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SENATE BILL NO. 455

Offered January 8, 2014

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A *BILL to amend and reenact § 37.2-808 of the Code of Virginia, relating to emergency custody orders; duration; extension.*

Patron—Obenshain

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That § 37.2-808 of the Code of Virginia is 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 order. In such cases, a copy of the emergency custody order shall accompany the person being

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

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

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

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

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

93 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
94 probable cause to believe that a person meets the criteria for emergency custody as stated in this section
95 may take that person into custody and transport that person to an appropriate location to assess the need
96 for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
97 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
98 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for
99 the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
100 custody shall not exceed four hours from the time the law-enforcement officer takes the person into
101 custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the
102 magistrate shall issue an order extending the period of emergency custody one time for an additional
103 period not to exceed two hours. Good cause for an extension includes the need for additional time to
104 allow (i) the community services board to identify a suitable facility in which the person can be
105 temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed
106 if necessary. *Upon expiration of the first two-hour extension, the magistrate shall issue an order*
107 *extending the period of emergency custody a second time for an additional period not to exceed two*
108 *hours upon a finding that the individual continues to meet the criteria for emergency custody, and the*
109 *extension is necessary to identify a suitable facility in which the person can be temporarily detained*
110 *pursuant to §37.2-809.*

111 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be
112 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial
113 limits of the county, city, or town in which he serves may take such person into custody and transport
114 him to an appropriate location to assess the need for hospitalization or treatment without prior
115 authorization when the law-enforcement officer determines (i) that the person has revoked consent to be
116 transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his
117 observations, that probable cause exists to believe that the person meets the criteria for emergency
118 custody as stated in this section. The period of custody shall not exceed four hours from the time the
119 law-enforcement officer takes the person into custody. However, upon a finding by a magistrate that
120 good cause exists to grant an extension, the magistrate shall issue an order extending the period of

121 emergency custody one time for an additional period not to exceed two hours. Good cause for an
122 extension includes the need for additional time to allow (a) the community services board to identify a
123 suitable facility in which the person can be temporarily detained pursuant to § 37.2-809, or (b) a medical
124 evaluation of the person to be completed if necessary. *Upon expiration of the first two-hour extension,*
125 *the magistrate shall issue an order extending the period of emergency custody a second time for an*
126 *additional period not to exceed two hours upon a finding that the individual continues to meet the*
127 *criteria for emergency custody, and the extension is necessary to identify a suitable facility in which the*
128 *person can be temporarily detained pursuant to §37.2-809.*

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

132 J. The person shall remain in custody until a temporary detention order is issued, until the person is
133 released, or until the emergency custody order expires. An emergency custody order shall be valid for a
134 period not to exceed four hours from the time of execution. However, upon a finding by a magistrate
135 that good cause exists to grant an extension, the magistrate shall extend the emergency custody order
136 one time for a second period not to exceed two hours. Good cause for an extension includes the need
137 for additional time to allow (i) the community services board to identify a suitable facility in which the
138 person can be temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to
139 be completed if necessary. *Upon expiration of the first two-hour extension, the magistrate shall issue an*
140 *order extending the period of emergency custody a second time for an additional period not to exceed*
141 *two hours upon a finding that the individual continues to meet the criteria for emergency custody, and*
142 *the extension is necessary to identify a suitable facility in which the person can be temporarily detained*
143 *pursuant to §37.2-809.* Any family member, as defined in § 37.2-100, employee or designee of the local
144 community services board as defined in § 37.2-809, treating physician, or law-enforcement officer may
145 request the two-hour extension.

146 K. If an emergency custody order is not executed within six hours of its issuance, the order shall be
147 void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is
148 not open, to any magistrate serving the jurisdiction of the issuing court.

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