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HOUSE BILL NO. 2091

House Amendments in [] — February 3, 1997

A BILL to amend and reenact §§ 16.1-339, 16.1-341, 16.1-342, 16.1-344 and 16.1-348, as they are currently effective and as they may become effective, and §§ 16.1-336, 16.1-343, 16.1-345, 16.1-347 and 37.1-88 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-349, relating to inpatient treatment of minors; commitment.

Patrons—Jones, J.C. and Landes

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-339, 16.1-341, 16.1-342, 16.1-344 and 16.1-348, as they are currently effective and as they may become effective, and §§ 16.1-336, 16.1-343, 16.1-345, 16.1-347 and 37.1-88 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-349 as follows:

§ 16.1-336. Definitions.

When used in this article, unless the context otherwise requires:

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor fourteen years of age or older and by a parent or a legally authorized custodian.

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the State Mental Health, Mental Retardation and Substance Abuse Services Board to be substantially similar to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

"Judge" means a judge of a juvenile and domestic relations district court or family court, as the case may be, and includes a special justice appointed pursuant to § 37.1-88.

"Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the minor or others from physical injury.

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without a compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior. Mental retardation, head injury, a learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness within the meaning of this article.

"Minor" means a person less than eighteen years of age.

"Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director of the local department of social services, or his designee, may stand as the minor's parent when the minor is in the legal custody of the local department of social services.

"Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology who is skilled in the diagnosis and treatment of mental illness in minors and familiar with the provisions of this article. If such psychiatrist or psychologist is unavailable, any mental health professional (i) licensed in Virginia through the Department of Health Professions or (ii) employed by a community services board who is skilled in the diagnosis and treatment of mental illness in minors and who is familiar with the provisions of this article may serve as the qualified evaluator.

"Treatment" means any planned intervention intended to improve a minor's functioning in those areas which show impairment as a result of mental illness.

§ 16.1-339. Parental admission of an objecting minor fourteen years of age or older.

A. A minor fourteen years of age or older who objects to admission may be admitted to a willing facility for up to seventy-two hours, pending the review required by subsections B and C of this section,

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60 upon the application of a parent. If admission is sought to a state hospital, the community services board
61 serving the area in which the minor resides shall provide the examination required by subsection B of
62 § 16.1-338 and shall ensure that the necessary written findings, except the minor's consent, have been
63 made before approving the admission.

64 B. A minor admitted under this section shall be examined within twenty-four hours of his admission
65 by a qualified evaluator designated by the community services board serving the area where the facility
66 is located who is not and will not be treating the minor and who has no significant financial interest in
67 the minor's hospitalization. The evaluator shall prepare a report which shall include written findings as
68 to whether:

69 1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent
70 that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is
71 experiencing a serious deterioration of his ability to care for himself in a developmentally
72 age-appropriate manner, as evidenced by delusional thinking or by a significant impairment of
73 functioning in hydration, nutrition, self-protection, or self-control;

74 2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit
75 from the proposed treatment; and

76 3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified
77 evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction
78 in which the facility is located.

79 C. Upon admission of a minor under this section, the facility shall immediately file a petition for
80 judicial approval with the juvenile and domestic relations district court for the jurisdiction in which the
81 facility is located. A copy of this petition shall be delivered to the minor's consenting parent. Upon
82 receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the ~~juvenile and~~
83 ~~domestic relations district court judge or special justice appointed pursuant to § 37.1-88~~ shall appoint a
84 guardian ad litem for the minor. The ~~court judge~~ and the guardian ad litem shall review the petition and
85 evaluator's report, and shall ascertain the views of the minor, the minor's consenting parent, the
86 evaluator, and the attending psychiatrist. The ~~court judge~~ shall conduct ~~its~~ *his* review in such place and
87 manner, including the facility, as ~~it~~ *he* deems to be in the best interests of the minor. Based upon ~~its~~ *his*
88 review and the recommendations of the guardian ad litem, the ~~court judge~~ shall order one of the
89 following dispositions:

90 1. If the ~~court judge~~ finds that the minor does not meet the criteria for admission specified in
91 subsection B, the ~~court judge~~ shall issue an order directing the facility to release the minor into the
92 custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed
93 to affect the terms and provisions of any valid court order of custody affecting the minor.

94 2. If the ~~court judge~~ finds that the minor meets the criteria for admission specified in subsection B,
95 the ~~court judge~~ shall issue an order authorizing continued hospitalization of the minor for up to ninety
96 days on the basis of the parent's consent.

97 Within ten days after the admission of a minor under this section, the director of the facility or the
98 director's designee shall ensure that an individualized plan of treatment has been prepared by the
99 provider responsible for the minor's treatment and has been explained to the parent consenting to the
100 admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem. The
101 minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with
102 his ability to understand and participate, and the minor's family shall be involved to the maximum extent
103 consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and
104 aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional
105 goals against which the success of treatment may be measured.

106 3. If the ~~court judge~~ determines that the available information is insufficient to permit an informed
107 determination regarding whether the minor meets the criteria specified in subsection B, ~~the court shall~~
108 ~~schedule a commitment hearing which shall be scheduled and~~ shall be conducted in accordance with the
109 procedures specified in §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up
110 to seventy-two additional hours pending the holding of the commitment hearing.

111 D. A minor admitted under this section who rescinds his objection may be retained in the hospital
112 pursuant to § 16.1-338.

113 E. If the parent who consented to a minor's admission under this section revokes his consent at any
114 time, the minor shall be released within forty-eight hours to the parent's custody unless the minor's
115 continued hospitalization is authorized pursuant to § 16.1-340 or § 16.1-345.

116 § 16.1-339. (Delayed effective date) Parental admission of an objecting minor fourteen years of age
117 or older.

118 A. A minor fourteen years of age or older who objects to admission may be admitted to a willing
119 facility for up to seventy-two hours, pending the review required by subsections B and C of this section,
120 upon the application of a parent. If admission is sought to a state hospital, the community services board
121 serving the area in which the minor resides shall provide the examination required by subsection B of

§ 16.1-338 and shall ensure that the necessary written findings, except the minor's consent, have been made before approving the admission.

B. A minor admitted under this section shall be examined within twenty-four hours of his admission by a qualified evaluator designated by the community services board serving the area where the facility is located who is not and will not be treating the minor and who has no significant financial interest in the minor's hospitalization. The evaluator shall prepare a report which shall include written findings as to whether:

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 delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified evaluator shall submit his report to the family court for the jurisdiction in which the facility is located.

C. Upon admission of a minor under this section, the facility shall immediately file a petition for judicial approval with the family court for the jurisdiction in which the facility is located. A copy of this petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the family court judge or special justice appointed pursuant to § 37.1-88 shall appoint a guardian ad litem for the minor. The court judge and the guardian ad litem shall review the petition and evaluator's report, and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. The court judge shall conduct its review in such place and manner, including the facility, as it he deems to be in the best interests of the minor. Based upon its his review and the recommendations of the guardian ad litem, the court judge shall order one of the following dispositions:

1. If the court judge finds that the minor does not meet the criteria for admission specified in subsection B, the court judge shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.

2. If the court judge finds that the minor meets the criteria for admission specified in subsection B, the court judge shall issue an order authorizing continued hospitalization of the minor for up to ninety days on the basis of the parent's consent.

Within ten days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured.

3. If the court judge determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the criteria specified in subsection B, the court shall schedule a commitment hearing which shall be scheduled and shall be conducted in accordance with the procedures specified in §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to seventy-two additional hours pending the holding of the commitment hearing.

D. A minor admitted under this section who rescinds his objection may be retained in the hospital pursuant to § 16.1-338.

E. If the parent who consented to a minor's admission under this section revokes his consent at any time, the minor shall be released within forty-eight hours to the parent's custody unless the minor's continued hospitalization is authorized pursuant to § 16.1-340 or § 16.1-345.

§ 16.1-341. Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

A. A petition for the involuntary commitment of a minor may be filed with the juvenile and domestic relations district court by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult. The petition shall include the name and address of the petitioner and the minor and shall set forth in specific terms why the petitioner believes the minor meets the criteria for involuntary commitment specified in § 16.1-345. The petition shall be taken under oath.

If a commitment hearing has been scheduled by a juvenile and domestic relations district judge pursuant to subdivision 3 of subsection C of § 16.1-339, the petition for judicial approval filed by the facility under subsection C of § 16.1-339 shall serve as the petition for involuntary commitment as long

183 as such petition complies in substance with the provisions of this subsection.

184 B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic
185 relations district court may schedule a hearing which shall occur no sooner than twenty-four hours and
186 no later than seventy-two hours from the time the petition was filed. If the seventy-two-hour period
187 expires on a Saturday, Sunday or other legal holiday, the seventy-two hours shall be extended to the
188 next day that is not a Saturday, Sunday or legal holiday. In no case may the time period between the
189 filing of the petition and the hearing under § 16.1-344 exceed ninety-six hours.

190 If the petition is not dismissed, copies of the petition, together with a notice of the hearing, shall be
191 served immediately upon the minor and the minor's parents, if they are not petitioners. No later than
192 twenty-four hours before the hearing, the ~~court~~ judge shall appoint counsel to represent the minor, unless
193 ~~it~~ he has determined that the minor has retained counsel. Upon the request of the minor's counsel, for
194 good cause shown, and after notice to the petitioner and all other persons receiving notice of the
195 hearing, the ~~court~~ judge may continue the hearing once for a period not to exceed seventy-two hours.

196 § 16.1-341. (Delayed effective date) Involuntary commitment; petition; hearing scheduled; notice and
197 appointment of counsel.

198 A. A petition for the involuntary commitment of a minor may be filed with the family court by a
199 parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible
200 adult. The petition shall include the name and address of the petitioner and the minor and shall set forth
201 in specific terms why the petitioner believes the minor meets the criteria for involuntary commitment
202 specified in § 16.1-345. The petition shall be taken under oath.

203 If a commitment hearing has been scheduled by a family court judge pursuant to subdivision 3 of
204 subsection C of § 16.1-339, the petition for judicial approval filed by the facility under subsection C of
205 § 16.1-339 shall serve as the petition for involuntary commitment as long as such petition complies in
206 substance with the provisions of this subsection.

207 B. Upon the filing of a petition for involuntary commitment of a minor, the family court may
208 schedule a hearing which shall occur no sooner than twenty-four hours and no later than seventy-two
209 hours from the time the petition was filed. If the seventy-two-hour period expires on a Saturday, Sunday
210 or other legal holiday, the seventy-two hours shall be extended to the next day that is not a Saturday,
211 Sunday or legal holiday. In no case may the time period between the filing of the petition and the
212 hearing under § 16.1-344 exceed ninety-six hours.

213 If the petition is not dismissed, copies of the petition, together with a notice of the hearing, shall be
214 served immediately upon the minor and the minor's parents, if they are not petitioners. No later than
215 twenty-four hours before the hearing, the ~~court~~ judge shall appoint counsel to represent the minor,
216 unless ~~it~~ he has determined that the minor has retained counsel. Upon the request of the minor's counsel,
217 for good cause shown, and after notice to the petitioner and all other persons receiving notice of the
218 hearing, the ~~court~~ judge may continue the hearing once for a period not to exceed seventy-two hours.

219 § 16.1-342. Involuntary commitment; clinical evaluation.

220 Upon the filing of a petition for involuntary commitment, the ~~juvenile and domestic relations district~~
221 ~~court~~ judge shall direct the community services board serving the area in which the minor is located to
222 arrange for an evaluation, if one has not already been performed pursuant to subsection B of § 16.1-339,
223 by a qualified evaluator who is not and will not be treating the minor and who has no significant
224 financial interest in the facility to which the minor would be committed. The petitioner, all public
225 agencies, and all providers or programs which have treated or who are treating the minor, shall
226 cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of
227 treatment or education of the minor. At least twenty-four hours before the scheduled hearing, the
228 evaluator shall submit to the court a written report which includes the evaluator's opinion regarding
229 whether the minor meets the criteria for involuntary commitment specified in § 16.1-345. The evaluator
230 shall attend the hearing as a witness.

231 § 16.1-342. (Delayed effective date) Involuntary commitment; clinical evaluation.

232 Upon the filing of a petition for involuntary commitment, the ~~family court~~ judge shall direct the
233 community services board serving the area in which the minor is located to arrange for an evaluation, if
234 one has not already been performed pursuant to subsection B of § 16.1-339, by a qualified evaluator
235 who is not and will not be treating the minor and who has no significant financial interest in the facility
236 to which the minor would be committed. The petitioner, all public agencies, and all providers or
237 programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall
238 promptly deliver, upon request and without charge, all records of treatment or education of the minor.
239 At least twenty-four hours before the scheduled hearing, the evaluator shall submit to the court a written
240 report which includes the evaluator's opinion regarding whether the minor meets the criteria for
241 involuntary commitment specified in § 16.1-345. The evaluator shall attend the hearing as a witness.

242 § 16.1-343. Involuntary commitment; duties of attorney for the minor.

243 As far as possible in advance of a hearing conducted under § 16.1-344, or an appeal from such a
244 hearing, the minor's attorney shall interview the minor; the minor's parent, if available; the petitioner;

and the qualified evaluator. He shall interview all other material witnesses, and examine all relevant diagnostic and other reports. The obligation of the minor's attorney during the hearing or appeal is to interview witnesses, obtain independent experts when possible, cross-examine adverse witnesses, present witnesses on behalf of the minor, articulate the wishes of the minor, and otherwise fully represent the minor in the proceeding. ~~Counsel appointed by the court~~ *Court-appointed counsel* shall be compensated in an amount not to exceed \$100.

§ 16.1-344. Involuntary commitment; hearing.

The court shall summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony shall be under oath. The rules of evidence shall apply; however, the evaluator's report required by § 16.1-342 shall be admissible into evidence by stipulation of the parties. The petitioner, minor and, with leave of court for good cause shown, any other person shall be given the opportunity to present evidence and cross-examine witnesses. The hearing shall be closed to the public unless the minor and petitioner request that it be open. Within thirty days of any final order committing the minor or dismissing the petition, the minor or petitioner shall have the right to appeal de novo to the circuit court having jurisdiction where the minor was committed or where the minor is hospitalized pursuant to the commitment order. The ~~juvenile and domestic relations district court~~ *judge* shall appoint an attorney to represent any minor desiring to appeal who does not appear to be already represented.

§ 16.1-344. (Delayed effective date) Involuntary commitment; hearing.

The court shall summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony shall be under oath. The rules of evidence shall apply; however, the evaluator's report required by § 16.1-342 shall be admissible into evidence by stipulation of the parties. The petitioner, minor and, with leave of court for good cause shown, any other person shall be given the opportunity to present evidence and cross-examine witnesses. The hearing shall be closed to the public unless the minor and petitioner request that it be open. Within thirty days of any final order committing the minor or dismissing the petition, the minor or petitioner shall have the right to appeal de novo to the circuit court having jurisdiction where the minor was committed or where the minor is hospitalized pursuant to the commitment order. The ~~family court~~ *judge* shall appoint an attorney to represent any minor desiring to appeal who does not appear to be already represented.

§ 16.1-345. Involuntary commitment; criteria.

The ~~court~~ *judge* shall order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed ninety days if ~~it~~ *he* 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 delusional 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 ~~inpatient treatment is ordered~~, such *Inpatient* treatment is the least restrictive alternative that meets the minor's needs. If the ~~court~~ *judge* finds that inpatient treatment is not the least restrictive treatment, ~~the court~~ *he* may order the minor to participate in outpatient or other clinically appropriate treatment.

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the ~~court~~ *judge* shall order inpatient treatment only if ~~it~~ *he* finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, or normal development, and that issuance of a removal order or protective order is authorized by § 16.1-252 or § 16.1-253.

Upon finding that the best interests of the minor so require, the ~~court~~ *judge* 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 the Department of Mental Health, Mental Retardation and Substance Abuse Services. The judge shall order the sheriff to transport the minor to the designated mental health facility as specified in § 37.1-71. The transportation of the committed minor by the minor's parent may be authorized at the discretion of the judge.

§ 16.1-347. Fees and expenses for qualified evaluators.

Every qualified evaluator appointed by the ~~court~~ *judge* to conduct an evaluation pursuant to § 16.1-342 who is not regularly employed by the Commonwealth shall be compensated for fees and

306 expenses as provided in § 37.1-89. The cost of an evaluation conducted pursuant to § 16.1-338 or
307 § 16.1-339 shall be considered for all purposes a cost of treatment and shall be compensated as a
308 professional fee billed by or on behalf of the qualified evaluator to the patient or any responsible third
309 party payor.

310 § 16.1-348. Availability of judge.

311 The chief judge of every juvenile and domestic relations district court shall establish and require that
312 a judge, ~~as defined in § 37.1-1~~ *substitute judge or special justice appointed pursuant to § 37.1-88*, be
313 available seven days a week, twenty-four hours a day, for the purpose of performing the duties
314 established by this article.

315 § 16.1-348. (Delayed effective date) Availability of judge.

316 The chief judge of every family court shall establish and require that a judge, ~~as defined in § 37.1-1~~
317 *substitute judge or special justice appointed pursuant to § 37.1-88*, be available seven days a week,
318 twenty-four hours a day, for the purpose of performing the duties established by this article.

319 § 16.1-349. *Special justices to perform duties of judges.*

320 *A special justice appointed pursuant to § 37.1-88 may perform any duty required of a judge by this*
321 *article. [Special training regarding procedures, laws and issues related to children and families shall*
322 *be provided to special justices.]*

323 § 37.1-88. Special justices to perform duties of judge under this title.

324 The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of
325 performing the duties required of a judge by this title *or Article 16 (§ 16.1-335 et seq.) of Chapter 11 of*
326 *Title 16.1*. At the time of appointment each such special justice shall be a person licensed to practice
327 law in this Commonwealth, shall have all the powers and jurisdiction conferred upon a judge by this
328 title and shall serve under the supervision and at the pleasure of the chief judge making the
329 appointment. Within six months of appointment, each special justice appointed on or after January 1,
330 1996, shall complete a minimum training program as prescribed by the Executive Secretary of the
331 Supreme Court. *[Special justices shall receive specialty training on procedures, laws and issues related*
332 *to children and families.]* Special justices shall collect the fees prescribed in this title for such service
333 and shall retain fees unless the governing body of the county or city in which such services are
334 performed shall provide for the payment of an annual salary for such services, in which event such fees
335 shall be collected and paid into the treasury of such county or city.