

SENATE BILL NO. 1299

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services

on February 3, 2023)

(Patron Prior to Substitute--Senator Deeds)

A BILL to amend and reenact §§ 37.2-809 and 37.2-813 of the Code of Virginia, relating to temporary detention; release of individual.

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

**1. That §§ 37.2-809 and 37.2-813 of the Code of Virginia are 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, clinical social worker, or licensed  
31 professional counselor treating the person, that the person (i) has a mental illness and that there exists a  
32 substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious  
33 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening  
34 harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect  
35 himself from harm or to provide for his basic human needs; (ii) is in need of hospitalization or treatment;  
36 and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The  
37 magistrate shall also consider, if available, (a) information provided by the person who initiated  
38 emergency custody and (b) the recommendations of any treating or examining physician licensed in  
39 Virginia either verbally or in writing prior to rendering a decision. Any temporary detention order entered  
40 pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This  
41 subsection shall not preclude any other 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, clinical social worker, or licensed professional counselor licensed in Virginia, if  
45 available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any  
46 relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness  
47 is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate  
48 considers relevant to the determination of whether probable cause exists to issue a temporary detention  
49 order.

50 D. A magistrate may issue a temporary detention order without an emergency custody order  
51 proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to  
52 subsection B if (i) the person has been personally examined within the previous 72 hours by an employee

53 or a designee of the local community services board or (ii) there is a significant physical, psychological,  
54 or medical risk to the person or to others associated with conducting such evaluation.

55 E. An employee or a designee of the local community services board shall determine the facility  
56 of temporary detention in accordance with the provisions of § 37.2-809.1 for all persons detained pursuant  
57 to this section. An employee or designee of the local community services board may change the facility  
58 of temporary detention and may designate an alternative facility for temporary detention at any point  
59 during the period of temporary detention if it is determined that the alternative facility is a more  
60 appropriate facility for temporary detention of the person given the specific security, medical, or  
61 behavioral health needs of the person. In cases in which the facility of temporary detention is changed  
62 following transfer of custody to an initial facility of temporary custody, transportation of the person to the  
63 alternative facility of temporary detention shall be provided in accordance with the provisions of § 37.2-  
64 810. The initial facility of temporary detention shall be identified on the preadmission screening report  
65 and indicated on the temporary detention order; however, if an employee or designee of the local  
66 community services board designates an alternative facility, that employee or designee shall provide  
67 written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of  
68 Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the  
69 provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the  
70 expiration of the period of emergency custody pursuant to § 37.2-808, the person shall be detained in a  
71 state facility for the treatment of persons with mental illness and such facility shall be indicated on the  
72 temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in  
73 accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place  
74 of confinement for persons charged with criminal offenses. Except as provided in § 37.2-811 for inmates  
75 requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6 or in subsection C of § 37.2-  
76 813 for persons awaiting transfer to the facility of temporary detention, the person shall remain in the  
77 custody of law enforcement until either (i) the person is ~~either~~ detained within a secure facility or (ii)  
78 custody has been accepted by the appropriate personnel designated by either the initial facility of  
79 temporary detention identified in the temporary detention order or by the alternative facility of temporary

80 detention designated by the employee or designee of the local community services board pursuant to this  
81 subsection. The person detained or in custody pursuant to this section shall be given a written summary  
82 of the temporary detention procedures and the statutory protections associated with those procedures.

83 F. Any facility caring for a person placed with it pursuant to a temporary detention order is  
84 authorized to provide emergency medical and psychiatric services within its capabilities when the facility  
85 determines that the services are in the best interests of the person within its care. The costs incurred as a  
86 result of the hearings and by the facility in providing services during the period of temporary detention  
87 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the  
88 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance  
89 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation,  
90 establish a reasonable rate per day of inpatient care for temporary detention.

91 G. The employee or the designee of the local community services board who is conducting the  
92 evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order,  
93 the insurance status of the person. Where coverage by a third party payor exists, the facility seeking  
94 reimbursement under this section shall first seek reimbursement from the third party payor. The  
95 Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances  
96 covered by the third party payor have been received.

97 H. The duration of temporary detention shall be sufficient to allow for completion of the  
98 examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-  
99 816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid  
100 involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour  
101 period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is  
102 lawfully closed, the person may be detained, as herein provided, until the close of business on the next  
103 day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The person  
104 may be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

105 I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter  
106 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of

107 the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the  
108 issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition  
109 is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local  
110 community services board prior to issuing a subsequent order upon the original petition. Any petition for  
111 which no temporary detention order or other process in connection therewith is served on the subject of  
112 the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of  
113 the clerk of the issuing court.

114 J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a  
115 magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of  
116 performing the duties established by this section. Each community services board shall provide to each  
117 general district court and magistrate's office within its service area a list of its employees and designees  
118 who are available to perform the evaluations required herein.

119 K. For purposes of this section, a health care provider or designee of a local community services  
120 board or behavioral health authority shall not be required to encrypt any email containing information or  
121 medical records provided to a magistrate unless there is reason to believe that a third party will attempt to  
122 intercept the email.

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

134 recommendations of the treating or examining physician and the employee or designee of the community  
135 services board who conducted the evaluation and consider such information and recommendations in  
136 accordance with subsection B in making his determination to issue a temporary detention order. The  
137 person who is the subject of emergency custody shall remain in the custody of law enforcement or a  
138 designee of law enforcement and shall not be released from emergency custody until communication with  
139 the magistrate pursuant to this subsection has concluded and the magistrate has made a determination  
140 regarding issuance of a temporary detention order.

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

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

148 **§ 37.2-813. Release of person prior to commitment hearing for involuntary admission.**

149 A. Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819, the district court judge or  
150 special justice may release the person on his personal recognizance or bond set by the district court judge  
151 or special justice if it appears from all evidence readily available that the person does not meet the  
152 commitment criteria specified in subsection C of § 37.2-817.

153 B. The director of any facility in which the person is detained may release the person prior to a  
154 hearing as authorized in §§ 37.2-814 through 37.2-819 if it appears, based on an evaluation conducted by  
155 the psychiatrist or clinical psychologist treating the person, that the person would not meet the  
156 commitment criteria specified in subsection C of § 37.2-817 if released.

157 C. For any person under a temporary detention order pursuant to § 37.2-809, prior to transport to  
158 the facility of temporary detention, the director of the facility in which the person is located may release  
159 the person if an employee or a designee of the local community services board, as those terms are defined  
160 in § 37.2-809, in consultation with the person's treating physician, (i) conducts an evaluation of the person,

161 (ii) determines that the person no longer meets the commitment criteria specified in subsection C of §  
162 37.2-817, (iii) authorizes the release of the person, and (iv) provides a discharge plan.

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