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HOUSE BILL NO. 785

Offered January 13, 2016

Prefiled January 12, 2016

A BILL to amend and reenact §§ 16.1-336 and 37.2-800 of the Code of Virginia, relating to emergency custody; temporary detention; law-enforcement agency.

 Patron—Adams

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-336 and 37.2-800 of the Code of Virginia are amended and reenacted as follows:****§ 16.1-336. Definitions.**

When used in this article, unless the context otherwise requires:

"Community services board" has the same meaning as provided in § 37.2-100. Whenever the term community services board appears, it shall include behavioral health authority, as that term is defined in § 37.2-100.

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor 14 years of age or older and by a parent or a legally authorized custodian.

"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 of Behavioral Health and Developmental Services, (iii) is able to provide an independent examination of the minor, (iv) is not related by blood, marriage, or adoption to, or is not the legal guardian of, the minor being evaluated, (v) has no financial interest in the admission or treatment of the minor being evaluated, (vi) has no investment interest in the facility detaining or admitting the minor 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 of Behavioral Health and Developmental Services.

"Incapable of making an informed decision" means unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to the treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the Department of Behavioral Health and Developmental Services to be substantially similar to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

"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.

"Judge" means a juvenile and domestic relations district judge. In addition, "judge" includes a retired judge sitting by designation pursuant to § 16.1-69.35, substitute judge, or special justice authorized by § 37.2-803 who has completed a training program regarding the provisions of this article, prescribed by the Executive Secretary of the Supreme Court.

"Law-enforcement agency" means any sheriff's office or county, city, or town police department; however, for any town that has a police department that does not provide law-enforcement services on a 24-hours-per-day, seven-days-per-week basis, "law-enforcement agency" means any sheriff's office or county police department.

"Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the minor or others from physical injury.

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Behavioral Health and Developmental Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a

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59 function of continued use in such a manner as to induce mental, emotional, or physical impairment and
60 cause socially dysfunctional or socially disordering behavior. Intellectual disability, head injury, a
61 learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness
62 within the meaning of this article.

63 "Minor" means a person less than 18 years of age.

64 "Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including
65 either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent
66 with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the
67 minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from
68 a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director
69 of the local department of social services, or his designee, may stand as the minor's parent when the
70 minor is in the legal custody of the local department of social services.

71 "Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board
72 of Medicine or the Board of Psychology, or if such psychiatrist or psychologist is unavailable, (i) any
73 mental health professional licensed in Virginia through the Department of Health Professions as a
74 clinical social worker, professional counselor, marriage and family therapist, psychiatric nurse
75 practitioner, or clinical nurse specialist, or (ii) any mental health professional employed by a community
76 services board. All qualified evaluators shall (a) be skilled in the diagnosis and treatment of mental
77 illness in minors, (b) be familiar with the provisions of this article, and (c) have completed a
78 certification program approved by the Department of Behavioral Health and Developmental Services.
79 The qualified evaluator shall (1) not be related by blood, marriage, or adoption to, or is not the legal
80 guardian of, the minor being evaluated, (2) not be responsible for treating the minor, (3) have no
81 financial interest in the admission or treatment of the minor, (4) have no investment interest in the
82 facility detaining or admitting the minor under this article, and (5) except for employees of state
83 hospitals, the U.S. Department of Veterans Affairs, and community services boards, not be employed by
84 the facility.

85 "Treatment" means any planned intervention intended to improve a minor's functioning in those areas
86 which show impairment as a result of mental illness.

87 **§ 37.2-800. Applicability of chapter.**

88 For the purposes of this chapter, ~~whenever the term mental illness appears, it shall include:~~

89 "*Community services board*" includes behavioral health authority.

90 "*Law-enforcement agency*" means any sheriff's office or county, city, or town police department;
91 however, for any town that has a police department that does not provide law-enforcement services on a
92 24-hours-per-day, seven-days-per-week basis, "*law-enforcement agency*" means any sheriff's office or
93 county police department.

94 "*Mental illness*" includes substance abuse. ~~Whenever the term responsible person appears, it shall~~
95 ~~include~~

96 "*Responsible person*" includes a family member as that term is defined in § 37.2-100, a community
97 services board ~~or behavioral health authority~~, any treating physician of the person, or a law-enforcement
98 officer. ~~Whenever the term community services board or board appears, it shall include behavioral health~~
99 ~~authority.~~