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HOUSE BILL NO. 2368

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Deeds
on February 23, 2015)

(Patron Prior to Substitute—Delegate Garrett)

A BILL to amend and reenact § 37.2-809 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 37.2 an article numbered 6, consisting of sections numbered 37.2-441 and 37.2-442, by adding in Chapter 5 of Title 37.2 a section numbered 37.2-513, and by adding in Chapter 6 of Title 37.2 a section numbered 37.2-616, relating to certification of crisis intervention specialists for community services boards and behavioral health authorities.

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 in Chapter 4 of Title 37.2 an article numbered 6, consisting of sections numbered 37.2-441 and 37.2-442, by adding in Chapter 5 of Title 37.2 a section numbered 37.2-513, and by adding in Chapter 6 of Title 37.2 a section numbered 37.2-616 as follows:

Article 6.

*Certification of Crisis Intervention Specialists.***§ 37.2-441. Certification of crisis intervention specialists.**

A. An applicant for certification as a crisis intervention specialist shall submit to the Department:

1. An application, in a form approved by the Department, for certification as a crisis intervention specialist together with an application fee not to exceed \$50;

2. Evidence that he holds (i) a current, valid license issued by the relevant health regulatory board of the Department of Health Professions as a psychiatrist, clinical psychologist, professional counselor, marriage and family therapist, substance abuse treatment practitioner, or clinical social worker; (ii) a valid license as a physician assistant together with a certificate of added qualification in psychiatry issued by the National Commission on Certification of Physician Assistants; (iii) a valid license as a psychiatric nurse practitioner together with a board certification as an adult psychiatric and mental health nurse practitioner issued by the American Nurses Credentialing Center; or (iv) a current certificate as a clinical nurse specialist certified in psychiatric mental health nursing;

3. Evidence of at least three years of professional experience working with individuals who have serious mental illness or serious emotional disturbance;

4. Evidence of successful completion of a training program for crisis intervention specialists approved by the Department, which may include a training provided by a local governing body for such purpose; and

5. Evidence of successful completion of a written examination for certification as a crisis intervention specialist approved by the Department.

B. Certification as a crisis intervention specialist shall be renewed annually, upon submission of:

1. An application for renewal of certification as a crisis intervention specialist together with a renewal fee not to exceed \$50;

2. Documentation of at least 24 hours of individual supervision and at least an additional 12 hours of individual or group supervision provided by a licensed clinical supervisor during the previous year, with at least one hour of individual supervision every two weeks and at least one additional hour of individual or group supervision every month;

3. Documentation of at least 16 hours of continuing education in accordance with requirements approved by the Department; and

4. Evidence of successful completion of a written examination for recertification as a crisis intervention specialist approved by the Department.

§ 37.2-442. Crisis intervention specialist licensed clinical supervisor.

No individual shall serve as a crisis intervention specialist licensed clinical supervisor unless he (i) holds (a) a valid, unrestricted license issued by the relevant health regulatory board of the Department of Health Professions as a psychiatrist, clinical psychologist, professional counselor, marriage and family therapist, substance abuse treatment practitioner, or clinical social worker, (b) a valid license as a physician assistant together with a certificate of added qualification in psychiatry issued by the National Commission on Certification of Physician Assistants, or (c) a valid license as a psychiatric nurse practitioner together with a board certification as an adult psychiatric and mental health nurse practitioner issued by the American Nurses Credentialing Center, or (d) a current certificate as a clinical nurse specialist certified in psychiatric mental health nursing; (ii) has at least five years of full-time employment providing emergency services; (iii) has completed a training program for crisis intervention specialist licensed clinical supervisors approved by the Department; and (iv) has been

60 approved by the Department to serve as a crisis intervention specialist licensed clinical supervisor.

61 **§ 37.2-513. Employment of or contracts with certified crisis intervention specialists for evaluations**
62 **for emergency custody or temporary detention.**

63 A. Every community services board shall employ or contract with certified crisis intervention
64 specialists for the performance of evaluations for emergency custody or involuntary temporary detention
65 pursuant to Article 4 (§ 37.2-808 et seq.) of Chapter 8.

66 B. Every community services board shall ensure that certified crisis intervention specialists whom the
67 community services board employs or with whom the community services board contracts pursuant to
68 subsection A complete a standardized orientation within 30 days of being hired or entering into a
69 contract with the community services board to provide evaluations pursuant to Article 4 (§ 37.2-808 et
70 seq.) of Chapter 8 and shall ensure that certified crisis intervention specialists have direct access at all
71 times to qualified licensed clinical supervisors who have sufficient knowledge and expertise to assist the
72 crisis intervention specialists in carrying out their duties, including assistance with diagnosis, risk
73 assessment, identification of collateral contracts, duty to warn, and special populations.

74 **§ 37.2-616. Employment of or contracts with certified crisis intervention specialists for evaluations**
75 **for emergency custody or temporary detention.**

76 A. Every behavioral health authority shall employ or contract with certified crisis intervention
77 specialists for the performance of evaluations for emergency custody or involuntary temporary detention
78 pursuant to Article 4 (§ 37.2-808 et seq.) of Chapter 8.

79 B. Every behavioral health authority shall ensure that certified crisis intervention specialists whom
80 the behavioral health authority employs or with whom the behavioral health authority contracts
81 pursuant to subsection A complete a standardized orientation within 30 days of being hired or entering
82 into a contract with the behavioral health authority to provide evaluations pursuant to Article 4
83 (§ 37.2-808 et seq.) of Chapter 8 and shall ensure that certified crisis intervention specialists have direct
84 access at all times to qualified licensed clinical supervisors who have sufficient knowledge and expertise
85 to assist the crisis intervention specialists in carrying out their duties, including assistance with
86 diagnosis, risk assessment, identification of collateral contracts, duty to warn, and special populations.

87 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

88 A. For the purposes of this section:

89 "Designee of the local community services board" means an examiner designated by the local
90 community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has
91 completed a certification program approved by the Department certified as a crisis intervention specialist
92 in accordance with § 37.2-441, (iii) (ii) is able to provide an independent examination of the person, (iv)
93 (iii) is not related by blood or marriage to the person being evaluated, (v) (iv) has no financial interest
94 in the admission or treatment of the person being evaluated, (vi) (v) has no investment interest in the
95 facility detaining or admitting the person under this article, and (vii) (vi) except for employees of state
96 hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

97 "Employee" means an employee of the local community services board who is skilled in the
98 assessment and treatment of mental illness and has completed a certification program approved by the
99 Department certified as a crisis intervention specialist in accordance with § 37.2-441.

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

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

119 C. When considering whether there is probable cause to issue a temporary detention order, the
120 magistrate may, in addition to the petition, consider (i) the recommendations of any treating or
121 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. An employee or designee of the local community services board may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the individual given the specific security, medical, or behavioral health needs of the person. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary custody, transportation of the individual to the alternative facility of temporary detention shall be provided in accordance with the provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board designates an alternative facility, that employee or designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the individual shall be detained in a state facility for the treatment of individuals with mental illness and such facility shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by either the initial facility of temporary detention identified in the temporary detention order or by the alternative facility of temporary detention designated by the employee or designee of the local community services board pursuant to this subsection. The person detained or in custody pursuant to this section shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures.

F. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by 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 72 hours prior to a hearing. If the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The person may be released, pursuant to § 37.2-813, before the 72-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

183 the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the
184 petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of
185 the local community services board prior to issuing a subsequent order upon the original petition. Any
186 petition for which no temporary detention order or other process in connection therewith is served on
187 the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned
188 to the office of the clerk of the issuing court.

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

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

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

201 **2. That the provisions of the first enactment clause of this act shall become effective on July 1,**
202 **2020.**

203 **3. That the Commissioner of Behavioral Health and Developmental Services shall, by January 1,**
204 **2016, develop an implementation plan and timetable for the implementation of the provisions of**
205 **this act and shall make annual interim reports on implementation progress to the General**
206 **Assembly by the first day of the Regular Session of the General Assembly session each year. In**
207 **developing the implementation plan and timetable for implementation, the Commissioner shall, in**
208 **conjunction with relevant stakeholders including the Virginia Association of Community Services**
209 **Boards, the National Alliance on Mental Illness - Virginia, the Psychiatric Society of Virginia, the**
210 **Virginia Hospital and Healthcare Association, the Virginia Academy of Clinical Psychologists, the**
211 **Medical Society of Virginia, and the University of Virginia Institute for Law, Psychiatry, and**
212 **Public Policy, review the current practice of conducting emergency evaluations of individuals who**
213 **are subject to an emergency custody order for involuntary civil admission and make**
214 **recommendations for improvements, to include the feasibility of authorizing psychiatrists and**
215 **emergency physicians, including psychiatrists and emergency physicians who are not certified crisis**
216 **intervention specialists in accordance with § 37.2-441 as added to the Code of Virginia by this act,**
217 **to conduct such evaluations.**