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SENATE BILL NO. 260

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 4, 2014)

(Patrons Prior to Substitute—Senators Deeds, Barker [SB 458], Black [SB 193], Deeds [SB 263], Favola [SB 370], and Howell [SB 200])

A BILL to amend and reenact §§ 37.2-808, 37.2-809, and 37.2-817.2 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; time limit.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-808, 37.2-809, and 37.2-817.2 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 crisis stabilization unit in the Commonwealth, including contact information for the facility;

2. Provide 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 are subject to the civil admission process; 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 inpatient private provider licensed by the Department shall participate in the acute psychiatric bed registry established pursuant to subsection A and shall designate an employee to serve as site administrator and a point of contact for the Department. Information reported to the acute psychiatric bed registry shall be updated at least daily in order to provide as current information as practicable.

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.

60 The evaluation shall be made by a person designated by the community services board who is skilled in
61 the diagnosis and treatment of mental illness and who has completed a certification program approved
62 by the Department.

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

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

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

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

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

120 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
121 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~~ 24 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~~ 24 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.~~

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~~ 24 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. 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. If an emergency custody order is not executed within ~~six~~ 24 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. 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

183 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a
184 designee of the local community services board to determine whether the person meets the criteria for
185 temporary detention, a temporary detention order if it appears from all evidence readily available,
186 including any recommendation from a physician or clinical psychologist treating the person, that the
187 person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental
188 illness, the person will, in the near future, (a) cause serious physical harm to himself or others as
189 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if
190 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide
191 for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to
192 volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider
193 the recommendations of any treating or examining physician licensed in Virginia if available either
194 verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to
195 this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection
196 shall not preclude any other disclosures as required or permitted by law.

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

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

209 E. An employee or a designee of the local community services board shall determine the facility of
210 temporary detention *in accordance with the provisions of § 37.2-809.1* for all individuals detained
211 pursuant to this section. ~~The facility of temporary detention shall be one that has been approved~~
212 ~~pursuant to regulations of the Board.~~ The facility shall be identified on the preadmission screening report
213 and indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring
214 hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a
215 jail or other place of confinement for persons charged with criminal offenses and shall remain in the
216 custody of law enforcement until the person is either detained within a secure facility or custody has
217 been accepted by the appropriate personnel designated by the facility identified in the temporary
218 detention order.

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

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

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

241 I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter
242 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office
243 of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of
244 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. An individual for whom a temporary detention order is issued in accordance with the provisions of § 37.2-809 shall be detained in a public or private facility identified by an employee or designee of the community services board, provided such facility is able to provide temporary detention and appropriate care for the individual.

B. 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 or is taken into custody pursuant to subsection G of § 37.2-808 and the person is found to meet the criteria for temporary detention, the employee or designee of the local community services board shall notify the Department if an appropriate facility of temporary detention for the person has not been identified within four hours of the issuance of the emergency custody order. The notification of the Department shall be made in a manner established by the Department.

C. In each case in which the Department receives notice that a facility of temporary detention has not been identified, the Department shall assist the local community services board in identifying an appropriate facility of temporary detention.

D. In each case in which a facility of temporary detention has not been identified by either the Department or the employee or designee of the local community services board within eight hours of issuance of an emergency custody order, the Department shall identify a facility operated by the Department to accept the person for temporary detention.

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

§ 37.2-817.2. Court review of mandatory outpatient treatment plan or discharge plan.

A. The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the mandatory outpatient treatment plan or discharge plan; however, if the fifth day is a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday. If the person is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order or discharge plan, and the original petitioner for the person's involuntary treatment. If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearings under §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment need not preside at the noncompliance hearing or any subsequent hearings. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

B. If requested by the person, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan or discharge plan, or the original petitioner for the person's involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally examine the person and certify to the court whether or not he has probable cause to believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient

treatment as specified in subsections C, C1, C2, and D of § 37.2-817. The examination shall include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not detained in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination, if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board. If the person refuses or fails to appear, the community services board shall notify the court, or a magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and capias directing the primary law-enforcement agency in the jurisdiction where the person resides to transport the person to the examination. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period exceed ~~four~~ 24 hours.

C. If the person fails to appear for the hearing, the court shall, after consideration of any evidence from the person, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan or discharge plan regarding why the person failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to § 37.2-808, or (iii) issue a temporary detention order pursuant to § 37.2-809.

D. After hearing the evidence regarding the person's material noncompliance with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment and the person's current condition, and any other relevant information referenced in subsection C of § 37.2-817, the judge or special justice shall make one of the following dispositions:

1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order the person's involuntary admission to a facility designated by the community services board for a period of treatment not to exceed 30 days;

2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment specified in subsection C1, C2, or D of § 37.2-817, and that a continued period of mandatory outpatient treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient treatment, making any necessary modifications that are acceptable to the community services board or treatment provider responsible for the person's treatment. In determining the appropriateness of outpatient treatment, the court may consider the person's material noncompliance with the previous mandatory treatment order; or

3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall rescind the order for mandatory outpatient treatment or order authorizing discharge to mandatory outpatient treatment following inpatient treatment.

Upon entry of an order for involuntary inpatient admission, transportation shall be provided in accordance with § 37.2-829.

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

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

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