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SENATE BILL NO. 738

Offered January 8, 2020

Prefiled January 8, 2020

A *BILL to amend and reenact § 37.2-1104 of the Code of Virginia, relating to temporary detention for observation and treatment.*

Patron—Deeds

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That § 37.2-1104 of the Code of Virginia is amended and reenacted as follows:****§ 37.2-1104. Temporary detention in hospital for testing, observation, or treatment.**

A. Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding of probable cause to believe that an adult person within the court's jurisdiction is incapable of making an informed decision regarding treatment of a physical or mental condition or is incapable of communicating such a decision due to a physical or mental condition and that the medical standard of care calls for testing, observation, or treatment within the next 24 hours to prevent death or disability, or to treat an emergency medical condition that requires immediate action to avoid harm, injury, or death, the

A. As used in this section, "mental or physical condition" includes intoxication.

B. The court or, if the court is unavailable, a magistrate serving the jurisdiction may, with the advice of a licensed physician who has attempted to obtain informed consent of an adult person to treatment of a mental or physical condition, issue an order authorizing temporary detention of the adult person ~~by~~ in a hospital emergency room department or other appropriate facility and authorizing such for testing, observation, or treatment upon a finding that (i) probable cause exists to believe the person is incapable of making or communicating an informed decision regarding treatment of a physical or mental condition due to a mental or physical condition and (ii) that observation, testing, or treatment is necessary within the next 24 hours to prevent injury, disability, death, or other harm to the person resulting from such mental or physical condition.

C. The duration of temporary detention ~~may~~ pursuant to this section shall not be for a period ~~exceeding~~ exceed 24 hours, unless extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order.

~~B.~~ C. A court or, if the court is unavailable, a magistrate serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if such person meets the criteria set forth in subsection A B. 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 pursuant to § 37.2-808, *the running of the time period during which a person may be held pursuant to the emergency custody order shall be tolled by the entry of the order for temporary detention pursuant to this section, and the time such order for temporary detention is effective shall not be computed as part of the period during which a person may be held pursuant to an emergency custody order issued pursuant to § 37.2-808. Upon completion of testing, observation, or treatment pursuant to this section,* the hospital emergency room or other appropriate facility in which the person is detained for testing, observation, or treatment shall notify the nearest community services board ~~when such testing, observation, or treatment is complete,~~ 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 subsection A B, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

INTRODUCED

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