

SENATE BILL NO. 872

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health

on _____)

(Patron Prior to Substitute--Senator Newman)

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

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 or other transportation provider with personnel trained to provide transportation in a safe manner, upon
43 determining, following consideration of information provided by the petitioner; the community services
44 board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or
45 other persons who are available and have knowledge of the person, and, when the magistrate or court
46 deems appropriate, the proposed alternative transportation provider, either in person or via two-way
47 electronic video and audio or telephone communication system, that the proposed alternative
48 transportation provider is available to provide transportation, willing to provide transportation, and able
49 to provide transportation in a safe manner.

50 When transportation is ordered to be provided by an alternative transportation provider, the
51 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take
52 the person into custody, and to transfer custody of the person to the alternative transportation provider
53 identified in the order. In such cases, a copy of the emergency custody order shall accompany the person

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

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

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

76 E. The law-enforcement agency or alternative transportation provider providing transportation
77 pursuant to this section may transfer custody of the person to the facility or location to which the person
78 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed
79 to provide the level of security necessary to protect both the person and others from harm, (ii) is actually
80 capable of providing the level of security necessary to protect the person and others from harm, and (iii)

81 in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement
82 or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions
83 under which it will accept a transfer of custody, provided, however, that the facility or location may not
84 require the law-enforcement agency to pay any fees or costs for the transfer of custody.

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

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

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

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

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

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

120 L. Nothing in this section shall preclude the issuance of an order for temporary detention for
121 testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an
122 emergency custody order issued pursuant to this section. In any case in which an order for temporary
123 detention for testing, observation, or treatment is issued for a person who is also the subject of an
124 emergency custody order, the person may be detained by a hospital emergency room or other appropriate
125 facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the
126 court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon
127 completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or
128 other appropriate facility in which the person is detained shall notify the nearest community services
129 board, and the designee of the community services board shall, as soon as is practicable and prior to the
130 expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of
131 the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

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

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

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

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

145 Q. An employee or contractor of an entity providing alternative transportation services pursuant
146 to a contract with the Department who has completed training approved by the Department in the proper
147 and safe use of restraint may use restraint (i) if restraint is necessary to ensure the safety of the person or
148 others or prevent escape and (ii) less restrictive techniques have been determined to be ineffective to
149 protect the person or others from harm or to prevent escape.

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

153 ~~R-S.~~ For purposes of this section:

154 "Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731.

155 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant
156 to §§ 15.2-1731 and 15.2-1733, except for the purposes of subsection G.

157 **§ 37.2-810. Transportation of person in the temporary detention process.**

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

166 B. The magistrate issuing the temporary detention order shall (i) specify the law-enforcement
167 agency to execute the order and (ii) designate a transportation provider. In determining the transportation
168 provider, the magistrate shall ~~consider any request to~~ authorize transportation by an alternative
169 transportation provider in accordance with this section, whenever an alternative transportation provider is
170 identified to the magistrate, which may be a person, facility, or agency, including a family member or
171 friend of the person who is the subject of the temporary detention order, a representative of the community
172 services board, an employee of or person providing services pursuant to a contract with the Department,
173 or other transportation provider with personnel trained to provide transportation in a safe manner. Upon
174 determining, following consideration of information provided by the petitioner; the community services
175 board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or
176 other persons who are available and have knowledge of the person, and, when the magistrate deems
177 appropriate, the proposed alternative transportation provider, either in person or via two-way electronic
178 video and audio or telephone communication system, that an alternative transportation provider is
179 available to provide transportation, willing to provide transportation, and able to provide transportation in
180 a safe manner, the magistrate shall designate such alternative transportation provider to provide
181 transportation of the person. If no alternative transportation provider is available to provide transportation,
182 willing to provide transportation, and able to provide transportation in a safe manner, the magistrate shall
183 designate the primary law-enforcement agency and jurisdiction designated to execute the temporary
184 detention order to provide transportation of the person.

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

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

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

208 C. If an alternative transportation provider providing transportation or maintaining custody of a
209 person who is the subject of a temporary detention order becomes unable to continue providing
210 transportation or maintaining custody of the person at any time after taking custody of the person, the
211 primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is

212 located at the time he becomes unable to continue providing transportation or maintaining custody shall
213 take custody of the person and shall transport the person to the facility of temporary detention. In such
214 cases, a copy of the temporary detention order shall accompany the person being transported and shall be
215 delivered to and returned by the temporary detention facility in accordance with the provisions of
216 subsection B.

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

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

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

243 G. An employee or contractor of an entity providing alternative transportation services pursuant
244 to a contract with the Department who has completed training approved by the Department in the proper
245 and safe use of restraint may use restraint (i) if restraint is necessary to ensure the safety of the person or
246 others or prevent escape and (ii) less restrictive techniques have been determined to be ineffective to
247 protect the person or others from harm or to prevent escape.

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

251 ~~H-I.~~ For purposes of this section:

252 "Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731.

253 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant
254 to §§ 15.2-1731 and 15.2-1733.

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