

SENATE BILL NO. 268

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health

on _____)

(Patron Prior to Substitute--Senator Favola)

A BILL to amend and reenact §§ 37.2-808 and 37.2-810 of the Code of Virginia, relating to emergency custody and temporary detention; transportation; transfer of custody.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-808 and 37.2-810 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, or a court may issue pursuant to § 19.2-271.6, 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, or the court may pursuant to § 19.2-271.6, 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

27 unavailable and it so states in the affidavit, and (7) any other information available that the magistrate or
28 the court considers relevant to the determination of whether probable cause exists to issue an emergency
29 custody order.

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

36 C. The magistrate or court issuing an emergency custody order shall (i) specify the primary law-
37 enforcement agency and jurisdiction to execute the emergency custody order and ~~provide~~ (ii) designate a
38 transportation provider. In determining the transportation provider, the magistrate or court shall
39 ~~consider any request to authorize transportation by an~~ all options for alternative transportation ~~provider~~ in
40 accordance with this section, ~~whenever an alternative transportation provider is identified to the magistrate~~
41 ~~or court~~, which may be a person, facility, or agency, including a family member or friend of the person
42 who is the subject of the order, a representative of the community services board, or other transportation
43 provider with personnel trained to provide transportation in a safe manner, ~~upon~~. Upon determining,
44 following consideration of information provided by the petitioner; the community services board or its
45 designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons
46 who are available and have knowledge of the person, and, when the magistrate or court deems appropriate,
47 the proposed alternative transportation provider, either in person or via two-way electronic video and
48 audio or telephone communication system, ~~that the proposed~~ an alternative transportation provider is
49 available to provide transportation, willing to provide transportation, and able to provide transportation in
50 a safe manner, the magistrate shall designate such alternative transportation provider to provide
51 transportation of the person. If no alternative transportation provider is available to provide transportation,
52 willing to provide transportation, and able to provide transportation in a safe manner, the magistrate or

53 court shall designate the primary law-enforcement agency and jurisdiction designated to execute the
54 emergency custody order to provide transportation of the person.

55 When transportation is ordered to be provided by an alternative transportation provider, the
56 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take
57 the person into custody, and to transfer custody of the person to the alternative transportation provider
58 identified in the order. The law-enforcement agency may transfer custody of the person to the alternative
59 transportation provider immediately upon execution of the emergency custody order. The alternative
60 transportation provider shall maintain custody of the person from the time custody is transferred to the
61 alternative transportation provider by the primary law-enforcement agency until such time as an evaluation
62 is conducted and custody is transferred pursuant to a temporary detention order or the person is released
63 upon a determination that the person does not meet the criteria for temporary detention, including during
64 any period prior to the initiation of transportation of the person and while transportation is being provided.

65 In such cases, a copy of the emergency custody order shall accompany the person being transported
66 pursuant to this section at all times and shall be delivered by the alternative transportation provider to the
67 community services board or its designee responsible for conducting the evaluation. The community
68 services board or its designee conducting the evaluation shall return a copy of the emergency custody
69 order to the court designated by the magistrate or the court that issued the emergency custody order as
70 soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation
71 provider and return of an order to the court may be accomplished electronically or by facsimile.

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

77 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
78 the magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by
79 the community services board that designated the person to perform the evaluation required in subsection

80 B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-
81 enforcement agency, provide transportation. If the community services board serves more than one
82 jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the
83 particular jurisdiction within the community services board's service area where the person who is the
84 subject of the emergency custody order was taken into custody or, if the person has not yet been taken
85 into custody, the primary law-enforcement agency from the jurisdiction where the person is presently
86 located to execute the order and provide transportation.

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

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

99 G. A law-enforcement officer who, based upon his observation or the reliable reports of others,
100 has probable cause to believe that a person meets the criteria for emergency custody as stated in this
101 section may take that person into custody and transport that person to an appropriate location to assess the
102 need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
103 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
104 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the
105 purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of

106 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into
107 custody.

108 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be
109 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits
110 of the county, city, or town in which he serves may take such person into custody and transport him to an
111 appropriate location to assess the need for hospitalization or treatment without prior authorization when
112 the law-enforcement officer determines (i) that the person has revoked consent to be transported to a
113 facility for the purpose of assessment or evaluation, and (ii) based upon his observations, that probable
114 cause exists to believe that the person meets the criteria for emergency custody as stated in this section.
115 The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the
116 person into custody.

117 I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider
118 from obtaining emergency medical treatment or further medical evaluation at any time for a person in his
119 custody as provided in this section.

120 J. A representative of the primary law-enforcement agency specified to execute an emergency
121 custody order or a representative of the law-enforcement agency employing a law-enforcement officer
122 who takes a person into custody pursuant to subsection G or H shall notify the community services board
123 responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after
124 execution of the emergency custody order or after the person has been taken into custody pursuant to
125 subsection G or H.

126 K. The person shall remain in custody until (i) a temporary detention order is issued in accordance
127 with § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in
128 accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the
129 emergency custody order expires. An emergency custody order shall be valid for a period not to exceed
130 eight hours from the time of execution.

131 L. Nothing in this section shall preclude the issuance of an order for temporary detention for
132 testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an

133 emergency custody order issued pursuant to this section. In any case in which an order for temporary
134 detention for testing, observation, or treatment is issued for a person who is also the subject of an
135 emergency custody order, the person may be detained by a hospital emergency room or other appropriate
136 facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the
137 court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon
138 completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or
139 other appropriate facility in which the person is detained shall notify the nearest community services
140 board, and the designee of the community services board shall, as soon as is practicable and prior to the
141 expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of
142 the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

143 M. Any person taken into emergency custody pursuant to this section shall be given a written
144 summary of the emergency custody procedures and the statutory protections associated with those
145 procedures.

146 N. If an emergency custody order is not executed within eight hours of its issuance, the order shall
147 be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is
148 not open, to any magistrate serving the jurisdiction of the issuing court.

149 O. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if
150 the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and
151 an employee or designee of the community services board as defined in § 37.2-809 may, for an additional
152 four hours, continue to attempt to identify an alternative facility that is able and willing to provide
153 temporary detention and appropriate care to the individual.

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

156 Q. No person who provides alternative transportation pursuant to this section shall be liable to the
157 person being transported for any civil damages for ordinary negligence in acts or omissions that result
158 from providing such alternative transportation.

159 **§ 37.2-810. Transportation of person in the temporary detention process.**

160 A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
161 the magistrate shall specify in the temporary detention order the law-enforcement agency of the
162 jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to
163 provide transportation, to execute the order and, in cases in which transportation is ordered to be provided
164 by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the
165 jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction
166 in which the person is located, the law-enforcement agency of the jurisdiction in which the person is
167 located shall execute the order and provide transportation.

168 B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency
169 to execute the order and provide transportation. However, the magistrate shall consider any request to
170 authorize transportation by an alternative transportation provider in accordance with this section,
171 whenever an alternative transportation provider is identified to the magistrate, which may be a person,
172 facility, or agency, including a family member or friend of the person who is the subject of the temporary
173 detention order, a representative of the community services board, an employee of or person providing
174 services pursuant to a contract with the Department, or other transportation provider with personnel trained
175 to provide transportation in a safe manner upon determining, following consideration of information
176 provided by the petitioner; the community services board or its designee; the local law-enforcement
177 agency, if any; the person's treating physician, if any; or other persons who are available and have
178 knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative
179 transportation provider, either in person or via two-way electronic video and audio or telephone
180 communication system, that the proposed alternative transportation provider is available to provide
181 transportation, willing to provide transportation, and able to provide transportation in a safe manner.

182 When transportation is ordered to be provided by an alternative transportation provider, the
183 magistrate shall order the specified law-enforcement agency to execute the order, to take the person into
184 custody, and to transfer custody of the person to the alternative transportation provider identified in the
185 order. The primary law-enforcement agency may transfer custody of the person to the alternative
186 transportation provider immediately upon execution of the temporary detention order. The alternative

187 transportation provider shall maintain custody of the person from the time custody is transferred to the
188 alternative transportation provider by the primary law-enforcement agency until such time as custody of
189 the person is transferred to the temporary detention facility, including during any period prior to the
190 initiation of transportation of the person from the facility to which he was transported pursuant to § 37.2-
191 808 and while transportation is being provided pursuant to this section.

192 In such cases, a copy of the temporary detention order shall accompany the person being
193 transported pursuant to this section at all times and shall be delivered by the alternative transportation
194 provider to the temporary detention facility. The temporary detention facility shall return a copy of the
195 temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of
196 an order to a law-enforcement officer or alternative transportation provider and return of an order to the
197 court may be accomplished electronically or by facsimile.

198 The order may include transportation of the person to such other medical facility as may be
199 necessary to obtain further medical evaluation or treatment prior to placement as required by a physician
200 at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or
201 alternative transportation provider from obtaining emergency medical treatment or further medical
202 evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or
203 treatment shall be conducted immediately in accordance with state and federal law.

204 C. If an alternative transportation provider providing transportation of a person who is the subject
205 of a temporary detention order becomes unable to continue providing transportation of the person at any
206 time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which
207 the alternative transportation provider is located at the time he becomes unable to continue providing
208 transportation shall take custody of the person and shall transport the person to the facility of temporary
209 detention. In such cases, a copy of the temporary detention order shall accompany the person being
210 transported and shall be delivered to and returned by the temporary detention facility in accordance with
211 the provisions of subsection B.

212 D. In cases in which an alternative facility of temporary detention is identified and the law-
213 enforcement agency or alternative transportation provider identified to provide transportation in

214 accordance with subsection B continues to have custody of the person, the local law-enforcement agency
215 or alternative transportation provider shall transport the person to the alternative facility of temporary
216 detention identified by the employee or designee of the community services board. In cases in which an
217 alternative facility of temporary detention is identified and custody of the person has been transferred from
218 the law-enforcement agency or alternative transportation provider that provided transportation in
219 accordance with subsection B to the initial facility of temporary detention, the employee or designee of
220 the community services board shall request, and a magistrate may enter an order specifying, an alternative
221 transportation provider or, if no alternative transportation provider is available, willing, and able to provide
222 transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person
223 resides or, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles
224 from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency
225 of the jurisdiction in which the person is located, to provide transportation.

226 E. The magistrate may change the transportation provider specified in a temporary detention order
227 at any time prior to the initiation of transportation of a person who is the subject of a temporary detention
228 order pursuant to this section. If the designated transportation provider is changed by the magistrate at any
229 time after the temporary detention order has been executed but prior to the initiation of transportation, the
230 transportation provider having custody of the person shall transfer custody of the person to the
231 transportation provider subsequently specified to provide transportation. For the purposes of this
232 subsection, "transportation provider" includes both a law-enforcement agency and an alternative
233 transportation provider.

234 F. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the
235 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing
236 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into
237 agreements to facilitate the execution of temporary detention orders and provide transportation.

238 G. No person who provides alternative transportation pursuant to this section shall be liable to the
239 person being transported for any civil damages for ordinary negligence in acts or omissions that result
240 from providing such alternative transportation.

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