

973579442

## HOUSE BILL NO. 2603

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

INTRODUCED

HB2603

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

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

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

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

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

the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this section.

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