

22104326D

SENATE BILL NO. 593

Senate Amendments in [] - February 10, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 15.2-1731, 15.2-1734, 15.2-1735, 15.2-1736, 37.2-808, and 37.2-810 of the Code of Virginia, relating to custody and transportation of persons subject to emergency custody orders or temporary detention process; alternative custody; auxiliary police officers.

Patron Prior to Engrossment—Senator Newman

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1731, 15.2-1734, 15.2-1735, 15.2-1736, 37.2-808, and 37.2-810 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1731. Establishment, etc., authorized; powers, authority and immunities generally.

A. Localities, for the further preservation of the public peace, safety, and good order of the community, may establish, equip, and maintain auxiliary police forces that have all the powers and authority and all the immunities of full-time law-enforcement officers, if all such forces have met the training requirements established by the Department of Criminal Justice Services under § 9.1-102.

B. Notwithstanding any other provision of this section, an auxiliary officer shall be exempted from any initial training requirement established under § 9.1-102 until a date one year subsequent to the approval by the Criminal Justice Services Board of compulsory minimum training standards for auxiliary police officers, except that (i) any such officer shall not be permitted to carry or use a firearm while serving as an auxiliary police officer unless such officer has met the firearms training requirements established in accordance with in-service training standards for law-enforcement officers as prescribed by the Criminal Justice Services Board, and (ii) any such officer shall have one year following the approval by the Board to comply with the compulsory minimum training standards.

C. *Auxiliary police forces established pursuant to this section, who have met the training requirements of § 9.1-102, may be called into service by the sheriff or other chief law-enforcement officer as appropriate to execute emergency custody orders and provide transportation for such person subject to an emergency custody order pursuant to § 37.2-808 or to provide transportation for a person in the temporary detention process pursuant to § 37.2-810.*

§ 15.2-1734. Calling auxiliary police officers into service; police officers performing service to wear uniform; exception.

A. A locality may call into service or provide for calling into service such auxiliary police officers as may be deemed necessary (i) in time of public emergency; (ii) at such times as there are insufficient numbers of regular police officers to preserve the peace, safety, and good order of the community; or (iii) *to execute emergency custody orders and provide transportation for such person subject to an emergency custody order pursuant to § 37.2-808 or to provide transportation for a person in the temporary detention process pursuant to § 37.2-810; or (iv) at any time for the purpose of training such auxiliary police officers. At all times when performing such service, the members of the auxiliary police force shall wear the uniform prescribed by the governing body.*

B. Members of any auxiliary police force who have been trained in accordance with the provisions of § 15.2-1731 may be called into service by the chief of police of any locality to aid and assist regular police officers in the performance of their duties, *including executing emergency custody orders and providing transportation for such person subject to an emergency custody order pursuant to § 37.2-808 or providing transportation for a person in the temporary detention process pursuant to § 37.2-810.*

C. When the duties of an auxiliary police officer are such that the wearing of the prescribed uniform would adversely limit the effectiveness of the auxiliary police officer's ability to perform his prescribed duties, then clothing appropriate for the duties to be performed may be required by the chief of police.

§ 15.2-1735. Acting beyond limits of jurisdiction of locality.

The members of any such auxiliary police force shall not be required to act beyond the limits of the jurisdiction of any such locality except when called upon to protect any public property belonging to the locality ~~which~~ *that* may be located beyond its boundaries, or as provided in § 15.2-1736, 37.2-808, or 37.2-810.

§ 15.2-1736. Mutual aid agreements among governing bodies of localities.

The governing bodies of localities, institutions of higher learning having a police force appointed pursuant to subsection B of § 23.1-812, and institutions of higher education having a private police force, as well as sheriffs, and the Director of the Department of Conservation and Recreation with

ENGROSSED

SB593E

59 commissioned conservation officers, or any combination thereof may, by proper resolutions, enter in and
60 become a party to contracts or mutual aid agreements for the use of their joint forces, both regular and
61 auxiliary, their equipment and materials to maintain peace and good order, *including executing*
62 *emergency custody orders and providing transportation for such person subject to an emergency custody*
63 *order pursuant to § 37.2-808 or providing transportation for a person in the temporary detention*
64 *process pursuant to § 37.2-810.* However, no such institution of higher learning shall enter into such
65 agreement with another institution of higher education in a noncontiguous locality without the consent of
66 all localities within which such institutions are located. Any police or other law-enforcement officer,
67 regular or auxiliary, while performing his duty under any such contract or agreement, shall have the
68 same authority in such locality as he has within the locality where he was appointed.

69 In counties where no police department has been established, the sheriff may, in his discretion, enter
70 into mutual aid agreements as provided by this section.

71 **§ 37.2-808. Emergency custody; issuance and execution of order.**

72 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician,
73 or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody order
74 when he has probable cause to believe that any person (i) has a mental illness and that there exists a
75 substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause
76 serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
77 threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of
78 capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of
79 hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for
80 hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide
81 for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any
82 other disclosures as required or permitted by law.

83 When considering whether there is probable cause to issue an emergency custody order, the
84 magistrate may, in addition to the petition, or the court may pursuant to § 19.2-271.6, consider (1) the
85 recommendations of any treating or examining physician or psychologist licensed in Virginia, if
86 available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any
87 relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness
88 is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate
89 or the court considers relevant to the determination of whether probable cause exists to issue an
90 emergency custody order.

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

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

112 When transportation is ordered to be provided by an alternative transportation provider, the
113 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to
114 take the person into custody, and to transfer custody of the person to the alternative transportation
115 provider identified in the order. *The primary law-enforcement agency may transfer custody of the person*
116 *to the alternative transportation provider immediately upon execution of the emergency custody order.*
117 *The alternative transportation provider shall maintain custody of the person from the time custody is*
118 *transferred to the alternative transportation provider by the primary law-enforcement agency until such*
119 *time as [an evaluation is completed and] custody of the person is transferred [to the community*
120 *services board or its designee that is responsible for conducting the evaluation pursuant to a temporary*

detention order or the person is released upon a determination that the person does not meet the criteria for temporary detention] , including during any period prior to the initiation of transportation of the person and while transportation is being provided.

In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

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

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

E. The law-enforcement agency or alternative transportation provider providing transportation pursuant to this section may transfer custody of the person to the facility or location to which the person is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed to provide the level of security necessary to protect both the person and others from harm, (ii) is actually capable of providing the level of security necessary to protect the person and others from harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

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

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

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

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

J. A representative of the primary law-enforcement agency specified to execute an emergency custody order or a representative of the law-enforcement agency employing a law-enforcement officer

182 who takes a person into custody pursuant to subsection G or H shall notify the community services
183 board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable
184 after execution of the emergency custody order or after the person has been taken into custody pursuant
185 to subsection G or H.

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

191 L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing,
192 observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency
193 custody order issued pursuant to this section. In any case in which an order for temporary detention for
194 testing, observation, or treatment is issued for a person who is also the subject of an emergency custody
195 order, the person may be detained by a hospital emergency room or other appropriate facility for testing,
196 observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of
197 an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon completion of
198 testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other
199 appropriate facility in which the person is detained shall notify the nearest community services board,
200 and the designee of the community services board shall, as soon as is practicable and prior to the
201 expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of
202 the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

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

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

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

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

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

219 R. *For purposes of this section:*

220 "*Law-enforcement agency*" includes an auxiliary police force established pursuant to § 15.2-1731;
221 and

222 "*Law-enforcement officer*" includes an auxiliary police officer appointed or provided for pursuant to
223 §§ 15.2-1731 and 15.2-1733.

224 **§ 37.2-810. Transportation of person in the temporary detention process.**

225 A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
226 the magistrate shall specify in the temporary detention order the law-enforcement agency of the
227 jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to
228 provide transportation, to execute the order and, in cases in which transportation is ordered to be
229 provided by the primary law-enforcement agency, provide transportation. However, if the nearest
230 boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest
231 boundary of the jurisdiction in which the person is located, the law-enforcement agency of the
232 jurisdiction in which the person is located shall execute the order and provide transportation.

233 B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to
234 execute the order and provide transportation. However, the magistrate shall consider any request to
235 authorize transportation by an alternative transportation provider in accordance with this section,
236 whenever an alternative transportation provider is identified to the magistrate, which may be a person,
237 facility, or agency, including a family member or friend of the person who is the subject of the
238 temporary detention order, a representative of the community services board, *an employee or designee of*
239 *the Department*, or other transportation provider with personnel trained to provide transportation in a
240 safe manner upon determining, following consideration of information provided by the petitioner; the
241 community services board or its designee; the local law-enforcement agency, if any; the person's treating
242 physician, if any; or other persons who are available and have knowledge of the person, and, when the
243 magistrate 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 shall order the specified 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 temporary detention order. The alternative transportation provider shall maintain custody of the person from the time custody is transferred to the alternative transportation provider by the primary law-enforcement agency until such time as custody of the person is transferred to the temporary detention facility, including during any period prior to the initiation of transportation of the person from the facility to which he was transported pursuant to § 37.2-808 and while transportation is being provided pursuant to this section [.]*

In such cases, a copy of the temporary detention order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

The order may include transportation of the person to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

C. If an alternative transportation provider providing transportation of a person who is the subject of a temporary detention order becomes unable to continue providing transportation of the person at any time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the person and shall transport the person to the facility of temporary detention. In such cases, a copy of the temporary detention order shall accompany the person being transported and shall be delivered to and returned by the temporary detention facility in accordance with the provisions of subsection B.

D. In cases in which an alternative facility of temporary detention is identified and the law-enforcement agency or alternative transportation provider identified to provide transportation in accordance with subsection B continues to have custody of the person, the local law-enforcement agency or alternative transportation provider shall transport the person to the alternative facility of temporary detention identified by the employee or designee of the community services board. In cases in which an alternative facility of temporary detention is identified and custody of the person has been transferred from the law-enforcement agency or alternative transportation provider that provided transportation in accordance with subsection B to the initial facility of temporary detention, the employee or designee of the community services board shall request, and a magistrate may enter an order specifying, an alternative transportation provider or, if no alternative transportation provider is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person resides or, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located, to provide transportation.

E. The magistrate may change the transportation provider specified in a temporary detention order at any time prior to the initiation of transportation of a person who is the subject of a temporary detention order pursuant to this section. If the designated transportation provider is changed by the magistrate at any time after the temporary detention order has been executed but prior to the initiation of transportation, the transportation provider having custody of the person shall transfer custody of the person to the transportation provider subsequently specified to provide transportation. For the purposes of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative transportation provider.

F. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

G. No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result

305 from providing such alternative transportation.

306 *H. For purposes of this section:*

307 *"Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731;*
308 *and*

309 *"Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant to*
310 *§§ 15.2-1731 and 15.2-1733.*

311 **2. That pursuant to subdivision 11 of § 9.1-102 of the Code of Virginia, the Department of**
312 **Criminal Justice Services, when establishing compulsory minimum training standards for auxiliary**
313 **police officers who are called into service solely for the purpose of executing emergency custody**
314 **orders and providing transportation for such person subject to an emergency custody order**
315 **pursuant to § 37.2-808 of the Code of Virginia, as amended by this act, or to provide**
316 **transportation for a person in the temporary detention process pursuant to § 37.2-810 of the Code**
317 **of Virginia, as amended by this act, shall be limited to establishing such compulsory minimum**
318 **training standards to courses related to weapons, defensive tactics, de-escalation techniques, and**
319 **working with individuals with disabilities, mental health needs, or substance use disorders.**