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HOUSE BILL NO. 330

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on January 25, 1995)

(Patron Prior to Substitute—Delegate Mims)

A BILL to amend and reenact §§ 37.1-67.01, 37.1-67.1, 37.1-67.3 and 37.1-89 of the Code of Virginia, relating to involuntary commitment.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-67.01, 37.1-67.1, 37.1-67.3 and 37.1-89 of the Code of Virginia are amended and reenacted as follows:

§ 37.1-67.01. Emergency custody; issuance and execution of order.

Based upon probable cause to believe that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, any magistrate may, upon the sworn petition of any responsible person or upon his own motion, issue an emergency custody order requiring any person within his judicial district *who is incapable of volunteering or unwilling to volunteer for treatment* to be taken into custody and transported to a convenient location to be evaluated by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness in order to assess the need for hospitalization. ~~If a person is incapable of volunteering or unwilling to volunteer for treatment, a magistrate may issue an emergency custody order based upon probable cause to believe that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self.~~ A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization without prior authorization. Such evaluation shall be conducted immediately. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours. 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 an order for emergency custody pursuant to this section. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

If an order of emergency custody is not executed within four 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 judge or magistrate thereof.

37.1-67.1. Involuntary temporary detention; issuance and execution of order.

For the purposes of this section, a designee of a community services board is defined as an examiner able to provide an independent examination of the person who is not related by blood or marriage to the person, who has no financial interest in the ~~detaining or admitting admission or treatment of the person, who has no investment interest in the hospital detaining or admitting the person under this article and,~~ except for employees of state hospitals, who is not employed by the ~~detaining or admitting such~~ hospital. *For purposes of this section, investment interest means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.*

A magistrate may, upon the advice of, and only after an in-person evaluation by, an employee of the local community services board or its designee who is skilled in the ~~diagnosis~~ *assessment* and treatment of mental illness, issue an order of temporary detention; ~~which if it appears from all evidence readily available that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, and the person is incapable of volunteering or unwilling to volunteer for treatment.~~ Such order may include transportation of the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement. A magistrate may issue an order of temporary detention if it appears from all evidence readily available that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, and the person is incapable of volunteering or unwilling to volunteer for treatment.

A magistrate may issue ~~an~~ such order of temporary detention without an emergency custody order

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60 proceeding, upon the advice of, and only after an in-person evaluation by, an employee of the local
61 community services board or its designee who is skilled in the diagnosis and treatment of mental illness.
62 A magistrate may issue an order of temporary detention without a prior in-person evaluation if (i) the
63 person has been personally examined within the previous seventy-two hours by an employee of the local
64 community services board or its designee who is skilled in the diagnosis assessment and treatment of
65 mental illness or (ii) there is a significant physical, psychological or medical risk, to the person or to
66 others, associated with conducting such evaluation.

67 An employee of the local community services board or its designee shall determine the facility of
68 temporary detention for all individuals detained pursuant to this section. The facility shall be identified
69 on the prescreening report and indicated on the temporary detention order. The Board of Medical
70 Assistance Services shall, by the regulation, establish a reasonable rate per day of inpatient care for
71 temporary detention. The institution or other place of detention shall be approved pursuant to regulations
72 of the Board of Mental Health, Mental Retardation and Substance Abuse Services. The employee of the
73 community services board or its designee who is conducting the evaluation pursuant to this section shall
74 determine, prior to the issuance of the temporary detention order, the insurance status of the person.
75 Except as provided herein for defendants requiring hospitalization in accordance with subdivision A 2 of
76 § 19.2-169.6, such person shall not be detained in a jail or other place of confinement for persons
77 charged with criminal offenses.

78 A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county,
79 city, or town in which he serves to any point in the Commonwealth for the purpose of executing any
80 order for temporary detention pursuant to this section. The duration of temporary detention shall not
81 exceed forty-eight hours prior to a hearing. If the forty-eight-hour period herein specified terminates on
82 a Saturday, Sunday or legal holiday, such person may be detained, as herein provided, until the next day
83 which is not a Saturday, Sunday or legal holiday, but in no event may he be detained for longer than
84 seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. For
85 purposes of this section, a Saturday, Sunday, or legal holiday shall be deemed to include the time period
86 up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday. Nothing herein shall
87 preclude a law-enforcement officer from obtaining emergency medical treatment or further medical
88 evaluation at any time for a person in his custody as provided in this section.

89 In any case in which temporary detention is ordered pursuant to this section upon petition of a
90 person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate
91 executing the order of temporary detention shall place such person in a hospital designated by
92 § 19.2-169.6 B, or if such facility is not available, the defendant shall be detained in a jail or other place
93 of confinement for persons charged with criminal offenses and shall be transferred to such hospital as
94 soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant,
95 either (i) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined
96 in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be
97 represented by counsel as specified in § 37.1-67.3. In any case in which temporary detention is ordered
98 pursuant to this section upon petition for involuntary commitment of a minor, the petition shall be filed
99 and the hearing scheduled in accordance with the provisions of § 16.1-341.

100 On such petition and prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341, the judge may
101 release such person on his personal recognizance or bond set by the judge if it appears from all
102 evidence readily available that such release will not pose an imminent danger to himself or others. In
103 the case of a minor, the judge may release the minor to his parent. The director of the hospital in which
104 the person is detained may release such person prior to a hearing as authorized in § 37.1-67.3 or
105 § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist
106 treating the person, that the person would not present an imminent danger to self or others if released.

107 If an order of temporary detention is not executed within twenty-four hours of its issuance, or within
108 such shorter period as is specified in the order, the order shall be void and shall be returned unexecuted
109 to the office of the clerk of the issuing court or if such office is not open, to any judge or magistrate
110 thereof. Subsequent orders may be issued upon the original petition within ninety-six hours after the
111 petition is filed. However, a magistrate must again obtain the advice of an employee of the local
112 community services board or its designee who is skilled in the diagnosis or treatment of mental illness
113 prior to issuing a subsequent order upon the original petition. Any petition for which no order of
114 temporary detention or other process in connection therewith is served on the subject of the petition
115 within ninety-six hours after the petition is filed shall be void and shall be returned to the office of the
116 clerk of the issuing court.

117 The chief judge of each general district court shall establish and require that a magistrate, as
118 provided by this section, be available seven days a week, twenty-four hours a day, for the purpose of
119 performing the duties established by this section. Each community services board shall provide to each
120 general district court and magistrate's office within its jurisdiction a list of its employees and designees
121 who are available to perform the evaluations required herein.

§ 37.1-67.3. Same; involuntary admission and treatment.

The commitment hearing shall be held within forty-eight hours of the execution of the temporary detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday, or legal holiday, but in no event may the person be detained for a period longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday.

The judge, in commencing the commitment hearing, shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission and treatment as provided for in § 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall ascertain if such person is then willing and capable of seeking voluntary admission and treatment. If the person is capable and willingly accepts voluntary admission and treatment, the judge shall require him to accept voluntary admission for a minimum period of treatment and after such minimum period, not to exceed seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital, during which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or § 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and the requirement for prescreening by a community services board or community mental health clinic as provided in § 37.1-65.

If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge shall inform such person of his right to a commitment hearing and right to counsel. The judge shall ascertain if a person whose admission is sought is represented by counsel, and if he is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

A written explanation of the involuntary commitment process and the statutory protections associated with the process shall be given to the person and its contents explained by an attorney prior to the commitment hearing. The written explanation shall include, at a minimum, an explanation of the person's right to retain private counsel or be represented by a court-appointed attorney, to present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, to be present during the hearing and testify, to appeal any certification for involuntary admission to the circuit court, and to have a jury trial on appeal. The judge shall ascertain whether the person whose admission is sought has been given the written explanation required herein.

To the extent possible, during *or before* the commitment hearing, the attorney for the person whose admission is sought shall interview his client, the petitioner, the examiner described below, the community services board staff ~~in attendance~~, and any other material witnesses. He shall also examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing and the person whose admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

Notwithstanding the above, the judge shall require an examination of such person by a psychiatrist ~~who is licensed in Virginia~~ or a clinical psychologist who is licensed in Virginia ~~by either the Board of Medicine or the Board of Psychology who is qualified in the diagnosis of mental illness~~ or, if such a psychiatrist or clinical psychologist is not available, ~~a physician or psychologist~~ *any mental health professional* who is (i) licensed in Virginia *through the Department of Health Professions* and ~~who is~~ (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be able to provide an independent examination of the person. The examiner shall not be related by blood or marriage to the person, shall not be responsible for treating the person, shall have no financial interest in the ~~detaining or admitting~~ admission or treatment of the person, shall have no investment interest in the hospital ~~detaining or admitting the person under this article~~, and, except for employees of state hospitals, shall not be employed by the ~~detaining or admitting~~ such hospital. *For purposes of this section, investment interest means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.*

All such examinations shall be conducted in private. The judge shall summons the examiner who shall certify that he has personally examined the individual and has probable cause to believe that the individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or

183 (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and
184 (iii) requires or does not require involuntary hospitalization or treatment. ~~The~~ *Alternatively, the* judge,
185 in his discretion, may accept written certification of the examiner's findings if the examination has been
186 personally made within the preceding five days and if there is no objection *sustained* to the acceptance
187 of such written certification by the person or his attorney. The judge shall not render any decision on
188 the petition until such examiner has presented his report either orally or in writing.

189 Except as otherwise provided in this section, prior to making any adjudication that such person is
190 mentally ill and shall be confined to an institution pursuant to this section, the judge shall require from
191 the community services board which serves the political subdivision where the person resides a
192 prescreening report, and the board or clinic shall provide such a report within forty-eight hours or within
193 seventy-two hours if the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. The
194 report shall state whether the person is deemed to be so seriously mentally ill that he is substantially
195 unable to care for himself, an imminent danger to himself or others as a result of mental illness and in
196 need of involuntary hospitalization or treatment, whether there is no less restrictive alternative to
197 institutional confinement and what the recommendations are for that person's care and treatment. In the
198 case of a person sentenced and committed to the Department of Corrections and who has been examined
199 by a psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the person is
200 mentally ill and should be confined pursuant to this section without requesting a prescreening report
201 from the community services board.

202 After observing the person and obtaining the necessary positive certification and other relevant
203 evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or
204 others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be
205 substantially unable to care for himself, and (iii) that alternatives to involuntary confinement and
206 treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to
207 institutional confinement and treatment, the judge shall by written order and specific findings so certify
208 and order that the person be placed in a hospital or other facility for a period of treatment not to exceed
209 180 days from the date of the court order. Such placement shall be in a hospital or other facility
210 designated by the community services board which serves the political subdivision in which the person
211 was examined as provided in this section. If the community services board does not provide a placement
212 recommendation at the commitment hearing, the person shall be placed in a hospital or other facility
213 designated by the Commissioner.

214 After observing the person and obtaining the necessary positive certification and other relevant
215 evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or
216 others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be
217 substantially unable to care for himself, and (iii) that less restrictive alternatives to institutional
218 confinement and treatment have been investigated and are deemed suitable, and if, moreover, the judge
219 finds specifically that (i) the patient has the degree of competency necessary to understand the
220 stipulations of his treatment, (ii) the patient expresses an interest in living in the community and agrees
221 to abide by his treatment plan, (iii) the patient is deemed to have the capacity to comply with the
222 treatment plan, (iv) the ordered treatment can be delivered on an outpatient basis, and (v) the ordered
223 treatment can be monitored by the community services board or designated providers, the judge shall
224 order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient
225 involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.5, or such other appropriate
226 course of treatment as may be necessary to meet the needs of the individual. Upon failure of the patient
227 to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to
228 the patient and after a commitment hearing, order involuntary commitment for treatment at a hospital.
229 The community services board which serves the political subdivision in which the person resides shall
230 recommend a specific course of treatment and programs for provision of such treatment. The community
231 services board shall monitor the person's compliance with such treatment as may be ordered by the court
232 under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by
233 the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this
234 section.

235 The judge shall make or cause to be made a tape or other audio recording of the hearing and shall
236 submit such recording to the appropriate district court clerk to be retained in a confidential file. Such
237 recordings shall only be used to document and to answer questions concerning the judge's conduct of the
238 hearing. These recordings shall be retained for at least three years from the date of the relevant
239 commitment hearing. The judge shall also order that *copies of* the relevant medical records of such
240 person be released to the facility or program in which he is placed upon request of the treating
241 physician or director of the facility or program. Except as provided in this section, the *court shall keep*
242 *its copies of* relevant medical records, reports, and court documents pertaining to the hearings provided
243 for in this section ~~shall be kept confidential by the court~~ if so requested by such person, or his counsel,
244 with access provided only upon court order for good cause shown. Such records, reports, and documents

shall not be subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such person shall be released at the expiration of 180 days unless involuntarily committed by further petition and order of a court as provided herein or such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.

The procedures required by this section shall be followed at such commitment hearing. The judge shall render a decision on such petition after the appointed examiner has presented his report, either orally or in writing, and after the community services board which serves the political subdivision where the person resides has presented a prescreening report, either orally or in writing, with recommendations for that person's placement, care and treatment.

The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order for involuntary commitment to a hospital. The copy of the form and the order shall be kept confidential in a separate file and used only for the purpose of conducting a firearms transaction record check authorized by § 18.2-308.2:2.

§ 37.1-89. Fees and expenses.

Any special justice as defined in § 37.1-88 and any district court substitute judge who presides over hearings pursuant to the provisions of §§ 37.1-67.1 through 37.1-67.4 shall receive a fee of fifty-seven dollars and fifty cents for each commitment hearing and his necessary mileage. Any special justice and any district court substitute judge who presides over a hearing shall receive a fee of twenty-eight dollars and seventy-five cents for each certification hearing and each order under § 37.1-134.5 ruling on competency or treatment and his necessary mileage. Every physician, ~~clinical~~ psychologist, or other mental health professional, or interpreter for the deaf appointed pursuant to § 37.1-67.5 who is not regularly employed by the Commonwealth of Virginia who is required to serve as a witness or as an interpreter for the Commonwealth in any proceeding under this chapter shall receive a fee of fifty dollars and his necessary expenses for each commitment hearing in which he serves. Every physician, clinical psychologist or interpreter for the deaf appointed pursuant to § 37.1-67.5 who is not regularly employed by the Commonwealth and who is required to serve as a witness or as an interpreter for the Commonwealth in any proceeding under this chapter shall receive a fee of twenty-five dollars and necessary expenses for each certification hearing in which he serves. Other witnesses regularly summoned before a judge under the provisions of this chapter shall receive such compensation for their attendance and mileage as is allowed witnesses summoned to testify before grand juries. Every attorney appointed under § 37.1-65.1 or §§ 37.1-67.1 through 37.1-67.4 shall receive a fee of fifty dollars and his necessary expenses for each commitment hearing. Every attorney appointed shall receive a fee of twenty-five dollars and his necessary expenses for each certification hearing and each proceeding under § 37.1-134.5. Except as hereinafter provided, all expenses incurred, including the fees, attendance and mileage aforesaid, shall be paid by the Commonwealth. Any such fees, costs and expenses incurred in connection with an examination or hearing for an admission pursuant to § 37.1-65.1 or §§ 37.1-67.1 through 37.1-67.4 in carrying out the provisions of this chapter or in connection with a proceeding under § 37.1-134.5, when paid by the Commonwealth, shall be recoverable by the Commonwealth from the person who is the subject of the examination, hearing or proceeding, or from his estate. Such collection or recovery may be undertaken by the Department. All such fees, costs and expenses, if collected or recovered by the Department, shall be refunded to the Commonwealth. No such fees or costs shall be recovered, however, from the person who is the subject of the examination or his estate when no good cause for his admission exists or when the recovery would create an undue financial hardship.