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HOUSE BILL NO. 309

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health and Human Services
on February 3, 2026)

(Patron Prior to Substitute—Delegate Hope)

A BILL to amend and reenact §§ 37.2-1104 and 37.2-1106 of the Code of Virginia, relating to temporary detention in hospital for testing, observation, or treatment.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-1104 and 37.2-1106 of the Code of Virginia are amended and reenacted as follows:

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

A. 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 treatment upon a finding that (i) probable cause exists to believe the person's intoxication has rendered the person incapable of making or communicating an informed decision regarding treatment 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 or another person resulting from such intoxication.

C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order. *While the physician is seeking the issuance of an order pursuant to this subsection, the person for whom such order is being sought shall remain at the facility where he is located for up to two hours, and any available security personnel shall, at the direction of the physician, take reasonable measures to ensure that such person does not leave the facility. However, if (i) an order pursuant to this subsection is not issued; (ii) prior to the issuance of an order the physician determines that the person does not meet the requirements of this section; or (iii) a legal guardian or other person authorized to make an informed decision on the person's behalf rejects consent to continued custody of the facility or the testing, observation, or treatment, then the person shall be permitted to leave the facility immediately.*

D. (Expires July 1, 2026) A court or, if the court is unavailable or pursuant to subsection B, a magistrate serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if such person meets the criteria set forth in subsection A or B. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate facility in which the person is detained for testing, observation, or treatment shall notify the nearest community services board when such testing, observation, or treatment is complete, and the designee of the community services board or certified evaluator, as defined in § 37.2-809, shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to subsection A or B, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

D (Effective July 1, 2026) A court or, if the court is unavailable or pursuant to subsection B, a magistrate serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if such person meets the criteria set forth in subsection A or B. In any case in which an order for temporary

detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate facility in which the person is detained for testing, observation, or treatment shall notify the nearest community services board when such testing, observation, or treatment is complete, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to subsection A or B, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

E. For any person who has received testing, observation, or treatment while under a temporary detention order pursuant to this section, if the person does not meet criteria for a temporary detention order pursuant to § 37.2-809, the evaluator or treating health care professional shall consider, prior to the person's release or the expiration of the temporary detention order pursuant to this section, whether referral of the person to a community-based outpatient stabilization program for voluntary treatment is appropriate.

§ 37.2-1106. When health professional or licensed hospital not liable.

Any licensed health professional or licensed hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, administering treatment, or providing testing, or detention pursuant to the court's or magistrate's authorization as provided in this chapter *or any licensed health professional, licensed hospital, or security personnel assisting a licensed health professional involved in the detention of a person pursuant to subsection C of § 37.2-1104* shall have no liability arising out of a claim to the extent the claim is based on lack of consent to the treatment, testing, or detention. Any such professional or hospital administering treatment with the consent of the person receiving or being offered treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent, if a court or a magistrate has denied a petition hereunder to authorize the treatment and the denial was based on an affirmative finding that the person was capable of making and communicating an informed decision regarding the proposed treatment.