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HOUSE BILL NO. 478**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

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

(Patrons Prior to Substitute—Delegates Villanueva, Bell, Robert B. [HB 294], Mason [HB 621], O'Bannon [HB 583], and Yost [HB 242])

A BILL to amend and reenact §§ 37.2-808 and 37.2-809 of the Code of Virginia, relating to emergency custody orders; duration; extension.

Be it enacted by the General Assembly of Virginia:**1. That §§ 37.2-808 and 37.2-809 of the Code of Virginia are amended and reenacted as follows:****§ 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 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. Any emergency custody 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.

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 person, (3) any past mental health treatment of the person, (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 person 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 the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board 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 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 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 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

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60 community services board or its designee conducting the evaluation shall return a copy of the
61 emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of
62 an order to a law-enforcement officer or alternative transportation provider and return of an order to the
63 court may be accomplished electronically or by facsimile.

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

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

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

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

92 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
93 probable cause to believe that a person meets the criteria for emergency custody as stated in this section
94 may take that person into custody and transport that person to an appropriate location to assess the need
95 for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
96 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
97 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for
98 the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
99 custody shall not exceed four hours from the time the law-enforcement officer takes the person into
100 custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the
101 magistrate shall issue an order extending the period of emergency custody one time for an additional
102 period not to exceed two hours. Good cause for an extension includes the need for additional time to
103 allow (i) the community services board to identify a suitable facility in which the person can be
104 temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if
105 necessary. *Upon expiration of the first two-hour extension, the magistrate shall issue an order extending*
106 *the period of emergency custody a second time for an additional period not to exceed two hours upon a*
107 *finding that the individual continues to meet the criteria for emergency custody and that the extension is*
108 *necessary to identify a suitable facility in which the person can be temporarily detained pursuant to*
109 *§ 37.2-809.*

110 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be
111 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial
112 limits of the county, city, or town in which he serves may take such person into custody and transport
113 him to an appropriate location to assess the need for hospitalization or treatment without prior
114 authorization when the law-enforcement officer determines (i) that the person has revoked consent to be
115 transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his
116 observations, that probable cause exists to believe that the person meets the criteria for emergency
117 custody as stated in this section. The period of custody shall not exceed four hours from the time the
118 law-enforcement officer takes the person into custody. However, upon a finding by a magistrate that
119 good cause exists to grant an extension, the magistrate shall issue an order extending the period of
120 emergency custody one time for an additional period not to exceed two hours. Good cause for an
121 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 evaluation of the person to be completed if necessary. *Upon expiration of the first two-hour extension, the magistrate shall issue an order extending the period of emergency custody a second time for an additional period not to exceed two hours upon a finding that the individual continues to meet the criteria for emergency custody and that the extension is necessary to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809.*

I. 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.

J. 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, the magistrate shall extend the emergency custody order 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. *Upon expiration of the first two-hour extension, the magistrate shall issue an order extending the period of emergency custody a second time for an additional period not to exceed two hours upon a finding that the individual continues to meet the criteria for emergency custody and that the extension is necessary to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809.* 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.

K. *Any person taken into emergency custody pursuant to this section shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures.*

L. If an emergency custody order is not executed within six 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.

~~L.~~ M. 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.

§ 37.2-809. 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

183 shall not preclude any other disclosures as required or permitted by law.

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

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

196 E. An employee or a designee of the local community services board shall determine the facility of
197 temporary detention for all individuals detained pursuant to this section. The facility of temporary
198 detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be
199 identified on the preadmission screening report and indicated on the temporary detention order. Except
200 as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of
201 § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged
202 with criminal offenses and shall remain in the custody of law enforcement until the person is either
203 detained within a secure facility or custody has been accepted by the appropriate personnel designated
204 by the facility identified in the temporary detention order. *The person detained or in custody pursuant to*
205 *this section shall be given a written summary of the temporary detention procedures and the statutory*
206 *protections associated with those procedures.*

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

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

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

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

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

243 K. For purposes of this section a health care provider or designee of a local community services
244 board or behavioral health authority shall not be required to encrypt any email containing information or

245 medical records provided to a magistrate unless there is reason to believe that a third party will attempt
246 to intercept the email.

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