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HOUSE BILL NO. 935

Offered January 10, 2018

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A *BILL to amend and reenact §§ 16.1-345.2 and 37.2-817 of the Code of Virginia, relating to mandatory outpatient treatment; consent.*

Patron—Hope

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-345.2 and 37.2-817 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-345.2. Mandatory outpatient treatment; criteria; orders.

A. After observing the minor and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (iv) any evaluation of the minor, (v) any medical records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, the court shall order that the minor be admitted involuntarily to mandatory outpatient treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment;

3. Less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate;

4. The ~~minor, if 14 years of age or older, and his~~minor's parents (i) have sufficient capacity to understand the stipulations of the minor's treatment, (ii) have expressed an interest in the minor's living in the community and have agreed to abide by the minor's treatment plan, and (iii) are deemed to have the capacity to comply with the treatment plan and understand and adhere to conditions and requirements of the treatment and services; and

5. The ordered treatment can be delivered on an outpatient basis by the community services board or a designated provider.

Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community and providers of the services have actually agreed to deliver the services.

B. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital, or other appropriate course of treatment as may be necessary to meet the needs of the minor. The community services board serving the area in which the minor resides shall recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment. Upon expiration of an order for mandatory outpatient treatment, the minor shall be released from the requirements of the order unless the order is continued in accordance with § 16.1-345.5.

C. Any order for mandatory outpatient treatment shall include an initial mandatory outpatient treatment plan developed by the community services board serving the area in which the minor resides. The plan shall, at a minimum, (i) identify the specific services to be provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the arrangements made for the initial in-person appointment or contact with each service provider, and (iv) include any other relevant information that may be available regarding the mandatory outpatient treatment ordered. The order shall require the community services board to monitor the implementation of the mandatory outpatient treatment plan and report any material noncompliance to the court.

D. No later than five business days after an order for mandatory outpatient treatment has been entered pursuant to this section, the community services board that is responsible for monitoring compliance with the order shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided to the minor, (ii) identify the provider that has agreed to provide each service included in the plan, (iii) certify that the services are the most appropriate and least restrictive treatment available for the minor, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department of Behavioral Health and Developmental

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59 Services' licensing regulations, (v) be developed with the fullest involvement and participation of the
60 minor and his parents and reflect their preferences to the greatest extent possible to support the minor's
61 recovery and self-determination, (vi) specify the particular conditions with which the minor shall be
62 required to comply, and (vii) describe how the community services board shall monitor the minor's
63 compliance with the plan and report any material noncompliance with the plan. The minor shall be
64 involved in the preparation of the plan to the maximum feasible extent consistent with his ability to
65 understand and participate, and the minor's family shall be involved to the maximum extent consistent
66 with the minor's treatment needs. The community services board shall submit the comprehensive
67 mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the
68 comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into
69 the order of mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall
70 be filed with the court for review and attached to any order for mandatory outpatient treatment.

71 E. If the community services board responsible for developing the comprehensive mandatory
72 outpatient treatment plan determines that the services necessary for the treatment of the minor's mental
73 illness are not available or cannot be provided to the minor in accordance with the order for mandatory
74 outpatient treatment, it shall notify the court within five business days of the entry of the order for
75 mandatory outpatient treatment. Within five business days of receiving such notice, the judge, after
76 notice to the minor, the minor's attorney, and the community services board responsible for developing
77 the comprehensive mandatory outpatient treatment plan, shall hold a hearing pursuant to § 16.1-345.4.

78 F. Upon entry of any order for mandatory outpatient treatment, the clerk of the court shall provide a
79 copy of the order to the minor who is the subject of the order, his parents, his attorney, his guardian ad
80 litem, and the community services board required to monitor his compliance with the plan. The
81 community services board shall acknowledge receipt of the order to the clerk of the court on a form
82 established by the Office of the Executive Secretary of the Supreme Court and provided by the court for
83 this purpose.

84 G. After entry of any order for mandatory outpatient treatment if the court that entered the order is
85 not the juvenile and domestic relations district court for the jurisdiction in which the minor resides, it
86 shall transfer jurisdiction of the case to the court where the minor resides.

87 **§ 37.2-817. Involuntary admission and mandatory outpatient treatment orders.**

88 A. The district court judge or special justice shall render a decision on the petition for involuntary
89 admission after the appointed examiner has presented the report required by § 37.2-815, and after the
90 community services board that serves the county or city where the person resides or, if impractical,
91 where the person is located has presented a preadmission screening report with recommendations for that
92 person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may
93 constitute sufficient evidence upon which the district court judge or special justice may base his
94 decision. The examiner, if not physically present at the hearing, and the treating physician at the facility
95 of temporary detention shall be available whenever possible for questioning during the hearing through a
96 two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.

97 B. Any employee or designee of the local community services board, as defined in § 37.2-809,
98 representing the community services board that prepared the preadmission screening report shall attend
99 the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through
100 a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.
101 Where a hearing is held outside of the service area of the community services board that prepared the
102 preadmission screening report, and it is not practicable for a representative of the board to attend or
103 participate in the hearing, arrangements shall be made by the board for an employee or designee of the
104 board serving the area in which the hearing is held to attend or participate on behalf of the board that
105 prepared the preadmission screening report. The employee or designee of the local community services
106 board, as defined in § 37.2-809, representing the community services board that prepared the
107 preadmission screening report or attending or participating on behalf of the board that prepared the
108 preadmission screening report shall not be excluded from the hearing pursuant to an order of
109 sequestration of witnesses. The community services board that prepared the preadmission screening
110 report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send
111 the preadmission screening report through certified mail, personal delivery, facsimile with return receipt
112 acknowledged, or other electronic means to the community services board attending the hearing. Where
113 a community services board attends the hearing on behalf of the community services board that prepared
114 the preadmission screening report, the attending community services board shall inform the community
115 services board that prepared the preadmission screening report of the disposition of the matter upon the
116 conclusion of the hearing. In addition, the attending community services board shall transmit the
117 disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other
118 electronic means.

119 At least 12 hours prior to the hearing, the court shall provide to the community services board that
120 prepared the preadmission screening report the time and location of the hearing. If the representative of

the community services board will be present by telephonic means, the court shall provide the telephone number to the board.

C. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, including whether the person recently has been found unrestorably incompetent to stand trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an opportunity for the improvement of the person's condition have been investigated and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board that serves the county or city in which the person was examined as provided in § 37.2-816. If the community services board does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the person shall be released unless he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order, or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805 or is ordered to mandatory outpatient treatment pursuant to subsection D. Upon motion of the treating physician, a family member or personal representative of the person, or the community services board serving the county or city where the facility is located, the county or city where the person resides, or the county or city where the person receives treatment, a hearing shall be held prior to the release date of any involuntarily admitted person to determine whether such person should be ordered to mandatory outpatient treatment pursuant to subsection D upon his release if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (A) involuntarily admitted pursuant to this section or (B) the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814. A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a mandatory outpatient treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday.

C1. In the order for involuntary admission, the judge or special justice may authorize the treating physician to discharge the person to mandatory outpatient treatment under a discharge plan developed pursuant to subsection C2, if the judge or special justice further finds by clear and convincing evidence that (i) the person has a history of lack of compliance with treatment for mental illness that at least twice within the past 36 months has resulted in the person being subject to an order for involuntary admission pursuant to subsection C; (ii) in view of the person's treatment history and current behavior, the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary inpatient treatment; (iii) as a result of mental illness, the person is unlikely to voluntarily participate in outpatient treatment unless the court enters an order authorizing discharge to mandatory outpatient treatment following inpatient treatment; and (iv) the person is likely to benefit from mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board, but shall not exceed 90 days. Upon expiration of the order for mandatory outpatient treatment, the person shall be released unless the order is continued in accordance with § 37.2-817.4.

C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as authorized pursuant to subsection C1, the treating physician shall determine, based upon his professional judgment, that (i) the person (a) in view of the person's treatment history and current behavior, no longer needs inpatient hospitalization; *and* (b) requires mandatory outpatient treatment at the time of discharge to prevent relapse or deterioration of his condition that would likely result in his meeting the criteria for involuntary inpatient treatment; *and* (c) ~~has agreed to abide by his discharge plan and has the ability to do so;~~ and (ii) the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person. Prior to discharging a person to mandatory outpatient treatment under a discharge plan who has not executed an advance directive, the treating

182 physician or his designee shall give to the person a written explanation of the procedures for executing
183 an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an
184 advance directive form, which may be the form set forth in § 54.1-2984. In no event shall the treating
185 physician discharge a person to mandatory outpatient treatment under a discharge plan as authorized
186 pursuant to subsection C1 if the person meets the criteria for involuntary commitment set forth in
187 subsection C. The discharge plan developed by the treating physician and facility staff in conjunction
188 with the community services board and the person shall serve as and shall contain all the components of
189 the comprehensive mandatory outpatient treatment plan set forth in subsection G, and no initial
190 mandatory outpatient treatment plan set forth in subsection F shall be required. The discharge plan shall
191 be submitted to the court for approval and, upon approval by the court, shall be filed and incorporated
192 into the order entered pursuant to subsection C1. The discharge plan shall be provided to the person by
193 the community services board at the time of the person's discharge from the inpatient facility. The
194 community services board where the person resides upon discharge shall monitor the person's
195 compliance with the discharge plan and report any material noncompliance to the court in accordance
196 with § 37.2-817.1.

197 D. After observing the person and considering (i) the recommendations of any treating or examining
198 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any
199 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records
200 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have
201 been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person
202 has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the
203 person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by
204 recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)
205 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic
206 human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an
207 opportunity for improvement of his condition have been investigated and are determined to be
208 appropriate; and (c) the person has agreed to abide by his treatment plan and has the ability to do so;
209 ~~and (d) the ordered treatment will be delivered on an outpatient basis by the community services board~~
210 ~~or designated provider to the person, the judge or special justice shall by written order and specific~~
211 ~~findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment.~~
212 Less restrictive alternatives shall not be determined to be appropriate unless the services are actually
213 available in the community.

214 E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a
215 hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11
216 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of
217 the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of
218 any kind in the provision of the medication. The community services board that serves the county or
219 city in which the person resides shall recommend a specific course of treatment and programs for the
220 provision of mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be
221 determined by the court based on recommendations of the community services board, but shall not
222 exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be
223 released from the requirements of the order unless the order is continued in accordance with
224 § 37.2-817.4.

225 F. Any order for mandatory outpatient treatment entered pursuant to subsection D shall include an
226 initial mandatory outpatient treatment plan developed by the community services board that completed
227 the preadmission screening report. The plan shall, at a minimum, (i) identify the specific services to be
228 provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the
229 arrangements made for the initial in-person appointment or contact with each service provider, and (iv)
230 include any other relevant information that may be available regarding the mandatory outpatient
231 treatment ordered. The order shall require the community services board to monitor the implementation
232 of the mandatory outpatient treatment plan and report any material noncompliance to the court.

233 G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for
234 mandatory outpatient treatment has been entered pursuant to subsection D, the community services board
235 where the person resides that is responsible for monitoring compliance with the order shall file a
236 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment
237 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided
238 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)
239 certify that the services are the most appropriate and least restrictive treatment available for the person,
240 (iv) certify that each provider has complied and continues to comply with applicable provisions of the
241 Department's licensing regulations, (v) be developed with the fullest possible involvement and
242 participation of the person and his family, with the person's consent, and reflect his preferences to the
243 greatest extent possible to support his recovery and self-determination, (vi) specify the particular

conditions with which the person shall be required to comply, and (vii) describe how the community services board shall monitor the person's compliance with the plan and report any material noncompliance with the plan. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment.

H. If the community services board responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, it shall notify the court within five business days of the entry of the order for mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special justice, after notice to the person, the person's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to § 37.2-817.2.

I. Upon entry of any order for mandatory outpatient treatment entered pursuant to subsection D, the clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to the community services board required to monitor compliance with the plan. The community services board shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose within five business days.

J. The court may transfer jurisdiction of the case to the district court where the person resides at any time after the entry of the mandatory outpatient treatment order. The community services board responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan shall remain responsible for monitoring the person's compliance with the plan until the community services board serving the locality to which jurisdiction of the case has been transferred acknowledges the transfer and receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose. The community services board serving the locality to which jurisdiction of the case has been transferred shall acknowledge the transfer and receipt of the order within five business days.

K. Any order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.