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**SENATE BILL NO. 823**

Offered January 14, 2009

Prefiled December 9, 2008

*A BILL to amend and reenact §§ 37.2-808, 37.2-810, 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.*

Patrons—Cuccinelli and Barker

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 37.2-808, 37.2-810, and 37.2-829 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 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~~ Prior to issuing the emergency custody order, the magistrate shall determine, after considering any information provided by the community services board or its designee; local law-enforcement agency, if involved; petitioner; treating physician, if any; or other persons who are available and have knowledge of the person, whether transportation can be provided by a family member, friend, representative of the community services board, health care provider, representative of the facility at which the person will be evaluated, or other transportation provider with personnel trained to provide transportation in a safe manner. If the magistrate finds that such person or provider is available, willing to provide transportation, and capable of providing transportation in a safe manner, the magistrate shall specify in the emergency custody order that the person be placed in the custody of the person or provider for the sole purpose of providing transportation as required in this section. The written emergency custody order shall accompany the person being transported at all times and shall be delivered to the person responsible for conducting the evaluation. The person conducting the evaluation shall return the written emergency custody order to the court designated by the magistrate as soon as practicable. Delivery of the order to the person or entity ordered to transport the person and return of the order to the court may be accomplished electronically, or by facsimile. Where none of the persons or providers listed in this subsection are available, willing to provide transportation, and capable of providing transportation in a safe manner, 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. Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include

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59 transportation to a medical facility for a medical evaluation if a physician at the hospital in which the  
60 person subject to the emergency custody order may be detained requires a medical evaluation prior to  
61 admission.

62 D. ~~The~~ *Where transportation is required to be provided by a law-enforcement officer, the* magistrate  
63 shall order the primary law-enforcement agency from the jurisdiction served by the community services  
64 board that designated the person to perform the evaluation required in subsection B to execute the order  
65 and provide transportation. If the community services board serves more than one jurisdiction, the  
66 magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the  
67 community services board's service area where the person who is the subject of the emergency custody  
68 order was taken into custody or, if the person has not yet been taken into custody, the primary  
69 law-enforcement agency from the jurisdiction where the person is presently located to execute the order  
70 and provide transportation.

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

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

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

87 H. Nothing herein shall preclude a law-enforcement officer *or other person or entity transporting a*  
88 *person who is in custody pursuant to this section* from obtaining emergency medical treatment or further  
89 medical evaluation at any time for a person in his custody as provided in this section.

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

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

103 K. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical  
104 screening and assessment services provided to persons with mental illnesses while in emergency custody.  
105 § 37.2-810. Transportation of person in the temporary detention process.

106 A. *Prior to issuing the temporary detention order pursuant to § 37.2-809, the magistrate shall*  
107 *determine, after considering any information provided by the community services board or its designee;*  
108 *local law-enforcement agency, if involved; petitioner; treating physician, if any; or other persons who*  
109 *are available and have knowledge of the person, whether transportation can be provided by a family*  
110 *member, friend, representative of the community services board, health care provider, representative of*  
111 *the facility at which the person will be detained, or other transportation provider with personnel trained*  
112 *to provide transportation in a safe manner. If the magistrate finds that such person or provider is*  
113 *available, willing to provide transportation, and capable of providing transportation in a safe manner,*  
114 *the magistrate shall order that the person be placed in the custody of the person or provider for the*  
115 *sole purpose of providing transportation as required in this section.*

116 B. ~~The~~ *Where transportation is required to be provided by a law-enforcement officer, the* magistrate  
117 issuing the temporary detention order shall specify the law-enforcement agency and jurisdiction that shall  
118 execute the temporary detention order and provide transportation. The magistrate shall specify in the  
119 temporary detention order the law-enforcement agency of the jurisdiction in which the person resides to  
120 execute the order and provide transportation. However, if the nearest boundary of the jurisdiction in

which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation. 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.

C. Nothing herein shall preclude a law-enforcement officer *or other person or entity transporting a person who is in custody pursuant to this section* 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-D. 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.

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

When a person has *volunteered for admission pursuant to § 37.2-814 or has been ordered to be admitted to a facility under §§ 37.2-814 37.2-817 through 37.2-821*, a ~~determination shall be made by the judge or special justice regarding the transportation of that person to the proper facility. The judge or special justice may consult~~ *shall determine, after consultation* with the person's treating mental health professional ~~and~~ any involved community services board or behavioral health authority staff regarding the person's dangerousness ~~and whether the sheriff should transport or whether transportation alternatives as provided in § 37.2-830 may be utilized, whether transportation can be provided by a family member, friend, representative of the community services board, health care provider, representative of the facility to which the person will be admitted, or other transportation provider with personnel trained to provide transportation in a safe manner. If such person or provider is available, willing to provide transportation, and capable of providing transportation in a safe manner, the judge or special justice shall order that the person be placed in the custody of the person or provider for the sole purpose of providing transportation pursuant to this section.~~ If the judge or special justice determines that the person requires transportation by the sheriff, the person may be delivered to the care of the sheriff, as specified in this section, who shall transport the person to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff of the judge's or special justice's order.

The sheriff of the jurisdiction where the person is a resident shall be responsible for transporting the person unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person. ~~The cost of transportation of any person ordered to be admitted pursuant to §§ 37.2-814 through 37.2-821 shall be paid by the Commonwealth from the same funds as for care in jail.~~

If any state hospital has become too crowded to admit any such person, the Commissioner shall give notice of the fact to all sheriffs and shall designate the facility to which they shall transport such persons.

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