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HOUSE BILL NO. 352

Offered January 11, 2006

Prefiled January 6, 2006

A BILL to amend and reenact §§ 37.2-808 and 37.2-809 of the Code of Virginia, relating to emergency custody and temporary detention orders.

 Patron—Hamilton

 Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That §§ 37.2-808 and 37.2-809 of the Code of Virginia are amended and reenacted as follows:**

§ 37.2-808. Emergency custody; issuance and execution of order.

A. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when he has probable cause to believe that any person within his judicial district (i) has mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment. This evaluation or treatment shall be conducted immediately in accordance with state and federal law.

D. The magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board or behavioral health authority that designated the person to perform the evaluation required in subsection B to execute the order and provide transportation. If the community services board or behavioral health authority serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's or behavioral health authority's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person is presently located to execute the order and provide transportation.

E. 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 emergency custody order pursuant to this section.

F. 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 or treatment without prior authorization. Such evaluation shall be conducted immediately.

G. 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.

H. 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 ~~six~~ *four* hours.

I. If an emergency custody order 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 magistrate thereof.

§ 37.2-809. Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board or behavioral health authority who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii)

59 is able to provide an independent examination of the person, (iv) is not related by blood or marriage to
60 the person being evaluated, (v) has no financial interest in the admission or treatment of the person
61 being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under
62 this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans
63 Affairs, is not employed by the facility.

64 "Employee" means an employee of the local community services board or behavioral health authority
65 who is skilled in the assessment and treatment of mental illness and has completed a certification
66 program approved by the Department.

67 "Investment interest" means the ownership or holding of an equity or debt security, including shares
68 of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or
69 debt instruments.

70 B. A magistrate may issue, upon the sworn petition of any responsible person or upon his own
71 motion and only after an in-person evaluation by an employee or a designee of the local community
72 services board, a temporary detention order if it appears from all evidence readily available, including
73 any recommendation from a physician or clinical psychologist treating the person, that the person (i) has
74 mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so
75 seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization
76 or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or
77 treatment.

78 C. A magistrate may issue a temporary detention order without an emergency custody order
79 proceeding. A magistrate may issue a temporary detention order without a prior in-person evaluation if
80 (i) the person has been personally examined within the previous 72 hours by an employee or a designee
81 of the local community services board or (ii) there is a significant physical, psychological, or medical
82 risk to the person or to others associated with conducting such evaluation.

83 D. An employee or a designee of the local community services board shall determine the facility of
84 temporary detention for all individuals detained pursuant to this section. The facility of temporary
85 detention shall be one that has been approved pursuant to regulations of the Board. *Whenever possible,*
86 *the* ~~The~~ facility shall be identified on the preadmission screening report and indicated on the temporary
87 detention order. *When the facility has not been identified on the temporary detention order, the*
88 *employee or designee of the local community services board shall notify the magistrate when such a*
89 *facility has been identified.* Except as provided in § 37.2-811 for defendants requiring hospitalization in
90 accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place
91 of confinement for persons charged with criminal offenses.

92 E. Any facility caring for a person placed with it pursuant to a temporary detention order is
93 authorized to provide emergency medical and psychiatric services within its capabilities when the facility
94 determines that the services are in the best interests of the person within its care. The costs incurred as a
95 result of the hearings and by the facility in providing services during the period of temporary detention
96 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the
97 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance
98 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by
99 regulation, establish a reasonable rate per day of inpatient care for temporary detention.

100 F. The employee or the designee of the local community services board who is conducting the
101 evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention
102 order, the insurance status of the person. Where coverage by a third party payor exists, the facility
103 seeking reimbursement under this section shall first seek reimbursement from the third party payor. The
104 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances
105 covered by the third party payor have been received.

106 G. The duration of temporary detention shall not exceed 48 hours prior to a hearing. If the 48-hour
107 period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained,
108 as herein provided, until the next day that is not a Saturday, Sunday, or legal holiday.

109 H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter
110 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office
111 of the clerk of the issuing court or, if the office is not open, to any magistrate thereof. Subsequent
112 orders may be issued upon the original petition within 96 hours after the petition is filed. However, a
113 magistrate must again obtain the advice of an employee or a designee of the local community services
114 board prior to issuing a subsequent order upon the original petition. Any petition for which no
115 temporary detention order or other process in connection therewith is served on the subject of the
116 petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the
117 clerk of the issuing court.

118 I. The chief judge of each general district court shall establish and require that a magistrate, as
119 provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing
120 the duties established by this section. Each community services board or behavioral health authority

121 shall provide to each general district court and magistrate's office within its service area a list of its
122 employees and designees who are available to perform the evaluations required herein.

INTRODUCED

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