

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 807

An Act to amend and reenact §§ 16.1-339, 16.1-341, and 16.1-343 of the Code of Virginia, relating to commitment of minors; appointment of counsel and guardians ad litem.

[S 247]

Approved April 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-339, 16.1-341, and 16.1-343 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-339. Parental admission of an objecting minor 14 years of age or older.

A. A minor 14 years of age or older who objects to admission may be admitted to a willing facility for up to 72 hours, pending the review required by subsections B and C of this section, upon the application of a parent. If admission is sought to a state hospital, the community services board or behavioral health authority 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 24 hours of his admission by a qualified evaluator designated by the community services board or behavioral health authority 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 that 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 juvenile and domestic relations district 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 juvenile and domestic relations district 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 judge shall appoint a guardian ad litem for the minor *and counsel to represent the minor, unless it has been determined that the minor has retained counsel*. The court 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 shall conduct its review in such place and manner, including the facility, as it deems to be in the best interests of the minor. Based upon its review and the recommendations of the guardian ad litem, the court shall order one of the following dispositions:

1. If the court finds that the minor does not meet the criteria for admission specified in subsection B, the court 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 finds that the minor meets the criteria for admission specified in subsection B, the court shall issue an order authorizing continued hospitalization of the minor for up to 90 days on the basis of the parent's consent.

Within 10 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 *and to counsel for the minor*. 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 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 that 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 72 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 48 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 serving the jurisdiction in which the minor is located by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court. 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 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 as such petition complies in substance with the provisions of this subsection.

B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic relations district court serving the jurisdiction in which the minor is located may schedule a hearing which shall occur no sooner than 24 hours and no later than 72 hours from the time the petition was filed. If the 72-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 72 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. The attorney for the minor, *the guardian ad litem for the minor*, the attorney for the Commonwealth in the jurisdiction giving rise to the detention, and the juvenile and domestic relations district court having jurisdiction over any minor in detention or shelter care shall be given notice prior to the hearing.

If the petition is not dismissed, copies of the petition, together with a notice of the hearing, shall be served immediately upon the minor and the minor's parents, if they are not petitioners. No later than 24 hours before the hearing, the court shall appoint *a guardian ad litem for the minor* and counsel to represent the minor, unless it has determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause shown, and after notice to the petitioner and all other persons receiving notice of the hearing, the court may continue the hearing once for a period not to exceed 72 hours.

Any recommendation made by a state mental health facility or state hospital regarding the minor's involuntary commitment may be admissible during the course of the hearing.

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

As far as possible in advance of *any action taken pursuant to the filing of a petition under § 16.1-339*, a hearing conducted under § 16.1-344, or an appeal from such a 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.

Any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health care provider shall permit the attorney appointed pursuant to this article to inspect and copy, without the consent of the minor or his parents, any records relating to the minor whom the attorney represents.

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 shall be compensated in an amount not to exceed \$100.