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HOUSE BILL NO. 1088

Offered January 13, 2016

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A BILL to amend and reenact §§ 19.2-34 through 19.2-38, 19.2-43, 19.2-44, 19.2-45, 19.2-46, 19.2-46.1, 19.2-48.1, and 37.2-809 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-35.1, relating to magistrates.

Patron—Cline

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-34 through 19.2-38, 19.2-43, 19.2-44, 19.2-45, 19.2-46, 19.2-46.1, 19.2-48.1, and 37.2-809 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-35.1 as follows:

§ 19.2-34. Number of magistrates.

There shall be appointed for each judicial district as many magistrates as are necessary for the effective administration of justice. ~~The positions of all employees of the magistrate system~~ Magistrates and any other personnel in the office of the magistrates shall be authorized by the Committee on District Courts established pursuant to § 16.1-69.33.

§ 19.2-35. Appointment; supervision generally.

Magistrates and any other personnel in the office of the magistrate shall be appointed by the ~~Executive Secretary of the Supreme Court of Virginia in consultation with the chief judges~~ judge of the circuit courts court having jurisdiction within the ~~region~~ district, in consultation with both the chief general district court judge and the chief juvenile and domestic relations district court judge of that district. Each magistrate shall be appointed to serve ~~one or more of the magisterial regions created by the Executive Secretary. Each magisterial region shall be comprised of one or more judicial districts.~~ The Executive Secretary the entire judicial district for which the appointment is made. The chief circuit court judge shall have full supervisory authority over the magistrates so appointed but may delegate this authority to the chief general district court judge. Notwithstanding any other provision of law, the only methods for the selection of magistrates shall be as set out in this section.

The chief circuit court judge, in consultation with both the chief general district court judge and the chief juvenile and domestic relations district court judge of that district, may also appoint as many substitute magistrates as may be authorized by the Committee on District Courts. The order of appointment of such substitute magistrate shall specify the period such substitute magistrate shall serve, and during this period such substitute magistrate shall exercise all the powers enumerated in § 19.2-45 in the judicial district for which the appointment is made.

If a magistrate of any district is absent or unable through sickness or other disability to perform his duties, the chief magistrate of that district may call upon any off-duty magistrate of an adjoining district to serve in a replacement capacity. When so designated, the replacement magistrate shall have all the authority and power of a magistrate of that district.

No person shall be appointed under this section until he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search. No person with a criminal conviction for a felony shall be appointed as a magistrate.

§ 19.2-35.1. When chief general district court judge to exercise general supervisory power; rules and regulations.

When delegated the authority by the chief circuit court judge, the chief general district court judge shall exercise general supervisory power over the administration of magistrates within the district. When such authority is delegated, it shall be the duty of the chief general district court judge to supervise the magistrates within the district and to promulgate such reasonable rules and regulations as may be deemed necessary to supplement or clarify the provisions of this title with respect to magistrates, to include fixing the time and place of the sitting of such magistrates.

§ 19.2-36. Chief magistrates.

A. The Executive Secretary of the Supreme Court of Virginia chief circuit court judge, in consultation with both the chief general district court judge and the chief juvenile and domestic relations district court judge of that district, may appoint a chief ~~magistrates~~ magistrate, for the purpose purposes of maintaining the proper schedules, assisting in the training of the magistrates, and being responsible to the Executive Secretary chief circuit court judge for the conduct of the magistrates and to further assist the Office of the Executive Secretary chief circuit court judge in the operation of one or

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59 ~~more of the magisterial regions the magistrate system.~~ The chief magistrate shall exercise direct daily
60 supervision over the magistrates he supervises and shall have the power to suspend without pay a
61 magistrate after consultation and with the concurrence of the ~~Executive Secretary~~ *chief circuit court*
62 *judge.*

63 B. To be eligible for appointment as chief magistrate, a person shall meet all of the qualifications of
64 a magistrate under § 19.2-37 and ~~must~~ be a member in good standing of the Virginia State Bar. His
65 appointment as chief magistrate shall terminate effective on the date on which his membership in good
66 standing ceases. The requirements of this subsection relating to membership in the Virginia State Bar
67 shall not apply to any person appointed as a chief magistrate before July 1, 2008, who continues in that
68 capacity without a break in service.

69 **§ 19.2-37. Magistrates; eligibility for appointment; restrictions on activities.**

70 A. Any person who is a United States citizen and resident of the Commonwealth may be appointed
71 to the office of magistrate under this title subject to the limitations of Chapter 28 (§ 2.2-2800 et seq.) of
72 Title 2.2 and of this section.

73 B. Every person appointed as a magistrate on and after July 1, 2008, shall be required to have a
74 bachelor's degree from an accredited institution of higher education. A person initially appointed as a
75 magistrate prior to July 1, 2008, who continues in office without a break in service is not required to
76 have a bachelor's degree from an accredited institution of higher education.

77 C. A person shall not be eligible for appointment as a magistrate under the provisions of this title:
78 ~~(a)~~ (i) if such person is a law-enforcement officer; ~~(b)~~ (ii) if such person or his spouse is a clerk, deputy
79 or assistant clerk, or employee of any such clerk of a district or circuit court, provided that the
80 Committee on District Courts may authorize a magistrate to assist in the district court clerk's office on a
81 part-time basis; ~~(c)~~ (iii) if the parent, child, spouse, or sibling of such person is a district or circuit court
82 judge in the ~~magisterial region~~ *judicial district* where he will serve; or ~~(d)~~ (iv) if such person is the chief
83 executive officer, or a member of the board of supervisors, town or city council, or other governing
84 body for any political subdivision of the Commonwealth.

85 D. No magistrate shall issue any warrant or process in complaint of his spouse, child, grandchild,
86 parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law or sister-in-law, nephew,
87 niece, uncle, aunt, first cousin, guardian, or ward.

88 E. A magistrate may not engage in any other activity for financial gain during the hours that he is
89 serving on duty as a magistrate. A magistrate may not be employed outside his duty hours without the
90 prior written approval of the ~~Executive Secretary~~ *chief circuit court judge.*

91 F. No person appointed as a magistrate on or after July 1, 2008, may engage in the practice of law.

92 G. A magistrate who is designated as a marriage celebrant under § 20-25 may not accept a fee, a
93 gratuity, or any other thing of value for exercise of authority as a marriage celebrant.

94 **§ 19.2-38. Probationary period; compensation and benefits; vacancies; revocation of**
95 **appointment.**

96 Persons appointed as magistrates under the provisions of this chapter shall serve ~~at the pleasure of~~
97 ~~the Executive Secretary for a term of four years. Such term shall commence upon appointment and~~
98 ~~qualification.~~ Upon appointment by the Executive Secretary, every magistrate shall serve initially for a
99 nine-month probationary period during which the magistrate must complete the minimum training
100 program as established by the Committee on District Courts and satisfactorily complete a certification
101 examination. Any magistrate who fails to successfully pass the certification examination shall not serve
102 beyond the nine-month probationary period. The probationary period described in this section shall not
103 apply to any magistrate serving on July 1, 2008, who has successfully completed the minimum training
104 program and passed the certification examination, provided there is no break in service after July 1,
105 2008. Magistrates shall be entitled to compensation and other benefits only from the time they take
106 office. *Appointments made under the provisions of this chapter shall be revocable at the pleasure of the*
107 *chief circuit court judge.*

108 **§ 19.2-43. Duty of Executive Secretary of Supreme Court.**

109 It shall be the duty of the Executive Secretary of the Supreme Court to ~~exercise general supervisory~~
110 ~~power over the administration of magistrates and adopt such policies as are deemed necessary to~~
111 ~~supplement or clarify the provisions of this chapter with respect to such magistrates; to include fixing~~
112 ~~the time and place such magistrates shall serve. The Executive Secretary shall assist the chief general~~
113 ~~district court judges and general district courts in the supervision and mandatory training of~~
114 ~~magistrates, for which purpose he shall be authorized to conduct training sessions and meetings for~~
115 ~~magistrates and provide information and materials for their use. He may appoint one or more magistrates~~
116 ~~to assist him and, in addition, with the approval of the Chief Justice, require annual reports to be filed~~
117 ~~by the magistrates on their work as such, fees associated therewith and other information pertinent to~~
118 ~~their office, on forms to be furnished by him. The Executive Secretary may appoint and employ such~~
119 ~~personnel as are needed to manage the magistrate system and carry out the duties and responsibilities~~
120 ~~conferred upon the Executive Secretary by this chapter.~~

§ 19.2-44. Territorial jurisdiction.

A magistrate shall be authorized to exercise the powers conferred on magistrates by this title only in the ~~magisterial region or regions~~ *judicial district* for which he is appointed, except that a magistrate may issue search warrants in accordance with the provisions of Chapter 5 (§ 19.2-52 et seq.) throughout the Commonwealth. A magistrate may exercise all powers conferred on magistrates by this title throughout the Commonwealth when so authorized by the Executive Secretary upon a determination that such assistance is necessary.

§ 19.2-45. Powers enumerated.

A magistrate shall have the following powers only:

~~(1)~~ 1. To issue process of arrest in accord with the provisions of §§ 19.2-71 ~~to through~~ 19.2-82 of the Code;

~~(2)~~ 2. To issue search warrants in accord with the provisions of §§ 19.2-52 ~~to through~~ 19.2-60 of the Code;

~~(3)~~ 3. To admit to bail or commit to jail all persons charged with offenses subject to the limitations of and in accord with general laws on bail;

~~(4)~~ 4. The same power to issue warrants and subpoenas *within such county or city* as is conferred upon district courts and as limited by the provisions of §§ 19.2-71 through 19.2-82. A copy of all felony warrants issued at the request of a citizen shall be promptly delivered to the attorney for the Commonwealth for the county or city in which the warrant is returnable. Upon the request of the attorney for the Commonwealth, a copy of any misdemeanor warrant issued at the request of a citizen shall be delivered to the attorney for the Commonwealth for such county or city. All attachments, warrants and subpoenas shall be returnable before a district court or any court of limited jurisdiction continued in operation pursuant to § 16.1-70.1;

~~(5)~~ 5. To issue civil warrants directed to the sheriff or constable of the county or city wherein the defendant resides, together with a copy thereof, requiring him to summon the person against whom the claim is, to appear before a district court on a certain day, not exceeding 30 days from the date thereof to answer such claim. If there be two or more defendants and any defendant resides outside the jurisdiction in which the warrant is issued, the summons for such defendant residing outside the jurisdiction may be directed to the sheriff of the county or city of his residence, and such warrant may be served and returned as provided in § 16.1-80;

~~(6)~~ 6. To administer oaths and take acknowledgments;

~~(7)~~ 7. To act as conservators of the peace; *and*

~~(8), (9) [Repealed.]~~

~~(10)~~ 8. To perform such other acts or functions specifically authorized by law.

§ 19.2-46. Compensation.

The salaries of all magistrates shall be fixed and paid as provided in § 19.2-46.1. The salaries ~~referred to herein~~ shall be in lieu of all fees ~~which~~ *that* may accrue to the recipient by virtue of his office.

Each substitute magistrate shall receive for his services a per diem compensation as may be established by the Committee on District Courts.

§ 19.2-46.1. Salaries to be fixed by the Committee on District Courts; limitations; mileage allowance.

Salaries of magistrates and any other personnel in the office of the magistrate shall be fixed by the ~~Executive Secretary of the Supreme Court~~ *Committee on District Courts*. Such salaries shall be fixed by the ~~Executive Secretary~~ *Committee* at least annually at such time as ~~he~~ *it* deems proper and as soon as practicable thereafter certified to the Comptroller *and the Executive Secretary of the Supreme Court*.

In addition to the salary authorized by this section, a magistrate may be reimbursed by the county or city for reasonable mileage expenses actually incurred in the performance of his duties.

In determining the salary of any magistrate, the ~~Executive Secretary~~ *Committee* shall consider the ~~work load workload~~ of and territory and population served by the magistrate and such other factors ~~he~~ *it* deems relevant. *The Committee may require of any magistrate or district court judge information on the operation of the office of the magistrate.*

The governing body of any county or city may add to the fixed compensation of magistrates such amount as the governing body may appropriate with the total amount not to exceed 50 percent of the amount paid by the Commonwealth to magistrates, provided *that* such additional compensation was in effect on June 30, 2008, for such magistrates and any magistrate receiving such additional compensation continues in office without a break in service. However, the total amount of additional compensation may not be increased after June 30, 2008. No additional amount paid by a local governing body shall be chargeable to the Executive Secretary of the Supreme Court, nor shall it remove or supersede any authority, control, or supervision of the Executive Secretary or Committee on District Courts.

§ 19.2-48.1. Quarters for magistrates.

182 A. The counties and cities served by a magistrate or magistrates *Each county and city having a*
183 *general district court or juvenile and domestic relations district court and having one or more*
184 *magistrates appointed pursuant to Article 3 (§ 19.2-33 et seq.)* shall provide suitable quarters for such
185 magistrates, including a site for any videoconferencing equipment necessary to provide remote access to
186 such magistrates. Insofar as possible, such quarters should be located in a public facility and should be
187 appropriate to conduct the affairs of a judicial officer as well as provide convenient access to the public
188 and law-enforcement officers. The county or city shall also provide all furniture and other equipment
189 necessary for the efficient operation of the office.

190 B. Wherever practical, the office of magistrate shall be located at the county seat. However, offices
191 may be located at other locations in the county, or city adjacent thereto, whenever such additional
192 offices are necessary to effect the efficient administration of justice.

193 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

194 A. For the purposes of this section:

195 "Designee of the local community services board" means an examiner designated by the local
196 community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has
197 completed a certification program approved by the Department, (iii) is able to provide an independent
198 examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has
199 no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment
200 interest in the facility detaining or admitting the person under this article, and (vii) except for employees
201 of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

202 "Employee" means an employee of the local community services board who is skilled in the
203 assessment and treatment of mental illness and has completed a certification program approved by the
204 Department.

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

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

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

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

236 E. An employee or a designee of the local community services board shall determine the facility of
237 temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained
238 pursuant to this section. An employee or designee of the local community services board may change
239 the facility of temporary detention and may designate an alternative facility for temporary detention at
240 any point during the period of temporary detention if it is determined that the alternative facility is a
241 more appropriate facility for temporary detention of the individual given the specific security, medical,
242 or behavioral health needs of the person. In cases in which the facility of temporary detention is
243 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 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 chief judge of each general district court 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

305 pursuant to this section shall, if he recommends that the person should not be subject to a temporary
306 detention order, inform the petitioner and an onsite treating physician of his recommendation.