

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact § 37.1-67.3 of the Code of Virginia, relating to involuntary treatment.*

[H 2126]

Approved

**Be it enacted by the General Assembly of Virginia:****1. That § 37.1-67.3 of the Code of Virginia is amended and reenacted as follows:**

§ 37.1-67.3. Same; involuntary admission and treatment.

If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge shall inform such person of his right to a commitment hearing and right to counsel. The judge shall ascertain if a person whose admission is sought is represented by counsel, and if he is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense. The commitment hearing shall be held within forty-eight hours of the execution of the detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified terminates on a Saturday, Sunday or a legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday or legal holiday, but in no event may he be detained for a period longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday. Prior to such hearing, the judge shall fully inform such person of the basis for his detention, the standard upon which he may be detained, the right of appeal from such hearing to the circuit court, the right to jury trial on appeal, and the place, date, and time of such hearing.

If such person is incapable of accepting or unwilling to accept voluntary admission and treatment as provided for in § 37.1-67.2, a commitment hearing shall be scheduled as soon as possible, allowing the person who is the subject of the hearing an opportunity to prepare any defenses which he may have, obtain independent evaluation and expert opinion at his own expense, and summons other witnesses.

To the extent possible, during the commitment hearing, the attorney for the person whose admission is sought shall interview his client, the petitioner, the examiner described below, and any other material witnesses. He shall also examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings.

The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence.

Notwithstanding the above, the judge shall require an examination of such person by a psychiatrist who is licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such a psychiatrist or clinical psychologist is not available, a physician or psychologist who is licensed in Virginia and who is qualified in the diagnosis of mental illness. All such examinations shall be conducted in private. The judge shall summons the examiner who shall certify that he has personally examined the individual and has probable cause to believe that the individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and (iii) requires or does not require involuntary hospitalization or treatment. The judge, in his discretion, may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection to the acceptance of such written certification by the person or his attorney. The judge shall not render any decision on the petition until such examiner has presented his report either orally or in writing.

Except as otherwise provided in this section, prior to making any adjudication that such person is mentally ill and shall be confined to an institution pursuant to this section, the judge shall request from the community services board which serves the political subdivision where the person resides a prescreening report, and the board or clinic shall provide such a report within forty-eight hours or within seventy-two hours if the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. The report shall state whether the person is deemed to be so seriously mentally ill that he is substantially unable to care for himself, an imminent danger to himself or others as a result of mental illness and in need of involuntary hospitalization or treatment, whether there is no less restrictive alternative to institutional confinement and what the recommendations are for that person's care and treatment. If the prescreening report is not received by the judge within the specified period, the judge shall proceed to dispose of the case without the board's or clinic's recommendation. In the case of a person sentenced

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HB2126ER

58 and committed to the Department of Corrections and who has been examined by a psychiatrist or  
 59 clinical psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should  
 60 be confined pursuant to this section without requesting a prescreening report from the community  
 61 services board.

62 After observing the person and obtaining the necessary positive certification and other relevant  
 63 evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or  
 64 others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be  
 65 substantially unable to care for himself, and (iii) that alternatives to involuntary confinement and  
 66 treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to  
 67 institutional confinement and treatment, the judge shall by written order and specific findings so certify  
 68 and order that the person be placed in a hospital or other facility for a period of treatment not to exceed  
 69 180 days from the date of the court order. Such placement shall be in a hospital or other facility  
 70 designated by the community services board which serves the political subdivision in which the person  
 71 was examined as provided in this section. If the community services board does not provide a placement  
 72 recommendation at the commitment hearing, the person shall be placed in a hospital or other facility  
 73 designated by the Commissioner.

74 After observing the person and obtaining the necessary positive certification and other relevant  
 75 evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or  
 76 others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be  
 77 substantially unable to care for himself, and (iii) that less restrictive alternatives to institutional  
 78 confinement and treatment have been investigated and are deemed suitable, *and if, moreover, the judge*  
 79 *finds specifically that (i) the patient has the degree of competency necessary to understand the*  
 80 *stipulations of his treatment, (ii) the patient expresses an interest in living in the community and agrees*  
 81 *to abide by his treatment plan, (iii) the patient is deemed to have the capacity to comply with the*  
 82 *treatment plan, (iv) the ordered treatment can be delivered on an outpatient basis, and (v) the ordered*  
 83 *treatment can be monitored by the community services board or designated providers,* the judge shall  
 84 order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient  
 85 involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.5, or such other appropriate  
 86 course of treatment as may be necessary to meet the needs of the individual. Upon failure of the patient  
 87 to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to  
 88 the patient and after a commitment hearing, order involuntary commitment for treatment at a hospital.  
 89 The community services board which serves the political subdivision in which the person resides shall  
 90 recommend a specific course of treatment and programs for provision of such treatment. The community  
 91 services board shall monitor the person's compliance with such treatment as may be ordered by the court  
 92 under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by  
 93 the court may be admitted into evidence in subsequent hearings held pursuant to § 37.1-67.2 or this  
 94 section.

95 The judge shall also order that the relevant medical records of such person be released to the facility  
 96 or program in which he is placed upon request of the treating physician or director of the facility or  
 97 program. Except as provided in this section, the relevant medical records, reports, and court documents  
 98 pertaining to the hearings provided for in this section and § 37.1-67.2 shall be kept confidential by the  
 99 court if so requested by such person, or his counsel, with access provided only upon court order for  
 100 good cause shown. Such records, reports, and documents shall not be subject to the Virginia Freedom of  
 101 Information Act (§ 2.1-340 et seq.). Such person shall be released at the expiration of 180 days unless  
 102 involuntarily committed by further petition and order of a court as provided herein or such person makes  
 103 application for treatment on a voluntary basis as provided for in § 37.1-65.

104 Any person committed pursuant to this section for whom a subsequent commitment order is being  
 105 sought prior to the expiration of the 180-day commitment period shall not be entitled to a separate  
 106 preliminary hearing prior to such commitment hearing.

107 The procedures required by § 37.1-67.2 or by this section shall be followed at such commitment  
 108 hearing. The judge shall render a decision on such petition after the appointed examiner has presented  
 109 his report, either orally or in writing, and after the community services board which serves the political  
 110 subdivision where the person resides has presented a prescreening report, either orally or in writing, with  
 111 recommendations for that person's placement, care and treatment.

112 The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form  
 113 provided by the Exchange, a copy of any order for involuntary commitment to a hospital and a  
 114 thumbprint of the person who is committed. The thumbprint shall be obtained at the site of the  
 115 commitment hearing. The copy of the form and the order shall be kept confidential in a separate file and  
 116 used only for the purpose of conducting a firearms transaction record check authorized by  
 117 § 18.2-308.2:2.