

SENATE BILL NO. 1302

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health  
on January 26, 2023)

(Patrons Prior to Substitute--Senators Deeds and Favola [SB 808])

A BILL to amend and reenact § 37.2-1104 of the Code of Virginia, relating to temporary detention in hospital for testing, observation, or treatment; mental or physical conditions resulting from intoxication.

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

**1. That § 37.2-1104 of the Code of Virginia is amended and reenacted as follows:**

**§ 37.2-1104. Temporary detention in hospital for testing, observation, or treatment.**

~~A. As used in this section, "mental or physical condition" includes intoxication.~~

~~B.~~The court or, if the court is unavailable, a magistrate serving the jurisdiction where the respondent is located may, with the advice of a licensed physician who has attempted to obtain informed consent of an adult person to treatment of a mental or physical condition, issue an order authorizing temporary detention of the adult person in a hospital emergency department or other appropriate facility for testing, observation, or treatment upon a finding that (i) probable cause exists to believe the person is incapable of making or communicating an informed decision regarding treatment of a physical or mental condition due to a mental or physical condition, including intoxication, and (ii) the medical standard of care calls for observation, testing, or treatment within the next 24 hours to prevent injury, disability, death, or other harm to the person resulting from such mental or physical condition.

B. When a mental or physical condition to be treated appears to be a result of intoxication, a licensed physician who has attempted to obtain informed consent of an adult person for treatment of such mental or physical condition appearing to be a result of intoxication may seek an order from the magistrate or court in the jurisdiction where the respondent is located authorizing temporary detention of the adult person in a hospital emergency department or other appropriate facility for testing, observation, or

27 treatment upon a finding that (i) probable cause exists to believe the person's intoxication has rendered the  
28 person incapable of making or communicating an informed decision regarding treatment and (ii) the  
29 medical standard of care calls for observation, testing, or treatment within the next 24 hours to prevent  
30 injury, disability, death, or other harm to the person or another person resulting from such intoxication.

31 C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless  
32 extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion  
33 of authorized testing, observation, or treatment, the physician determines that a person subject to an order  
34 under this subsection has become capable of making and communicating an informed decision, the  
35 physician shall rely on the person's decision on whether to consent to further testing, observation, or  
36 treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the  
37 physician learns of an objection by a member of the person's immediate family to the testing, observation,  
38 or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining  
39 whether to issue, modify, or terminate the order.

40 D. A court or, if the court is unavailable or pursuant to subsection B, a magistrate serving the  
41 jurisdiction may issue an order authorizing temporary detention for testing, observation, or treatment for  
42 a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if such  
43 person meets the criteria set forth in subsection A or B. In any case in which an order for temporary  
44 detention for testing, observation, or treatment is issued for a person who is also the subject of an  
45 emergency custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate facility  
46 in which the person is detained for testing, observation, or treatment shall notify the nearest community  
47 services board when such testing, observation, or treatment is complete, and the designee of the  
48 community services board shall, as soon as is practicable and prior to the expiration of the order for  
49 temporary detention issued pursuant to subsection A or B, conduct an evaluation of the person to  
50 determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

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