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## SENATE BILL NO. 260

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 21, 2014)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact §§ 37.2-808 and 37.2-809 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 37.2-308.1 and 37.2-809.1, relating to emergency custody; duration; facility of temporary detention; acute psychiatric bed registry.

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 and that the Code of Virginia is amended by adding sections numbered 37.2-308.1 and 37.2-809.1 as follows:

§ 37.2-308.1. *Acute psychiatric bed registry.*

A. The Department shall develop and administer a web-based acute psychiatric bed registry to collect, aggregate, and display information about available acute beds in public and private inpatient psychiatric facilities and public and private residential crisis stabilization units to facilitate the identification and designation of facilities for the temporary detention and treatment of individuals who meet the criteria for temporary detention pursuant to § 37.2-809.

B. The acute psychiatric bed registry created pursuant to subsection A shall:

1. Include descriptive information for every public and private inpatient psychiatric facility and every public and private residential crisis stabilization unit in the Commonwealth, including contact information for the facility or unit;

2. Provide real-time information about the number of beds available at each facility and, for each available bed, the type of patient that may be admitted, the level of security provided, and any other information that may be necessary to allow employees or designees of community services boards and employees of inpatient psychiatric facilities to identify appropriate facilities for detention and treatment of individuals who meet the criteria for temporary detention; and

3. Allow employees and designees of community services boards and employees of inpatient psychiatric facilities to perform searches of the registry to identify available beds that are appropriate for the detention and treatment of individuals who meet the criteria for temporary detention.

C. Every state facility, community services board, behavioral health authority, and private inpatient provider licensed by the Department shall participate in the acute psychiatric bed registry established pursuant to subsection A and shall designate such employees as may be necessary to submit information for inclusion in the acute psychiatric bed registry and serve as a point of contact for addressing requests for information related to data reported to the acute psychiatric bed registry.

D. The Commissioner may enter into a contract with a private entity for the development and administration of the acute psychiatric bed registry established pursuant to subsection A.

§ 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

60 by the Department.

61 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement  
62 agency and jurisdiction to execute the emergency custody order and provide transportation. However, in  
63 cases in which the emergency custody order is based upon a finding that the person who is the subject  
64 of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental  
65 illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect  
66 himself from harm or to provide for his basic human needs but there is no substantial likelihood that the  
67 person will cause serious physical harm to himself or others as evidenced by recent behavior causing,  
68 attempting, or threatening harm and other relevant information, the magistrate shall consider any request  
69 to authorize transportation by an alternative transportation provider in accordance with this section,  
70 whenever an alternative transportation provider is identified to the magistrate, which may be a person,  
71 facility, or agency, including a family member or friend of the person who is the subject of the order, a  
72 representative of the community services board, or other transportation provider with personnel trained  
73 to provide transportation in a safe manner, upon determining, following consideration of information  
74 provided by the petitioner; the community services board or its designee; the local law-enforcement  
75 agency, if any; the person's treating physician, if any; or other persons who are available and have  
76 knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative  
77 transportation provider, either in person or via two-way electronic video and audio or telephone  
78 communication system, that the proposed alternative transportation provider is available to provide  
79 transportation, willing to provide transportation, and able to provide transportation in a safe manner.  
80 When transportation is ordered to be provided by an alternative transportation provider, the magistrate  
81 shall order the specified primary law-enforcement agency to execute the order, to take the person into  
82 custody, and to transfer custody of the person to the alternative transportation provider identified in the  
83 order. In such cases, a copy of the emergency custody order shall accompany the person being  
84 transported pursuant to this section at all times and shall be delivered by the alternative transportation  
85 provider to the community services board or its designee responsible for conducting the evaluation. The  
86 community services board or its designee conducting the evaluation shall return a copy of the  
87 emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of  
88 an order to a law-enforcement officer or alternative transportation provider and return of an order to the  
89 court may be accomplished electronically or by facsimile.

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

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

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

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

118 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has  
119 probable cause to believe that a person meets the criteria for emergency custody as stated in this section  
120 may take that person into custody and transport that person to an appropriate location to assess the need  
121 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. *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.*

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 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

183 completed a certification program approved by the Department, (iii) is able to provide an independent  
184 examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has  
185 no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment  
186 interest in the facility detaining or admitting the person under this article, and (vii) except for employees  
187 of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

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

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

194 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
195 upon his own motion and only after an evaluation conducted in-person or by means of a two-way  
196 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a  
197 designee of the local community services board to determine whether the person meets the criteria for  
198 temporary detention, a temporary detention order if it appears from all evidence readily available,  
199 including any recommendation from a physician or clinical psychologist treating the person, that the  
200 person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental  
201 illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
202 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if  
203 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide  
204 for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to  
205 volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider  
206 the recommendations of any treating or examining physician licensed in Virginia if available either  
207 verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to  
208 this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection  
209 shall not preclude any other disclosures as required or permitted by law.

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

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

222 E. An employee or a designee of the local community services board shall determine the facility of  
223 temporary detention *in accordance with the provisions of § 37.2-809.1* for all individuals detained  
224 pursuant to this section. ~~The facility of temporary detention shall be one that has been approved~~  
225 ~~pursuant to regulations of the Board.~~ The facility shall be identified on the preadmission screening report  
226 and indicated on the temporary detention order. *Subject to the provisions of § 37.2-809.1, if a facility of*  
227 *temporary detention cannot be identified prior to the expiration of the emergency custody order and any*  
228 *extension thereof pursuant to § 37.2-808, the individual shall be detained in a state facility for the*  
229 *treatment of individuals with mental illness and such facility shall be indicated on the temporary*  
230 *detention order.* Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance  
231 with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of  
232 confinement for persons charged with criminal offenses and shall remain in the custody of law  
233 enforcement until the person is either detained within a secure facility or custody has been accepted by  
234 the appropriate personnel designated by the facility identified in the temporary detention order. *The*  
235 *person detained or in custody pursuant to this section shall be given a written summary of the*  
236 *temporary detention procedures and the statutory protections associated with those procedures.*

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

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

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

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

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

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

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

**§ 37.2-809.1. Facility of temporary detention.**

*A. In each case in which an employee or designee of the local community services board is required to make an evaluation of a person who is subject to an emergency custody order pursuant to subsection B of § 37.2-808, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the individual will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified. Upon completion of the evaluation, the employee or designee of the community services board shall convey to the state facility information about the individual necessary to allow the state facility to determine the services the individual will require upon admission.*

*B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual, which may include another state facility if the state facility notified in accordance with subsection A is unable to provide temporary detention and appropriate care for the individual. If an alternative facility is identified and agrees to accept the individual for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.*

*C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the Board.*

**2. That an emergency exists and the provisions of this act adding § 37.2-308.1 to the Code of Virginia are in force from the passage of this act and that the remaining provisions of this act shall become effective in due course.**

**3. That the Department of Behavioral Health and Development Services shall submit an annual report on or before June 30 of each year on the implementation of this act to the Governor and the chairmen of the House Appropriations and Senate Finance Committees. The report shall include the number of notifications of individuals in need of facility services by the community**

306 services boards, the number of alternative facilities contacted by community services boards and  
307 state facilities, the number of temporary detentions provided by state facilities and alternative  
308 facilities, the length of stay in state facilities and alternative facilities, and the cost of the  
309 detentions in state facilities and alternative facilities.

310 4. That the Governor's Task Force on Mental Health Services and Crisis Response created on  
311 December 10, 2013, by Executive Order 68 shall identify and examine issues related to the use of  
312 law enforcement in the involuntary admission process. The task force shall consider options to  
313 reduce the amount of resources needed to detain individuals during the emergency custody order  
314 period, including the amount of time spent providing transportation throughout the admission  
315 process. Such options shall include developing crisis stabilization units in all regions of the  
316 Commonwealth and contracting for retired officers to provide needed transportation. The task  
317 force shall report its findings and recommendations to the Governor and the General Assembly by  
318 October 1, 2014.

319 5. That the State Board of Behavioral Health and Developmental Services shall promulgate  
320 regulations to implement the provisions of this act to be effective within 280 days of its enactment.

321 6. That the provisions of this act shall not become effective unless an appropriation effectuating  
322 the purposes of this act is included in a general appropriation act passed in 2014 by the General  
323 Assembly that becomes law.