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HOUSE BILL NO. 293

Offered January 8, 2014

Prefiled December 31, 2013

A BILL to amend and reenact § 37.2-809 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 37.2-308.1 and 37.2-809.1, relating to facility of temporary detention.

Patrons—Bell, Robert B., Comstock, Edmunds, Farrell, Garrett, Jones, LaRock, Leftwich, Loupassi, Minchew, Orrock, Rust, Wright and Yancey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-809 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 37.2-308.1 and 37.2-809.1 as follows:

§ 37.2-308.1. Acute psychiatric bed registry.

A. The Department shall develop and administer a web-based acute psychiatric bed registry to collect, aggregate, and display information about available acute beds in public and private inpatient psychiatric facilities and public and private residential crisis stabilization units to facilitate the identification and designation of facilities for the temporary detention and treatment of individuals who meet the criteria for temporary detention pursuant to § 37.2-809.

B. Every state facility, community services board, behavioral health authority, and private provider licensed by the Department shall participate in the acute psychiatric bed registry established pursuant to subsection A and shall designate an employee to submit information for inclusion in the acute psychiatric bed registry and serve as a point of contact for addressing requests for information related to data reported to the acute psychiatric bed registry. Information reported to the acute psychiatric bed registry shall be updated at least daily.

C. The Commissioner may enter into a contract with a private entity for the development and administration of the acute psychiatric bed registry established pursuant to subsection A.

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

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has 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 or clinical psychologist 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 the recommendations of any treating or examining physician licensed in Virginia if available 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.

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58 C. When considering whether there is probable cause to issue a temporary detention order, the
59 magistrate may, in addition to the petition, consider (i) the recommendations of any treating or
60 examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person,
61 (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical
62 records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the
63 affidavit, and (vii) any other information available that the magistrate considers relevant to the
64 determination of whether probable cause exists to issue a temporary detention order.

65 D. A magistrate may issue a temporary detention order without an emergency custody order
66 proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to
67 subsection B if (i) the person has been personally examined within the previous 72 hours by an
68 employee or a designee of the local community services board or (ii) there is a significant physical,
69 psychological, or medical risk to the person or to others associated with conducting such evaluation.

70 E. An employee or a designee of the local community services board shall determine the facility of
71 temporary detention *in accordance with the provisions of § 37.2-809.1* for all individuals detained
72 pursuant to this section. ~~The facility of temporary detention shall be one that has been approved~~
73 ~~pursuant to regulations of the Board.~~ The facility shall be identified on the preadmission screening report
74 and indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring
75 hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a
76 jail or other place of confinement for persons charged with criminal offenses and shall remain in the
77 custody of law enforcement until the person is either detained within a secure facility or custody has
78 been accepted by the appropriate personnel designated by the facility identified in the temporary
79 detention order.

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

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

94 H. The duration of temporary detention shall be sufficient to allow for completion of the examination
95 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and
96 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary
97 commitment where possible, but shall not exceed 48 hours prior to a hearing. If the 48-hour period
98 herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as
99 herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal
100 holiday. The person may be released, pursuant to § 37.2-813, before the 48-hour period herein specified
101 has run.

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

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

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

120 L. The employee or designee of the community services board who is conducting the evaluation
121 pursuant to this section shall, if he recommends that the person should not be subject to a temporary
122 detention order, inform the petitioner and an onsite treating physician of his recommendation.

123 **§ 37.2-809.1. Facility of temporary detention.**

124 A. An individual for whom a temporary detention order is issued in accordance with the provisions
125 of § 37.2-809 shall be detained in a state facility for the treatment of individuals with mental illness
126 unless an employee or designee of the community services board or an employee of the state facility to
127 which the individual would be admitted in accordance with this subsection is able, prior to the issuance
128 of the temporary detention order, to locate an alternative facility that is able to provide temporary
129 detention and appropriate care for the individual and that alternative facility agrees to accept the
130 individual for temporary detention.

131 B. In each case in which an employee or designee of the local community services board is required
132 to make an evaluation of a person who is subject to an emergency custody order pursuant to subsection
133 B of § 37.2-808, an employee or designee of the local community services board shall, upon being
134 notified of the need for such evaluation, contact the state facility for the area in which the community
135 services board is located and notify the state facility that the individual will be transported to the
136 facility upon issuance of a temporary detention order. Upon completion of the evaluation, the employee
137 or designee of the community services board shall convey to the state facility information about the
138 individual necessary to allow the state facility to determine the services the individual will require upon
139 admission.

140 C. A state facility may, following the notice in accordance with subsection B, conduct a search for
141 an alternative facility that is able and willing to provide temporary detention and appropriate care to
142 the individual, which may include another state facility if the state facility is unable to provide
143 temporary detention and appropriate care for the individual. If an alternative facility is identified and
144 agrees to accept the individual for temporary detention, the state facility shall notify the community
145 services board, and the community services board shall designate the alternative facility on the
146 prescreening report.

147 D. An employee or designee of a community services board shall continue, following notice to the
148 state facility pursuant to subsection B, to make good faith efforts to identify a facility other than the
149 state facility that is able and willing to provide temporary detention and appropriate care for an
150 individual who meets the criteria for temporary detention, until such time as an alternative facility is
151 identified or the individual is admitted to the state facility. If an alternative facility is identified, the
152 community services board shall notify the state facility and designate the alternative facility on the
153 prescreening report. If an alternative facility is not identified prior to the expiration of the initial period
154 of emergency custody, the community services board shall petition the magistrate for an extension of the
155 emergency custody order, in accordance with the provisions of §37.2-808.

156 E. The facility of temporary detention designated in accordance with this section shall be one that
157 has been approved pursuant to regulations of the Board.