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SENATE BILL NO. 603

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 16.1-340.2, 16.1-345, 37.2-810, and 37.2-829 of the Code of Virginia, relating to involuntary admission; transportation; transfer to local law enforcement.

Patron—Hanger

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-340.2, 16.1-345, 37.2-810, and 37.2-829 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-340.2. Transportation of minor in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the minor resides to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the 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 temporary detention 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 any case in which a magistrate authorizes transportation of a minor subject to a temporary detention order by an alternative transportation provider, a copy of the temporary detention 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 temporary detention facility. The temporary detention facility shall return a copy of the temporary detention 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 facsimile.

The order may include transportation of the minor to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. 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 minor in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

C. *If an alternative transportation provider providing transportation of a minor who is the subject of an emergency custody order becomes unable to continue providing transportation of the minor at any time after taking custody of the minor, local law enforcement for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the minor and shall transport the minor to the facility of temporary detention. In such cases, a copy of the temporary detention order shall accompany the minor being transported and shall be delivered to and returned by the temporary detention facility in accordance with the provisions of subsection B.*

D. In cases in which an alternative facility of temporary detention is identified and the

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law-enforcement agency or alternative transportation provider identified to provide transportation in accordance with subsection B continues to have custody of the minor, the local law-enforcement agency or alternative transportation provider shall transport the minor to the alternative facility of temporary detention identified by the employee or designee of the local community services board. In cases in which an alternative facility of temporary detention is identified and custody of the minor has been transferred from the law-enforcement agency or alternative transportation provider that provided transportation in accordance with subsection B to the initial facility of temporary detention, the employee or designee of the local community services board shall request, and a magistrate may enter an order specifying, an alternative transportation provider or, if no alternative transportation provider is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the minor resides or, if the nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor is located, to provide transportation.

~~D.~~ *E.* 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 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

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

§ 16.1-345. Involuntary commitment; criteria.

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 qualified evaluator's report, (v) any medical records available, (vi) the preadmission screening report, and (vii) any other evidence that may have been admitted, the court shall order the involuntary commitment of the minor to a mental health facility for 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 delusionary 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; and

3. If the court finds that inpatient treatment is not the least restrictive treatment, the court shall consider entering an order for mandatory outpatient treatment pursuant to § 16.1-345.2.

Upon the expiration of an order for involuntary commitment, the minor 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 90 days from the date of the subsequent court order, or the minor or his parent rescinds the objection to inpatient treatment and consents to admission pursuant to § 16.1-338 or subsection D of § 16.1-339 or the minor is ordered to mandatory outpatient treatment pursuant to § 16.1-345.2.

A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody. However, such a minor shall not be eligible for mandatory outpatient treatment.

In conducting an evaluation of a minor who has been properly detained, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in this section, the evaluator shall recommend that the minor meets the criteria for involuntary commitment.

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, safety, or normal development. If a special justice believes that issuance of a removal order or protective order may be in the child's best interest, the special justice shall report the matter to the local department of social services for the county or city where the minor resides.

Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility

for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § 16.1-342. If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of Behavioral Health and Developmental Services.

When a minor has been involuntarily committed pursuant to this section, the judge shall determine, after consideration of information provided by the minor's treating mental health professional and any involved community services board staff regarding the minor's dangerousness, whether transportation shall be provided by the sheriff or may be provided by an alternative transportation provider, including a parent, family member, or friend of the minor, a representative of the community services board, a representative of the facility at which the minor was detained pursuant to a temporary detention order, or other alternative transportation provider with personnel trained to provide transportation in a safe manner. If the judge determines that transportation may be provided by an alternative transportation provider, the judge may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. If the judge finds that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the judge may order transportation by the proposed alternative transportation provider. In all other cases, the judge shall order transportation by the sheriff of the jurisdiction where the minor is a resident unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction in which the minor is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the minor.

If the judge determines that the minor requires transportation by the sheriff, the sheriff, as specified in this section shall transport the minor to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff or alternative transportation provider of the judge's order.

If an alternative transportation provider providing transportation of a minor becomes unable to continue providing transportation of the minor at any time after taking custody of the minor, local law enforcement for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the minor and shall transport the minor to the proper facility.

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

§ 37.2-810. Transportation of person in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to provide transportation, to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the order and provide transportation. However, the magistrate shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the temporary detention 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 person's treating physician, if any; or other persons who are available and have knowledge of the person, 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 law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order.

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In such cases, a copy of the temporary detention order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention 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 facsimile.

The order may include transportation of the person to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. 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. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

C. *If an alternative transportation provider providing transportation of a person who is the subject of an emergency custody order becomes unable to continue providing transportation of the person at any time after taking custody of the person, local law enforcement for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the person and shall transport the person to the facility of temporary detention. In such cases, a copy of the temporary detention order shall accompany the person being transported and shall be delivered to and returned by the temporary detention facility in accordance with the provisions of subsection B.*

D. In cases in which an alternative facility of temporary detention is identified and the law-enforcement agency or alternative transportation provider identified to provide transportation in accordance with subsection B continues to have custody of the person, the local law-enforcement agency or alternative transportation provider shall transport the person to the alternative facility of temporary detention identified by the employee or designee of the community services board. In cases in which an alternative facility of temporary detention is identified and custody of the individual has been transferred from the law-enforcement agency or alternative transportation provider that provided transportation in accordance with subsection B to the initial facility of temporary detention, the employee or designee of the community services board shall request, and a magistrate may enter an order specifying, an alternative transportation provider or, if no alternative transportation provider is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person resides or, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located, to provide transportation.

~~D.~~ *E.* A law-enforcement officer may lawfully go to 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 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

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

§ 37.2-829. Transportation of person in civil admission process.

When a person has volunteered for admission pursuant to § 37.2-814 or been ordered to be admitted to a facility under §§ 37.2-815 through 37.2-821, the judge or special justice shall determine after consideration of information provided by the person's treating mental health professional and any involved community services board or behavioral health authority staff regarding the person's dangerousness, whether transportation shall be provided by the sheriff or may be provided by an alternative transportation provider, including a family member or friend of the person, a representative of the community services board, a representative of the facility at which the person was detained pursuant to a temporary detention order, or other alternative transportation provider with personnel trained to provide transportation in a safe manner. If the judge or special justice determines that transportation may be provided by an alternative transportation provider, the judge or special justice may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. If the judge or special justice finds that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the judge or special justice may order transportation by the proposed alternative transportation provider. In all other cases, the judge or special justice shall order transportation by the sheriff of the jurisdiction where the person is a resident unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a

resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person.

If the judge or special justice determines that the person requires transportation by the sheriff, the person may be delivered to the care of the sheriff, as specified in this section, who shall transport the person to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff or alternative transportation provider of the judge's or special justice's order.

If any state hospital has become too crowded to admit any such person, the Commissioner shall give notice of the fact to all community services boards and shall designate the facility to which sheriffs or alternative transportation providers shall transport such persons.

If an alternative transportation provider providing transportation of a person becomes unable to continue providing transportation of the person at any time after taking custody of the person, local law enforcement for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the person and shall transport the person to the proper facility.

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

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