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SENATE BILL NO. 935

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 16, 2017)

(Patrons Prior to Substitute—Senators Lucas and Marsden [SB895])

A *BILL to amend and reenact § 19.2-169.6 of the Code of Virginia, relating to inpatient psychiatric hospital admission; defendant found incompetent.*

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-169.6 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-169.6. Inpatient psychiatric hospital admission from local correctional facility.

A. Any inmate of a local correctional facility ~~who is not subject to the provisions of § 19.2-169.2~~ may be hospitalized for psychiatric treatment at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge if:

1. The court with jurisdiction over the inmate's case, if it is still pending, on the petition of the person having custody over an inmate or on its own motion, holds a hearing at which the inmate is represented by counsel and finds by clear and convincing evidence that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate 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 any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information; and (iii) the inmate requires treatment in a hospital rather than the local correctional facility. Prior to making this determination, the court shall consider the examination conducted in accordance with § 37.2-815 and the preadmission screening report prepared in accordance with § 37.2-816 and 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 designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness, who is not providing treatment to the inmate, and who has completed a certification program approved by the Department of Behavioral Health and Developmental Services as provided in § 37.2-809. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report; or

2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate 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 any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information; and (iii) the inmate requires treatment in a hospital rather than a local correctional facility, and the magistrate issues a temporary detention order for the inmate. Prior to the filing of the petition, the person having custody shall arrange for an evaluation of the inmate 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 designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809. After considering the evaluation of the employee or designee of the local community services board or behavioral health authority, and any other information presented, and finding that probable cause exists to meet the criteria, the magistrate may issue a temporary detention order in accordance with the applicable procedures specified in §§ 37.2-809 through 37.2-813. The person having custody over the inmate shall notify the court having jurisdiction over the inmate's case,

60 if it is still pending, and the inmate's attorney prior to the detention pursuant to a temporary detention
61 order or as soon thereafter as is reasonable.

62 Upon detention pursuant to this subdivision, a hearing shall be held either before the court having
63 jurisdiction over the inmate's case or before a district court judge or a special justice, as defined in
64 § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate
65 shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within 72 hours of
66 execution of the temporary detention order issued pursuant to this subdivision. If the 72-hour period
67 terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the
68 inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal
69 holiday, or day on which the court is lawfully closed. Any employee or designee of the local
70 community services board or behavioral health authority, as defined in § 37.2-809, representing the
71 board or authority that prepared the preadmission screening report shall attend the hearing in person or,
72 if physical attendance is not practicable, shall participate in the hearing through a two-way electronic
73 video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside
74 the service area of the community services board or behavioral health authority that prepared the
75 preadmission screening report, and it is not practicable for a representative of the board or authority to
76 attend or participate in the hearing, arrangements shall be made by the board or authority for an
77 employee or designee of the board or authority serving the area in which the hearing is held to attend or
78 participate on behalf of the board or authority that prepared the preadmission screening report. The
79 judge or special justice conducting the hearing may order the inmate hospitalized if, after considering
80 the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in
81 accordance with § 37.2-816, and any other available information as specified in subsection C of
82 § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there
83 exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, (a)
84 cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
85 threatening harm and any other relevant information or (b) suffer serious harm due to his lack of
86 capacity to protect himself from harm as evidenced by recent behavior and any other relevant
87 information; and (3) the inmate requires treatment in a hospital rather than a local correctional facility.
88 The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be
89 available whenever possible for questioning during the hearing through a two-way electronic video and
90 audio or telephonic communication system as authorized in § 37.2-804.1. The examination and the
91 preadmission screening report shall be admitted into evidence at the hearing.

92 B. In no event shall an inmate have the right to make application for voluntary admission as may be
93 otherwise provided in § 37.2-805 or 37.2-814 or be subject to an order for mandatory outpatient
94 treatment as provided in § 37.2-817.

95 C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the
96 court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the
97 inmate's competency to stand trial and his mental state at the time of the offense pursuant to
98 §§ 19.2-169.1 and 19.2-169.5.

99 D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court
100 which has criminal jurisdiction over him or a district court judge or a special justice, as defined in
101 § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the
102 provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a
103 court other than the court which has jurisdiction over his criminal case, the facility at which the inmate
104 is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in
105 the criminal case, if the case is still pending.

106 E. Hospitalization may be extended in accordance with subsection D for periods of 60 days for
107 inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such
108 hospitalization act to delay trial, as long as the inmate remains competent to stand trial. Hospitalization
109 may be extended in accordance with subsection D for periods of 180 days for an inmate who has been
110 convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the
111 custody of a local correctional facility after sentencing, but in no event may such hospitalization be
112 continued beyond the date upon which his sentence would have expired had he received the maximum
113 sentence for the crime charged. Any inmate who has not completed service of his sentence upon
114 discharge from the hospital shall serve the remainder of his sentence.

115 F. For any inmate who has been convicted and not yet sentenced, or who has been convicted of a
116 crime and is in the custody of a local correctional facility after sentencing, the time the inmate is
117 confined in a hospital for psychiatric treatment shall be deducted from any term for which he may be
118 sentenced to any penal institution, reformatory or elsewhere.

119 G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an
120 inmate who is the subject of a proceeding under this section, upon request, shall disclose to a
121 magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed

pursuant to § 37.2-815, the community service board or behavioral health authority preparing the preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional facility any and all information that is necessary and appropriate to enable each of them to perform his duties under this section. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the inmate and to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local correctional facility shall be limited to information necessary to protect the sheriff or administrator of the local correctional facility and his employees, the inmate, or the public from physical injury or to address the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

H. Any order entered where an inmate is the subject of proceedings under this section shall provide for the disclosure of medical records pursuant to subsection G. This subsection shall not preclude any other disclosures as required or permitted by law.

I. As used in this section, "person having custody over an inmate" means the sheriff or other person in charge of the local correctional facility where the inmate is incarcerated at the time of the filing of a petition for the psychiatric treatment of the inmate.