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**SENATE BILL NO. 458**

Offered January 8, 2014

Prefiled January 7, 2014

*A BILL to amend and reenact § 37.2-809 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 37.2-809.1, relating to facility of temporary detention.*

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 Patron—Barker
 

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 Referred to Committee on Education and Health
 

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**Be it enacted by the General Assembly of Virginia:**

**1. That § 37.2-809 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 37.2-809.1 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 *in accordance with the provisions of § 37.2-809.1* for all individuals detained pursuant to this section. ~~The facility of temporary detention shall be one that has been approved~~

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59 pursuant to regulations of the Board. The facility shall be identified on the preadmission screening report  
60 and indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring  
61 hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a  
62 jail or other place of confinement for persons charged with criminal offenses and shall remain in the  
63 custody of law enforcement until the person is either detained within a secure facility or custody has  
64 been accepted by the appropriate personnel designated by the facility identified in the temporary  
65 detention order.

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

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

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

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

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

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

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

109 **§ 37.2-809.1. Facility of temporary detention.**

110 A. *An individual for whom a temporary detention order is issued in accordance with the provisions*  
111 *of § 37.2-809 shall be detained in a state facility for the treatment of individuals with mental illness*  
112 *unless an employee or designee of the community services board or an employee of the state facility to*  
113 *which the individual would be admitted in accordance with this subsection is able, prior to the issuance*  
114 *of the temporary detention order, to locate an alternative facility that is able to provide temporary*  
115 *detention and appropriate care for the individual and that alternative facility agrees to accept the*  
116 *individual for temporary detention.*

117 B. *In each case in which an employee or designee of the local community services board is required*  
118 *to make an evaluation of a person who is subject to an emergency custody order pursuant to subsection*  
119 *B of § 37.2-808, an employee or designee of the local community services board shall, upon being*  
120 *notified of the need for such evaluation, contact the state facility for the area in which the community*

121 services board is located and notify the state facility that the individual will be transported to the  
122 facility upon issuance of a temporary detention order. Upon completion of the evaluation, the employee  
123 or designee of the community services board shall convey to the state facility information about the  
124 individual necessary to allow the state facility to determine the services the individual will require upon  
125 admission.

126 C. A state facility may, following the notice in accordance with subsection B, conduct a search for  
127 an alternative facility that is able and willing to provide temporary detention and appropriate care to  
128 the individual, which may include another state facility if the state facility is unable to provide  
129 temporary detention and appropriate care for the individual. If an alternative facility is identified and  
130 agrees to accept the individual for temporary detention, the state facility shall notify the community  
131 services board, and the community services board shall designate the alternative facility on the  
132 prescreening report.

133 D. An employee or designee of a community services board shall continue, following notice to the  
134 state facility pursuant to subsection B, to make good efforts to identify a facility other than the state  
135 facility that is able and willing to provide temporary detention and appropriate care for an individual  
136 who meets the criteria for temporary detention, until such time as an alternative facility is identified or  
137 the individual is admitted to the state facility. If an alternative facility is identified, the community  
138 services board shall notify the state facility and designate the alternative facility on the prescreening  
139 report. If an alternative facility is not identified prior to the expiration of the initial period of emergency  
140 custody, the community services board shall petition the magistrate for an extension of the emergency  
141 custody order, in accordance with the provisions of §37.2-808.

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