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HOUSE BILL NO. 293

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 8, 2014)

(Patrons Prior to Substitute—Delegates Bell, Robert B. and Yost [HB 243])

A *BILL to amend and reenact §§ 16.1-340.1 and 37.2-809 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-340.1:1 and 37.2-809.1, relating to facility of temporary detention.*

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 and that the Code of Virginia is amended by adding sections numbered 16.1-340.1:1 and 37.2-809.1 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 or clinical psychologist 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 irreparable 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 or psychologist 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 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. The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board of Behavioral Health and Developmental Services. The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. Subject to the provisions of § 16.1-340.1:1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall be detained in a state facility for the treatment of minors with mental illness and such facility shall be indicated on the temporary detention order. Except for minors who are detained for a criminal offense by a juvenile and domestic relations district court and who require hospitalization in accordance with this article, the minor shall not be detained in a jail or other place of confinement for persons charged with criminal

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60 offenses and shall remain in the custody of law enforcement until the minor is either detained within a
61 secure facility or custody has been accepted by the appropriate personnel designated by the facility
62 identified in the temporary detention order.

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

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

77 G. The duration of temporary detention shall be sufficient to allow for completion of the examination
78 required by § 16.1-342, preparation of the preadmission screening report required by § 16.1-340.4, and
79 initiation of mental health treatment to stabilize the minor's psychiatric condition to avoid involuntary
80 commitment where possible, but shall not exceed 96 hours prior to a hearing. If the 96-hour period
81 herein specified terminates on a Saturday, Sunday, or legal holiday, the minor may be detained, as
82 herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal
83 holiday. The minor may be released, pursuant to § 16.1-340.3, before the 96-hour period herein specified
84 has run.

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

94 I. For purposes of this section a healthcare provider or an employee or designee of the local
95 community services board shall not be required to encrypt any email containing information or medical
96 records provided to a magistrate unless there is reason to believe that a third party will attempt to
97 intercept the email.

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

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

104 **§ 16.1-340.1:1. Facility of temporary detention.**

105 A. *In each case in which an employee or designee of the local community services board is required*
106 *to make an evaluation of a minor pursuant to subsection B, G, or H of § 16.1-340, an employee or*
107 *designee of the local community services board shall, upon being notified of the need for such*
108 *evaluation, contact the state facility for the area in which the community services board is located and*
109 *notify the state facility that the minor will be transported to the facility upon issuance of a temporary*
110 *detention order if no other facility of temporary detention can be identified by the time of the expiration*
111 *of the period of emergency custody pursuant to § 16.1-340. Upon completion of the evaluation, the*
112 *employee or designee of the local community services board shall convey to the state facility information*
113 *about the minor necessary to allow the state facility to determine the services the minor will require*
114 *upon admission.*

115 B. *A state facility may, following the notice in accordance with subsection A, conduct a search for*
116 *an alternative facility that is able and willing to provide temporary detention and appropriate care to*
117 *the minor, which may include another state facility if the state facility notified in accordance with*
118 *subsection A is unable to provide temporary detention and appropriate care for the minor. Under no*
119 *circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for temporary*
120 *detention pursuant to § 16.1-340.1 unless an alternative facility that is able to provide temporary*
121 *detention and appropriate care agrees to accept the minor for temporary detention, and the minor shall*

not during the duration of the temporary detention order be released from the custody of the community services board except for purposes of transporting the minor to the state facility or alternative facility in accordance with the provisions of § 16.1-340.2. If an alternative facility is identified and agrees to accept the minor for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the State Board of Behavioral Health and Developmental Services.

§ 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.

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 or psychologist 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 individuals detained pursuant to this section. ~~The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board.~~ The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. *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 individual shall be detained in a state facility for the treatment of individuals 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

183 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons
184 charged with criminal offenses and shall remain in the custody of law enforcement until the person is
185 either detained within a secure facility or custody has been accepted by the appropriate personnel
186 designated by the facility identified in the temporary detention order.

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 48 hours prior to a hearing. If the 48-hour period
205 herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as
206 herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal
207 holiday. The person may be released, pursuant to § 37.2-813, before the 48-hour period herein specified
208 has run.

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

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

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

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

230 **§ 37.2-809.1. Facility of temporary detention.**

231 A. In each case in which an employee or designee of the local community services board as defined
232 in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of
233 § 37.2-808, an employee or designee of the local community services board shall, upon being notified of
234 the need for such evaluation, contact the state facility for the area in which the community services
235 board is located and notify the state facility that the individual will be transported to the facility upon
236 issuance of a temporary detention order if no other facility of temporary detention can be identified by
237 the time of the expiration of the period of emergency custody pursuant to § 37.2-808. Upon completion
238 of the evaluation, the employee or designee of the local community services board shall convey to the
239 state facility information about the individual necessary to allow the state facility to determine the
240 services the individual will require upon admission.

241 B. A state facility may, following the notice in accordance with subsection A, conduct a search for
242 an alternative facility that is able and willing to provide temporary detention and appropriate care to
243 the individual, which may include another state facility if the state facility notified in accordance with
244 subsection A is unable to provide temporary detention and appropriate care for the individual. Under no

circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary detention pursuant to § 37.2-809 unless an alternative facility that is able to provide temporary detention and appropriate care agrees to accept the individual for temporary detention and the individual shall not during the duration of the temporary detention order be released from the custody of the community services board except for purposes of transporting the individual to the state facility or alternative facility in accordance with the provisions of § 37.2-810. If an alternative facility is identified and agrees to accept the individual for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

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

2. That the Department of Behavioral Health and Developmental Services shall submit an annual report on or before June 30 of each year on the implementation of this act to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees. The report shall include the number of notifications of individuals in need of facility services by the community services boards, the number of alternative facilities contacted by community services boards and state facilities, the number of temporary detentions provided by state facilities and alternative facilities, the length of stay in state facilities and alternative facilities, and the cost of the detentions in state facilities and alternative facilities.