

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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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

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

57 as practicable but no later than the close of business on the next following business day, certify and
58 forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the
59 order. Upon receipt of any order for a commitment hearing issued pursuant to this article for
60 mandatory outpatient treatment of a minor 14 years of age or older, the clerk of court shall, prior to
61 the close of that business day, certify and forward to the Central Criminal Records Exchange, on a form
62 provided by the Exchange, a copy of the order.

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

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

77 **§ 16.1-344. Involuntary commitment; hearing.**

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

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

92 C. An employee or a designee of the community services board that arranged for the evaluation of
93 the minor shall attend the hearing in person or, if physical attendance is not practicable, shall participate
94 in the hearing through a two-way electronic video and audio or telephonic communication system as
95 authorized in § 16.1-345.1. If (i) the minor does not reside in the jurisdiction served by the juvenile and
96 domestic relations district court that conducts the hearing and (ii) the minor is being considered for
97 mandatory outpatient treatment pursuant to § 16.1-345.2, an employee or designee of the community
98 services board serving the area where the minor resides shall also attend the hearing in person or, if
99 physical attendance is not practicable, shall participate in the hearing through a two-way electronic video
100 and audio or telephonic communication system as authorized in § 16.1-345.1. The employee or designee
101 of the community services board serving the area where the minor resides may, instead of attending the
102 hearing, make arrangements with the community services board that arranged for the evaluation of the
103 minor to present on its behalf the recommendations for a specific course of treatment and programs for
104 the provision of mandatory outpatient treatment required by subsection C of § 16.1-345.2 and the initial
105 mandatory outpatient treatment plan required by subsection D of § 16.1-345.2. When a community
106 services board attends the hearing on behalf of the community services board serving the area where the
107 minor resides, the attending community services board shall inform the community services board
108 serving the area where the minor resides of the disposition of the matter upon the conclusion of the
109 hearing. In addition, the attending community services board shall transmit the disposition through
110 certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means
111 to the community services board serving the area where the minor resides. Any employee or designee of
112 the community services board attending or participating in the hearing shall not be excluded from the
113 hearing pursuant to an order of sequestration of witnesses.

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

117 **§ 18.2-308.1:3. Purchase, possession, or transportation of firearm by persons involuntarily**

118 **admitted or ordered to outpatient treatment; penalty.**

119 A. It shall be unlawful for any person (i) involuntarily admitted to a facility or ordered to mandatory
120 outpatient treatment pursuant to § 19.2-169.2, (ii) involuntarily admitted to a facility or ordered to
121 mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814
122 et seq.) of Chapter 8 of Title 37.2, ~~or~~ (iii) *involuntarily admitted to a facility or ordered to mandatory*
123 *outpatient treatment as a minor 14 years of age or older as the result of a commitment hearing*
124 *pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, (iv) who was the subject of a*
125 *temporary detention order pursuant to § 37.2-809 and subsequently agreed to voluntary admission*
126 *pursuant to § 37.2-805 or (v) who, as a minor 14 years of age or older, was the subject of a temporary*
127 *detention order pursuant to § 16.1-340.1 and subsequently agreed to voluntary admission pursuant to*
128 *§ 16.1-338 to purchase, possess, or transport a firearm. A violation of this subsection shall be punishable*
129 *as a Class 1 misdemeanor.*

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

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

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

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