

SENATE BILL NO. 119

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 § 37.2-809 of the Code of Virginia, relating to involuntary temporary detention; disclosure of health records.

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-809 of the Code of Virginia is amended and reenacted as follows:

§ 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

27 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a
28 designee of the local community services board to determine whether the person meets the criteria for
29 temporary detention, a temporary detention order if it appears from all evidence readily available,
30 including any recommendation from a physician, clinical psychologist, or clinical social worker treating
31 the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a
32 result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or
33 others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant
34 information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or
35 to provide for his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling
36 to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also
37 consider, if available, (a) information provided by the person who initiated emergency custody and (b) the
38 recommendations of any treating or examining physician licensed in Virginia either verbally or in writing
39 prior to rendering a decision. Any temporary detention order entered pursuant to this section shall provide
40 for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other
41 disclosures as required or permitted by law.

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

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

54 E. An employee or a designee of the local community services board shall determine the facility
55 of temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained
56 pursuant to this section. An employee or designee of the local community services board may change the
57 facility of temporary detention and may designate an alternative facility for temporary detention at any
58 point during the period of temporary detention if it is determined that the alternative facility is a more
59 appropriate facility for temporary detention of the individual given the specific security, medical, or
60 behavioral health needs of the person. In cases in which the facility of temporary detention is changed
61 following transfer of custody to an initial facility of temporary custody, transportation of the individual to
62 the alternative facility of temporary detention shall be provided in accordance with the provisions of §
63 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening
64 report and indicated on the temporary detention order; however, if an employee or designee of the local
65 community services board designates an alternative facility, that employee or designee shall provide
66 written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of
67 Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the
68 provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the
69 expiration of the period of emergency custody pursuant to § 37.2-808, the individual shall be detained in
70 a state facility for the treatment of individuals with mental illness and such facility shall be indicated on
71 the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in
72 accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place
73 of confinement for persons charged with criminal offenses and shall remain in the custody of law
74 enforcement until the person is either detained within a secure facility or custody has been accepted by
75 the appropriate personnel designated by either the initial facility of temporary detention identified in the
76 temporary detention order or by the alternative facility of temporary detention designated by the employee
77 or designee of the local community services board pursuant to this subsection. The person detained or in
78 custody pursuant to this section shall be given a written summary of the temporary detention procedures
79 and the statutory protections associated with those procedures.

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 regulation,
87 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 order,
90 the insurance status of the person. Where coverage by a third party payor exists, the facility seeking
91 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
95 examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-
96 816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid
97 involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour
98 period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is
99 lawfully closed, the person may be detained, as herein provided, until the close of business on the next
100 day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The person
101 may be released, pursuant to § 37.2-813, before the 72-hour period herein specified 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 of
104 the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the
105 issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition
106 is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local

107 community services board prior to issuing a subsequent order upon the original petition. Any petition for
108 which no temporary detention order or other process in connection therewith is served on the subject of
109 the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of
110 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 of
113 performing the duties established by this section. Each community services board shall provide to each
114 general district court and magistrate's office within its service area a list of its employees and designees
115 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 to
119 intercept the email.

120 L. If the employee or designee of the community services board who is conducting the evaluation
121 pursuant to this section recommends that the person should not be subject to a temporary detention order,
122 such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if
123 such person is present, and an onsite treating physician of his recommendation; (ii) promptly inform such
124 person who initiated emergency custody that the community services board will facilitate communication
125 between the person and the magistrate if the person disagrees with recommendations of the employee or
126 designee of the community services board who conducted the evaluation and the person who initiated
127 emergency custody so requests; and (iii) upon prompt request made by the person who initiated emergency
128 custody, arrange for such person who initiated emergency custody to communicate with the magistrate as
129 soon as is practicable and prior to the expiration of the period of emergency custody. The magistrate shall
130 consider any information provided by the person who initiated emergency custody and any
131 recommendations of the treating or examining physician and the employee or designee of the community
132 services board who conducted the evaluation and consider such information and recommendations in
133 accordance with subsection B in making his determination to issue a temporary detention order. The

134 individual who is the subject of emergency custody shall remain in the custody of law enforcement or a
135 designee of law enforcement and shall not be released from emergency custody until communication with
136 the magistrate pursuant to this subsection has concluded and the magistrate has made a determination
137 regarding issuance of a temporary detention order.

138 M. For purposes of this section, "person who initiated emergency custody" means any person who
139 initiated the issuance of an emergency custody order pursuant to § 37.2-808 or a law-enforcement officer
140 who takes a person into custody pursuant to subsection G of § 37.2-808.

141 N. In any case in which a person subject to an evaluation pursuant to this section is receiving
142 services in a hospital emergency department, the treating physician or his designee and the employee or
143 designee of the local community services board shall consult and disclose relevant information pertaining
144 to the individual's treatment in the emergency department.

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