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## HOUSE BILL NO. 1115

Offered January 10, 2018

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A *BILL to amend and reenact §§ 16.1-274.2 and 37.2-808 of the Code of Virginia, relating to minors; education records; disposition; children in need of services.*

Patrons—VanValkenburg, Rodman and Guzman

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-274.2 and 37.2-808 of the Code of Virginia are amended and reenacted as follows:**

**§ 16.1-274.2. Certain records as evidence.**

A. In any proceeding where (i) a juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult and whether such act was committed intentionally or willfully by the juvenile is an element of the delinquent act and (ii) such act was committed (a) during school hours, and during school-related or school-sponsored activities upon the property of a public or private elementary or secondary school or child day center; (b) on any school bus as defined in § 46.2-100; or (c) upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity, the juvenile shall be permitted to introduce into evidence as relevant to whether he acted intentionally or willfully any document created prior to the commission of the alleged delinquent act that relates to (a) an Individualized Education Program developed pursuant to the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; (b) a Section 504 Plan prepared pursuant to § 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. § 794; (c) a behavioral intervention plan as defined in 8VAC20-81-10; or (d) a functional behavioral assessment as defined in 8VAC20-81-10.

Any such document shall be admitted as evidence of the facts stated therein.

B. At least 10 days prior to the commencement of the proceeding in which a document listed in subsection A will be offered as evidence, the juvenile intending to offer the document shall notify the attorney for the Commonwealth, in writing, of the intent to offer the document and shall provide or make available copies of the document to be introduced.

C. Copies of documents listed in subsection A shall be received as evidence, provided that such copies are authenticated to be true and accurate copies by the custodian thereof, or by the person to whom the custodian reports if they are different. An affidavit signed by the custodian of such documents, or by the person to whom the custodian reports if they are different, stating that such documents are true and accurate copies of such documents shall be valid authentication for the purposes of this section.

D. Upon considering evidence admitted pursuant to this section, at the conclusion of an adjudicatory proceeding the court shall determine whether the juvenile acted intentionally or willfully when committing the alleged delinquent act.

1. If the court makes a finding that the juvenile is responsible because he acted intentionally or willfully when committing the delinquent act, the court shall enter an order of adjudication or, if an order of adjudication has been entered, an order of disposition in accordance with Article 9 (§ 16.1-278 et seq.).

2. If the court makes a finding that the juvenile is not responsible because he did not act intentionally or willfully when committing the delinquent act, the court shall determine whether the juvenile poses a serious threat to his well-being or the safety of another person or the community. If the court determines that the juvenile poses a serious threat to his well-being or the safety of another person or the community, the court may (i) enter an order of disposition authorized under §§ 16.1-278.4 and 16.1-286; (ii) find the juvenile to be in need of services and enter an order of commitment in accordance with § 16.1-280; or (iii) if the juvenile has reached the age of 18 years and falls under the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2, enter an order of emergency custody in accordance with § 37.2-808. If the court determines that the juvenile does not pose a serious threat to his well-being or the safety of another person or the community, the court may enter an order of disposition authorized under §§ 16.1-278.4 and 16.1-286 or dismiss the petition. The court shall impose the least restrictive alternative disposition under this subdivision.

E. Upon motion of the juvenile, any document admitted pursuant to this section shall be placed under seal by the court.

**§ 37.2-808. Emergency custody; issuance and execution of order.**

INTRODUCED

HB1115

59 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician,  
60 or upon his own motion, an emergency custody order when he has probable cause to believe that any  
61 person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental  
62 illness, the person will, in the near future, (a) cause serious physical harm to himself or others as  
63 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if  
64 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide  
65 for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to  
66 volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order  
67 entered pursuant to this section shall provide for the disclosure of medical records pursuant to §  
68 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

69 When considering whether there is probable cause to issue an emergency custody order, the  
70 magistrate may, in addition to the petition, consider (1) the recommendations of any treating or  
71 examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person,  
72 (3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical  
73 records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the  
74 affidavit, and (7) any other information available that the magistrate considers relevant to the  
75 determination of whether probable cause exists to issue an emergency custody order.

76 B. Any person for whom an emergency custody order is issued shall be taken into custody and  
77 transported to a convenient location to be evaluated to determine whether the person meets the criteria  
78 for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment.  
79 The evaluation shall be made by a person designated by the community services board who is skilled in  
80 the diagnosis and treatment of mental illness and who has completed a certification program approved  
81 by the Department.

82 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement  
83 agency and jurisdiction to execute the emergency custody order and provide transportation. However, the  
84 magistrate shall consider any request to authorize transportation by an alternative transportation provider  
85 in accordance with this section, whenever an alternative transportation provider is identified to the  
86 magistrate, which may be a person, facility, or agency, including a family member or friend of the  
87 person who is the subject of the order, a representative of the community services board, or other  
88 transportation provider with personnel trained to provide transportation in a safe manner, upon  
89 determining, following consideration of information provided by the petitioner; the community services  
90 board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any;  
91 or other persons who are available and have knowledge of the person, and, when the magistrate deems  
92 appropriate, the proposed alternative transportation provider, either in person or via two-way electronic  
93 video and audio or telephone communication system, that the proposed alternative transportation  
94 provider is available to provide transportation, willing to provide transportation, and able to provide  
95 transportation in a safe manner. When transportation is ordered to be provided by an alternative  
96 transportation provider, the magistrate shall order the specified primary law-enforcement agency to  
97 execute the order, to take the person into custody, and to transfer custody of the person to the  
98 alternative transportation provider identified in the order. In such cases, a copy of the emergency  
99 custody order shall accompany the person being transported pursuant to this section at all times and  
100 shall be delivered by the alternative transportation provider to the community services board or its  
101 designee responsible for conducting the evaluation. The community services board or its designee  
102 conducting the evaluation shall return a copy of the emergency custody order to the court designated by  
103 the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative  
104 transportation provider and return of an order to the court may be accomplished electronically or by  
105 facsimile.

106 Transportation under this section shall include transportation to a medical facility as may be  
107 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in  
108 accordance with state and federal law. Transportation under this section shall include transportation to a  
109 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the  
110 emergency custody order may be detained requires a medical evaluation prior to admission.

111 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,  
112 the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the  
113 community services board that designated the person to perform the evaluation required in subsection B  
114 to execute the order and, in cases in which transportation is ordered to be provided by the primary  
115 law-enforcement agency, provide transportation. If the community services board serves more than one  
116 jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular  
117 jurisdiction within the community services board's service area where the person who is the subject of  
118 the emergency custody order was taken into custody or, if the person has not yet been taken into  
119 custody, the primary law-enforcement agency from the jurisdiction where the person is presently located  
120 to execute the order and provide transportation.

E. The law-enforcement agency or alternative transportation provider providing transportation pursuant to this section may transfer custody of the person to the facility or location to which the person is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed to provide the level of security necessary to protect both the person and others from harm, (ii) is actually capable of providing the level of security necessary to protect the person and others from harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section.

G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

H. A law-enforcement officer who is transporting a person who has voluntarily consented to be transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of the county, city, or town in which he serves may take such person into custody and transport him to an appropriate location to assess the need for hospitalization or treatment without prior authorization when the law-enforcement officer determines (i) that the person has revoked consent to be transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his observations, that probable cause exists to believe that the person meets the criteria for emergency custody as stated in this section. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

J. A representative of the primary law-enforcement agency specified to execute an emergency custody order or a representative of the law-enforcement agency employing a law-enforcement officer who takes a person into custody pursuant to subsection G or H shall notify the community services board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after execution of the emergency custody order or after the person has been taken into custody pursuant to subsection G or H.

K. The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution.

L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency custody order issued pursuant to this section. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order, the person may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to § 37.2-1101, in accordance with subsection A of § 37.2-1104. Upon completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility in which the person is detained shall notify the nearest community services board, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

M. Any person taken into emergency custody pursuant to this section shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures.

N. If an emergency custody order is not executed within eight hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.

182 O. (Expires June 30, 2018) In addition to the eight-hour period of emergency custody set forth in  
183 subsection G, H, or K, if the individual is detained in a state facility pursuant to subsection E of §  
184 37.2-809, the state facility and an employee or designee of the community services board as defined in  
185 § 37.2-809 may, for an additional four hours, continue to attempt to identify an alternative facility that is  
186 able and willing to provide temporary detention and appropriate care to the individual.

187 P. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical  
188 screening and assessment services provided to persons with mental illnesses while in emergency custody.

189 Q. No person who provides alternative transportation pursuant to this section shall be liable to the  
190 person being transported for any civil damages for ordinary negligence in acts or omissions that result  
191 from providing such alternative transportation.

192 R. *For the purposes of this section, "magistrate" includes a juvenile and domestic relations district*  
193 *court judge who enters an order of emergency custody as provided by § 16.1-274.2.*