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SENATE BILL NO. 67

Offered January 9, 2008

Prefiled December 21, 2007

A BILL to amend and reenact §§ 16.1-336 and 16.1-339 of the Code of Virginia, relating to parental admission of minors for inpatient treatment; minors incapable of giving consent.

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-336 and 16.1-339 of the Code of Virginia are amended and reenacted as follows:****§ 16.1-336. Definitions.**

When used in this article, unless the context otherwise requires:

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor fourteen years of age or older and by a parent or a legally authorized custodian.

"Incapable of making an informed decision" means unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to the treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the State Mental Health, Mental Retardation and Substance Abuse Services Board to be substantially similar to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

"Judge" means a juvenile and domestic relations district judge. In addition, "judge" includes a retired judge sitting by designation pursuant to § 16.1-69.35, substitute judge, or special justice authorized by § 37.2-803 who has completed a training program regarding the provisions of this article, prescribed by the Executive Secretary of the Supreme Court.

"Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the minor or others from physical injury.

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior. Mental retardation, head injury, a learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness within the meaning of this article.

"Minor" means a person less than eighteen years of age.

"Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director of the local department of social services, or his designee, may stand as the minor's parent when the minor is in the legal custody of the local department of social services.

"Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology who is skilled in the diagnosis and treatment of mental illness in minors and familiar with the provisions of this article. If such psychiatrist or psychologist is unavailable, any mental health professional (i) licensed in Virginia through the Department of Health Professions or (ii) employed by a community services board who is skilled in the diagnosis and treatment of mental illness in minors and who is familiar with the provisions of this article may serve as the qualified evaluator.

"Treatment" means any planned intervention intended to improve a minor's functioning in those areas which show impairment as a result of mental illness.

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59 § 16.1-339. Parental admission of an objecting minor 14 years of age or older.

60 A. A minor 14 years of age or older who (i) objects to admission, or (ii) is incapable of making an
61 informed decision may be admitted to a willing facility for up to 72 hours, pending the review required
62 by subsections B and C of this section, upon the application of a parent. If admission is sought to a
63 state hospital, the community services board or behavioral health authority serving the area in which the
64 minor resides shall provide the examination required by subsection B of § 16.1-338 and shall ensure that
65 the necessary written findings, except the minor's consent, have been made before approving the
66 admission.

67 B. A minor admitted under this section shall be examined within 24 hours of his admission by a
68 qualified evaluator designated by the community services board or behavioral health authority serving
69 the area where the facility is located who is not and will not be treating the minor and who has no
70 significant financial interest in the minor's hospitalization. The evaluator shall prepare a report that shall
71 include written findings as to whether:

72 1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent
73 that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is
74 experiencing a serious deterioration of his ability to care for himself in a developmentally
75 age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of
76 functioning in hydration, nutrition, self-protection, or self-control;

77 2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit
78 from the proposed treatment; and

79 3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified
80 evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction
81 in which the facility is located.

82 C. Upon admission of a minor under this section, the facility shall immediately file a petition for
83 judicial approval with the juvenile and domestic relations district court for the jurisdiction in which the
84 facility is located. A copy of this petition shall be delivered to the minor's consenting parent. Upon
85 receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the judge shall
86 appoint a guardian ad litem for the minor. The court and the guardian ad litem shall review the petition
87 and evaluator's report and shall ascertain the views of the minor, the minor's consenting parent, the
88 evaluator, and the attending psychiatrist. The court shall conduct its review in such place and manner,
89 including the facility, as it deems to be in the best interests of the minor. Based upon its review and the
90 recommendations of the guardian ad litem, the court shall order one of the following dispositions:

91 1. If the court finds that the minor does not meet the criteria for admission specified in subsection B,
92 the court shall issue an order directing the facility to release the minor into the custody of the parent
93 who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms
94 and provisions of any valid court order of custody affecting the minor.

95 2. If the court finds that the minor meets the criteria for admission specified in subsection B, the
96 court shall issue an order authorizing continued hospitalization of the minor for up to 90 days on the
97 basis of the parent's consent.

98 Within 10 days after the admission of a minor under this section, the director of the facility or the
99 director's designee shall ensure that an individualized plan of treatment has been prepared by the
100 provider responsible for the minor's treatment and has been explained to the parent consenting to the
101 admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem. The
102 minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with
103 his ability to understand and participate, and the minor's family shall be involved to the maximum extent
104 consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and
105 aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional
106 goals against which the success of treatment may be measured.

107 3. If the court determines that the available information is insufficient to permit an informed
108 determination regarding whether the minor meets the criteria specified in subsection B, the court shall
109 schedule a commitment hearing that shall be conducted in accordance with the procedures specified in
110 §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to 72 additional hours
111 pending the holding of the commitment hearing.

112 D. A minor admitted under this section who rescinds his objection may be retained in the hospital
113 pursuant to § 16.1-338.

114 E. If the parent who consented to a minor's admission under this section revokes his consent at any
115 time, the minor shall be released within 48 hours to the parent's custody unless the minor's continued
116 hospitalization is authorized pursuant to § 16.1-340 or 16.1-345.