

11100932D

## HOUSE BILL NO. 2090

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact §§ 16.1-340 and 37.2-808 of the Code of Virginia, relating to execution of emergency custody orders.*

Patron—Herring

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-340 and 37.2-808 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-340. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion, an emergency custody order when he has probable cause to believe that (i) because of mental illness, the minor (a) 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 (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law. To the extent possible, the petition shall contain the information required by § 16.1-339.1.

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 minor, (3) any past mental health treatment of the minor, (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 minor 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 he meets the criteria for temporary detention pursuant to § 16.1-340.1 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board serving the area in which the minor is located 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 minor who is the subject of the order has a mental illness and that, as a result of mental illness, the minor is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor 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 information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, 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 minor into custody, and to transfer custody of the minor to the alternative transportation provider

INTRODUCED

HB2090

59 identified in the order. In such cases, a copy of the emergency custody order shall accompany the minor  
60 being transported pursuant to this section at all times and shall be delivered by the alternative  
61 transportation provider to the community services board or its designee responsible for conducting the  
62 evaluation. The community services board or its designee conducting the evaluation shall return a copy  
63 of the emergency custody order to the court designated by the magistrate as soon as is practicable.  
64 Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an  
65 order to the court may be accomplished electronically or by facsimile.

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

71 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,  
72 the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the  
73 community services board that designated the person to perform the evaluation required in subsection B  
74 to execute the order and, in cases in which transportation is ordered to be provided by the primary  
75 law-enforcement agency, provide transportation. If the community services board serves more than one  
76 jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular  
77 jurisdiction within the community services board's service area where the minor who is the subject of  
78 the emergency custody order was taken into custody or, if the minor has not yet been taken into  
79 custody, the primary law-enforcement agency from the jurisdiction where the minor is presently located  
80 to execute the order and provide transportation.

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

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

94 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has  
95 probable cause to believe that a minor meets the criteria for emergency custody as stated in this section  
96 may take that minor into custody and transport that minor to an appropriate location to assess the need  
97 for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a  
98 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the  
99 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for  
100 the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of  
101 custody shall not exceed four hours from the time the law-enforcement officer takes the minor into  
102 custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the  
103 magistrate shall issue an order extending the period of emergency custody one time for an additional  
104 period not to exceed two hours. Good cause for an extension includes the need for additional time to  
105 allow (i) the community services board to identify a suitable facility in which the minor can be  
106 temporarily detained pursuant to § 16.1-340.1 or (ii) a medical evaluation of the person to be completed  
107 if necessary.

108 H. A law-enforcement officer who is transporting a minor who has voluntarily consented to be  
109 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial  
110 limits of the county, city, or town in which he serves may take such minor into custody and transport  
111 him to an appropriate location to assess the need for hospitalization or treatment without prior  
112 authorization when the law-enforcement officer determines (i) that the minor has revoked consent to be  
113 transported to a facility for the purpose of assessment or evaluation and (ii) based upon his observations,  
114 that probable cause exists to believe that the minor meets the criteria for emergency custody as stated in  
115 this section. The period of custody shall not exceed four hours from the time the law-enforcement  
116 officer takes the minor into custody. However, upon a finding by a magistrate that good cause exists to  
117 grant an extension, the magistrate shall issue an order extending the period of emergency custody one  
118 time for an additional period not to exceed two hours. Good cause for an extension includes the need  
119 for additional time to allow (a) the community services board to identify a suitable facility in which the  
120 minor can be temporarily detained pursuant to § 16.1-340.1 or (b) a medical evaluation of the person to

121 be completed if necessary.

122 I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from  
123 obtaining emergency medical treatment or further medical evaluation at any time for a minor in his  
124 custody as provided in this section.

125 J. The minor shall remain in custody until a temporary detention order is issued, until the minor is  
126 released, or until the emergency custody order expires. An emergency custody order shall be valid for a  
127 period not to exceed four hours from the time of execution. However, upon a finding by a magistrate  
128 that good cause exists to grant an extension, the magistrate shall extend the emergency custody order  
129 one time for a second period not to exceed two hours. Good cause for an extension includes the need  
130 for additional time to allow (i) the community services board to identify a suitable facility in which the  
131 minor can be temporarily detained pursuant to § 16.1-340.1 or (ii) a medical evaluation of the person to  
132 be completed if necessary. Any family member, as defined in § 37.2-100, employee or designee of the  
133 community services board, treating physician, or law-enforcement officer may request the two-hour  
134 extension.

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

138 L. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical  
139 screening and assessment services provided to minors with mental illnesses while in emergency custody.

140 § 37.2-808. Emergency custody; issuance and execution of order.

141 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician,  
142 or upon his own motion, an emergency custody order when he has probable cause to believe that any  
143 person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental  
144 illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
145 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if  
146 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide  
147 for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to  
148 volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order  
149 entered pursuant to this section shall provide for the disclosure of medical records pursuant to  
150 § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

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

164 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement  
165 agency and jurisdiction to execute the emergency custody order and provide transportation. However, in  
166 cases in which the emergency custody order is based upon a finding that the person who is the subject  
167 of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental  
168 illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect  
169 himself from harm or to provide for his basic human needs, the magistrate may authorize transportation  
170 by an alternative transportation provider, including a family member or friend of the person who is the  
171 subject of the order, a representative of the community services board, or other transportation provider  
172 with personnel trained to provide transportation in a safe manner, upon determining, following  
173 consideration of information provided by the petitioner; the community services board or its designee;  
174 the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who  
175 are available and have knowledge of the person, and, when the magistrate deems appropriate, the  
176 proposed alternative transportation provider, either in person or via two-way electronic video and audio  
177 or telephone communication system, that the proposed alternative transportation provider is available to  
178 provide transportation, willing to provide transportation, and able to provide transportation in a safe  
179 manner. When transportation is ordered to be provided by an alternative transportation provider, the  
180 magistrate shall order the specified primary law-enforcement agency to execute the order, to take the  
181 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 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 community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody 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.

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

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

E. The law-enforcement agency or alternative transportation provider providing transportation pursuant to this section may transfer custody of the person to the facility or location to which the person is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed to provide the level of security necessary to protect both the person and others from harm, (ii) is actually 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 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. A law-enforcement officer who takes a person into custody pursuant to this subsection or subsection H may lawfully go 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 obtaining the assessment. Such evaluation shall be conducted immediately. The period of custody shall not exceed four hours from the time the law-enforcement officer takes the person into custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate shall issue an order extending the period of emergency custody one time for an additional 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.

H. A law-enforcement officer who is transporting a person who has voluntarily consented to be transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of the county, city, or town in which he serves may take such person into custody and transport him to an appropriate location to assess the need for hospitalization or treatment without prior authorization when the law-enforcement officer determines (i) that the person has revoked consent to be transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his observations, that probable cause exists to believe that the person meets the criteria for emergency custody as stated in this section. The period of custody shall not exceed four hours from the time the law-enforcement officer takes the person into custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate shall issue an order extending the period of emergency custody one time for an additional period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (a) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809, or (b) a medical

244 evaluation of the person to be completed if necessary.

245 I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from  
246 obtaining emergency medical treatment or further medical evaluation at any time for a person in his  
247 custody as provided in this section.

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

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

261 L. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical  
262 screening and assessment services provided to persons with mental illnesses while in emergency custody.