

VIRGINIA ACTS OF ASSEMBLY -- 2018 RECONVENED SESSION

CHAPTER 846

An Act to amend and reenact §§ 16.1-337, 16.1-344, and 18.2-308.1:3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-337.1, relating to involuntary mental health treatment; minors; access to firearms.

[S 669]

Approved April 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-337, 16.1-344, and 18.2-308.1:3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-337.1 as follows:

§ 16.1-337. Inpatient treatment of minors; general applicability; disclosure of records.

A. A minor may be admitted to a mental health facility for inpatient treatment only pursuant to § 16.1-338, 16.1-339, or 16.1-340.1 or in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345. The provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 ~~of this title~~ and § 16.1-337.1 relating to the confidentiality of files, papers, and records shall apply to proceedings under this article.

B. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a minor who is the subject of proceedings under this article, upon request, shall disclose to a magistrate, the juvenile intake officer, the court, the minor's attorney, the minor's guardian ad litem, the qualified evaluator performing the evaluation required under §§ 16.1-338, 16.1-339, and 16.1-342, the community services board or its designee performing the evaluation, preadmission screening, or monitoring duties under this article, or a law-enforcement officer any and all information that is necessary and appropriate to enable each of them to perform his duties under this article. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the person and to monitor that care and treatment. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the minor, or the public from physical injury or to address the health care needs of the minor. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider providing services to a minor who is the subject of proceedings under this article shall make a reasonable attempt to notify the minor's parent of information that is directly relevant to such individual's involvement with the minor's health care, which may include the minor's location and general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, unless the provider has actual knowledge that the parent is currently prohibited by court order from contacting the minor. No health care provider shall be required to notify a person's family member or personal representative pursuant to this section if the health care provider has actual knowledge that such notice has been provided.

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

C. Any order entered where a minor is the subject of proceedings under this article shall provide for the disclosure of health records pursuant to subsection B. This subsection shall not preclude any other disclosures as required or permitted by law.

§ 16.1-337.1. Order of involuntary commitment or mandatory outpatient treatment forwarded to Central Criminal Records Exchange; certain voluntary admissions forwarded to Central Criminal Records Exchange; firearm background check.

A. *The order from a commitment hearing issued pursuant to this article for involuntary admission or mandatory outpatient treatment for a minor 14 years of age or older and the certification of any minor 14 years of age or older who has been the subject of a temporary detention order pursuant to § 16.1-340.1 and who, after being advised by the court that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 16.1-338 shall be filed by the court with the clerk of the juvenile and domestic relations district court for the county or city where the hearing took place as soon as practicable but no later than the close of business on the next business day following the completion of the hearing.*

B. *Upon receipt of any order from a commitment hearing issued pursuant to this article for involuntary admission of a minor 14 years of age or older to a facility, the clerk of court shall, as soon as practicable but no later than the close of business on the next following business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the*

order. Upon receipt of any order from a commitment hearing issued pursuant to this article for mandatory outpatient treatment of a minor 14 years of age or older, the clerk of court shall, prior to the close of that business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order.

C. The clerk of court shall also, as soon as practicable but no later than the close of business on the next following business day, forward upon receipt to the Central Criminal Records Exchange, on a form provided by the Exchange, certification of any minor 14 years of age or older who has been the subject of a temporary detention order pursuant to § 16.1-340.1 and who, after being advised by the court that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 16.1-338.

D. Except as provided in subdivision A 1 of § 19.2-389, the copy of the forms and orders sent to the Central Criminal Records Exchange pursuant to subsection B, and the forms and certifications sent to the Central Criminal Records Exchange regarding voluntary admission pursuant to subsection C, shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange with any form, order, or certification required by subsection B or C. The Department of State Police shall forward only a person's eligibility to possess, purchase, or transfer a firearm to the National Instant Criminal Background Check System.

§ 16.1-344. Involuntary commitment; hearing.

A. The court shall summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony shall be under oath. The rules of evidence shall apply. The petitioner, minor and, with leave of court for good cause shown, any other person shall be given the opportunity to present evidence and cross-examine witnesses. The hearing shall be closed to the public unless the minor and petitioner request that it be open.

B. At the commencement of the hearing involving a minor 14 years of age or older, the court shall inform the minor whose involuntary commitment is being sought of his right to be voluntarily admitted for inpatient treatment as provided for in § 16.1-338 and shall afford the minor an opportunity for voluntary admission, provided that the minor's parent consents to such voluntary admission. *The court shall advise the minor whose involuntary commitment is being sought that if the minor chooses to be voluntarily admitted pursuant to § 16.1-338, such minor will be prohibited from possessing, purchasing, or transporting a firearm pursuant to § 18.2-308.1:3.* In determining whether a minor is capable of consenting to voluntary admission, the court may consider evidence regarding the minor's past compliance or noncompliance with treatment.

C. An employee or a designee of the community services board that arranged for the evaluation of the minor 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 or telephonic communication system as authorized in § 16.1-345.1. If (i) the minor does not reside in the jurisdiction served by the juvenile and domestic relations district court that conducts the hearing and (ii) the minor is being considered for mandatory outpatient treatment pursuant to § 16.1-345.2, an employee or designee of the community services board serving the area where the minor resides shall also 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 or telephonic communication system as authorized in § 16.1-345.1. The employee or designee of the community services board serving the area where the minor resides may, instead of attending the hearing, make arrangements with the community services board that arranged for the evaluation of the minor to present on its behalf the recommendations for a specific course of treatment and programs for the provision of mandatory outpatient treatment required by subsection C of § 16.1-345.2 and the initial mandatory outpatient treatment plan required by subsection D of § 16.1-345.2. When a community services board attends the hearing on behalf of the community services board serving the area where the minor resides, the attending community services board shall inform the community services board serving the area where the minor resides of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board serving the area where the minor resides. Any employee or designee of the community services board attending or participating in the hearing shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.

At least 12 hours prior to the hearing, the court shall provide the time and location of the hearing to the community services board that arranged for the evaluation of the minor. If the community services board will be present by telephonic means, the court shall provide the telephone number to the board.

§ 18.2-308.1:3. Purchase, possession, or transportation of firearm by persons involuntarily admitted or ordered to outpatient treatment; penalty.

A. It shall be unlawful for any person (i) involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to § 19.2-169.2, (ii) involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or (iii) involuntarily admitted to a facility or ordered to mandatory

outpatient treatment as a minor 14 years of age or older as the result of a commitment hearing pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, (iv) who was the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805 or (v) who, as a minor 14 years of age or older, was the subject of a temporary detention order pursuant to § 16.1-340.1 and subsequently agreed to voluntary admission pursuant to § 16.1-338 to purchase, possess, or transport a firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following his release from involuntary admission to a facility, his release from an order of mandatory outpatient treatment, or his release from voluntary admission pursuant to § 37.2-805 following the issuance of a temporary detention order, petition the general district court in the city or county in which he resides or, if the person is not a resident of the Commonwealth, the general district court of the city or county in which the most recent of the proceedings described in subsection A occurred to restore his right to purchase, possess or transport a firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines, after receiving and considering evidence concerning the circumstances regarding the disabilities referred to in subsection A and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not likely act in a manner dangerous to public safety and that granting the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection A do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

C. As used in this section, "treatment record" shall include copies of health records detailing the petitioner's psychiatric history, which shall include the records pertaining to the commitment or adjudication that is the subject of the request for relief pursuant to this section.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

3. That an emergency exists and this act is in force from its passage.