

Civil Commitment Overview

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Emergency Custody Orders

Virginia Code § 37.2-808

- Definition - an order issued by a magistrate that requires any person in the magistrate's judicial district who is incapable of volunteering or unwilling to volunteer for treatment to be taken into custody and transported for an evaluation in order to assess the need for hospitalization or treatment

Who can ask for an ECO?

A magistrate may issue an ECO upon:

- the sworn petition of any responsible person; or
- the magistrate's own motion

Criteria for an ECO

Probable cause to believe that the person within his judicial district:

- (i) Has mental illness; and
- (ii) Is in need of hospitalization or treatment; and

Criteria for an ECO, con't.

- (iii) Is unwilling to volunteer or incapable of volunteering for hospitalization or treatment; and
- (iv) Presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself

Jurisdiction (37.2-808(C) and (D))

- Magistrate to order the primary law-enforcement agency from the jurisdiction served by the evaluating CSB/BHA to execute the order and provide transportation
 - If more than one jurisdiction covered, LE from the one where the person was taken into custody or, if not in custody yet, where person is presently located

Law Enforcement

- LEO may lawfully go to or be sent beyond the territorial limits of where he serves to any point in the Commonwealth to execute ECO
- ECO law doesn't preclude LEO from obtaining emergency medical treatment or further medical evaluation at any time for person in his custody

What happens after the ECO is issued?

- Law enforcement takes person into custody
- Transports to a convenient location for an evaluation

ECO Evaluation

- Made by a person designated by the CSB or BHA who is skilled in the diagnosis and treatment of mental illness and has completed a certification program approved by the DMHMRSAS
- Purpose - to assess the need for hospitalization or treatment

ECO Custody Limit: 37.2-808(H)

- Person shall remain in custody until a TDO is issued or until released but in no event shall this period of custody exceed **4 hours**.

Life of an ECO: 37.2-808(I)

- If an ECO is not executed within **4 hours** of its issuance, it is void
 - Must be returned unexecuted to the clerk's office of the issuing court, or if the office is not open, to any magistrate thereof

Custody without an ECO?

37.2-808(F)

- 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 may take that person into custody and transport for an evaluation without prior authorization
- Evaluation to be conducted immediately
- Period of custody not to exceed **4 hours**

Temporary Detention Orders

Virginia Code § 37.2-809

- Definition - an order issued by a magistrate that authorizes law enforcement to take a person into custody and transport to a facility designated on the order

How is a TDO issued?

37.2-809(B)

- Upon the sworn petition of any responsible person or upon the magistrate's own motion
- Only after an in-person evaluation by an employee or designee of the local CSB
 - Evaluator must be skilled in the assessment and treatment of mental illness and have completed a certification program approved by the DMHMRSAS

TDO Evaluation

- A designee of a CSB is defined as an examiner designated by the local CSB or BHA and able to provide an independent evaluation of the person who is
 - not related by blood or marriage to the person
 - has no financial interest in the admission or treatment of the person
 - has no investment interest in the facility of detention
 - is not an employee of the facility of detention (except for employees of state hospitals and the U.S. Department of Veterans Affairs)

Criteria for a TDO

- A magistrate may issue a TDO if it appears from all evidence readily available that the person:
 - (i) Has mental illness; and
 - (ii) Is in need of hospitalization or treatment; and

Criteria for a TDO, con't.

- (iii) Is incapable of volunteering or unwilling to volunteer for treatment or hospitalization; and
- (iv) Presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself

Criteria for a TDO, con't.

- Recommendations from a physician or clinical psychologist treating the person may be considered as part of the evidence

Which facility? 37.2-809(D)

- An employee or designee of the local CSB shall determine the facility of temporary detention
 - One approved per Board regulations
- The facility shall be identified on the preadmission screening report and indicated on the TDO itself
- May not be a jail unless the person being detained is under criminal charges (37.2-811)

Can a TDO be issued without an ECO proceeding? 37.2-809(C)

Yes. A magistrate may issue a TDO without a prior ECO proceeding. A TDO may also be issued without a prior in-person evaluation if:

- the person has been personally evaluated within the previous 72 hours by an employee or designee of the local CSB
- or
- there is a significant physical, psychological or medical risk, to the person or to others, associated with conducting such evaluation

Life of a TDO 37.2-809(H)

- If a TDO is not executed within **24 hours** of its issuance (or a shorter period specified in the TDO), it is void
 - Must be returned unexecuted to the clerk's office of the issuing court, or if the office is not open, to any magistrate thereof

Life of a Petition

- A subsequent TDO may be issued upon the original petition within **96 hours** after the petition is filed. However, a magistrate must again obtain the advice of an employee or designee of the local CSB prior to issuing the subsequent TDO.
 - After 96 hours, petition is void

Length of Detention

37.2-809(G)

- The temporary detention period cannot exceed **48 hours** prior to a hearing
- If the 48 hour period ends on a Saturday, Sunday or legal holiday, the temporary detention may extend until the next day that is not a Saturday, Sunday or legal holiday

Civil Commitment Hearings

- Governed by § 37.2-814 through 37.2-820

Who presides?

- District Court Judge
- Special Justice

Special Justices

37.2-803

- Appointed by chief judge of circuit to perform the duties required of a judge under Chapters 8 and 11 of Title 37.2 and select statutes under Titles 16.1, 19.2 and 53.1
- Licensed to practice law in Virginia
- Shall have all powers and jurisdiction conferred upon a judge
- Serves under the supervision and at the pleasure of the chief judge

Special Justices (cont'd)

- Within 6 months of appointment, must complete a minimum training program prescribed by Exec. Sec'y. of Supreme Court
- Collect fees prescribed in § 37.2-804 unless the governing body of the city or county provides for payment of an annual salary, in which case the fees are collected and paid into the treasury of the city or county

When?

37.2-814(A)

- Within 48 hours of execution of TDO unless
 - 48 hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed
 - Person may be detained until the next day that is not a Saturday, Sunday or legal holiday, or day on which the court is lawfully closed

When? (cont'd)

- 48 hours cannot be continued by issuance of successive TDOs
1996 Va. Op. Att'y Gen. 166, 170
- May be continued at person's request in furtherance of important constitutional right
 - Retain an attorney
 - Obtain an independent evaluation or summon other witnesses1996 Va. Op. Att'y Gen. 154, 156-157

Where?

37.2-820

- Convenient institution or other place provided for in 37.2-809
 - Even if the institution or place is located in a city or county other than his own, judge has full authority and power as if in own city or county
 - Judge or special justice where institution or place is located may also conduct the hearing

Voluntary Admission

37.2-814(B)

- Judge shall inform person of right to apply for voluntary admission and treatment
- Judge shall ascertain whether person is willing and capable of seeking voluntary admission

Voluntary Admission (cont'd)

- If willing and capable, judge shall require person to accept voluntary admission for a minimum period of treatment not to exceed 72 hours
- After minimum period of treatment, person must give 48 hours notice prior to leaving the hospital
- Subject to transportation and CSB prescreening requirements.

Rights

37.2-814(C)

- If person is incapable or unwilling to accept voluntary admission, judge informs him of:
 - Right to a commitment hearing
 - Right to counsel
 - If not represented, judge appoints counsel
 - If requested, shall give person a reasonable opportunity to employ counsel at own expense

Written Explanation

37.2-814(D)

- Written explanation of process shall be given to the person and explained by counsel prior to the hearing. Contents must include:
 - Right to retain counsel or have court-appointed counsel
 - Right to present any defense, including independent evaluation and expert testimony or testimony of other witnesses

Written Explanation (cont'd)

- Right to be present and testify
- Right to appeal
- Right to have jury trial on appeal

Judge must ascertain whether person has been given the written explanation

Duties of Attorney

37.2-814(E)

- To extent possible, during or before the hearing, the attorney shall:
 - Interview his client, the petitioner, the examiner, the CSB staff, and any other material witnesses
 - Examine all relevant diagnostic and other reports
 - Present evidence and witnesses, if any
 - Actively represent client
 - Represent wishes of client to extent possible

Rights of Petitioner

37.2-814(F)

- Shall be given adequate notice of place, date, and time of hearing
- Entitled to:
 - Retain counsel at own expense
 - Be present at hearing
 - Testify and present evidence
 - Petitioner encouraged but not required to testify
 - Person shall not be released solely because petitioner did not attend or testify

Examination

37.2-815

- Judge shall require an examination
- Qualifications of examiner
 - Psychiatrist licensed by Bd of Medicine or psychologist licensed by Bd of Psychology
 - Qualified in diagnosis of mental illness
 - If not available:
 - Any mental health professional licensed by DHP
 - Qualified in the diagnosis of mental illness

Examination (cont'd)

- Examiner must be able to provide an independent examination
 - Not related by blood or marriage
 - Not responsible for treating the person
 - No financial interest in the admission or treatment
 - Except for state hospital and VA employees, not an employee of the facility
 - No investment interest in the facility detaining or admitting the person

Examination (cont'd)

- Investment interest
 - Ownership or holding of equity or debt security, including
 - Shares of stock in a corporation
 - Interests or units of a partnership
 - Bonds
 - Debentures
 - Notes
 - Other equity or debt instruments
- § 37.2-809

Examination (cont'd)

- Examination shall be conducted in private
- Examiner shall certify that he has:
 - Personally examined the person
 - Has probable cause to believe person:
 - Does or does not present an imminent danger to himself or others as a result of mental illness or is or is not so seriously mentally ill as to be substantially unable to care for self; and
 - Requires or does not require involuntary inpatient treatment

Examination (cont'd)

- Judge shall summons the examiner to so certify or
- Judge, in his discretion, may accept written certification of examiner's findings if examination has been personally made within preceding 5 days and no objection sustained
- Judge shall not render a decision until the examiner has presented his report orally or in writing

Preadmission Screening Report

37.2-816

- Judge shall require a prescreening report
 - From CSB where the person resides or if impractical, where the person is located
 - Must be provided within 48 hours (or next day that is not Saturday, Sunday, legal holiday, or day on which court is lawfully closed)
 - Report is admissible as evidence of the facts stated therein
 - DOC exception

Preadmission Screening Report (Cont'd)

- Report must state
 - Whether the person presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill that he is substantially unable to care for self
 - Whether the person is in need of involuntary inpatient treatment
 - Whether there is no less restrictive alternative
 - Recommendations for placement, care and treatment

Decision

37.2-817

- Judge must
 - Observe person
 - Obtain necessary positive certification
 - Consider other relevant evidence offered

Involuntary Admission

37.2-817(B)

- Criteria for Involuntary Admission
 - Person presents an imminent danger to self or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for self
 - Alternatives to involuntary inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative

Involuntary Admission (cont'd)

- If person meets criteria for inpatient treatment, judge orders person placed in facility for treatment
- Treatment not to exceed 180 days from date of order
- Placement shall be in a facility designated by the CSB where person examined
 - If CSB does not provide a recommendation, then in a facility designated by the Commissioner

Outpatient Treatment

37.2-817(C)

- Criteria for Outpatient Treatment Order
 - Person presents an imminent danger to self or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for self
 - Less restrictive alternatives to involuntary inpatient treatment investigated and deemed suitable

Outpatient Treatment (cont'd)

- Judge must find that the person
 - Has the degree of competency necessary to understand the stipulations of his treatment
 - Expresses an interest in living in the community and agrees to abide by treatment plan
 - Deemed to have capacity to comply with treatment plan
- Ordered treatment can be delivered on an outpatient basis
- Ordered treatment can be monitored by the CSB or designated provider

Outpatient Treatment (cont'd)

- Order
 - Outpatient treatment
 - Day treatment in a hospital
 - Night treatment in a hospital
 - Outpatient treatment with anti-psychotic medication (37.2-1101)
 - Other appropriate course of treatment as may be necessary to meet the needs of the person

Outpatient Treatment (cont'd)

- Revocation
 - Upon failure to adhere to the outpatient treatment order:
 - Judge may revoke outpatient treatment order
 - Order involuntary admission to a facility
 - Only after notice and a commitment hearing

Evidentiary Considerations

- Person may not be released solely on basis of petitioner's failure to attend or testify

37.2-814(F)

- Examiner and CSB preadmission screening reports, presented orally or in writing, may constitute sufficient evidence for court to make decision, if uncontested

37.2-817(A)

- Person's failure to adhere to past outpatient treatment orders may be admitted as evidence in subsequent hearings

37.2-817(C)

Appeals

37.2-821

- Any person involuntarily admitted has the right to appeal
- Must be filed within 30 days of date of order
- Appeal to the circuit court where the person was committed or to the circuit court where the facility is located
 - Choice rests with the person but court may transfer venue on finding that the other forum is more convenient
- Clerk of circuit court gives notice of appeal to the petitioner

Appeal (cont'd)

- Appeal is heard de novo
 - An order continuing the involuntary admission will only be entered if the commitment criteria are met at the time the appeal is heard

Appeal (cont'd)

- Rights of person on appeal
 - Trial by seven person jury
 - Counsel
 - If person is not represented by counsel, an attorney will be appointed to represent him
- Commonwealth's Attorney defends the order being appealed