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HOUSE BILL NO. 1088**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 10, 2016)

(Patron Prior to Substitute—Delegate Cline)

A BILL to amend and reenact §§ 19.2-34 through 19.2-38, 19.2-43, 19.2-44, 19.2-45, 19.2-46, 19.2-46.1, 19.2-48.1, and 37.2-809 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-35.1, relating to magistrates.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-34 through 19.2-38, 19.2-43, 19.2-44, 19.2-45, 19.2-46, 19.2-46.1, 19.2-48.1, and 37.2-809 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-35.1 as follows:

§ 19.2-34. Number of magistrates.

There shall be appointed for each judicial district as many magistrates as are necessary for the effective administration of justice. ~~The positions of all employees of the magistrate system~~ Magistrates and any other personnel in the office of the magistrate shall be authorized by the Committee on District Courts established pursuant to § 16.1-69.33.

§ 19.2-35. Appointment; supervision generally.

Magistrates and any other personnel in the office of the magistrate shall be appointed by the ~~Executive Secretary of the Supreme Court of Virginia in consultation with the chief judges a majority of the chief judges of the circuit courts for the judicial circuits having jurisdiction within the magisterial region, as set forth in § 19.2-44, in consultation with the chief general district court judges and the chief juvenile and domestic relations district court judges of the district courts located in each judicial circuit.~~ Each magistrate shall be appointed to serve one or more of the magisterial regions created by the ~~Executive Secretary.~~ Each magisterial region shall be comprised of one or more judicial districts. ~~The Executive Secretary the entire magisterial region for which the appointment is made.~~ The chief circuit court judges shall have full supervisory authority over the magistrates so appointed but may delegate this authority to the chief general district court judges. Notwithstanding any other provision of law, the only methods for the selection of magistrates shall be as set out in this section. The power to appoint and supervise magistrates shall be exercised by a majority of the chief circuit court judges in that magisterial region. In the case of a tie, such fact shall be communicated to the Chief Justice of the Supreme Court of Virginia, who shall appoint a circuit court judge from another magisterial region to act as tie breaker.

The chief circuit court judges, in consultation with the chief general district court judges and the chief juvenile and domestic relations district court judges of the district courts located in that judicial circuit, may also appoint as many substitute magistrates as may be authorized by the Committee on District Courts. The order of appointment of such substitute magistrates shall specify the period such substitute magistrates shall serve, and during this period such substitute magistrates shall exercise all the powers enumerated in § 19.2-45 in the magisterial region for which the appointment is made.

If a magistrate of any magisterial region is absent or unable through sickness or other disability to perform his duties, the chief magistrate of that magisterial region may call upon any off-duty magistrate of an adjoining magisterial region to serve in a replacement capacity. When so designated, the replacement magistrate shall have all the authority and power of a magistrate of that region.

No person shall be appointed under this section until he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search. No person with a criminal conviction for a felony shall be appointed as a magistrate.

§ 19.2-35.1. When chief general district court judges to exercise general supervisory power; rules and regulations.

When delegated the authority by the chief circuit court judges, the chief general district court judges shall exercise general supervisory power over the administration of magistrates within the magisterial region. When such authority is delegated, it shall be the duty of the chief general district court judges to supervise the magistrates within the magisterial region and to promulgate such reasonable rules and regulations as may be deemed necessary to supplement or clarify the provisions of this title with respect to magistrates, to include fixing the time and place of the sitting of such magistrates. The power to appoint and supervise magistrates shall be exercised by a majority of the chief general district court judges in that magisterial region. In the case of a tie, such fact shall be communicated to the Chief Justice of the Supreme Court of Virginia, who shall appoint a district court judge from another magisterial region to act as tie breaker.

§ 19.2-36. Chief magistrates.

60 A. The ~~Executive Secretary of the Supreme Court of Virginia~~ *chief circuit court judges of the circuit*
61 *courts in a magisterial region, in consultation with the chief general district court judges and the chief*
62 *juvenile and domestic relations district court judges of the district courts in that magisterial region,* may
63 appoint a chief ~~magistrates~~ *magistrate*, for the ~~purpose~~ *purposes* of maintaining the proper schedules,
64 assisting in the training of the magistrates, and being responsible to the ~~Executive Secretary~~ *chief circuit*
65 *court judges* for the conduct of the magistrates and to further assist the ~~Office of the Executive~~
66 ~~Secretary~~ *chief circuit court judges* in the operation of ~~one or more of the magisterial regions~~ *the*
67 *magistrate system*. The chief magistrate shall exercise direct daily supervision over the magistrates he
68 supervises and shall have the power to suspend without pay a magistrate after consultation and with the
69 concurrence of the ~~Executive Secretary~~ *chief circuit court judges*. *The power to appoint a chief*
70 *magistrate shall be exercised by a majority of the chief circuit court judges in that magisterial region.*
71 *In the case of a tie, such fact shall be communicated to the Chief Justice of the Supreme Court of*
72 *Virginia, who shall appoint a circuit court judge from another magisterial region to act as tie breaker.*

73 B. To be eligible for appointment as chief magistrate, a person shall meet all of the qualifications of
74 a magistrate under § 19.2-37 and ~~must~~ be a member in good standing of the Virginia State Bar. His
75 appointment as chief magistrate shall terminate effective on the date on which his membership in good
76 standing ceases. The requirements of this subsection relating to membership in the Virginia State Bar
77 shall not apply to any person appointed as a chief magistrate before July 1, 2008, who continues in that
78 capacity without a break in service.

79 **§ 19.2-37. Magistrates; eligibility for appointment; restrictions on activities.**

80 A. Any person who is a United States citizen and resident of the Commonwealth may be appointed
81 to the office of magistrate under this title subject to the limitations of Chapter 28 (§ 2.2-2800 et seq.) of
82 Title 2.2 and of this section.

83 B. Every person appointed as a magistrate on and after July 1, 2008, shall be required to have a
84 bachelor's degree from an accredited institution of higher education. A person initially appointed as a
85 magistrate prior to July 1, 2008, who continues in office without a break in service is not required to
86 have a bachelor's degree from an accredited institution of higher education.

87 C. A person shall not be eligible for appointment as a magistrate under the provisions of this title:
88 ~~(a)~~ *(i)* if such person is a law-enforcement officer; ~~(b)~~ *(ii)* if such person or his spouse is a clerk, deputy
89 or assistant clerk, or employee of any such clerk of a district or circuit court, provided that the
90 Committee on District Courts may authorize a magistrate to assist in the district court clerk's office on a
91 part-time basis; ~~(c)~~ *(iii)* if the parent, child, spouse, or sibling of such person is a district or circuit court
92 judge in the magisterial region where he will serve; or ~~(d)~~ *(iv)* if such person is the chief executive
93 officer, or a member of the board of supervisors, town or city council, or other governing body, for any
94 political subdivision of the Commonwealth.

95 D. No magistrate shall issue any warrant or process in complaint of his spouse, child, grandchild,
96 parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law or sister-in-law, nephew,
97 niece, uncle, aunt, first cousin, guardian, or ward.

98 E. A magistrate may not engage in any other activity for financial gain during the hours that he is
99 serving on duty as a magistrate. A magistrate may not be employed outside his duty hours without the
100 prior written approval of the ~~Executive Secretary~~ *chief circuit court judges*.

101 F. No person appointed as a magistrate on or after July 1, 2008, may engage in the practice of law.

102 G. A magistrate who is designated as a marriage celebrant under § 20-25 may not accept a fee, a
103 gratuity, or any other thing of value for exercise of authority as a marriage celebrant.

104 **§ 19.2-38. Probationary period; compensation and benefits; vacancies; revocation of**
105 **appointment.**

106 Persons appointed as magistrates under the provisions of this chapter shall serve ~~at the pleasure of~~
107 ~~the Executive Secretary~~ *for a term of four years. Such term shall commence upon appointment and*
108 *qualification.* Upon appointment ~~by the Executive Secretary~~, every magistrate shall serve initially for a
109 nine-month probationary period during which the magistrate must complete the minimum training
110 program as established by the Committee on District Courts and satisfactorily complete a certification
111 examination. Any magistrate who fails to successfully pass the certification examination shall not serve
112 beyond the nine-month probationary period. The probationary period described in this section shall not
113 apply to any magistrate serving on July 1, 2008, who has successfully completed the minimum training
114 program and passed the certification examination, provided there is no break in service after July 1,
115 2008. Magistrates shall be entitled to compensation and other benefits only from the time they take
116 office. *Appointments made under the provisions of this chapter shall be revocable at the pleasure of the*
117 *chief circuit court judges.*

118 **§ 19.2-43. Duty of Executive Secretary of Supreme Court.**

119 It shall be the duty of the Executive Secretary of the Supreme Court to ~~exercise general supervisory~~
120 ~~power over the administration of magistrates and adopt such policies as are deemed necessary to~~
121 ~~supplement or clarify the provisions of this chapter with respect to such magistrates, to include fixing~~

the time and place such magistrates shall serve. The Executive Secretary shall assist the chief general district court judges and general district courts in the supervision of magistrates. The Executive Secretary shall conduct mandatory training sessions and meetings for magistrates and provide information and materials for their use. He may appoint one or more magistrates to assist him and, in addition, with the approval of the Chief Justice, require annual reports to be filed by the magistrates on their work as such, fees associated therewith, and other information pertinent to their office, on forms to be furnished by him. The Executive Secretary may appoint and employ such personnel as are needed to manage the magistrate system and carry out the duties and responsibilities conferred upon the Executive Secretary by this chapter.

§ 19.2-44. Magisterial regions; territorial jurisdiction.

A. The Commonwealth shall be divided into magisterial regions consisting of judicial circuits established pursuant to § 17.1-506 as follows:

1. Region 1, consisting of the twenty-seventh, twenty-eighth, twenty-ninth, and thirtieth judicial circuits;

2. Region 2, consisting of the twenty-first, twenty-second, twenty-third, twenty-fourth, and twenty-fifth judicial circuits;

3. Region 3, consisting of the sixth, tenth, eleventh, and twelfth judicial circuits;

4. Region 4, consisting of the sixteenth, twentieth, and twenty-sixth judicial circuits;

5. Region 5, consisting of the seventeenth, eighteenth, nineteenth, and thirty-first judicial circuits;

6. Region 6, consisting of the ninth, thirteenth, fourteenth, and fifteenth judicial circuits;

7. Region 7, consisting of the second, third, and fourth judicial circuits; and

8. Region 8, consisting of the first, fifth, seventh, and eighth judicial circuits.

B. A magistrate shall be authorized to exercise the powers conferred on magistrates by this title only in the magisterial region or regions for which he is appointed, except that a magistrate may issue search warrants in accordance with the provisions of Chapter 5 (§ 19.2-52 et seq.) throughout the Commonwealth. A magistrate may exercise all powers conferred on magistrates by this title throughout the Commonwealth when so authorized by the Executive Secretary upon a determination that such assistance is necessary.

§ 19.2-45. Powers enumerated.

A magistrate shall have the following powers only:

(1) 1. To issue process of arrest in accord with the provisions of §§ 19.2-71 to through 19.2-82 of the Code;

(2) 2. To issue search warrants in accord with the provisions of §§ 19.2-52 to through 19.2-60 of the Code;

(3) 3. To admit to bail or commit to jail all persons charged with offenses subject to the limitations of and in accord with general laws on bail;

(4) 4. The same power to issue warrants and subpoenas within such county or city as is conferred upon district courts and as limited by the provisions of §§ 19.2-71 through 19.2-82. A copy of all felony warrants issued at the request of a citizen shall be promptly delivered to the attorney for the Commonwealth for the county or city in which the warrant is returnable. Upon the request of the attorney for the Commonwealth, a copy of any misdemeanor warrant issued at the request of a citizen shall be delivered to the attorney for the Commonwealth for such county or city. All attachments, warrants and subpoenas shall be returnable before a district court or any court of limited jurisdiction continued in operation pursuant to § 16.1-70.1;

(5) 5. To issue civil warrants directed to the sheriff or constable of the county or city wherein the defendant resides, together with a copy thereof, requiring him to summon the person against whom the claim is, to appear before a district court on a certain day, not exceeding 30 days from the date thereof to answer such claim. If there be two or more defendants and any defendant resides outside the jurisdiction in which the warrant is issued, the summons for such defendant residing outside the jurisdiction may be directed to the sheriff of the county or city of his residence, and such warrant may be served and returned as provided in § 16.1-80;

(6) 6. To administer oaths and take acknowledgments;

(7) 7. To act as conservators of the peace; and

(8), (9) [Repealed.]

(10) 8. To perform such other acts or functions specifically authorized by law.

§ 19.2-46. Compensation.

The salaries of all magistrates shall be fixed and paid as provided in § 19.2-46.1. The salaries referred to herein shall be in lieu of all fees which that may accrue to the recipient by virtue of his office.

Each substitute magistrate shall receive for his services a per diem compensation as may be established by the Committee on District Courts.

§ 19.2-46.1. Salaries to be fixed by the Committee on District Courts; limitations; mileage allowance.

Salaries of magistrates and any other personnel in the office of the magistrate shall be fixed by the Executive Secretary of the Supreme Court Committee on District Courts. Such salaries shall be fixed by the Executive Secretary Committee at least annually at such time as he it deems proper and as soon as practicable thereafter certified to the Comptroller and the Executive Secretary of the Supreme Court.

In addition to the salary authorized by this section, a magistrate may be reimbursed by the county or city for reasonable mileage expenses actually incurred in the performance of his duties.

In determining the salary of any magistrate, the Executive Secretary Committee shall consider the work load workload of and territory and population served by the magistrate and such other factors he it deems relevant. The Committee may require of any magistrate or district court judge information on the operation of the office of the magistrate.

The governing body of any county or city may add to the fixed compensation of magistrates such amount as the governing body may appropriate with the total amount not to exceed 50 percent of the amount paid by the Commonwealth to magistrates, provided that such additional compensation was in effect on June 30, 2008, for such magistrates and any magistrate receiving such additional compensation continues in office without a break in service. However, the total amount of additional compensation may not be increased after June 30, 2008. No additional amount paid by a local governing body shall be chargeable to the Executive Secretary of the Supreme Court, nor shall it remove or supersede any authority, control, or supervision of the Executive Secretary or Committee on District Courts.

§ 19.2-48.1. Quarters for magistrates.

A. The counties and cities served by a magistrate or magistrates Each county and city having a general district court or juvenile and domestic relations district court and having one or more magistrates appointed pursuant to Article 3 (§ 19.2-33 et seq.) shall provide suitable quarters for such magistrates, including a site for any videoconferencing equipment necessary to provide remote access to such magistrates. Insofar as possible, such quarters should be located in a public facility and should be appropriate to conduct the affairs of a judicial officer as well as provide convenient access to the public and law-enforcement officers. The county or city shall also provide all furniture and other equipment necessary for the efficient operation of the office.

B. Wherever practical, the office of magistrate shall be located at the county seat. However, offices may be located at other locations in the county, or city adjacent thereto, whenever such additional offices are necessary to effect the efficient administration of justice.

§ 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 who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii) is able to provide an independent examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

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

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

B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the local community services board to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the 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. The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. Any temporary detention 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.

C. When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

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

E. An employee or a designee of the local community services board shall determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained pursuant to this section. An employee or designee of the local community services board may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the individual given the specific security, medical, or behavioral health needs of the person. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary custody, transportation of the individual to the alternative facility of temporary detention shall be provided in accordance with the provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board designates an alternative facility, that employee or designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the individual shall be detained in a state facility for the treatment of individuals with mental illness and such facility shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by either the initial facility of temporary detention identified in the temporary detention order or by the alternative facility of temporary detention designated by the employee or designee of the local community services board pursuant to this subsection. The person detained or in custody pursuant to this section shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures.

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

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

H. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The person may

306 be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

307 I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter
308 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office
309 of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of
310 the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the
311 petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of
312 the local community services board prior to issuing a subsequent order upon the original petition. Any
313 petition for which no temporary detention order or other process in connection therewith is served on
314 the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned
315 to the office of the clerk of the issuing court.

316 J. The ~~Executive Secretary of the Supreme Court of Virginia~~ *chief judge of each general district*
317 *court* shall establish and require that a magistrate, as provided by this section, be available seven days a
318 week, 24 hours a day, for the purpose of performing the duties established by this section. Each
319 community services board shall provide to each general district court and magistrate's office within its
320 service area a list of its employees and designees who are available to perform the evaluations required
321 herein.

322 K. For purposes of this section, a health care provider or designee of a local community services
323 board or behavioral health authority shall not be required to encrypt any email containing information or
324 medical records provided to a magistrate unless there is reason to believe that a third party will attempt
325 to intercept the email.

326 L. The employee or designee of the community services board who is conducting the evaluation
327 pursuant to this section shall, if he recommends that the person should not be subject to a temporary
328 detention order, inform the petitioner and an onsite treating physician of his recommendation.