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HOUSE BILL NO. 332

Offered January 15, 1996

A *BILL to amend and reenact §§ 37.1-67.1 and 37.1-67.3 of the Code of Virginia, relating to involuntary detention and commitments.*

Patron—Woodrum

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-67.1 and 37.1-67.3 of the Code of Virginia are amended and reenacted as follows:

§ 37.1-67.1. Involuntary temporary detention; issuance and execution of order.

For the purposes of this section, a designee of a community services board is defined as an examiner able to provide an independent examination of the person who is not related by blood or marriage to the person, who has no financial interest in the detaining or admitting hospital and, except for employees of state hospitals *or individual associations or corporations not organized or incorporated for pecuniary profit or financial gain, or any organization or association which is exempt from taxation pursuant to 26 U.S.C. § 501 (c)*, who is not employed by the detaining or admitting hospital.

A magistrate may, upon the advice of, and only after an in-person evaluation by, an employee of the local community services board or its designee who is skilled in the diagnosis and treatment of mental illness, issue an order of temporary detention, which may include transportation of the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement. A magistrate may issue an order of temporary detention if it appears from all evidence readily available that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, and the person is incapable of volunteering or unwilling to volunteer for treatment.

A magistrate may issue an order of temporary detention without an emergency custody order proceeding, upon the advice of, and only after an in-person evaluation by, an employee of the local community services board or its designee who is skilled in the diagnosis and treatment of mental illness. A magistrate may issue an order of temporary detention without a prior in-person evaluation if (i) the person has been personally examined within the previous seventy-two hours by an employee of the local community services board or its designee who is skilled in the diagnosis and treatment of mental illness or (ii) there is a significant physical, psychological or medical risk, to the person or to others, associated with conducting such evaluation.

An employee of the local community services board or its designee shall determine the facility of temporary detention for all individuals detained pursuant to this section. The facility shall be identified on the prescreening report and indicated on the temporary detention order. The Board of Medical Assistance Services shall, by the regulation, establish a reasonable rate per day of inpatient care for temporary detention. The institution or other place of detention shall be approved pursuant to regulations of the Board of Mental Health, Mental Retardation and Substance Abuse Services. The employee of the community services board or its designee who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Except as provided herein for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, such person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.

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 order for temporary detention pursuant to this section. The duration of temporary detention shall not exceed forty-eight hours prior to a hearing. If the forty-eight-hour period herein specified terminates on a Saturday, Sunday or 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 longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. For purposes of this section, 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. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

In any case in which temporary detention is ordered pursuant to this section upon petition of a person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate

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60 executing the order of temporary detention shall place such person in a hospital designated by
61 § 19.2-169.6 B, or if such facility is not available, the defendant shall be detained in a jail or other place
62 of confinement for persons charged with criminal offenses and shall be transferred to such hospital as
63 soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant,
64 either (i) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined
65 in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be
66 represented by counsel as specified in § 37.1-67.3. In any case in which temporary detention is ordered
67 pursuant to this section upon petition for involuntary commitment of a minor, the petition shall be filed
68 and the hearing scheduled in accordance with the provisions of § 16.1-341.

69 On such petition and prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341, the judge may
70 release such person on his personal recognizance or bond set by the judge if it appears from all
71 evidence readily available that such release will not pose an imminent danger to himself or others. In
72 the case of a minor, the judge may release the minor to his parent. The director of the hospital in which
73 the person is detained may release such person prior to a hearing as authorized in § 37.1-67.3 or
74 § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist
75 treating the person, that the person would not present an imminent danger to self or others if released.

76 If an order of temporary detention is not executed within twenty-four hours of its issuance, or within
77 such shorter period as is specified in the order, the order shall be void and shall be returned unexecuted
78 to the office of the clerk of the issuing court or if such office is not open, to any judge or magistrate
79 thereof. Subsequent orders may be issued upon the original petition within ninety-six hours after the
80 petition is filed. However, a magistrate must again obtain the advice of an employee of the local
81 community services board or its designee who is skilled in the diagnosis or treatment of mental illness
82 prior to issuing a subsequent order upon the original petition. Any petition for which no order of
83 temporary detention or other process in connection therewith is served on the subject of the petition
84 within ninety-six hours after the petition is filed shall be void and shall be returned to the office of the
85 clerk of the issuing court.

86 The chief judge of each general district court shall establish and require that a magistrate, as
87 provided by this section, be available seven days a week, twenty-four hours a day, for the purpose of
88 performing the duties established by this section. Each community services board shall provide to each
89 general district court and magistrate's office within its jurisdiction a list of its employees and designees
90 who are available to perform the evaluations required herein.

91 § 37.1-67.3. Same; involuntary admission and treatment.

92 The commitment hearing shall be held within forty-eight hours of the execution of the temporary
93 detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified
94 terminates on a Saturday, Sunday, or legal holiday, such person may be detained, as herein provided,
95 until the next day which is not a Saturday, Sunday, or legal holiday, but in no event may the person be
96 detained for a period longer than seventy-two hours or ninety-six hours when such legal holiday occurs
97 on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to include the time
98 period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday.

99 The judge, in commencing the commitment hearing, shall inform the person whose involuntary
100 admission is being sought of his right to apply for voluntary admission and treatment as provided for in
101 § 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall ascertain
102 if such person is then willing and capable of seeking voluntary admission and treatment. If the person is
103 capable and willingly accepts voluntary admission and treatment, the judge shall require him to accept
104 voluntary admission for a minimum period of treatment and after such minimum period, not to exceed
105 seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital, during
106 which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or
107 § 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and the
108 requirement for prescreening by a community services board or community mental health clinic as
109 provided in § 37.1-65.

110 If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the
111 judge shall inform such person of his right to a commitment hearing and right to counsel. The judge
112 shall ascertain if a person whose admission is sought is represented by counsel, and if he is not
113 represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such
114 person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to
115 employ counsel at his own expense.

116 A written explanation of the involuntary commitment process and the statutory protections associated
117 with the process shall be given to the person and its contents explained by an attorney prior to the
118 commitment hearing. The written explanation shall include, at a minimum, an explanation of the
119 person's right to retain private counsel or be represented by a court-appointed attorney, to present any
120 defenses including independent evaluation and expert testimony or the testimony of other witnesses, to
121 be present during the hearing and testify, to appeal any certification for involuntary admission to the

circuit court, and to have a jury trial on appeal. The judge shall ascertain whether the person whose admission is sought has been given the written explanation required herein.

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, the community services board staff in attendance, 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 role of the attorney shall be to represent the wishes of his client, to the extent possible.

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. The petitioner shall be encouraged but shall not be required to testify at the hearing and the person whose admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

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. The examiner chosen shall be able to provide an independent examination of the person. The examiner shall not be related by blood or marriage to the person, shall not be responsible for treating the person, shall have no financial interest in the detaining or admitting hospital, and, except for employees of state hospitals *or individual associations or corporations not organized or incorporated for pecuniary profit or financial gain, or any organization or association which is exempt from taxation pursuant to 26 U.S.C. § 501 (c)*, shall not be employed by the detaining or admitting hospital. 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 require 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. In the case of a person sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should be confined pursuant to this section without requesting a prescreening report from the community services board.

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

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (iii) that less restrictive alternatives to institutional confinement and treatment have been investigated and are deemed suitable, and if, moreover, the judge

183 finds specifically that (i) the patient has the degree of competency necessary to understand the
184 stipulations of his treatment, (ii) the patient expresses an interest in living in the community and agrees
185 to abide by his treatment plan, (iii) the patient is deemed to have the capacity to comply with the
186 treatment plan, (iv) the ordered treatment can be delivered on an outpatient basis, and (v) the ordered
187 treatment can be monitored by the community services board or designated providers, the judge shall
188 order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient
189 involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.5, or such other appropriate
190 course of treatment as may be necessary to meet the needs of the individual. Upon failure of the patient
191 to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to
192 the patient and after a commitment hearing, order involuntary commitment for treatment at a hospital.
193 The community services board which serves the political subdivision in which the person resides shall
194 recommend a specific course of treatment and programs for provision of such treatment. The community
195 services board shall monitor the person's compliance with such treatment as may be ordered by the court
196 under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by
197 the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this
198 section.

199 The judge shall make or cause to be made a tape or other audio recording of the hearing and shall
200 submit such recording to the appropriate district court clerk to be retained in a confidential file. Such
201 recordings shall only be used to document and to answer questions concerning the judge's conduct of the
202 hearing. These recordings shall be retained for at least three years from the date of the relevant
203 commitment hearing. The judge shall also order that the relevant medical records of such person be
204 released to the facility or program in which he is placed upon request of the treating physician or
205 director of the facility or program. Except as provided in this section, the relevant medical records,
206 reports, and court documents pertaining to the hearings provided for in this section shall be kept
207 confidential by the court if so requested by such person, or his counsel, with access provided only upon
208 court order for good cause shown. Such records, reports, and documents shall not be subject to the
209 Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such person shall be released at the expiration
210 of 180 days unless involuntarily committed by further petition and order of a court as provided herein or
211 such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.

212 The procedures required by this section shall be followed at such commitment hearing. The judge
213 shall render a decision on such petition after the appointed examiner has presented his report, either
214 orally or in writing, and after the community services board which serves the political subdivision where
215 the person resides has presented a prescreening report, either orally or in writing, with recommendations
216 for that person's placement, care and treatment.

217 The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form
218 provided by the Exchange, a copy of any order for involuntary commitment to a hospital. The copy of
219 the form and the order shall be kept confidential in a separate file and used only for the purpose of
220 conducting a firearms transaction record check authorized by § 18.2-308.2:2.