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## SENATE BILL NO. 432

Offered January 13, 2016

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A BILL to amend and reenact § 54.1-2969 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-338.1, relating to admission of minors 14 years of age or older for inpatient mental health treatment; nonconsenting parents.

Patron—Barker

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:**

1. That § 54.1-2969 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-338.1 as follows:

**§ 16.1-338.1. Admission of minors 14 years of age or older; nonconsenting parents.**

A. If a minor 14 years of age or older does not have the consent of a parent to be admitted to a mental health facility for inpatient treatment pursuant to § 16.1-338, the minor may obtain a preadmission screening report conducted by an employee or designee of the community services board serving the area in which the minor resides for the purpose of receiving approval for inpatient treatment. The preadmission screening report shall include written findings as to whether:

1. The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment;

2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment;

3. The minor has consented to admission; and

4. All available modalities of treatment less restrictive than inpatient treatment have been considered, and no less restrictive alternative is available that would offer comparable benefits to the minor.

B. A copy of the written findings of the preadmission screening report shall be provided to the minor and to a parent of the minor, both of whom shall be provided with an opportunity to discuss the findings with the employee or designee of the community services board who prepared the report.

C. If after being given an opportunity to review the preadmission screening report pursuant to subsection B, the parent of the minor still refuses to consent to admission, a minor 14 years of age or older may be admitted to a willing mental health facility for inpatient treatment based on the findings made in the report. The facility shall be provided with a copy of the written findings of the report and shall be given the opportunity to discuss the report with the employee or designee of the community services board who prepared it. The facility shall also submit a copy of the report to the juvenile and domestic relations district court for the jurisdiction in which the facility is located.

D. Upon admission of a minor under this section, the facility shall file a petition for judicial approval no sooner than 24 hours and no later than 120 hours after admission with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. To the extent available, the petition shall contain the information required by § 16.1-339.1. A copy of this petition shall be delivered to the minor's nonconsenting 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. A copy of the evaluator's report shall be provided to the minor's counsel and guardian ad litem. 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 nonconsenting 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. The minor's nonconsenting parent shall be given the opportunity to be heard. 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 A, the court shall issue an order directing the facility to release the minor into the custody of his parent. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor. If a minor is released from the facility pursuant to this subdivision, the court shall also order the parent into whose custody the minor is released to meet with a representative from the local community services board to discuss the minor's illness and alternative treatment options.

2. If the court finds that the minor meets the criteria for admission specified in subsection A, the court shall issue an order authorizing continued hospitalization of the minor for up to 90 days.

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59        *Within 10 days after the admission of a minor under this section, the director of the facility or the*  
60 *director's designee shall ensure that an individualized plan of treatment has been prepared by the*  
61 *provider responsible for the minor's treatment and has been provided to the minor's nonconsenting*  
62 *parent, who shall be given the opportunity to discuss the plan with the director or his designee. A copy*  
63 *of the plan shall also be provided to the guardian ad litem and to counsel for the minor. The minor*  
64 *shall be involved in the preparation of the plan to the maximum feasible extent consistent with his*  
65 *ability to understand and participate, and the minor's family shall be involved to the maximum extent*  
66 *consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and*  
67 *aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional*  
68 *goals against which the success of treatment may be measured.*

69        *E. If the minor objects at any time to further treatment, the minor shall be discharged within 48*  
70 *hours to the custody of his parent unless the minor's continued hospitalization is authorized pursuant to*  
71 *§ 16.1-339, 16.1-340.1, or 16.1-345. If the 48-hour time period expires on a Saturday, Sunday, legal*  
72 *holiday, or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is*  
73 *not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If a minor 14 or*  
74 *older objects to further treatment, the mental health facility shall (i) immediately notify the parent of the*  
75 *minor's objections and (ii) provide to the parent a summary, prepared by the Office of the Attorney*  
76 *General, of the procedures for requesting continued treatment of the minor pursuant to § 16.1-339,*  
77 *16.1-340.1, or 16.1-345.*

78        *F. Inpatient treatment of a minor hospitalized under this section may not exceed 90 consecutive days*  
79 *unless it has been authorized by appropriate hospital medical personnel, based upon their written*  
80 *findings that the criteria set forth in subsection A continue to be met, after such persons have examined*  
81 *the minor and reviewed reports submitted by members of the facility staff familiar with the minor's*  
82 *condition.*

83        *G. Any minor 14 years of age or older admitted under this section shall, in addition to his parent,*  
84 *have the right to access his health information. The concurrent authorization of both the parent and the*  
85 *minor shall be required to disclose such minor's health information.*

86        *H. A minor who has been hospitalized while properly detained by a juvenile and domestic relations*  
87 *district court or circuit court shall be returned to the detention home, shelter care, or other facility*  
88 *approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor*  
89 *was detained within 24 hours following completion of a period of inpatient treatment, unless the court*  
90 *having jurisdiction over the case orders that the minor be released from custody.*

91        **§ 54.1-2969. Authority to consent to surgical and medical treatment of certain minors.**

92        *A. Whenever any minor who has been separated from the custody of his parent or guardian is in*  
93 *need of surgical or medical treatment, authority commensurate with that of a parent in like cases is*  
94 *conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:*

95        *1. Upon judges with respect to minors whose custody is within the control of their respective courts.*

96        *2. Upon local directors of social services or their designees with respect to (i) minors who are*  
97 *committed to the care and custody of the local board by courts of competent jurisdiction, (ii) minors*  
98 *who are taken into custody pursuant to § 63.2-1517, and (iii) minors who are entrusted to the local*  
99 *board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained*  
100 *immediately and, in the absence of such consent, a court order for such treatment cannot be obtained*  
101 *immediately.*

102        *3. Upon the Director of the Department of Corrections or the Director of the Department of Juvenile*  
103 *Justice or his designees with respect to any minor who is sentenced or committed to his custody.*

104        *4. Upon the principal executive officers of state institutions with respect to the wards of such*  
105 *institutions.*

106        *5. Upon the principal executive officer of any other institution or agency legally qualified to receive*  
107 *minors for care and maintenance separated from their parents or guardians, with respect to any minor*  
108 *whose custody is within the control of such institution or agency.*

109        *6. Upon any person standing in loco parentis, or upon a conservator or custodian for his ward or*  
110 *other charge under disability.*

111        *B. Whenever the consent of the parent or guardian of any minor who is in need of surgical or*  
112 *medical treatment is unobtainable because such parent or guardian is not a resident of the*  
113 *Commonwealth or his whereabouts is unknown or he cannot be consulted with promptness reasonable*  
114 *under the circumstances, authority commensurate with that of a parent in like cases is conferred, for the*  
115 *purpose of giving consent to such surgical or medical treatment, upon judges of juvenile and domestic*  
116 *relations district courts.*

117        *C. Whenever delay in providing medical or surgical treatment to a minor may adversely affect such*  
118 *minor's recovery and no person authorized in this section to consent to such treatment for such minor is*  
119 *available within a reasonable time under the circumstances, no liability shall be imposed upon qualified*  
120 *emergency medical services personnel as defined in § 32.1-111.1 at the scene of an accident, fire or*

other emergency, a licensed health professional, or a licensed hospital by reason of lack of consent to such medical or surgical treatment. However, in the case of a minor 14 years of age or older who is physically capable of giving consent, such consent shall be obtained first.

D. Whenever delay in providing transportation to a minor from the scene of an accident, fire or other emergency prior to hospital admission may adversely affect such minor's recovery and no person authorized in this section to consent to such transportation for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon emergency medical services personnel as defined in § 32.1-111.1, by reason of lack of consent to such transportation. However, in the case of a minor 14 years of age or older who is physically capable of giving consent, such consent shall be obtained first.

E. A minor shall be deemed an adult for the purpose of consenting to:

1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease that the State Board of Health requires to be reported;

2. Medical or health services required in case of birth control, pregnancy or family planning except for the purposes of sexual sterilization;

3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.2-100; ~~or~~

4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance; *or*

*5. Medical or health services needed in the case of inpatient care, treatment, or rehabilitation for mental illness, provided that the minor is 14 years of age or older and is admitted to a mental health facility for inpatient treatment pursuant to § 16.1-338.1.*

A minor shall also be deemed an adult for the purpose of accessing or authorizing the disclosure of medical records related to subdivisions 1 through 4 5.

F. Except for the purposes of sexual sterilization, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment.

G. A pregnant minor shall be deemed an adult for the sole purpose of giving consent for herself and her child to surgical and medical treatment relating to the delivery of her child when such surgical or medical treatment is provided during the delivery of the child or the duration of the hospital admission for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the purpose of giving consent to surgical and medical treatment for her child.

H. Any minor 16 years of age or older may, with the consent of a parent or legal guardian, consent to donate blood and may donate blood if such minor meets donor eligibility requirements. However, parental consent to donate blood by any minor 17 years of age shall not be required if such minor receives no consideration for his blood donation and the procurer of the blood is a nonprofit, voluntary organization.

I. Any judge, local director of social services, Director of the Department of Corrections, Director of the Department of Juvenile Justice, or principal executive officer of any state or other institution or agency who consents to surgical or medical treatment of a minor in accordance with this section shall make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

J. Nothing in subsection G shall be construed to permit a minor to consent to an abortion without complying with § 16.1-241.

K. Nothing in subsection E shall prevent a parent, legal guardian or person standing in loco parentis from obtaining (i) the results of a minor's nondiagnostic drug test when the minor is not receiving care, treatment or rehabilitation for substance abuse as defined in § 37.2-100 or (ii) a minor's other health records, except when the minor's treating physician or the minor's treating clinical psychologist has determined, in the exercise of his professional judgment, that the disclosure of health records to the parent, legal guardian, or person standing in loco parentis would be reasonably likely to cause substantial harm to the minor or another person pursuant to subsection B of § 20-124.6.