

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 544

An Act to amend and reenact § 37.2-821 of the Code of Virginia, relating to appeal of involuntary admission, certification, or mandatory outpatient treatment orders.

[H 247]

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-821 of the Code of Virginia is amended and reenacted as follows:

§ 37.2-821. Appeal of involuntary admission or certification order.

A. Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to §§ 37.2-814 through 37.2-819 or certified as eligible for admission pursuant to § 37.2-806 shall have the right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to which he was admitted is located. Choice of venue shall rest with ~~the party noting the appeal such person~~. The court may transfer the case upon a finding that the other forum is more convenient. An appeal shall be filed within ~~30~~ 10 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241 regarding the time within which the court shall set criminal cases for trial. *A petition for or the pendency of an appeal shall not suspend any order unless so ordered by a judge or special justice; however, a person may be released after a petition for or during the pendency of an appeal pursuant to § 37.2-837 or 37.2-838.* The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the petitioner in the case in accordance with procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required, and the appeal shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in § 37.2-804.

B. The appeal shall be heard de novo in accordance with the provisions set forth in §§ 37.2-802, 37.2-804, 37.2-804.1, 37.2-804.2, and 37.2-805, and (i) § 37.2-806 or ~~this article~~ (ii) §§ 37.2-814 through 37.2-819, except that the court in its discretion may rely upon the evaluation report in the commitment hearing from which the appeal is taken instead of requiring a new evaluation pursuant to § 37.2-815. ~~The circuit court may require an independent evaluation of the person pursuant to § 37.2-815, or may rely upon the evaluation report in the commitment hearing from which the appeal is taken.~~ Any order of the circuit court shall not extend the period of involuntary admission or mandatory outpatient treatment set forth in the order appealed from. An order continuing the involuntary admission shall be entered only if the criteria in § 37.2-817 are met at the time the appeal is heard. The person so admitted or certified shall be entitled to trial by jury. Seven persons from a panel of 13 shall constitute a jury.

C. If the person is not represented by counsel, the judge shall appoint an attorney to represent him. Counsel so appointed shall be paid a fee of \$75 and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.