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SENATE BILL NO. 920

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 30, 2013)

(Patron Prior to Substitute—Senator Carrico)

A *BILL to amend and reenact §§ 37.2-808 and 37.2-810 of the Code of Virginia, relating to mental health patients; transportation.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-808 and 37.2-810 of the Code of Virginia are amended and reenacted as follows:

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

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

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 determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made 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.

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. However, in cases in which the emergency custody order is based upon a finding that the person who is the subject of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs *but there is no substantial likelihood that the person will cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information*, the magistrate ~~may~~ shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy

60 of the emergency custody order to the court designated by the magistrate as soon as is practicable.
61 Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an
62 order to the court may be accomplished electronically or by facsimile.

63 Transportation under this section shall include transportation to a medical facility as may be
64 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in
65 accordance with state and federal law. Transportation under this section shall include transportation to a
66 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the
67 emergency custody order may be detained requires a medical evaluation prior to admission.

68 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
69 the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the
70 community services board that designated the person to perform the evaluation required in subsection B
71 to execute the order and, in cases in which transportation is ordered to be provided by the primary
72 law-enforcement agency, provide transportation. If the community services board serves more than one
73 jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular
74 jurisdiction within the community services board's service area where the person who is the subject of
75 the emergency custody order was taken into custody or, if the person has not yet been taken into
76 custody, the primary law-enforcement agency from the jurisdiction where the person is presently located
77 to execute the order and provide transportation.

78 E. The law-enforcement agency or alternative transportation provider providing transportation
79 pursuant to this section may transfer custody of the person to the facility or location to which the person
80 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is
81 licensed to provide the level of security necessary to protect both the person and others from harm, (ii)
82 is actually capable of providing the level of security necessary to protect the person and others from
83 harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered
84 into an agreement or memorandum of understanding with the law-enforcement agency setting forth the
85 terms and conditions under which it will accept a transfer of custody, provided, however, that the
86 facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer
87 of custody.

88 F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county,
89 city, or town in which he serves to any point in the Commonwealth for the purpose of executing an
90 emergency custody order pursuant to this section.

91 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
92 probable cause to believe that a person meets the criteria for emergency custody as stated in this section
93 may take that person into custody and transport that person to an appropriate location to assess the need
94 for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
95 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
96 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for
97 the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
98 custody shall not exceed four hours from the time the law-enforcement officer takes the person into
99 custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the
100 magistrate shall issue an order extending the period of emergency custody one time for an additional
101 period not to exceed two hours. Good cause for an extension includes the need for additional time to
102 allow (i) the community services board to identify a suitable facility in which the person can be
103 temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if
104 necessary.

105 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be
106 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial
107 limits of the county, city, or town in which he serves may take such person into custody and transport
108 him to an appropriate location to assess the need for hospitalization or treatment without prior
109 authorization when the law-enforcement officer determines (i) that the person has revoked consent to be
110 transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his
111 observations, that probable cause exists to believe that the person meets the criteria for emergency
112 custody as stated in this section. The period of custody shall not exceed four hours from the time the
113 law-enforcement officer takes the person into custody. However, upon a finding by a magistrate that
114 good cause exists to grant an extension, the magistrate shall issue an order extending the period of
115 emergency custody one time for an additional period not to exceed two hours. Good cause for an
116 extension includes the need for additional time to allow (a) the community services board to identify a
117 suitable facility in which the person can be temporarily detained pursuant to § 37.2-809, or (b) a medical
118 evaluation of the person to be completed if necessary.

119 I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from
120 obtaining emergency medical treatment or further medical evaluation at any time for a person in his
121 custody as provided in this section.

J. The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed four hours from the time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate shall extend the emergency custody order one time for a second period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (i) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if necessary. Any family member, as defined in § 37.2-100, employee or designee of the local community services board as defined in § 37.2-809, treating physician, or law-enforcement officer may request the two-hour extension.

K. If an emergency custody order is not executed within six 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 serving the jurisdiction of the issuing court.

L. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical screening and assessment services provided to persons with mental illnesses while in emergency custody.

§ 37.2-810. Transportation of person in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the order and provide transportation. However, *in cases in which the temporary detention order is based upon a finding that the person who is the subject of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs but there is no substantial likelihood that the person will cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information*, the magistrate ~~may~~ shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the temporary detention order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the temporary detention order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

The order may include transportation of the person to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

C. 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 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.