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SENATE BILL NO. 935

Offered January 11, 2017

Prefiled December 28, 2016

A BILL to amend and reenact § 19.2-169.6 of the Code of Virginia, relating to inpatient psychiatric hospital admission; defendant found incompetent.

Patrons—Lucas, Marsden, Cosgrove and Ebbin; Delegate: Tyler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-169.6 of the Code of Virginia is amended and reenacted as follows:****§ 19.2-169.6. Inpatient psychiatric hospital admission from local correctional facility.**

A. Any inmate of a local correctional facility ~~who is not subject to the provisions of § 19.2-169.2~~ may be hospitalized for psychiatric treatment at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge if:

1. The court with jurisdiction over the inmate's case, if it is still pending, on the petition of the person having custody over an inmate or on its own motion, holds a hearing at which the inmate is represented by counsel and finds by clear and convincing evidence that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate 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 any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information; and (iii) the inmate requires treatment in a hospital rather than the local correctional facility. Prior to making this determination, the court shall consider the examination conducted in accordance with § 37.2-815 and the preadmission screening report prepared in accordance with § 37.2-816 and conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness, who is not providing treatment to the inmate, and who has completed a certification program approved by the Department of Behavioral Health and Developmental Services as provided in § 37.2-809. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report; or

2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate 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 any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information; and (iii) the inmate requires treatment in a hospital rather than a local correctional facility, and the magistrate issues a temporary detention order for the inmate. Prior to the filing of the petition, the person having custody shall arrange for an evaluation of the inmate conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809. After considering the evaluation of the employee or designee of the local community services board or behavioral health authority, and any other information presented, and

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59 finding that probable cause exists to meet the criteria, the magistrate may issue a temporary detention
60 order in accordance with the applicable procedures specified in §§ 37.2-809 through 37.2-813. The
61 person having custody over the inmate shall notify the court having jurisdiction over the inmate's case,
62 if it is still pending, and the inmate's attorney prior to the detention pursuant to a temporary detention
63 order or as soon thereafter as is reasonable.

64 Upon detention pursuant to this subdivision, a hearing shall be held either before the court having
65 jurisdiction over the inmate's case or before a district court judge or a special justice, as defined in
66 § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate
67 shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within 72 hours of
68 execution of the temporary detention order issued pursuant to this subdivision. If the 72-hour period
69 terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the
70 inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal
71 holiday, or day on which the court is lawfully closed. Any employee or designee of the local
72 community services board or behavioral health authority, as defined in § 37.2-809, representing the
73 board or authority that prepared the preadmission screening report shall attend the hearing in person or,
74 if physical attendance is not practicable, shall participate in the hearing through a two-way electronic
75 video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside
76 the service area of the community services board or behavioral health authority that prepared the
77 preadmission screening report, and it is not practicable for a representative of the board or authority to
78 attend or participate in the hearing, arrangements shall be made by the board or authority for an
79 employee or designee of the board or authority serving the area in which the hearing is held to attend or
80 participate on behalf of the board or authority that prepared the preadmission screening report. The
81 judge or special justice conducting the hearing may order the inmate hospitalized if, after considering
82 the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in
83 accordance with § 37.2-816, and any other available information as specified in subsection C of
84 § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there
85 exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, (a)
86 cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
87 threatening harm and any other relevant information or (b) suffer serious harm due to his lack of
88 capacity to protect himself from harm as evidenced by recent behavior and any other relevant
89 information; and (3) the inmate requires treatment in a hospital rather than a local correctional facility.
90 The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be
91 available whenever possible for questioning during the hearing through a two-way electronic video and
92 audio or telephonic communication system as authorized in § 37.2-804.1. The examination and the
93 preadmission screening report shall be admitted into evidence at the hearing.

94 B. In no event shall an inmate have the right to make application for voluntary admission as may be
95 otherwise provided in § 37.2-805 or 37.2-814 or be subject to an order for mandatory outpatient
96 treatment as provided in § 37.2-817.

97 C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the
98 court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the
99 inmate's competency to stand trial and his mental state at the time of the offense pursuant to
100 §§ 19.2-169.1 and 19.2-169.5.

101 D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court
102 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
103 § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the
104 provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a
105 court other than the court which has jurisdiction over his criminal case, the facility at which the inmate
106 is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in
107 the criminal case, if the case is still pending.

108 E. Hospitalization may be extended in accordance with subsection D for periods of 60 days for
109 inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such
110 hospitalization act to delay trial, as long as the inmate remains competent to stand trial. Hospitalization
111 may be extended in accordance with subsection D for periods of 180 days for an inmate who has been
112 convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the
113 custody of a local correctional facility after sentencing, but in no event may such hospitalization be
114 continued beyond the date upon which his sentence would have expired had he received the maximum
115 sentence for the crime charged. Any inmate who has not completed service of his sentence upon
116 discharge from the hospital shall serve the remainder of his sentence.

117 F. For any inmate who has been convicted and not yet sentenced, or who has been convicted of a
118 crime and is in the custody of a local correctional facility after sentencing, the time the inmate is
119 confined in a hospital for psychiatric treatment shall be deducted from any term for which he may be
120 sentenced to any penal institution, reformatory or elsewhere.

121 G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an
122 inmate who is the subject of a proceeding under this section, upon request, shall disclose to a
123 magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed
124 pursuant to § 37.2-815, the community service board or behavioral health authority preparing the
125 preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional
126 facility any and all information that is necessary and appropriate to enable each of them to perform his
127 duties under this section. These health care providers and other service providers shall disclose to one
128 another health records and information where necessary to provide care and treatment to the inmate and
129 to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local
130 correctional facility shall be limited to information necessary to protect the sheriff or administrator of the
131 local correctional facility and his employees, the inmate, or the public from physical injury or to address
132 the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used
133 for any other purpose, disclosed to others, or retained.

134 Any health care provider disclosing records pursuant to this section shall be immune from civil
135 liability for any harm resulting from the disclosure, including any liability under the federal Health
136 Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person
137 or provider disclosing such records intended the harm or acted in bad faith.

138 H. Any order entered where an inmate is the subject of proceedings under this section shall provide
139 for the disclosure of medical records pursuant to subsection G. This subsection shall not preclude any
140 other disclosures as required or permitted by law.

141 I. As used in this section, "person having custody over an inmate" means the sheriff or other person
142 in charge of the local correctional facility where the inmate is incarcerated at the time of the filing of a
143 petition for the psychiatric treatment of the inmate.