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SENATE BILL NO. 603

Senate Amendments in [] - February 5, 2020

A BILL to amend and reenact §§ 16.1-340.2, 16.1-345, 37.2-810, and 37.2-829 of the Code of Virginia, relating to involuntary admission; transportation; transfer to local law enforcement.

Patron Prior to Engrossment—Senator Hanger

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-340.2, 16.1-345, 37.2-810, and 37.2-829 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-340.2. Transportation of minor 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 minor 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 minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor 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, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor 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 minor's treating physician, if any; or other persons who are available and have knowledge of the minor, 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 minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order.

In such cases any case in which a magistrate authorizes transportation of a minor subject to a temporary detention order by an alternative transportation provider, a copy of the temporary detention order shall accompany the minor 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 minor 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 minor 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. If an alternative transportation provider providing transportation of a minor who is the subject of [~~an emergency custody~~ a temporary detention] order becomes unable to continue providing transportation of the minor at any time after taking custody of the minor, [~~local law enforcement~~ the primary law-enforcement agency] for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the minor and shall transport the minor to the facility of temporary detention. In such cases, [(i)] a copy of the temporary detention order shall accompany the minor being transported and shall be delivered to and returned by the temporary detention facility in accordance with the provisions of subsection B [and (ii) if the alternative transportation provider originally authorized to provide transportation is a person other than the minor's parent, the alternative transportation provider shall notify the minor's parent (a)

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59 *that primary law enforcement has taken custody of the minor and is transporting the minor to the*
60 *facility of temporary detention and (b) of the name of the law-enforcement officer providing*
61 *transportation of the minor and the jurisdiction that such local law-enforcement officer represents] .*

62 D. In cases in which an alternative facility of temporary detention is identified and the
63 law-enforcement agency or alternative transportation provider identified to provide transportation in
64 accordance with subsection B continues to have custody of the minor, the local law-enforcement agency
65 or alternative transportation provider shall transport the minor to the alternative facility of temporary
66 detention identified by the employee or designee of the local community services board. In cases in
67 which an alternative facility of temporary detention is identified and custody of the minor has been
68 transferred from the law-enforcement agency or alternative transportation provider that provided
69 transportation in accordance with subsection B to the initial facility of temporary detention, the
70 employee or designee of the local community services board shall request, and a magistrate may enter
71 an order specifying, an alternative transportation provider or, if no alternative transportation provider is
72 available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency
73 for the jurisdiction in which the minor resides or, if the nearest boundary of the jurisdiction in which the
74 minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is
75 located, the law-enforcement agency of the jurisdiction in which the minor is located, to provide
76 transportation.

77 ~~D.~~ E. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the
78 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing
79 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into
80 agreements to facilitate the execution of temporary detention orders and provide transportation.

81 ~~E.~~ F. No person who provides alternative transportation pursuant to this section shall be liable to the
82 person being transported for any civil damages for ordinary negligence in acts or omissions that result
83 from providing such alternative transportation.

84 **§ 16.1-345. Involuntary commitment; criteria.**

85 After observing the minor and considering (i) the recommendations of any treating or examining
86 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any
87 past mental health treatment of the minor, (iv) any qualified evaluator's report, (v) any medical records
88 available, (vi) the preadmission screening report, and (vii) any other evidence that may have been
89 admitted, the court shall order the involuntary commitment of the minor to a mental health facility for
90 treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

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

96 2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to
97 benefit from the proposed treatment; and

98 3. If the court finds that inpatient treatment is not the least restrictive treatment, the court shall
99 consider entering an order for mandatory outpatient treatment pursuant to § 16.1-345.2.

100 Upon the expiration of an order for involuntary commitment, the minor shall be released unless he is
101 involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed
102 90 days from the date of the subsequent court order, or the minor or his parent rescinds the objection to
103 inpatient treatment and consents to admission pursuant to § 16.1-338 or subsection D of § 16.1-339 or
104 the minor is ordered to mandatory outpatient treatment pursuant to § 16.1-345.2.

105 A minor who has been hospitalized while properly detained by a juvenile and domestic relations
106 district court shall be returned to the detention home, shelter care, or other facility approved by the
107 Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained
108 within 24 hours following completion of a period of inpatient treatment, unless the court having
109 jurisdiction over the case orders that the minor be released from custody. However, such a minor shall
110 not be eligible for mandatory outpatient treatment.

111 In conducting an evaluation of a minor who has been properly detained, if the evaluator finds,
112 irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary
113 commitment in this section, the evaluator shall recommend that the minor meets the criteria for
114 involuntary commitment.

115 If the parent or parents with whom the minor resides are not willing to approve the proposed
116 commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified
117 in this section, that such treatment is necessary to protect the minor's life, health, safety, or normal
118 development. If a special justice believes that issuance of a removal order or protective order may be in
119 the child's best interest, the special justice shall report the matter to the local department of social
120 services for the county or city where the minor resides.

Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § 16.1-342. If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of Behavioral Health and Developmental Services.

When a minor has been involuntarily committed pursuant to this section, the judge shall determine, after consideration of information provided by the minor's treating mental health professional and any involved community services board staff regarding the minor's dangerousness, whether transportation shall be provided by the sheriff or may be provided by an alternative transportation provider, including a parent, family member, or friend of the minor, a representative of the community services board, a representative of the facility at which the minor was detained pursuant to a temporary detention order, or other alternative transportation provider with personnel trained to provide transportation in a safe manner. If the judge determines that transportation may be provided by an alternative transportation provider, the judge may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. If the judge finds that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the judge may order transportation by the proposed alternative transportation provider. In all other cases, the judge shall order transportation by the sheriff of the jurisdiction where the minor is a resident unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction in which the minor is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the minor.

If the judge determines that the minor requires transportation by the sheriff, the sheriff, as specified in this section shall transport the minor to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff or alternative transportation provider of the judge's order.

If an alternative transportation provider providing transportation of a minor becomes unable to continue providing transportation of the minor at any time after taking custody of the minor, local law enforcement for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the minor and shall transport the minor to the proper facility. [In such cases, if the alternative transportation provider originally authorized to provide transportation is a person other than the minor's parent, the alternative transportation provider shall notify the minor's parent (a) that primary law enforcement has taken custody of the minor and is transporting the minor to the facility of temporary detention and (b) of the name of the law-enforcement officer providing transportation of the minor and the jurisdiction that such local law-enforcement officer represents.]

No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

§ 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, or any other willing law-enforcement agency that has agreed to provide transportation, 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, the magistrate 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;

182 the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who
183 are available and have knowledge of the person, and, when the magistrate deems appropriate, the
184 proposed alternative transportation provider, either in person or via two-way electronic video and audio
185 or telephone communication system, that the proposed alternative transportation provider is available to
186 provide transportation, willing to provide transportation, and able to provide transportation in a safe
187 manner. When transportation is ordered to be provided by an alternative transportation provider, the
188 magistrate shall order the specified law-enforcement agency to execute the order, to take the person into
189 custody, and to transfer custody of the person to the alternative transportation provider identified in the
190 order.

191 In such cases, a copy of the temporary detention order shall accompany the person being transported
192 pursuant to this section at all times and shall be delivered by the alternative transportation provider to
193 the temporary detention facility. The temporary detention facility shall return a copy of the temporary
194 detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order
195 to a law-enforcement officer or alternative transportation provider and return of an order to the court
196 may be accomplished electronically or by facsimile.

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

203 *C. If an alternative transportation provider providing transportation of a person who is the subject*
204 *of [an emergency custody a temporary detention] order becomes unable to continue providing*
205 *transportation of the person at any time after taking custody of the person, local law enforcement for*
206 *the jurisdiction in which the alternative transportation provider is located at the time he becomes unable*
207 *to continue providing transportation shall take custody of the person and shall transport the person to*
208 *the facility of temporary detention. In such cases, a copy of the temporary detention order shall*
209 *accompany the person being transported and shall be delivered to and returned by the temporary*
210 *detention facility in accordance with the provisions of subsection B.*

211 *D.* In cases in which an alternative facility of temporary detention is identified and the
212 law-enforcement agency or alternative transportation provider identified to provide transportation in
213 accordance with subsection B continues to have custody of the person, the local law-enforcement agency
214 or alternative transportation provider shall transport the person to the alternative facility of temporary
215 detention identified by the employee or designee of the community services board. In cases in which an
216 alternative facility of temporary detention is identified and custody of the individual has been transferred
217 from the law-enforcement agency or alternative transportation provider that provided transportation in
218 accordance with subsection B to the initial facility of temporary detention, the employee or designee of
219 the community services board shall request, and a magistrate may enter an order specifying, an
220 alternative transportation provider or, if no alternative transportation provider is available, willing, and
221 able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in
222 which the person resides or, if the nearest boundary of the jurisdiction in which the person resides is
223 more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the
224 law-enforcement agency of the jurisdiction in which the person is located, to provide transportation.

225 ~~D.~~ *E.* A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the
226 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing
227 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into
228 agreements to facilitate the execution of temporary detention orders and provide transportation.

229 ~~E.~~ *F.* No person who provides alternative transportation pursuant to this section shall be liable to the
230 person being transported for any civil damages for ordinary negligence in acts or omissions that result
231 from providing such alternative transportation.

232 **§ 37.2-829. Transportation of person in civil admission process.**

233 When a person has volunteered for admission pursuant to § 37.2-814 or been ordered to be admitted
234 to a facility under §§ 37.2-815 through 37.2-821, the judge or special justice shall determine after
235 consideration of information provided by the person's treating mental health professional and any
236 involved community services board or behavioral health authority staff regarding the person's
237 dangerousness, whether transportation shall be provided by the sheriff or may be provided by an
238 alternative transportation provider, including a family member or friend of the person, a representative of
239 the community services board, a representative of the facility at which the person was detained pursuant
240 to a temporary detention order, or other alternative transportation provider with personnel trained to
241 provide transportation in a safe manner. If the judge or special justice determines that transportation may
242 be provided by an alternative transportation provider, the judge or special justice may consult with the
243 proposed alternative transportation provider either in person or via two-way electronic video and audio

244 or telephone communication system to determine whether the proposed alternative transportation
245 provider is available to provide transportation, willing to provide transportation, and able to provide
246 transportation in a safe manner. If the judge or special justice finds that the proposed alternative
247 transportation provider is available to provide transportation, willing to provide transportation, and able
248 to provide transportation in a safe manner, the judge or special justice may order transportation by the
249 proposed alternative transportation provider. In all other cases, the judge or special justice shall order
250 transportation by the sheriff of the jurisdiction where the person is a resident unless the sheriff's office
251 of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in
252 which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a
253 resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the
254 proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport
255 the person.

256 If the judge or special justice determines that the person requires transportation by the sheriff, the
257 person may be delivered to the care of the sheriff, as specified in this section, who shall transport the
258 person to the proper facility. In no event shall transport commence later than six hours after notification
259 to the sheriff or alternative transportation provider of the judge's or special justice's order.

260 If any state hospital has become too crowded to admit any such person, the Commissioner shall give
261 notice of the fact to all community services boards and shall designate the facility to which sheriffs or
262 alternative transportation providers shall transport such persons.

263 *If an alternative transportation provider providing transportation of a person becomes unable to*
264 *continue providing transportation of the person at any time after taking custody of the person, local law*
265 *enforcement for the jurisdiction in which the alternative transportation provider is located at the time he*
266 *becomes unable to continue providing transportation shall take custody of the person and shall transport*
267 *the person to the proper facility.*

268 No person who provides alternative transportation pursuant to this section shall be liable to the
269 person being transported for any civil damages for ordinary negligence in acts or omissions that result
270 from providing such alternative transportation.