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HOUSE BILL NO. 1916

Offered January 8, 1997

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

Patron—Weatherholtz

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

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

§ 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 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 and of the U.S. Department of Veterans Affairs, who is not employed by 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 assessment and treatment of mental illness, issue an order of temporary detention if it appears from all evidence readily available that the person (i) 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 (ii) is so seriously mentally ill as to be substantially unable to care for self or others, or (iii) is experiencing a serious deterioration of his ability to care for himself in an appropriate manner as evidenced by delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control, or (iv) is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment, 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 such order of temporary detention without an emergency custody order proceeding. A magistrate may issue an order of temporary detention without a prior in-person evaluation if (i) the person has been personally examined within the previous seventy-two hours by an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness or (ii) there is a significant physical, psychological or medical risk, to the person or to others, associated with conducting such evaluation.

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

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 order for temporary detention pursuant to this section. The duration of temporary detention shall not exceed forty-eight hours prior to a hearing. 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 he be detained for longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. For purposes of this section, 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. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical

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60 evaluation at any time for a person in his custody as provided in this section.

61 In any case in which temporary detention is ordered pursuant to this section upon petition of a
62 person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate
63 executing the order of temporary detention shall place such person in a hospital designated by
64 § 19.2-169.6 B, or if such facility is not available, the defendant shall be detained in a jail or other place
65 of confinement for persons charged with criminal offenses and shall be transferred to such hospital as
66 soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant,
67 either (i) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined
68 in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be
69 represented by counsel as specified in § 37.1-67.3. In any case in which temporary detention is ordered
70 pursuant to this section upon petition for involuntary commitment of a minor, the petition shall be filed
71 and the hearing scheduled in accordance with the provisions of § 16.1-341.

72 On such petition and prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341, the judge may
73 release such person on his personal recognizance or bond set by the judge if it appears from all
74 evidence readily available (i) that such release will not pose an imminent danger to himself or others,
75 (ii) *that the person is not experiencing a serious deterioration of his ability to care for himself in an*
76 *appropriate manner as evidenced by delusional thinking or by a significant impairment of functioning*
77 *in hydration, nutrition, self-protection, or self-control, or (iii) that the person is not in need of*
78 *compulsory treatment for a mental illness from which he would be reasonably likely to benefit.* In the
79 case of a minor, the judge may release the minor to his parent. The director of the hospital in which the
80 person is detained may release such person prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341
81 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the
82 person, that the person would not present an imminent danger to self or others if released.

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

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

98 § 37.1-67.3. Same; involuntary admission and treatment.

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

106 The judge, in commencing the commitment hearing, shall inform the person whose involuntary
107 admission is being sought of his right to apply for voluntary admission and treatment as provided for in
108 § 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall ascertain
109 if such person is then willing and capable of seeking voluntary admission and treatment. If the person is
110 capable and willingly accepts voluntary admission and treatment, the judge shall require him to accept
111 voluntary admission for a minimum period of treatment and after such minimum period, not to exceed
112 seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital, during
113 which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or
114 § 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and the
115 requirement for prescreening by a community services board or community mental health clinic as
116 provided in § 37.1-65.

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

122 employ counsel at his own expense.

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

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

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

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

155 All such examinations shall be conducted in private. The judge shall summons the examiner who
156 shall certify that he has personally examined the individual and has probable cause to believe that the
157 individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or
158 (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and
159 (iii) requires or does not require involuntary hospitalization or treatment, (iv) *is or is not experiencing a
160 serious deterioration of his ability to care for himself in an appropriate manner as evidenced by
161 delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection,
162 or self-control, and (v) is or is not in need of compulsory treatment for a mental illness from which he
163 would be reasonably likely to benefit.* Alternatively, the judge, in his discretion, may accept written
164 certification of the examiner's findings if the examination has been personally made within the preceding
165 five days and if there is no objection sustained to the acceptance of such written certification by the
166 person or his attorney. The judge shall not render any decision on the petition until such examiner has
167 presented his report either orally or in writing.

168 Except as otherwise provided in this section, prior to making any adjudication that such person is
169 mentally ill and shall be confined to an institution pursuant to this section, the judge shall require from
170 the community services board which serves the political subdivision where the person resides a
171 prescreening report, and the board or clinic shall provide such a report within forty-eight hours or within
172 seventy-two hours if the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. The
173 report shall state whether the person is deemed to be so seriously mentally ill that he is substantially
174 unable to care for himself, an imminent danger to himself or others as a result of mental illness and, in
175 need of involuntary hospitalization or treatment, *experiencing a serious deterioration of his ability to
176 care for himself in an appropriate manner as evidenced by delusional thinking or by a significant
177 impairment of functioning in hydration, nutrition, self-protection, or self-control, and in need of
178 compulsory treatment for a mental illness from which he would be reasonably likely to benefit,* whether
179 there is no less restrictive alternative to institutional confinement and what the recommendations are for
180 that person's care and treatment. In the case of a person sentenced and committed to the Department of
181 Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge may
182 proceed to adjudicate whether the person is mentally ill and should be confined pursuant to this section

183 without requesting a prescreening report from the community services board.

184 After observing the person and obtaining the necessary positive certification and other relevant
185 evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or
186 others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be
187 substantially unable to care for himself, and (iii) that alternatives to involuntary confinement and
188 treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to
189 institutional confinement and treatment, the judge shall by written order and specific findings so certify
190 and order that the person be placed in a hospital or other facility for a period of treatment not to exceed
191 180 days from the date of the court order. Such placement shall be in a hospital or other facility
192 designated by the community services board which serves the political subdivision in which the person
193 was examined as provided in this section. If the community services board does not provide a placement
194 recommendation at the commitment hearing, the person shall be placed in a hospital or other facility
195 designated by the Commissioner.

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

217 The judge shall make or cause to be made a tape or other audio recording of the hearing and shall
218 submit such recording to the appropriate district court clerk to be retained in a confidential file. Such
219 recordings shall only be used to document and to answer questions concerning the judge's conduct of the
220 hearing. These recordings shall be retained for at least three years from the date of the relevant
221 commitment hearing. The judge shall also order that copies of the relevant medical records of such
222 person be released to the facility or program in which he is placed upon request of the treating
223 physician or director of the facility or program. Except as provided in this section, the court shall keep
224 its copies of relevant medical records, reports, and court documents pertaining to the hearings provided
225 for in this section confidential if so requested by such person, or his counsel, with access provided only
226 upon court order for good cause shown. Such records, reports, and documents shall not be subject to the
227 Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such person shall be released at the expiration
228 of 180 days unless involuntarily committed by further petition and order of a court as provided herein or
229 such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.

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

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