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## HOUSE BILL NO. 1444

Offered January 12, 2011

Prefiled November 15, 2010

A BILL to amend and reenact §§ 37.2-805, 37.2-806, and 37.2-836 of the Code of Virginia, relating to admission to a training center.

Patron—Morgan

Referred to Committee on Health, Welfare and Institutions

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

**1. That §§ 37.2-805, 37.2-806, and 37.2-836 of the Code of Virginia are amended and reenacted as follows:**

§ 37.2-805. Voluntary admission; state hospitals.

Any state ~~facility~~ hospital shall admit any person requesting admission who has been (i) screened by the community services board or behavioral health authority that serves the city or county where the person resides or, if impractical, where the person is located, (ii) examined by a physician on the staff of the state ~~facility~~ hospital, and (iii) deemed by the board or authority and the state ~~facility~~ hospital physician to be in need of treatment, ~~training, or habilitation~~ in a state ~~facility~~ hospital.

§ 37.2-806. Judicial certification of eligibility for admission of persons with mental retardation.

~~A. Whenever a person alleged to have mental retardation is not capable of requesting admission to a training center pursuant to § 37.2-805, a parent or guardian of the person or another responsible person may initiate a proceeding to certify the person's eligibility for admission pursuant to this section.~~

~~B.A. The parent or guardian of a person alleged to have mental retardation and be incapable of making decisions regarding his admission to a facility for the care, training, or habilitation of persons with mental retardation or any other responsible person may initiate a proceeding to certify that the person is eligible for admission to a training center pursuant to this section. Prior to initiating the proceeding, the parent, or guardian, or other responsible person seeking the person's admission shall first obtain (i) a preadmission screening report from the community services board or behavioral health authority that serves the city or county where the person who is alleged to have mental retardation resides or, if impractical, where the person is located that (a) states that the person has mental retardation, (b) identifies all available treatment and placement options for the person including treatment and placement options that are less restrictive than admission to a training center, (c) states why each of those options has been determined to be inconsistent with the best interests of the person, and (d) recommends admission to a training center from the community services board or behavioral health authority that serves the city or county where the person who is alleged to have mental retardation resides as the best treatment and placement option for the person; and (ii) the approval of the training center to which it is proposed that the person be admitted. The Board shall adopt regulations establishing the procedure and standards for the issuance of such approval. These regulations may include provision for the observation and evaluation of the person in a training center for a period not to exceed 48 hours. No person alleged to have mental retardation who is the subject of a proceeding under this section shall be detained on that account pending the hearing except for observation and evaluation pursuant to the provisions of this subsection.~~

~~C.B. Upon the filing of a petition in any city or county alleging that the person has mental retardation, is in need of training, treatment, or habilitation, and has been approved for admission pursuant to subsection B of this section A, a proceeding to certify the person's eligibility for admission to the training center may be commenced. The petition shall be filed with any district court or special justice. A copy of the petition shall be personally served on the person named in the petition, his attorney, and his guardian or conservator. Prior to any hearing under this section, the judge or special justice shall appoint an attorney to represent the person. However, the person shall not be precluded from employing counsel of his choosing and at his expense.~~

~~D.C. The person who is the subject of the hearing shall be allowed sufficient opportunity to prepare his defense, obtain independent evaluations and expert opinion at his own expense, and summons other witnesses. He shall be present at any hearing held under this section, unless his attorney waives his right to be present and the judge or special justice is satisfied by a clear showing and after personal observation that the person's attendance would subject him to substantial risk of physical or emotional injury or would be so disruptive as to prevent the hearing from taking place.~~

~~E.D. Notwithstanding the above, the judge or special justice shall summons either a physician or a clinical psychologist who is licensed in Virginia and is qualified in the assessment of persons with~~

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59 mental retardation or a person designated by the local community services board or behavioral health  
60 authority who meets the qualifications established by the Board. The physician, clinical psychologist, or  
61 community services board or behavioral health authority designee may be the one who assessed the  
62 person pursuant to subsection B of this section A. The judge or special justice also shall summons other  
63 witnesses when so requested by the person or his attorney. The physician, clinical psychologist, or  
64 community services board or behavioral health authority designee shall certify that he has personally  
65 assessed the person and has probable cause to believe that the person (i) does or does not have mental  
66 retardation, (ii) is or is not eligible for a less restrictive service, and (iii) is or is not in need of training,  
67 treatment, or habilitation in a training center. The judge or special justice may accept written  
68 certification of a finding of a physician, clinical psychologist, or community services board or behavioral  
69 health authority designee, provided such assessment has been personally made within the preceding 30  
70 days and there is no objection to the acceptance of the written certification by the person or his attorney.

71 ~~F.E.~~ If the judge or special justice, having observed the person and having obtained the necessary  
72 positive certification and other relevant evidence, specifically finds that (i) the person is not capable of  
73 requesting his own admission to a facility for the care, training, or habilitation of persons with mental  
74 retardation, (ii) the training center has approved the proposed admission pursuant to subsection B of this  
75 section A, (iii) there is no less restrictive alternative to training center admission, consistent with the best  
76 interests of the person who is the subject of the proceeding, and (iv) the person has mental retardation  
77 and is in need of training, treatment, or habilitation in a training center, the judge or special justice shall  
78 by written order certify that the person is eligible for admission to a training center for a period not to  
79 exceed 365 days from the date of the order.

80 *F. Upon expiration of an order certifying that a person is eligible for admission to a training center,*  
81 *the person shall be discharged from the training center unless the person has been recertified as eligible*  
82 *for admission to a training center for an additional period not to exceed 365 days by a separate petition*  
83 *and order issued pursuant to this section after receipt and review of the preadmission screening report*  
84 *required by clause (i) of subsection A, the approval of the training center required by clause (ii) of*  
85 *subsection A, the necessary positive certification required by subsection D and any other relevant*  
86 *evidence, and a finding that the person continues to meet the criteria set forth in subsection E.*  
87 *However, in cases in which all parties to a proceeding for recertification of eligibility for admission to*  
88 *a training center agree, the hearing may be waived and the judge or special justice may enter an order*  
89 *after receiving and reviewing the preadmission screening report, approval of the training center,*  
90 *necessary positive certification, and other relevant evidence and finding that the person continues to*  
91 *meet the criteria for eligibility for admission to a training center.*

92 G. Certification of eligibility for admission hereunder shall not be construed as a judicial  
93 commitment for involuntary admission of the person but shall authorize the parent or guardian or other  
94 responsible person to admit the person to a training center and shall authorize the training center to  
95 accept the person.

96 § 37.2-836. Employees to accompany persons admitted voluntarily to hospitals.

97 When application is made to the director of a facility hospital for admission pursuant to § 37.2-805,  
98 he may send an employee from the facility hospital to accompany the person to the facility hospital. If  
99 for any reason it is impracticable for an employee to do so, then the director may appoint some suitable  
100 person for the purpose, or may request the sheriff of the county or city in which the person resides to  
101 convey him to the facility hospital. The sheriff or other person appointed for the purpose shall receive  
102 only his necessary expenses for conveying any person admitted to the facility hospital. Expenses  
103 authorized herein shall be paid by the Department.