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SENATE BILL NO. 1094

Senate Amendments in [] - January 27, 2025

A BILL to amend and reenact § 37.2-809, as it is currently effective, of the Code of Virginia, relating to involuntary temporary detention orders; definition of "psychiatric emergency department."

Patron Prior to Engrossment—Senator Jordan

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

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

§ 37.2-809. (Expires July 1, 2026) Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section:

"Certified evaluator" means (i) an individual with an educational attainment of a master's or doctoral degree with an associated professional license; (ii) a licensed professional counselor, licensed clinical social worker, licensed marriage and family therapist, licensed clinical psychologist, or psychiatrist; or (iii) a licensed psychiatric nurse practitioner, psychiatric physician assistant, psychiatric clinical nurse specialist, doctor of medicine, or doctor of osteopathy, who are not emergency department providers. A certified evaluator shall (a) be employed or contracted by a hospital with a psychiatric emergency department in the City of Hampton and such hospital shall be responsible for all costs associated with the hiring, training, and supervision of the certified evaluators, including salary, fringe benefits, and overhead costs; (b) be skilled in the assessment and treatment of mental illness; (c) have completed a training and certification program approved by the Department; (d) have received a prescreener orientation presentation developed by the Department in consultation with the Virginia Association of Community Services Boards, which shall include information on determining the least restrictive treatment available for the person being evaluated pursuant to subsection G of § 37.2-817.01; (e) be able to provide an independent examination of the person; (f) not be related by blood or marriage to the person being evaluated; (g) have no financial interest in the admission, treatment, or denial of admission of the person being evaluated; (h) have no investment interest in the facility detaining or admitting the person under this article; (i) only be permitted to conduct in-person evaluations on site at participating hospitals; and (j) only be permitted to conduct a temporary detention order evaluation in lieu of an employee or designee of the local community services board if the person subject to the temporary detention order evaluation is located in a hospital with a psychiatric emergency department in the City of Hampton.

"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.

"Psychiatric emergency department" means a facility that (i) is a separate and secure environment operating under the authority of a hospital with emergency department services licensed by the Department of Health, (ii) provides immediate access to psychiatric and psychological care, (iii) is adjacent to a facility licensed by the Department or the Department of Health, [and] (iv) provides medical care, case management, discharge planning, and bridge psychiatric services post-discharge as needed [, and (v) complies with subdivision B 2 of § 32.1-127] .

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 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the local community services board or after an in-person evaluation conducted by a certified evaluator to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician, clinical psychologist, clinical

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59 social worker, or licensed professional counselor treating the person, that the person (i) has a mental illness
60 and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near
61 future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing,
62 attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his
63 lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) is in need of
64 hospitalization or treatment; and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization
65 or treatment. The magistrate shall also consider, if available, (a) information provided by the person who
66 initiated emergency custody and (b) the recommendations of any treating or examining physician licensed in
67 Virginia either verbally or in writing prior to rendering a decision. Any temporary detention order entered
68 pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This
69 subsection shall not preclude any other disclosures as required or permitted by law.

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

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

82 E. An employee or a designee of the local community services board or a certified evaluator shall
83 determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all
84 persons detained pursuant to this section. An employee or designee of the local community services board or
85 a certified evaluator may change the facility of temporary detention and may designate an alternative facility
86 for temporary detention at any point during the period of temporary detention if it is determined that the
87 alternative facility is a more appropriate facility for temporary detention of the person given the specific
88 security, medical, or behavioral health needs of the person. In cases in which the facility of temporary
89 detention is changed following transfer of custody to an initial facility of temporary custody, transportation of
90 the person to the alternative facility of temporary detention shall be provided in accordance with the
91 provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the preadmission
92 screening report and indicated on the temporary detention order; however, if an employee or designee of the
93 local community services board or the certified evaluator designates an alternative facility, that employee or
94 designee or certified evaluator shall provide written notice forthwith, on a form developed by the Executive
95 Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the
96 alternative facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be
97 identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the person
98 shall be detained in a state facility for the treatment of persons with mental illness and such facility shall be
99 indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring
100 hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail
101 or other place of confinement for persons charged with criminal offenses. Except as provided in § 37.2-811
102 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6 or in subsection C of
103 § 37.2-813 for persons prior to transfer to the facility of temporary detention, the person shall remain in the
104 custody of law enforcement until either (i) the person is detained within a secure facility or (ii) custody has
105 been accepted by the appropriate personnel designated by either the initial facility of temporary detention
106 identified in the temporary detention order or by the alternative facility of temporary detention designated by
107 the employee or designee of the local community services board or the certified evaluator pursuant to this
108 subsection. The person detained or in custody pursuant to this section shall be given a written summary of the
109 temporary detention procedures and the statutory protections associated with those procedures.

110 F. 1. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized
111 to provide emergency medical and psychiatric services within its capabilities when the facility determines
112 that the services are in the best interests of the person within its care. The costs incurred as a result of the
113 hearings and by the facility in providing services during the period of temporary detention shall be paid and
114 recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this
115 section shall be established by the State Board of Medical Assistance Services based on reasonable criteria.
116 The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of
117 inpatient care for temporary detention.

118 2. Participating hospitals with psychiatric emergency departments in the City of Hampton shall report at
119 the end of each calendar year to the Chairmen of the Senate Committees on Education and Health and

120 Finance and Appropriations, the House Committees on Appropriations and Health and Human Services, and
 121 the Behavioral Health Commission and the Commissioner of Behavioral Health and Developmental Services
 122 the following information: (i) the length of time between when a person who is the subject of an emergency
 123 custody order pursuant to § 37.2-808 arrives at the psychiatric emergency department of a participating
 124 hospital and when the temporary detention order evaluation is completed and (ii) the number of (a)
 125 admissions, (b) psychiatric emergency department visits, (c) temporary detention order evaluations
 126 completed, (d) temporary detention orders executed, (e) individuals under temporary detention admitted to
 127 the participating hospital, and (f) individuals transferred from the psychiatric emergency department of the
 128 participating hospital to a state facility.

129 3. Participating hospitals with psychiatric emergency departments in the City of Hampton shall report
 130 monthly to the Commissioner of Behavioral Health and Developmental Services the number of (i) crisis
 131 evaluations conducted each month; (ii) temporary detention orders executed as a result of such evaluations
 132 and the percentage of evaluations such temporary detention orders represent by payor type; (iii) reportable
 133 events associated with such temporary detention orders and the percentage of temporary detention orders that
 134 such reportable events represent; (iv) reportable events (a) involving loss of custody, (b) with and without an
 135 emergency custody order, (c) with a temporary detention order executed subsequently, (d) in which the
 136 individual subsequently became engaged in outpatient treatment, (e) in which the individual did not become
 137 engaged in treatment services, and (f) involving medical treatment; and (v) other events. Such participating
 138 hospitals shall include in their monthly report the facility where each patient, classified by payor type, is
 139 placed for any temporary detention order that is executed based on their evaluation.

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

146 H. The duration of temporary detention shall be sufficient to allow for completion of the examination
 147 required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and
 148 initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary
 149 commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period herein
 150 specified terminates on a Saturday, Sunday, legal holiday, or, if the individual has been admitted to a facility
 151 of temporary detention, day or part of a day on which the clerk's office is lawfully closed, the person may be
 152 detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal
 153 holiday, or, if the individual has been admitted to a facility of temporary detention, day or part of a day on
 154 which the clerk's office is lawfully closed. The person may be released, pursuant to § 37.2-813, before the
 155 72-hour period herein specified has run.

156 I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period
 157 as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk
 158 of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the issuing court.
 159 Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed.
 160 However, a magistrate must again obtain the advice of an employee or a designee of the local community
 161 services board or a certified evaluator prior to issuing a subsequent order upon the original petition. Any
 162 petition for which no temporary detention order or other process in connection therewith is served on the
 163 subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the
 164 office of the clerk of the issuing court.

165 J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a magistrate,
 166 as provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing the
 167 duties established by this section. Each community services board shall provide to each general district court
 168 and magistrate's office within its service area a list of its employees and designees who are available to
 169 perform the evaluations required herein. The employer of any certified evaluator shall provide to each general
 170 district court and magistrate's office within its service area a list of its employees and designees who are
 171 available to perform the evaluations required herein.

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

176 L. If the employee or designee of the community services board or the certified evaluator who is
 177 conducting the evaluation pursuant to this section recommends that the person should not be subject to a
 178 temporary detention order, such employee or designee or certified evaluator shall (i) inform the petitioner, the
 179 person who initiated emergency custody if such person is present, and an onsite treating physician of his
 180 recommendation; (ii) promptly inform such person who initiated emergency custody that the community

181 services board or certified evaluator will facilitate communication between the person and the magistrate if
182 the person disagrees with recommendations of the employee or designee of the community services board or
183 certified evaluator who conducted the evaluation and the person who initiated emergency custody so
184 requests; and (iii) upon prompt request made by the person who initiated emergency custody, arrange for
185 such person who initiated emergency custody to communicate with the magistrate as soon as is practicable
186 and prior to the expiration of the period of emergency custody. The magistrate shall consider any information
187 provided by the person who initiated emergency custody and any recommendations of the treating or
188 examining physician and the employee or designee of the community services board or certified evaluator
189 who conducted the evaluation and consider such information and recommendations in accordance with
190 subsection B in making his determination to issue a temporary detention order. The person who is the subject
191 of emergency custody shall remain in the custody of law enforcement or a designee of law enforcement and
192 shall not be released from emergency custody until communication with the magistrate pursuant to this
193 subsection has concluded and the magistrate has made a determination regarding issuance of a temporary
194 detention order.

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

198 N. In any case in which a person subject to an evaluation pursuant to this section is receiving services in a
199 hospital emergency department, the treating physician or his designee and the employee or designee of the
200 local community services board or certified evaluator shall disclose to each other relevant information
201 pertaining to the individual's treatment in the emergency department. The (i) certified evaluator conducting
202 the evaluation pursuant to subsection B of § 37.2-808 and the provisions of this section or (ii) hospital
203 emergency department and treating physician or other health care provider designated by the physician shall
204 allow a family member or legal guardian of the individual subject to evaluation who is present, and who may
205 provide support and supportive decision-making, to be present with the individual unless the individual
206 objects or the certified evaluator or treating physician determines that the presence of any such person would
207 create a medical, clinical, or safety risk to the patient or health care provider or interferes with patient care.
208 No provision of this section shall delay the process of the patient receiving treatment.