

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 37.2-810 of the Code of Virginia, relating to temporary detention order; alternative transportation.

[S 497]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-810 of the Code of Virginia is amended and reenacted as follows:

§ 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 (i) specify the law-enforcement agency to execute the order and (ii) designate a transportation provider. In determining the transportation provider, the magistrate shall 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, an employee of or person providing services pursuant to a contract with the Department, 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 person's treating physician, if any; or other persons who are available and have knowledge of the person, 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 an alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall designate such alternative transportation provider to provide transportation of the person. *An alternative transportation provider shall be deemed to be available if the alternative transportation provider states that it is available to take custody of the individual from law enforcement within six hours of issuance of the temporary detention order or an order changing the transportation provider pursuant to subsection E.* If (a) no alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner or (b) the law-enforcement agency elects to provide transportation, the magistrate shall designate the primary law-enforcement agency and jurisdiction designated to execute the temporary detention order to provide transportation of the person.

When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. The primary law-enforcement agency may transfer custody of the person to the alternative transportation provider immediately upon execution of the temporary detention order based on the availability of alternative transportation providers. The alternative transportation provider shall maintain custody of the person from the time custody is transferred to the alternative transportation provider by the primary law-enforcement agency until such time as custody of the person is transferred to the temporary detention facility, including during any period prior to the initiation of transportation of the person from the facility to which he was transported pursuant to § 37.2-808 and while transportation is being provided pursuant to this section.

In such cases, a copy of the temporary detention order shall accompany the person 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.

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The order may include transportation of the person 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 person 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 or maintaining custody of a person who is the subject of a temporary detention order becomes unable to continue providing transportation or maintaining custody of the person at any time after taking custody of the person, 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 or maintaining custody shall take custody of the person and shall transport the person to the facility of temporary detention. In such cases, a copy of the temporary detention order shall accompany the person being transported and shall be delivered to and returned by the temporary detention facility in accordance with the provisions of subsection B.

D. In cases in which an alternative facility of temporary detention is identified and the law-enforcement agency or alternative transportation provider identified to provide transportation in accordance with subsection B continues to have custody of the person, the local law-enforcement agency or alternative transportation provider shall transport the person to the alternative facility of temporary detention identified by the employee or designee of the community services board. In cases in which an alternative facility of temporary detention is identified and custody of the person has been transferred from the law-enforcement agency or alternative transportation provider that provided transportation in accordance with subsection B to the initial facility of temporary detention, the employee or designee of the community services board shall request, and a magistrate may enter an order specifying, an alternative transportation provider or, if no alternative transportation provider is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person resides or, 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, to provide transportation.

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

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

G. An employee or contractor of an entity providing alternative transportation services pursuant to a contract with the Department who has completed training approved by the Department in the proper and safe use of restraint may use restraint (i) if restraint is necessary to ensure the safety of the person or others or prevent escape and (ii) if less restrictive techniques have been determined to be ineffective to protect the person or others from harm or to prevent escape.

H. 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.

I. For purposes of this section:

"Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731.

"Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733.