

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-340.1 and 37.2-809 of the Code of Virginia, relating to duration of involuntary temporary detention.

[H 2410]

Approved

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-340.1 and 37.2-809 of the Code of Virginia are amended and reenacted as follows:****§ 16.1-340.1. Involuntary temporary detention; issuance and execution of order.**

A. A magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, 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 § 16.1-345.1 by an employee or designee of the local community services board to determine whether the minor meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician, clinical psychologist, clinical social worker, or licensed professional counselor treating the person, that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. The magistrate shall also consider the recommendations of the minor's parents and of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. To the extent possible, the petition shall contain the information required by § 16.1-339.1. Any temporary detention order entered pursuant to this section shall be effective until such time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is located conducts a hearing pursuant to subsection B of § 16.1-341. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law.

B. 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, psychologist, clinical social worker, or licensed professional counselor licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (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.

C. 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 A if (i) the minor has been personally examined within the previous 72 hours by an employee or designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the minor or to others associated with conducting such evaluation.

D. An employee or designee of the local community services board shall determine the facility of temporary detention in accordance with the provisions of § 16.1-340.1:1 for all minors 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 minor given the specific security, medical, or behavioral health needs of the minor. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary detention, transportation of the minor to the alternative facility of temporary detention shall be provided in accordance with the provisions of § 16.1-340.2. 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

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57 written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of
 58 Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to
 59 the provisions of § 16.1-340.1:1, if a facility of temporary detention cannot be identified by the time of
 60 the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall be detained in
 61 a state facility for the treatment of minors with mental illness and such facility shall be indicated on the
 62 temporary detention order. Except for minors who are detained for a criminal offense by a juvenile and
 63 domestic relations district court and who require hospitalization in accordance with this article, the minor
 64 shall not be detained in a jail or other place of confinement for persons charged with criminal offenses
 65 and shall remain in the custody of law enforcement until the minor is either detained within a secure
 66 facility or custody has been accepted by the appropriate personnel designated by either the initial facility
 67 of temporary detention identified in the temporary detention order or by the alternative facility of
 68 temporary detention designated by the employee or designee of the local community services board
 69 pursuant to this subsection.

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

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

84 G. The duration of temporary detention shall be sufficient to allow for completion of the examination
 85 required by § 16.1-342, preparation of the preadmission screening report required by § 16.1-340.4, and
 86 initiation of mental health treatment to stabilize the minor's psychiatric condition to avoid involuntary
 87 commitment where possible, but shall not exceed 96 hours prior to a hearing. If the 96-hour period
 88 herein specified terminates on a Saturday, Sunday, ~~or~~ legal holiday, *or, if the minor has been admitted*
 89 *to a facility of temporary detention, day or part of a day on which the clerk's office is lawfully closed,*
 90 the minor may be detained, as herein provided, until the close of business on the next day that is not a
 91 Saturday, Sunday, ~~or~~ legal holiday, *or, if the minor has been admitted to a facility of temporary*
 92 *detention, day or part of a day on which the clerk's office is lawfully closed.* The minor may be
 93 released, pursuant to § 16.1-340.3, before the 96-hour period herein specified has run.

94 H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter
 95 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office
 96 of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of
 97 the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the
 98 petition is filed. However, a magistrate must again obtain the advice of an employee or designee of the
 99 local community services board prior to issuing a subsequent order upon the original petition. Any
 100 petition for which no temporary detention order or other process in connection therewith is served on
 101 the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned
 102 to the office of the clerk of the issuing court.

103 I. For purposes of this section, a health care provider or an employee or designee of the local
 104 community services board shall not be required to encrypt any email containing information or medical
 105 records provided to a magistrate unless there is reason to believe that a third party will attempt to
 106 intercept the email.

107 J. The employee or designee of the local community services board who is conducting the evaluation
 108 pursuant to this section shall, if he recommends that the minor should not be subject to a temporary
 109 detention order, inform the petitioner and an on-site treating physician of his recommendation.

110 K. Each community services board shall provide to each juvenile and domestic relations district court
 111 and magistrate's office within its service area a list of employees and designees who are available to
 112 perform the evaluations required herein.

113 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

114 A. For the purposes of this section:

115 "Designee of the local community services board" means an examiner designated by the local
 116 community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has
 117 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, clinical psychologist, clinical social worker, or licensed professional counselor 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, if available, (a) information provided by the person who initiated emergency custody and (b) the recommendations of any treating or examining physician licensed in Virginia 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, psychologist, clinical social worker, or licensed professional counselor 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 persons 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 person 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 person 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 person shall be detained in a state facility for the treatment of persons 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. Except as provided in § 37.2-811 for inmates

179 requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall remain in
 180 the custody of law enforcement until (i) the person is either detained within a secure facility or (ii)
 181 custody has been accepted by the appropriate personnel designated by either the initial facility of
 182 temporary detention identified in the temporary detention order or by the alternative facility of
 183 temporary detention designated by the employee or designee of the local community services board
 184 pursuant to this subsection. The person detained or in custody pursuant to this section shall be given a
 185 written summary of the temporary detention procedures and the statutory protections associated with
 186 those procedures.

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

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

201 H. The duration of temporary detention shall be sufficient to allow for completion of the examination
 202 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and
 203 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary
 204 commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period
 205 herein specified terminates on a Saturday, Sunday, legal holiday, or, *if the individual has been admitted*
 206 *to a facility of temporary detention, day or part of a day on which the court clerk's office* is lawfully
 207 closed, the person may be detained, as herein provided, until the close of business on the next day that
 208 is not a Saturday, Sunday, legal holiday, or, *if the individual has been admitted to a facility of*
 209 *temporary detention, day or part of a day on which the court clerk's office* is lawfully closed. The
 210 person may be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

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

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

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

229 L. If the employee or designee of the community services board who is conducting the evaluation
 230 pursuant to this section recommends that the person should not be subject to a temporary detention
 231 order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency
 232 custody if such person is present, and an onsite treating physician of his recommendation; (ii) promptly
 233 inform such person who initiated emergency custody that the community services board will facilitate
 234 communication between the person and the magistrate if the person disagrees with recommendations of
 235 the employee or designee of the community services board who conducted the evaluation and the person
 236 who initiated emergency custody so requests; and (iii) upon prompt request made by the person who
 237 initiated emergency custody, arrange for such person who initiated emergency custody to communicate
 238 with the magistrate as soon as is practicable and prior to the expiration of the period of emergency
 239 custody. The magistrate shall consider any information provided by the person who initiated emergency

240 custody and any recommendations of the treating or examining physician and the employee or designee
241 of the community services board who conducted the evaluation and consider such information and
242 recommendations in accordance with subsection B in making his determination to issue a temporary
243 detention order. The person who is the subject of emergency custody shall remain in the custody of law
244 enforcement or a designee of law enforcement and shall not be released from emergency custody until
245 communication with the magistrate pursuant to this subsection has concluded and the magistrate has
246 made a determination regarding issuance of a temporary detention order.

247 M. For purposes of this section, "person who initiated emergency custody" means any person who
248 initiated the issuance of an emergency custody order pursuant to § 37.2-808 or a law-enforcement officer
249 who takes a person into custody pursuant to subsection G of § 37.2-808.

250 N. In any case in which a person subject to an evaluation pursuant to this section is receiving
251 services in a hospital emergency department, the treating physician or his designee and the employee or
252 designee of the local community services board shall disclose to each other relevant information
253 pertaining to the individual's treatment in the emergency department.