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SENATE BILL NO. 603

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions on February 25, 2020)

(Patron Prior to Substitute—Senator Hanger [SB 602])

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.

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 a temporary detention order becomes unable to continue providing transportation of the minor at any time after taking custody of the minor, 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) that the primary law-enforcement agency for the jurisdiction in which he is located 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

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60 *transportation of the minor.*

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

76 *D. E.* *The magistrate may change the transportation provider specified in a temporary detention*  
77 *order at any time prior to the initiation of transportation of a minor who is the subject of a temporary*  
78 *detention order pursuant to this section. If the designated transportation provider is changed by the*  
79 *magistrate at any time after the temporary detention order has been executed but prior to the initiation*  
80 *of transportation, the transportation provider having custody of the minor shall transfer custody of the*  
81 *minor to the transportation provider subsequently specified to provide transportation. For the purposes*  
82 *of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative*  
83 *transportation provider.*

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

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

91 **§ 16.1-345. Involuntary commitment; criteria.**

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

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

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

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

107 Upon the expiration of an order for involuntary commitment, the minor shall be released unless he is  
108 involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed  
109 90 days from the date of the subsequent court order, or the minor or his parent rescinds the objection to  
110 inpatient treatment and consents to admission pursuant to § 16.1-338 or subsection D of § 16.1-339 or  
111 the minor is ordered to mandatory outpatient treatment pursuant to § 16.1-345.2.

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

118 In conducting an evaluation of a minor who has been properly detained, if the evaluator finds,  
119 irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary  
120 commitment in this section, the evaluator shall recommend that the minor meets the criteria for  
121 involuntary commitment.

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

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

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

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

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

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

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

172 **§ 37.2-810. Transportation of person in the temporary detention process.**

173 A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,  
174 the magistrate shall specify in the temporary detention order the law-enforcement agency of the  
175 jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to  
176 provide transportation, to execute the order and, in cases in which transportation is ordered to be  
177 provided by the primary law-enforcement agency, provide transportation. However, if the nearest  
178 boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest  
179 boundary of the jurisdiction in which the person is located, the law-enforcement agency of the  
180 jurisdiction in which the person is located shall execute the order and provide transportation.

181 B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to  
182 execute the order and provide transportation. However, the magistrate shall consider any request to

183 authorize transportation by an alternative transportation provider in accordance with this section,  
184 whenever an alternative transportation provider is identified to the magistrate, which may be a person,  
185 facility, or agency, including a family member or friend of the person who is the subject of the  
186 temporary detention order, a representative of the community services board, or other transportation  
187 provider with personnel trained to provide transportation in a safe manner upon determining, following  
188 consideration of information provided by the petitioner; the community services board or its designee;  
189 the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who  
190 are available and have knowledge of the person, and, when the magistrate deems appropriate, the  
191 proposed alternative transportation provider, either in person or via two-way electronic video and audio  
192 or telephone communication system, that the proposed alternative transportation provider is available to  
193 provide transportation, willing to provide transportation, and able to provide transportation in a safe  
194 manner. When transportation is ordered to be provided by an alternative transportation provider, the  
195 magistrate shall order the specified law-enforcement agency to execute the order, to take the person into  
196 custody, and to transfer custody of the person to the alternative transportation provider identified in the  
197 order.

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

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

210 *C. If an alternative transportation provider providing transportation of a person who is the subject*  
211 *of a temporary detention order becomes unable to continue providing transportation of the person at*  
212 *any time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in*  
213 *which the alternative transportation provider is located at the time he becomes unable to continue*  
214 *providing transportation shall take custody of the person and shall transport the person to the facility of*  
215 *temporary detention. In such cases, a copy of the temporary detention order shall accompany the person*  
216 *being transported and shall be delivered to and returned by the temporary detention facility in*  
217 *accordance with the provisions of subsection B.*

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

233 ~~D.~~ *E. The magistrate may change the transportation provider specified in a temporary detention*  
234 *order at any time prior to the initiation of transportation of a person who is the subject of a temporary*  
235 *detention order pursuant to this section. If the designated transportation provider is changed by the*  
236 *magistrate at any time after the temporary detention order has been executed but prior to the initiation*  
237 *of transportation, the transportation provider having custody of the person shall transfer custody of the*  
238 *person to the transportation provider subsequently specified to provide transportation. For the purposes*  
239 *of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative*  
240 *transportation provider.*

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

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

248 **§ 37.2-829. Transportation of person in civil admission process.**

249 When a person has volunteered for admission pursuant to § 37.2-814 or been ordered to be admitted  
250 to a facility under §§ 37.2-815 through 37.2-821, the judge or special justice shall determine after  
251 consideration of information provided by the person's treating mental health professional and any  
252 involved community services board or behavioral health authority staff regarding the person's  
253 dangerousness, whether transportation shall be provided by the sheriff or may be provided by an  
254 alternative transportation provider, including a family member or friend of the person, a representative of  
255 the community services board, a representative of the facility at which the person was detained pursuant  
256 to a temporary detention order, or other alternative transportation provider with personnel trained to  
257 provide transportation in a safe manner. If the judge or special justice determines that transportation may  
258 be provided by an alternative transportation provider, the judge or special justice may consult with the  
259 proposed alternative transportation provider either in person or via two-way electronic video and audio  
260 or telephone communication system to determine whether the proposed alternative transportation  
261 provider is available to provide transportation, willing to provide transportation, and able to provide  
262 transportation in a safe manner. If the judge or special justice finds that the proposed alternative  
263 transportation provider is available to provide transportation, willing to provide transportation, and able  
264 to provide transportation in a safe manner, the judge or special justice may order transportation by the  
265 proposed alternative transportation provider. In all other cases, the judge or special justice shall order  
266 transportation by the sheriff of the jurisdiction where the person is a resident unless the sheriff's office  
267 of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in  
268 which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a  
269 resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the  
270 proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport  
271 the person.

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

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

279 *If an alternative transportation provider providing transportation of a person becomes unable to  
280 continue providing transportation of the person at any time after taking custody of the person, the  
281 primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is  
282 located at the time he becomes unable to continue providing transportation shall take custody of the  
283 person and shall transport the person to the proper facility.*

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