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HOUSE BILL NO. 681

Offered January 22, 1998

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

Patrons—Thomas, Bloxom, Christian, Clement, Cranwell, Croshaw, Darner, DeBoer, Deeds, Diamonstein, Dickinson, Hall, Hull, Jackson, Joannou, Johnson, Jones, J.C., Keating, Moran, Murphy, Phillips, Plum, Puller, Robinson, Spruill, Stump, Tate, Van Landingham, Van Yahres, Williams and Woodrum; Senators: Gartlan and Martin

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That §§ 37.1-67.01 and 37.1-67.1 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 *and who has completed a certification program approved by the Department* in order to assess the need for hospitalization. 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 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 *and who has completed a certification program approved by the Department*, 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. 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

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60 mental illness *and who has completed a certification program approved by the Department* or (ii) there
61 is a significant physical, psychological or medical risk, to the person or to others, associated with
62 conducting such evaluation.

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

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

85 In any case in which temporary detention is ordered pursuant to this section upon petition of a
86 person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate
87 executing the order of temporary detention shall place such person in a hospital designated by
88 § 19.2-169.6 B, or if such facility is not available, the defendant shall be detained in a jail or other place
89 of confinement for persons charged with criminal offenses and shall be transferred to such hospital as
90 soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant,
91 either (i) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined
92 in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be
93 represented by counsel as specified in § 37.1-67.3. In any case in which temporary detention is ordered
94 pursuant to this section upon petition for involuntary commitment of a minor, the petition shall be filed
95 and the hearing scheduled in accordance with the provisions of § 16.1-341.

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

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

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