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## SENATE BILL NO. 260

Offered January 8, 2014

Prefiled January 3, 2014

A *BILL to amend and reenact §§ 37.2-808 and 37.2-817.2 of the Code of Virginia, relating to emergency custody; time limit.*

Patrons—Deeds, Barker, Black, Favola, Howell and Ebbin; Delegates: Plum and Torian

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 37.2-808 and 37.2-817.2 of the Code of Virginia are amended and reenacted as follows:**

**§ 37.2-808. Emergency custody; issuance and execution of order.**

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any 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. Any emergency custody 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.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, in cases in which the emergency custody order is based upon a finding that the person who is the subject of the order 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, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs but there is no substantial likelihood that the person will cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, the magistrate shall consider any request to 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 order, a representative of the community services board, 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 the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary 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. In such cases, a copy of the emergency custody order shall accompany the person being

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59 transported pursuant to this section at all times and shall be delivered by the alternative transportation  
60 provider to the community services board or its designee responsible for conducting the evaluation. The  
61 community services board or its designee conducting the evaluation shall return a copy of the  
62 emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of  
63 an order to a law-enforcement officer or alternative transportation provider and return of an order to the  
64 court may be accomplished electronically or by facsimile.

65 Transportation under this section shall include transportation to a medical facility as may be  
66 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in  
67 accordance with state and federal law. Transportation under this section shall include transportation to a  
68 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the  
69 emergency custody order may be detained requires a medical evaluation prior to admission.

70 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,  
71 the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the  
72 community services board that designated the person to perform the evaluation required in subsection B  
73 to execute the order and, in cases in which transportation is ordered to be provided by the primary  
74 law-enforcement agency, provide transportation. If the community services board serves more than one  
75 jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular  
76 jurisdiction within the community services board's service area where the person who is the subject of  
77 the emergency custody order was taken into custody or, if the person has not yet been taken into  
78 custody, the primary law-enforcement agency from the jurisdiction where the person is presently located  
79 to execute the order and provide transportation.

80 E. The law-enforcement agency or alternative transportation provider providing transportation  
81 pursuant to this section may transfer custody of the person to the facility or location to which the person  
82 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is  
83 licensed to provide the level of security necessary to protect both the person and others from harm, (ii)  
84 is actually capable of providing the level of security necessary to protect the person and others from  
85 harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered  
86 into an agreement or memorandum of understanding with the law-enforcement agency setting forth the  
87 terms and conditions under which it will accept a transfer of custody, provided, however, that the  
88 facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer  
89 of custody.

90 F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county,  
91 city, or town in which he serves to any point in the Commonwealth for the purpose of executing an  
92 emergency custody order pursuant to this section.

93 G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has  
94 probable cause to believe that a person meets the criteria for emergency custody as stated in this section  
95 may take that person into custody and transport that person to an appropriate location to assess the need  
96 for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a  
97 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the  
98 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for  
99 the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of  
100 custody shall not exceed ~~four~~ 24 hours from the time the law-enforcement officer takes the person into  
101 custody. ~~However, upon a finding by a magistrate that good cause exists to grant an extension, the~~  
102 ~~magistrate shall issue an order extending the period of emergency custody one time for an additional~~  
103 ~~period not to exceed two hours. Good cause for an extension includes the need for additional time to~~  
104 ~~allow (i) the community services board to identify a suitable facility in which the person can be~~  
105 ~~temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if~~  
106 ~~necessary.~~

107 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be  
108 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial  
109 limits of the county, city, or town in which he serves may take such person into custody and transport  
110 him to an appropriate location to assess the need for hospitalization or treatment without prior  
111 authorization when the law-enforcement officer determines (i) that the person has revoked consent to be  
112 transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his  
113 observations, that probable cause exists to believe that the person meets the criteria for emergency  
114 custody as stated in this section. The period of custody shall not exceed ~~four~~ 24 hours from the time the  
115 law-enforcement officer takes the person into custody. ~~However, upon a finding by a magistrate that~~  
116 ~~good cause exists to grant an extension, the magistrate shall issue an order extending the period of~~  
117 ~~emergency custody one time for an additional period not to exceed two hours. Good cause for an~~  
118 ~~extension includes the need for additional time to allow (a) the community services board to identify a~~  
119 ~~suitable facility in which the person can be temporarily detained pursuant to § 37.2-809, or (b) a medical~~  
120 ~~evaluation of the person to be completed if necessary.~~

I. 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.

J. The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed ~~four~~ 24 hours from the time of execution. ~~However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate shall extend the emergency custody order one time for a second period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (i) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if necessary. Any family member, as defined in § 37.2-100, employee or designee of the local community services board as defined in § 37.2-809, treating physician, or law-enforcement officer may request the two-hour extension.~~

K. If an emergency custody order is not executed within ~~six~~ 24 hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.

L. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical screening and assessment services provided to persons with mental illnesses while in emergency custody.

**§ 37.2-817.2. Court review of mandatory outpatient treatment plan or discharge plan.**

A. The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the mandatory outpatient treatment plan or discharge plan; however, if the fifth day is a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday. If the person is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order or discharge plan, and the original petitioner for the person's involuntary treatment. If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearings under §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment need not preside at the noncompliance hearing or any subsequent hearings. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

B. If requested by the person, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan or discharge plan, or the original petitioner for the person's involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally examine the person and certify to the court whether or not he has probable cause to believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient treatment as specified in subsections C, C1, C2, and D of § 37.2-817. The examination shall include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not detained in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination, if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board. If the person refuses or fails to appear, the community services board shall notify the court, or a magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and *capias* directing the primary law-enforcement agency in the jurisdiction where the person resides to transport the person to the examination. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period exceed ~~four~~ 24 hours.

C. If the person fails to appear for the hearing, the court shall, after consideration of any evidence from the person, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan or discharge plan regarding why the person failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to § 37.2-808, or (iii) issue a temporary detention order pursuant to § 37.2-809.

D. After hearing the evidence regarding the person's material noncompliance with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following

182 inpatient treatment and the person's current condition, and any other relevant information referenced in  
183 subsection C of § 37.2-817, the judge or special justice shall make one of the following dispositions:

184 1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary  
185 admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order  
186 the person's involuntary admission to a facility designated by the community services board for a period  
187 of treatment not to exceed 30 days;

188 2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment  
189 specified in subsection C1, C2, or D of § 37.2-817, and that a continued period of mandatory outpatient  
190 treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient  
191 treatment, making any necessary modifications that are acceptable to the community services board or  
192 treatment provider responsible for the person's treatment. In determining the appropriateness of  
193 outpatient treatment, the court may consider the person's material noncompliance with the previous  
194 mandatory treatment order; or

195 3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall  
196 rescind the order for mandatory outpatient treatment or order authorizing discharge to mandatory  
197 outpatient treatment following inpatient treatment.

198 Upon entry of an order for involuntary inpatient admission, transportation shall be provided in  
199 accordance with § 37.2-829.