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HOUSE BILL NO. 1172

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 3, 2014)

(Patron Prior to Substitute—Delegate Bell, Robert B.)

A BILL to amend and reenact §§ 37.2-809 and 37.2-810 of the Code of Virginia, relating to change of facility for temporary detention.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-809 and 37.2-810 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-809. Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii) is able to provide an independent examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department.

"Investment interest" means the ownership or holding of an equity or debt security, including shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the local community services board to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the 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. The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. Any temporary detention 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.

C. When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

D. A magistrate may issue a temporary detention order without an emergency custody order proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to subsection B if (i) the person has been personally examined within the previous 72 hours by an employee or a designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

E. An employee or a designee of the local community services board shall determine the facility of temporary detention for all individuals detained pursuant to this section. ~~The~~ An employee or designee of the local community services board may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the individual given the specific security, medical, or behavioral health needs of the person. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of

60 *temporary custody, transportation of the individual to the alternative facility of temporary detention*
61 *shall be provided in accordance with the provisions of § 37.2-810. A facility of temporary detention in*
62 *which a person is temporarily detained pursuant to this section shall be one that has been approved*
63 *pursuant to regulations of the Board. The initial facility of temporary detention shall be identified on the*
64 *preadmission screening report and indicated on the temporary detention order; however, if an employee*
65 *or designee of the local community services board designates an alternative facility, that employee or*
66 *designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the*
67 *Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative*
68 *facility. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with*
69 *subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement*
70 *for persons charged with criminal offenses and shall remain in the custody of law enforcement until the*
71 *person is either detained within a secure facility or custody has been accepted by the appropriate*
72 *personnel designated by either the initial facility of temporary detention identified in the temporary*
73 *detention order or by the alternative facility of temporary detention designated by the employee or*
74 *designee of the local community services board pursuant to this subsection.*

75 F. Any facility caring for a person placed with it pursuant to a temporary detention order is
76 authorized to provide emergency medical and psychiatric services within its capabilities when the facility
77 determines that the services are in the best interests of the person within its care. The costs incurred as a
78 result of the hearings and by the facility in providing services during the period of temporary detention
79 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the
80 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance
81 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by
82 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

83 G. The employee or the designee of the local community services board who is conducting the
84 evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention
85 order, the insurance status of the person. Where coverage by a third party payor exists, the facility
86 seeking reimbursement under this section shall first seek reimbursement from the third party payor. The
87 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances
88 covered by the third party payor have been received.

89 H. The duration of temporary detention shall be sufficient to allow for completion of the examination
90 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and
91 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary
92 commitment where possible, but shall not exceed 48 hours prior to a hearing. If the 48-hour period
93 herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as
94 herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal
95 holiday. The person may be released, pursuant to § 37.2-813, before the 48-hour period herein specified
96 has run.

97 I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter
98 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office
99 of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of
100 the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the
101 petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of
102 the local community services board prior to issuing a subsequent order upon the original petition. Any
103 petition for which no temporary detention order or other process in connection therewith is served on
104 the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned
105 to the office of the clerk of the issuing court.

106 J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a
107 magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose
108 of performing the duties established by this section. Each community services board shall provide to
109 each general district court and magistrate's office within its service area a list of its employees and
110 designees who are available to perform the evaluations required herein.

111 K. For purposes of this section a health care provider or designee of a local community services
112 board or behavioral health authority shall not be required to encrypt any email containing information or
113 medical records provided to a magistrate unless there is reason to believe that a third party will attempt
114 to intercept the email.

115 L. The employee or designee of the community services board who is conducting the evaluation
116 pursuant to this section shall, if he recommends that the person should not be subject to a temporary
117 detention order, inform the petitioner and an onsite treating physician of his recommendation.

118 **§ 37.2-810. Transportation of person in the temporary detention process.**

119 A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
120 the magistrate shall specify in the temporary detention order the law-enforcement agency of the
121 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, in cases in which the temporary detention order is based upon a finding that the person who is the subject of the order 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, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs but there is no substantial likelihood that the person will cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, the magistrate shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, 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 electronically or by facsimile.

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. 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. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

C. *In cases in which an alternative facility of temporary detention is identified and the law-enforcement agency or alternative transportation provider identified to provide transportation in accordance with subsection B continues to have custody of the person, the local law-enforcement agency or alternative transportation provider shall transport the person to the alternative facility of temporary detention identified by the employee or designee of the community services board. In cases in which an alternative facility of temporary detention is identified and custody of the individual has been transferred from the law-enforcement agency or alternative transportation provider that provided transportation in accordance with subsection B to the initial facility of temporary detention, the employee or designee of the community services board shall request, and a magistrate may enter an order specifying, an alternative transportation provider or, if no alternative transportation provider is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person resides or, 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, to provide transportation.*

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.