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SENATE BILL NO. 823

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 4, 2009)

(Patron Prior to Substitute—Senator Cuccinelli)

A BILL to amend and reenact §§ 16.1-345, 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-345, 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:

§ 16.1-345. Involuntary commitment; criteria.

The court shall order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. If inpatient treatment is ordered, such treatment is the least restrictive alternative that meets the minor's needs. If the court finds that inpatient treatment is not the least restrictive treatment, the court may order the minor to participate in outpatient or other clinically appropriate treatment.

A minor who has been hospitalized while properly detained for a criminal offense by a juvenile and domestic relations district court shall be returned to the detention home following completion of a period of inpatient treatment, unless the court having jurisdiction over the criminal case orders that the minor be released from custody.

In conducting an evaluation of a minor who has been properly detained, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in this section, the evaluator shall recommend that the minor meets the criteria for involuntary commitment.

In no event shall a minor who has been properly detained by a juvenile and domestic relations district court, and who meets criteria for involuntary commitment, have the right to make application for voluntary admission and treatment as may otherwise be provided for in this section.

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, or normal development, and that issuance of a removal order or protective order is authorized by § 16.1-252 or 16.1-253.

Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § 16.1-342. If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. The judge shall order the sheriff or an alternative transportation provider to transport the minor to the designated mental health facility as specified in § 37.2-829. The transportation of the committed minor by the minor's parent may be authorized at the discretion of the judge.

§ 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

60 for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to
61 volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order
62 entered pursuant to this section shall provide for the disclosure of medical records pursuant to
63 § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

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

77 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement
78 agency and jurisdiction to execute the emergency custody order and provide transportation. *However, in*
79 *cases in which the emergency custody order is based upon a finding that the person who is the subject*
80 *of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental*
81 *illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect*
82 *himself from harm or to provide for his basic human needs, the magistrate may authorize transportation*
83 *by an alternative transportation provider, including a family member or friend of the person who is the*
84 *subject of the order, a representative of the community services board, or other transportation provider*
85 *with personnel trained to provide transportation in a safe manner, upon determining, following*
86 *consideration of information provided by the petitioner; the community services board or its designee;*
87 *the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who*
88 *are available and have knowledge of the person, and, when the magistrate deems appropriate, the*
89 *proposed alternative transportation provider, either in person or via two-way electronic video and audio*
90 *or telephone communication system, that the proposed alternative transportation provider is available to*
91 *provide transportation, willing to provide transportation, and able to provide transportation in a safe*
92 *manner. When transportation is ordered to be provided by an alternative transportation provider, the*
93 *magistrate shall order the specified primary law-enforcement agency to execute the order, to take the*
94 *person into custody, and to transfer custody of the person to the alternative transportation provider*
95 *identified in the order. In such cases, a copy of the emergency custody order shall accompany the*
96 *person being transported pursuant to this section at all times and shall be delivered by the alternative*
97 *transportation provider to the community services board or its designee responsible for conducting the*
98 *evaluation. The community services board or its designee conducting the evaluation shall return a copy*
99 *of the emergency custody order to the court designated by the magistrate as soon as is practicable.*
100 *Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an*
101 *order to the court may be accomplished electronically or by facsimile.*

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

107 D. ~~The~~*In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,*
108 *the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the*
109 *community services board that designated the person to perform the evaluation required in subsection B*
110 *to execute the order and, in cases in which transportation is ordered to be provided by the primary*
111 *law-enforcement agency, provide transportation. If the community services board serves more than one*
112 *jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular*
113 *jurisdiction within the community services board's service area where the person who is the subject of*
114 *the emergency custody order was taken into custody or, if the person has not yet been taken into*
115 *custody, the primary law-enforcement agency from the jurisdiction where the person is presently located*
116 *to execute the order and provide transportation.*

117 E. The law-enforcement agency *or alternative transportation provider* providing transportation
118 pursuant to this section may transfer custody of the person to the facility or location to which the person
119 is transported for the evaluation required in subsection B or G if the facility or location (i) is licensed to
120 provide the level of security necessary to protect both the person and others from harm, (ii) is actually
121 capable of providing the level of security necessary to protect the person and others from harm, and (iii)

in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

F. 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 an emergency custody order pursuant to this section.

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

H. 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.

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

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

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

A. ~~The magistrate issuing the temporary detention order shall specify~~*In specifying the primary law-enforcement agency and jurisdiction that shall execute the temporary detention order and provide transportation. Thefor purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, 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.*

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 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, when the magistrate deems appropriate, 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 temporary detention facility. The temporary detention facility 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*

183 *electronically or by facsimile.*

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

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

194 § 37.2-817.2. Court review of mandatory outpatient treatment plan.

195 A. The district court judge or special justice shall hold a hearing within five days after receiving the
196 petition for review of the mandatory outpatient treatment plan; however if the fifth day is a Saturday,
197 Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a
198 Saturday, Sunday, or legal holiday. If the person is being detained under a temporary detention order,
199 the hearing shall be scheduled within the same time frame provided for a commitment hearing under
200 § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board,
201 all treatment providers listed in the comprehensive mandatory outpatient treatment order, and the original
202 petitioner for the person's involuntary treatment. If the person is not represented by counsel, the court
203 shall appoint an attorney to represent the person in this hearing and any subsequent hearings under
204 §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the attorney who represented the
205 person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order. The
206 same judge or special justice that presided over the hearing resulting in the mandatory outpatient
207 treatment order need not preside at the noncompliance hearing or any subsequent hearings. The
208 community services board shall offer to arrange the person's transportation to the hearing if the person is
209 not detained and has no other source of transportation.

210 B. If requested by the person, the community services board, a treatment provider listed in the
211 comprehensive mandatory outpatient treatment plan, or the original petitioner for the person's involuntary
212 treatment, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally
213 examine the person and certify to the court whether or not he has probable cause to believe that the
214 person meets the criteria for involuntary inpatient admission or mandatory outpatient treatment as
215 specified in subsections C and D of § 37.2-817. The examination shall include all applicable
216 requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the
217 appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person
218 is not detained in an inpatient facility, the community services board shall arrange for the person to be
219 examined at a convenient location and time. The community services board shall offer to arrange for the
220 person's transportation to the examination, if the person has no other source of transportation and resides
221 within the service area or an adjacent service area of the community services board. If the person
222 refuses or fails to appear, the community services board shall notify the court, or a magistrate if the
223 court is not available, and the court or magistrate shall issue a mandatory examination order and *habeas*
224 directing the primary law-enforcement agency in the jurisdiction where the person resides to transport
225 the person to the examination. The person shall remain in custody until a temporary detention order is
226 issued or until the person is released, but in no event shall the period exceed four hours.

227 C. If the person fails to appear for the hearing the court shall, after consideration of any evidence
228 from the person, from the community services board, or from any treatment provider identified in the
229 mandatory outpatient treatment plan regarding why the person failed to appear at the hearing, either (i)
230 reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to
231 § 37.2-808 or (iii) issue a temporary detention order pursuant to § 37.2-809.

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

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

240 2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment
241 specified in subsection D of § 37.2-817, and that a continued period of mandatory outpatient treatment
242 appears warranted, the judge or special justice shall renew the order for mandatory outpatient treatment,
243 making any necessary modifications that are acceptable to the community services board or treatment
244 provider responsible for the person's treatment. In determining the appropriateness of outpatient

245 treatment, the court may consider the person's material noncompliance with the previous mandatory
 246 treatment order; or

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

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

251 § 37.2-829. Transportation of person in civil admission process.

252 When a person has *volunteered for admission pursuant to § 37.2-814* or been ordered to be admitted
 253 to a facility under §§ ~~37.2-814~~ 37.2-815 through 37.2-821, a ~~determination shall be made by~~ the judge or
 254 special justice ~~regarding the transportation of that person to the proper facility.~~ The judge or special
 255 justice ~~may consult with~~ *shall determine after consideration of information provided by* the person's
 256 treating mental health professional and any involved community services board or behavioral health
 257 authority staff regarding the person's dangerousness ~~and whether the sheriff should transport or whether~~
 258 ~~transportation alternatives as provided in § 37.2-830 may be utilized, whether transportation shall be~~
 259 ~~provided by the sheriff or may be provided by an alternative transportation provider, including a family~~
 260 ~~member or friend of the person, a representative of the community services board, a representative of~~
 261 ~~the facility at which the person was detained pursuant to a temporary detention order, or other~~
 262 ~~alternative transportation provider with personnel trained to provide transportation in a safe manner. If~~
 263 ~~the judge or special justice determines that transportation may be provided by an alternative~~
 264 ~~transportation provider, the judge or special justice may consult with the proposed alternative~~
 265 ~~transportation provider either in person or via two-way electronic video and audio or telephone~~
 266 ~~communication system to determine whether the proposed alternative transportation provider is available~~
 267 ~~to provide transportation, willing to provide transportation, and able to provide transportation in a safe~~
 268 ~~manner. If the judge or special justice finds that the proposed alternative transportation provider is~~
 269 ~~available to provide transportation, willing to provide transportation, and able to provide transportation~~
 270 ~~in a safe manner, the judge or special justice may order transportation by the proposed alternative~~
 271 ~~transportation provider. In all other cases, the judge or special justice shall order transportation by the~~
 272 ~~sheriff of the jurisdiction where the person is a resident unless the sheriff's office of that jurisdiction is~~
 273 ~~located more than 100 road miles from the nearest boundary of the jurisdiction in which the~~
 274 ~~proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is~~
 275 ~~more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took~~
 276 ~~place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person.~~

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

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

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

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