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SENATE BILL NO. 373

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact § 37.2-808 of the Code of Virginia, relating to emergency custody; extension; medical testing, observation, or treatment.*

Patron—Deeds

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

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

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

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) 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 (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody 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.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, or the court may pursuant to § 19.2-271.6, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (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 or the court considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any person 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 the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board 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 or court 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 or court 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 or court, which may be a person, facility, or agency, including a family member or friend of the person 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 person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate or court 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 or court shall order the specified primary 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. In such cases, a copy of the emergency custody 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 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

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59 emergency custody order to the court designated by the magistrate or the court that issued the
60 emergency custody order as soon as is practicable. Delivery of an order to a law-enforcement officer or
61 alternative transportation provider and return of an order to the court may be accomplished electronically
62 or by facsimile.

63 Transportation under this section shall include transportation to a medical facility as may be
64 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in
65 accordance with state and federal law. Transportation under this section shall include transportation to a
66 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the
67 emergency custody order may be detained requires a medical evaluation prior to admission.

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

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

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

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

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

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

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

118 K. The person shall remain in custody until (i) a temporary detention order is issued in accordance
119 with § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in
120 accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the

emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution.

L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency custody order issued pursuant to this section. 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, the person may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility in which the person is detained shall notify the nearest community services board, 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 § 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

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

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

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

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

Q. 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.

R. A magistrate may, upon the sworn petition of the Commissioner or his designee, issue an order extending an emergency custody order issued pursuant to this section for a period of up to 48 hours upon finding that probable cause exists to believe that the behaviors upon which a finding that the person meets the criteria for emergency custody are the result of a medical or physical condition, including substance intoxication or withdrawal, and that the medical standard of care for such medical or physical condition calls for testing, observation, or treatment to prevent harm to the person resulting from such medical or physical condition. Such order shall include designation of the primary law-enforcement agency or an alternative transportation provider to transport the person to a medical care facility for testing, observation, and treatment.

Upon issuance of an order extending the period of emergency custody pursuant to this subsection, the person shall be transported to and detained in an appropriate medical care facility for testing, observation, and treatment, the duration of which shall not exceed 48 hours from the issuance of such order. During such period, the person may be admitted to the medical care facility for further treatment or transferred to a different medical care facility for testing, observation, or treatment. If the staff of the medical care facility determines, prior to the expiration of the emergency custody order, that testing, observation, and treatment is no longer necessary or appropriate, the medical care facility shall contact the community services board that conducted the evaluation pursuant to this section and a designee of the community services board shall, as soon as is practicable and prior to the expiration of the emergency custody order, conduct an evaluation of the person to determine whether he meets the criteria for temporary detention pursuant to § 37.2-809.