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HOUSE BILL NO. 1100

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend and reenact § 37.2-821 of the Code of Virginia, relating to appeal of involuntary admission order; possession of firearms.

Patrons—Levine and Torian

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-821 of the Code of Virginia is amended and reenacted as follows:

§ 37.2-821. Appeal of involuntary admission or certification order.

A. Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to §§ 37.2-814 through 37.2-819 or certified as eligible for admission pursuant to § 37.2-806 shall have the right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to which he was admitted is located. Choice of venue shall rest with such person. The court may transfer the case upon a finding that the other forum is more convenient. An appeal shall be filed within 10 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241 regarding the time within which the court shall set criminal cases for trial. A petition for or the pendency of an appeal shall not suspend any order unless so ordered by a judge or special justice; however, a person may be released after a petition for or during the pendency of an appeal pursuant to § 37.2-837 or 37.2-838. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the petitioner in the case in accordance with procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required, and the appeal shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in § 37.2-804.

B. The appeal shall be heard de novo in accordance with the provisions set forth in §§ 37.2-802, 37.2-804, 37.2-804.1, 37.2-804.2, and 37.2-805, and (i) § 37.2-806 or (ii) §§ 37.2-814 through 37.2-819, except that the court in its discretion may rely upon the evaluation report in the commitment hearing from which the appeal is taken instead of requiring a new evaluation pursuant to § 37.2-815. Any order of the circuit court shall not extend the period of involuntary admission or mandatory outpatient treatment set forth in the order appealed from. An order continuing the involuntary admission shall be entered only if the criteria in § 37.2-817 are met at the time the appeal is heard. Regardless of whether the court finds that the criteria in § 37.2-817 are met at the time the appeal is heard, the appealed order entered by the district court judge or special justice pursuant to § 37.2-817 acts as an adjudication that the person was involuntarily admitted or ordered to mandatory outpatient treatment for the purposes of § 18.2-308.1:3 until such time as the person's right to purchase, possess, or transport a firearm is restored pursuant to § 18.2-308.1:3. The person so admitted or certified shall be entitled to trial by jury. Seven persons from a panel of 13 shall constitute a jury.

C. If the person is not represented by counsel, the judge shall appoint an attorney to represent him. Counsel so appointed shall be paid a fee of \$75 and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.

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.

INTRODUCED

HB1100