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**HOUSE BILL NO. 822**

Offered January 10, 2024

Prefiled January 9, 2024

*A BILL to amend and reenact § 37.2-808 of the Code of Virginia, relating to emergency custody; transportation; transfer of custody.*

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Patron—Cherry

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Referred to Committee for Courts of Justice

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**Be it enacted by the General Assembly of Virginia:****1. That § 37.2-808 of the Code of Virginia is 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 unavailable and it so states in the affidavit, and (7) any other information available that the magistrate or the court considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate or court issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate or court shall authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate or court, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, *an employee of or person providing services pursuant to a contract with the Department*, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate or court deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner.

When transportation is ordered to be provided by an alternative transportation provider, the magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. *The primary law-enforcement agency may transfer custody of the person to the alternative transportation provider immediately upon execution of the emergency custody order. The alternative transportation provider shall maintain custody of the person from the time custody is*

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59 *transferred to the alternative transportation provider by the primary law-enforcement agency until such*  
60 *time as custody of the person is transferred to the community services board or its designee that is*  
61 *responsible for conducting the evaluation, including during any period prior to the initiation of*  
62 *transportation of the person and while transportation is being provided.* In such cases, a copy of the  
63 emergency custody order shall accompany the person being transported pursuant to this section at all  
64 times and shall be delivered by the alternative transportation provider to the community services board  
65 or its designee responsible for conducting the evaluation. The community services board or its designee  
66 conducting the evaluation shall return a copy of the emergency custody order to the court designated by  
67 the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of  
68 an order to a law-enforcement officer or alternative transportation provider and return of an order to the  
69 court may be accomplished electronically or by facsimile.

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

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

85 E. The law-enforcement agency or alternative transportation provider providing transportation  
86 pursuant to this section may transfer custody of the person to the facility or location to which the person  
87 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is  
88 licensed to provide the level of security necessary to protect both the person and others from harm, (ii)  
89 is actually capable of providing the level of security necessary to protect the person and others from  
90 harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered  
91 into an agreement or memorandum of understanding with the law-enforcement agency setting forth the  
92 terms and conditions under which it will accept a transfer of custody, provided, however, that the  
93 facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer  
94 of custody. *If the magistrate issuing the emergency custody order pursuant to subsection A determines*  
95 *that the person subject to the order is not at risk to seriously harm others in the near future, the*  
96 *law-enforcement agency may transfer custody to the evaluating facility or location without meeting the*  
97 *conditions set forth in this subsection.*

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

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

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

119 I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from  
120 obtaining emergency medical treatment or further medical evaluation at any time for a person in his

121 custody as provided in this section.

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

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

133 L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing,  
134 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency  
135 custody order issued pursuant to this section. In any case in which an order for temporary detention for  
136 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody  
137 order, the person may be detained by a hospital emergency room or other appropriate facility for testing,  
138 observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of  
139 an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of  
140 testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other  
141 appropriate facility in which the person is detained shall notify the nearest community services board,  
142 and the designee of the community services board shall, as soon as is practicable and prior to the  
143 expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of  
144 the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

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

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

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

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

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

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

166 S. For purposes of this section:

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

168 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to  
169 §§ 15.2-1731 and 15.2-1733, except for the purposes of subsection G.