

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-340 and 37.2-808 of the Code of Virginia, relating to emergency custody orders; extension.

[S 673]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-340 and 37.2-808 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-340. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion, an emergency custody order when he has probable cause to believe that (i) because of mental illness, the minor (a) 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 (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law. To the extent possible, the petition shall contain the information required by § 16.1-339.1.

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

B. Any minor for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether he meets the criteria for temporary detention pursuant to § 16.1-340.1 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board serving the area in which the minor is located who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by

57 facsimile.

58 Transportation under this section shall include transportation to a medical facility as may be
59 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in
60 accordance with state and federal law. Transportation under this section shall include transportation to a
61 medical facility for a medical evaluation if a physician at the hospital in which the minor subject to the
62 emergency custody order may be detained requires a medical evaluation prior to admission.

63 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
64 the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the
65 community services board that designated the person to perform the evaluation required in subsection B
66 to execute the order and, in cases in which transportation is ordered to be provided by the primary
67 law-enforcement agency, provide transportation. If the community services board serves more than one
68 jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular
69 jurisdiction within the community services board's service area where the minor who is the subject of
70 the emergency custody order was taken into custody or, if the minor has not yet been taken into
71 custody, the primary law-enforcement agency from the jurisdiction where the minor is presently located
72 to execute the order and provide transportation.

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

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

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

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

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

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

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

116 L. If an emergency custody order is not executed within eight hours of its issuance, the order shall
117 be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office

118 is not open, to any magistrate serving the jurisdiction of the issuing court.

119 M. ~~[Expired.]~~ *In addition to the eight-hour period of emergency custody set forth in subsection G, H,*
 120 *or K, if the minor is detained in a state facility pursuant to subsection D of § 16.1-340.1, the state*
 121 *facility and an employee or designee of the community services board may, for an additional four hours,*
 122 *continue to attempt to identify an alternative facility that is able and willing to provide temporary*
 123 *detention and appropriate care to the minor.*

124 N. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical
 125 screening and assessment services provided to minors with mental illnesses while in emergency custody.

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

129 **§ 37.2-808. Emergency custody; issuance and execution of order.**

130 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician,
 131 or upon his own motion, an emergency custody order when he has probable cause to believe that any
 132 person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental
 133 illness, the person will, in the near future, (a) cause serious physical harm to himself or others as
 134 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if
 135 any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide
 136 for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to
 137 volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order
 138 entered pursuant to this section shall provide for the disclosure of medical records pursuant to
 139 § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

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

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

153 C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement
 154 agency and jurisdiction to execute the emergency custody order and provide transportation. However, the
 155 magistrate shall consider any request to authorize transportation by an alternative transportation provider
 156 in accordance with this section, whenever an alternative transportation provider is identified to the
 157 magistrate, which may be a person, facility, or agency, including a family member or friend of the
 158 person who is the subject of the order, a representative of the community services board, or other
 159 transportation provider with personnel trained to provide transportation in a safe manner, upon
 160 determining, following consideration of information provided by the petitioner; the community services
 161 board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any;
 162 or other persons who are available and have knowledge of the person, and, when the magistrate deems
 163 appropriate, the proposed alternative transportation provider, either in person or via two-way electronic
 164 video and audio or telephone communication system, that the proposed alternative transportation
 165 provider is available to provide transportation, willing to provide transportation, and able to provide
 166 transportation in a safe manner. When transportation is ordered to be provided by an alternative
 167 transportation provider, the magistrate shall order the specified primary law-enforcement agency to
 168 execute the order, to take the person into custody, and to transfer custody of the person to the
 169 alternative transportation provider identified in the order. In such cases, a copy of the emergency
 170 custody order shall accompany the person being transported pursuant to this section at all times and
 171 shall be delivered by the alternative transportation provider to the community services board or its
 172 designee responsible for conducting the evaluation. The community services board or its designee
 173 conducting the evaluation shall return a copy of the emergency custody order to the court designated by
 174 the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative
 175 transportation provider and return of an order to the court may be accomplished electronically or by
 176 facsimile.

177 Transportation under this section shall include transportation to a medical facility as may be
 178 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in

179 accordance with state and federal law. Transportation under this section shall include transportation to a
180 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the
181 emergency custody order may be detained requires a medical evaluation prior to admission.

182 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
183 the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the
184 community services board that designated the person to perform the evaluation required in subsection B
185 to execute the order and, in cases in which transportation is ordered to be provided by the primary
186 law-enforcement agency, provide transportation. If the community services board serves more than one
187 jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular
188 jurisdiction within the community services board's service area where the person who is the subject of
189 the emergency custody order was taken into custody or, if the person has not yet been taken into
190 custody, the primary law-enforcement agency from the jurisdiction where the person is presently located
191 to execute the order and provide transportation.

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

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

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

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

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

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

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

235 L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing,
236 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency
237 custody order issued pursuant to this section. In any case in which an order for temporary detention for
238 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody
239 order, the person may be detained by a hospital emergency room or other appropriate facility for testing,

240 observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of
241 an order pursuant to § 37.2-1101, in accordance with subsection A of § 37.2-1104. Upon completion of
242 testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other
243 appropriate facility in which the person is detained shall notify the nearest community services board,
244 and the designee of the community services board shall, as soon as is practicable and prior to the
245 expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of
246 the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

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

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

253 O. ~~Expired.~~ *In addition to the eight-hour period of emergency custody set forth in subsection G, H,*
254 *or K, if the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state*
255 *facility and an employee or designee of the community services board as defined in § 37.2-809 may, for*
256 *an additional four hours, continue to attempt to identify an alternative facility that is able and willing to*
257 *provide temporary detention and appropriate care to the individual.*

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

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