

SENATE BILL NO. 650

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health

on _____)

(Patron Prior to Substitute--Senator Hanger)

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 specify the primary law-
37 enforcement agency and jurisdiction to execute the emergency custody order and provide transportation.
38 However, the magistrate or court shall consider any request to authorize transportation by an alternative
39 transportation provider in accordance with this section, whenever an alternative transportation provider is
40 identified to the magistrate or court, which may be a person, facility, or agency, including a family member
41 or friend of the person who is the subject of the order, a representative of the community services board,
42 an employee of or person providing services pursuant to a contract with the Department, or other
43 transportation provider with personnel trained to provide transportation in a safe manner, upon
44 determining, following consideration of information provided by the petitioner; the community services
45 board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or
46 other persons who are available and have knowledge of the person, and, when the magistrate or court
47 deems appropriate, the proposed alternative transportation provider, either in person or via two-way
48 electronic video and audio or telephone communication system, that the proposed alternative
49 transportation provider is available to provide transportation, willing to provide transportation, and able
50 to provide transportation in a safe manner.

51 When transportation is ordered to be provided by an alternative transportation provider, the
52 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take
53 the person into custody, and to transfer custody of the person to the alternative transportation provider

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

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

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

74 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
75 the magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by
76 the community services board that designated the person to perform the evaluation required in subsection
77 B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-
78 enforcement agency, provide transportation. If the community services board serves more than one
79 jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the
80 particular jurisdiction within the community services board's service area where the person who is the

81 subject of the emergency custody order was taken into custody or, if the person has not yet been taken
82 into custody, the primary law-enforcement agency from the jurisdiction where the person is presently
83 located to execute the order and provide transportation.

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

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

96 G. A law-enforcement officer who, based upon his observation or the reliable reports of others,
97 has probable cause to believe that a person meets the criteria for emergency custody as stated in this
98 section may take that person into custody and transport that person to an appropriate location to assess the
99 need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
100 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
101 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the
102 purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
103 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into
104 custody.

105 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be
106 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits
107 of the county, city, or town in which he serves may take such person into custody and transport him to an

108 appropriate location to assess the need for hospitalization or treatment without prior authorization when
109 the law-enforcement officer determines (i) that the person has revoked consent to be transported to a
110 facility for the purpose of assessment or evaluation, and (ii) based upon his observations, that probable
111 cause exists to believe that the person meets the criteria for emergency custody as stated in this section.
112 The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the
113 person into custody.

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

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

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

128 L. Nothing in this section shall preclude the issuance of an order for temporary detention for
129 testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an
130 emergency custody order issued pursuant to this section. In any case in which an order for temporary
131 detention for testing, observation, or treatment is issued for a person who is also the subject of an
132 emergency custody order, the person may be detained by a hospital emergency room or other appropriate
133 facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the
134 court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon

135 completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or
136 other appropriate facility in which the person is detained shall notify the nearest community services
137 board, and the designee of the community services board shall, as soon as is practicable and prior to the
138 expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of
139 the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

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

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

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

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

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

156 **§ 37.2-810. Transportation of person in the temporary detention process.**

157 A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
158 the magistrate shall specify in the temporary detention order the law-enforcement agency of the
159 jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to
160 provide transportation, to execute the order and, in cases in which transportation is ordered to be provided
161 by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the

162 jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction
163 in which the person is located, the law-enforcement agency of the jurisdiction in which the person is
164 located shall execute the order and provide transportation.

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

179 When transportation is ordered to be provided by an alternative transportation provider, the
180 magistrate shall order the specified law-enforcement agency to execute the order, to take the person into
181 custody, and to transfer custody of the person to the alternative transportation provider identified in the
182 order. The primary law-enforcement agency may transfer custody of the person to the alternative
183 transportation provider immediately upon execution of the temporary detention order. The alternative
184 transportation provider shall maintain custody of the person from the time custody is transferred to the
185 alternative transportation provider by the primary law-enforcement agency until such time as custody of
186 the person is transferred to the temporary detention facility, including during any period prior to the
187 initiation of transportation of the person from the facility to which he was transported pursuant to § 37.2-
188 808 and while transportation is being provided pursuant to this section.

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

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

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

209 D. In cases in which an alternative facility of temporary detention is identified and the law-
210 enforcement agency or alternative transportation provider identified to provide transportation in
211 accordance with subsection B continues to have custody of the person, the local law-enforcement agency
212 or alternative transportation provider shall transport the person to the alternative facility of temporary
213 detention identified by the employee or designee of the community services board. In cases in which an
214 alternative facility of temporary detention is identified and custody of the person has been transferred from
215 the law-enforcement agency or alternative transportation provider that provided transportation in

216 accordance with subsection B to the initial facility of temporary detention, the employee or designee of
217 the community services board shall request, and a magistrate may enter an order specifying, an alternative
218 transportation provider or, if no alternative transportation provider is available, willing, and able to provide
219 transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person
220 resides or, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles
221 from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency
222 of the jurisdiction in which the person is located, to provide transportation.

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

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

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

238 **2. That the Department of Behavioral Health and Developmental Services shall amend its existing**
239 **contract for the provision of alternative transportation of a person who is subject to an emergency**
240 **custody or temporary detention order or enter into new contracts for alternative transportation of**
241 **a person who is subject to an emergency custody or temporary detention order to ensure sufficient**
242 **availability of alternative transportation providers to retain sufficient licensed security staff to take**

243 custody of and provide transportation for persons for whom alternative transportation is ordered
244 immediately upon execution of an emergency custody or temporary detention order, as provided in
245 this act.

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