportation under this section shall include transportation to a medical facility as may be
64 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in
65 accordance with state and federal law. Transportation under this section shall include transportation to a
66 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the
67 emergency custody order may be detained requires a medical evaluation prior to admission.

68 D. ~~Thein specifying the primary law enforcement agency and jurisdiction to execute the order and~~
69 *provide transportation pursuant to this section, the magistrate shall order the primary law-enforcement*
70 *agency from the jurisdiction served by the community services board that designated the person to*
71 *perform the evaluation required in subsection B to execute the order and provide transportation. If the*
72 *community services board serves more than one jurisdiction, the magistrate shall designate the primary*
73 *law-enforcement agency from the particular jurisdiction within the community services board's service*
74 *area where the person who is the subject of the emergency custody order was taken into custody or, if*
75 *the person has not yet been taken into custody, the primary law-enforcement agency from the*
76 *jurisdiction where the person is presently located to execute the order and provide transportation.*

77 E. The law-enforcement agency *or alternative transportation provider* providing transportation
78 pursuant to this section may transfer custody of the person to the facility or location to which the person
79 is transported for the evaluation required in subsection B or G if the facility or location (i) is licensed to
80 provide the level of security necessary to protect both the person and others from harm, (ii) is actually
81 capable of providing the level of security necessary to protect the person and others from harm, and (iii)
82 *in cases in which transportation is provided by a law-enforcement agency, has entered into an*
83 *agreement or memorandum of understanding with the law-enforcement agency setting forth the terms*
84 *and conditions under which it will accept a transfer of custody, provided, however, that the facility or*
85 *location may not require the law-enforcement agency to pay any fees or costs for the transfer of*
86 *custody.*

87 F. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the
88 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing
89 an emergency custody order pursuant to this section.

90 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
91 probable cause to believe that a person meets the criteria for emergency custody as stated in this section
92 may take that person into custody and transport that person to an appropriate location to assess the need
93 for hospitalization or treatment without prior authorization. Such evaluation shall be conducted
94 immediately.

95 H. Nothing herein shall preclude a law-enforcement officer *or alternative transportation provider*
96 from obtaining emergency medical treatment or further medical evaluation at any time for a person in
97 his custody as provided in this section.

98 I. The person shall remain in custody until a temporary detention order is issued, until the person is
99 released, or until the emergency custody order expires. An emergency custody order shall be valid for a
100 period not to exceed four hours from the time of execution. However, upon a finding by a magistrate
101 that good cause exists to grant an extension, an emergency custody order may be renewed one time for
102 a second period not to exceed two hours. Good cause for an extension includes the need for additional
103 time to allow (i) the community services board to identify a suitable facility in which the person can be
104 temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if
105 necessary. Any family member, as defined in § 37.2-100, employee or designee of the local community
106 services board as defined in § 37.2-809, treating physician, or law-enforcement officer may request the
107 two-hour extension.

108 J. If an emergency custody order is not executed within four hours of its issuance, the order shall be
109 void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is
110 not open, to any magistrate serving the jurisdiction of the issuing court.

111 K. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical
112 screening and assessment services provided to persons with mental illnesses while in emergency custody.
113 § 37.2-810. Transportation of person in the temporary detention process.

114 A. ~~The magistrate issuing the temporary detention order shall specify~~*In specifying the primary*
115 *law-enforcement agency and jurisdiction that shall to execute the temporary detention order and provide*
116 *transportation. The pursuant to this section, the magistrate shall specify in the temporary detention order*
117 *the law-enforcement agency of the jurisdiction in which the person resides to execute the order and*
118 *provide transportation. However, if the nearest boundary of the jurisdiction in which the person resides*
119 *is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the*
120 *law-enforcement agency of the jurisdiction in which the person is located shall execute the order and*

provide transportation.

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the order and provide transportation. However, the magistrate may authorize transportation by an alternative transportation provider, including a family member or friend of the person who is the subject of the temporary detention order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner upon determining, following consideration of (i) information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person and (ii) information provided by the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the temporary detention order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the person or facility responsible for conducting the evaluation. The person or facility conducting the evaluation shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

The order may include transportation of the person to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

B-C. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

§ 37.2-817.2. Court review of mandatory outpatient treatment plan.

A. The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the mandatory outpatient treatment plan; however if the fifth day is a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday. If the person is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order, and the original petitioner for the person's involuntary treatment. If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearings under §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order need not preside at the noncompliance hearing or any subsequent hearings. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

B. If requested by the person, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan, or the original petitioner for the person's involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally examine the person and certify to the court whether or not he has probable cause to believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient treatment as specified in subsections C and D of § 37.2-817. The examination shall include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not detained in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination, if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board. If the person refuses or fails to appear, the community services board shall notify the court, or a magistrate if the

182 court is not available, and the court or magistrate shall issue a mandatory examination order and *capias*
183 directing the primary law-enforcement agency in the jurisdiction where the person resides to transport
184 the person to the examination. The person shall remain in custody until a temporary detention order is
185 issued or until the person is released, but in no event shall the period exceed four hours.

186 C. If the person fails to appear for the hearing the court shall, after consideration of any evidence
187 from the person, from the community services board, or from any treatment provider identified in the
188 mandatory outpatient treatment plan regarding why the person failed to appear at the hearing, either (i)
189 reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to
190 § 37.2-808 or (iii) issue a temporary detention order pursuant to § 37.2-809.

191 D. After hearing the evidence regarding the person's material noncompliance with the mandatory
192 outpatient treatment order and the person's current condition, and any other relevant information
193 referenced in subsection C of § 37.2-817, the judge or special justice shall make one of the following
194 dispositions:

195 1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary
196 admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order
197 the person's involuntary admission to a facility designated by the community services board for a period
198 of treatment not to exceed 30 days;

199 2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment
200 specified in subsection D of § 37.2-817, and that a continued period of mandatory outpatient treatment
201 appears warranted, the judge or special justice shall renew the order for mandatory outpatient treatment,
202 making any necessary modifications that are acceptable to the community services board or treatment
203 provider responsible for the person's treatment. In determining the appropriateness of outpatient
204 treatment, the court may consider the person's material noncompliance with the previous mandatory
205 treatment order; or

206 3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall
207 rescind the order for mandatory outpatient treatment.

208 Upon entry of an order for involuntary inpatient admission, transportation shall be provided in
209 accordance with § 37.2-829 ~~or~~ 37.2-830.

210 § 37.2-829. Transportation of person in civil admission process.

211 When a person has *volunteered for admission pursuant to § 37.2-814* or been ordered to be admitted
212 to a facility under §§ ~~37.2-814~~ 37.2-815 through 37.2-821, ~~a determination shall be made by the judge or~~
213 ~~special justice regarding the transportation of that person to the proper facility. The judge or special~~
214 ~~justice may consult with~~ *shall determine after consideration of information provided by the person's*
215 *treating mental health professional and any involved community services board or behavioral health*
216 *authority staff regarding the person's dangerousness and whether the sheriff should transport or whether*
217 *transportation alternatives as provided in § 37.2-830 may be utilized, whether transportation shall be*
218 *provided by the sheriff or may be provided by an alternative transportation provider, including a family*
219 *member or friend of the person, a representative of the community services board, a representative of*
220 *the facility at which the person was detained pursuant to a temporary detention order, or other*
221 *alternative transportation provider with personnel trained to provide transportation in a safe manner. If*
222 *the judge or special justice determines that transportation may be provided by an alternative*
223 *transportation provider, the judge or special justice shall consult with the proposed alternative*
224 *transportation provider in person to determine whether the proposed alternative transportation provider*
225 *is available to provide transportation, willing to provide transportation, and able to provide*
226 *transportation in a safe manner. If the judge or special justice finds that the proposed alternative*
227 *transportation provider is available to provide transportation, willing to provide transportation, and*
228 *able to provide transportation in a safe manner, the judge or special justice may order transportation*
229 *by the proposed alternative transportation provider. In all other cases, the judge or special justice shall*
230 *order transportation by the sheriff of the jurisdiction where the person is a resident unless the sheriff's*
231 *office of that jurisdiction is located more than 100 road miles from the nearest boundary of the*
232 *jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which*
233 *the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in*
234 *which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to*
235 *transport the person.*

236 If the judge or special justice determines that the person requires transportation by the sheriff, the
237 person may be delivered to the care of the sheriff, as specified in this section, who shall transport the
238 person to the proper facility. In no event shall transport commence later than six hours after notification
239 to the sheriff or *alternative transportation provider* of the judge's or special justice's order.

240 The sheriff of the jurisdiction where the person is a resident shall be responsible for transporting the
241 person unless the sheriff's office of that jurisdiction is located more than 100 road miles from the
242 nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of
243 the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary

244 of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the
245 latter jurisdiction to transport the person. The cost of transportation of any person ordered to be admitted
246 pursuant to §§ 37.2-814 through 37.2-821 shall be paid by the Commonwealth from the same funds as
247 for care in jail.

248 If any state hospital has become too crowded to admit any such person, the Commissioner shall give
249 notice of the fact to all ~~sheriffs~~*community services boards* and shall designate the facility to which
250 ~~they~~*sheriffs or alternative transportation providers* shall transport such persons.

251 2. That § 37.2-830 of the Code of Virginia is repealed.