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SENATE BILL NO. 1114

Offered January 14, 2015

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A BILL to amend and reenact §§ 37.2-808 and 37.2-1104 of the Code of Virginia, relating to temporary detention for testing, observation, and treatment of a person who is the subject of an emergency custody order.

Patrons—Barker and Lucas

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-808 and 37.2-1104 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-808. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, in cases in which the emergency custody order is based upon a finding that the person who is the subject of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs but there is no substantial likelihood that the person will cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, the magistrate shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the

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59 order. In such cases, a copy of the emergency custody order shall accompany the person being  
60 transported pursuant to this section at all times and shall be delivered by the alternative transportation  
61 provider to the community services board or its designee responsible for conducting the evaluation. The  
62 community services board or its designee conducting the evaluation shall return a copy of the  
63 emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of  
64 an order to a law-enforcement officer or alternative transportation provider and return of an order to the  
65 court may be accomplished electronically or by facsimile.

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

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

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

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

94 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has  
95 probable cause to believe that a person meets the criteria for emergency custody as stated in this section  
96 may take that person into custody and transport that person to an appropriate location to assess the need  
97 for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a  
98 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the  
99 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for  
100 the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of  
101 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into  
102 custody.

103 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be  
104 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial  
105 limits of the county, city, or town in which he serves may take such person into custody and transport  
106 him to an appropriate location to assess the need for hospitalization or treatment without prior  
107 authorization when the law-enforcement officer determines (i) that the person has revoked consent to be  
108 transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his  
109 observations, that probable cause exists to believe that the person meets the criteria for emergency  
110 custody as stated in this section. The period of custody shall not exceed eight hours from the time the  
111 law-enforcement officer takes the person into custody.

112 I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from  
113 obtaining emergency medical treatment or further medical evaluation at any time for a person in his  
114 custody as provided in this section.

115 J. A representative of the primary law-enforcement agency specified to execute an emergency  
116 custody order or a representative of the law-enforcement agency employing a law-enforcement officer  
117 who takes a person into custody pursuant to subsection G or H shall notify the community services  
118 board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable  
119 after execution of the emergency custody order or after the person has been taken into custody pursuant  
120 to subsection G or H.

121 K. The person shall remain in custody until a temporary detention order is issued, until the person is  
122 released, or until the emergency custody order expires. An emergency custody order shall be valid for a  
123 period not to exceed eight hours from the time of execution.

124 L. *Nothing in this section shall preclude the issuance of an order for temporary detention for testing,  
125 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency  
126 custody order issued pursuant to this section. In any case in which an order for temporary detention for  
127 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody  
128 order, the person may be detained by a hospital emergency room or other appropriate facility for  
129 testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as  
130 part of an order pursuant to § 37.2-1101, in accordance with subsection A of § 37.2-1104. Upon  
131 completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room  
132 or other appropriate facility in which the person is detained shall notify the community services board  
133 responsible for conducting the evaluation required by this section, and the designee of the community  
134 services board shall, as soon as is practicable and prior to the expiration of the order for temporary  
135 detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he meets  
136 the criteria for temporary detention pursuant to § 37.2-809.*

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

140 ~~M. N.~~ N. If an emergency custody order is not executed within eight hours of its issuance, the order  
141 shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such  
142 office is not open, to any magistrate serving the jurisdiction of the issuing court.

143 ~~N. O.~~ O. (Expires June 30, 2018) In addition to the eight-hour period of emergency custody set forth in  
144 subsection G, H, or K, if the individual is detained in a state facility pursuant to subsection E of  
145 § 37.2-809, the state facility and an employee or designee of the community services board as defined in  
146 § 37.2-809 may, for an additional four hours, continue to attempt to identify an alternative facility that is  
147 able and willing to provide temporary detention and appropriate care to the individual.

148 ~~O. P.~~ P. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical  
149 screening and assessment services provided to persons with mental illnesses while in emergency custody.

150 **§ 37.2-1104. Temporary detention in hospital for testing, observation or treatment.**

151 A. Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding  
152 of probable cause to believe that an adult person within the court's jurisdiction is incapable of making  
153 an informed decision regarding treatment of a physical or mental disorder or is incapable of  
154 communicating such a decision due to a physical or mental disorder and that the medical standard of  
155 care calls for testing, observation, or treatment of the disorder within the next 24 hours to prevent death,  
156 disability, or a serious ~~irreversible~~ *acute medical* condition, the court or, if the court is unavailable, a  
157 magistrate serving the jurisdiction may issue an order authorizing temporary detention of the person by a  
158 hospital emergency room or other appropriate facility and authorizing such testing, observation, or  
159 treatment. The detention may not be for a period exceeding 24 hours, unless extended by the court as  
160 part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing,  
161 observation, or treatment, the physician determines that a person subject to an order under this  
162 subsection has become capable of making and communicating an informed decision, the physician shall  
163 rely on the person's decision on whether to consent to further testing, observation, or treatment. If,  
164 before issuance of an order under this subsection or during its period of effectiveness, the physician  
165 learns of an objection by a member of the person's immediate family to the testing, observation, or  
166 treatment, he shall so notify the court or magistrate, who shall consider the objection in determining  
167 whether to issue, modify, or terminate the order.

168 B. *A court or, if the court is unavailable, a magistrate serving the jurisdiction may issue an order  
169 authorizing temporary detention for testing, observation, or treatment for a person who is also the  
170 subject of an emergency custody order issued pursuant to § 37.2-808, if such person meets the criteria  
171 set forth in subsection A. In any case in which an order for temporary detention for testing, observation,  
172 or treatment is issued for a person who is also the subject of an emergency custody order pursuant to  
173 § 37.2-808, the hospital emergency room or other appropriate facility at which the person is detained  
174 for testing, observation, or treatment shall notify the community services board responsible for  
175 conducting the evaluation required by § 37.2-808 when such testing, observation, or treatment is  
176 complete, and the designee of the community services board shall, as soon as is practicable and prior to  
177 the expiration of the order for temporary detention issued pursuant to subsection A, conduct an  
178 evaluation of the person to determine if he meets the criteria for temporary detention pursuant to  
179 §37.2-809.*