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HOUSE BILL NO. 2602

Offered January 20, 1997

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

Patron—Ruff

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 37.1-67.3 of the Code of Virginia is amended and reenacted as follows:**

§ 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, 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 or a 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 psychologist is not available, any mental health professional who is (i) licensed in Virginia through the Department of Health Professions and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be

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60 able to provide an independent examination of the person. The examiner shall not be related by blood or
61 marriage to the person, shall not be responsible for treating the person, shall have no financial interest in
62 the admission or treatment of the person, shall have no investment interest in the hospital detaining or
63 admitting the person under this article, and, except for employees of state hospitals and of the U.S.
64 Department of Veterans Affairs, shall not be employed by such hospital. For purposes of this section,
65 investment interest means the ownership or holding of an equity or debt security, including, but not
66 limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes,
67 or other equity or debt instruments.

68 All such examinations shall be conducted in private. The judge shall summons the examiner who
69 shall certify that he has personally examined the individual and has probable cause to believe that the
70 individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or
71 (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and
72 (iii) requires or does not require involuntary hospitalization or treatment. Alternatively, the judge, in his
73 discretion, may accept written certification of the examiner's findings if the examination has been
74 personally made within the preceding five days and if there is no objection sustained to the acceptance
75 of such written certification by the person or his attorney. The judge shall not render any decision on
76 the petition until such examiner has presented his report either orally or in writing.

77 Except as otherwise provided in this section, prior to making any adjudication that such person is
78 mentally ill and shall be confined to an institution pursuant to this section, the judge shall require from
79 the community services board which serves the political subdivision where the person resides a
80 prescreening report, and the board or clinic shall provide such a report within forty-eight hours or within
81 seventy-two hours if the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. The
82 report shall state whether the person is deemed to be so seriously mentally ill that he is substantially
83 unable to care for himself, an imminent danger to himself or others as a result of mental illness and in
84 need of involuntary hospitalization or treatment, whether there is no less restrictive alternative to
85 institutional confinement and what the recommendations are for that person's care and treatment.
86 *However, if a person has been confined for treatment in a state hospital for a period of five years or*
87 *more, the judge may proceed to adjudicate whether the person is mentally ill and should be confined*
88 *pursuant to this section without requesting a prescreening report from the community services board.* In
89 the case of a person sentenced and committed to the Department of Corrections and who has been
90 examined by a psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the
91 person is mentally ill and should be confined pursuant to this section without requesting a prescreening
92 report from the community services board.

93 After observing the person and obtaining the necessary positive certification and other relevant
94 evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or
95 others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be
96 substantially unable to care for himself, and (iii) that alternatives to involuntary confinement and
97 treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to
98 institutional confinement and treatment, the judge shall by written order and specific findings so certify
99 and order that the person be placed in a hospital or other facility for a period of treatment not to exceed
100 180 days from the date of the court order. Such placement shall be in a hospital or other facility
101 designated by the community services board which serves the political subdivision in which the person
102 was examined as provided in this section. If the community services board does not provide a placement
103 recommendation at the commitment hearing, the person shall be placed in a hospital or other facility
104 designated by the Commissioner.

105 After observing the person and obtaining the necessary positive certification and other relevant
106 evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or
107 others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be
108 substantially unable to care for himself, and (iii) that less restrictive alternatives to institutional
109 confinement and treatment have been investigated and are deemed suitable, and if, moreover, the judge
110 finds specifically that (i) the patient has the degree of competency necessary to understand the
111 stipulations of his treatment, (ii) the patient expresses an interest in living in the community and agrees
112 to abide by his treatment plan, (iii) the patient is deemed to have the capacity to comply with the
113 treatment plan, (iv) the ordered treatment can be delivered on an outpatient basis, and (v) the ordered
114 treatment can be monitored by the community services board or designated providers, the judge shall
115 order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient
116 involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.5, or such other appropriate
117 course of treatment as may be necessary to meet the needs of the individual. Upon failure of the patient
118 to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to
119 the patient and after a commitment hearing, order involuntary commitment for treatment at a hospital.
120 The community services board which serves the political subdivision in which the person resides shall
121 recommend a specific course of treatment and programs for provision of such treatment. The community

122 services board shall monitor the person's compliance with such treatment as may be ordered by the court
123 under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by
124 the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this
125 section.

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

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

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