Virginia's Civil Commitment Laws

Allyson K. Tysinger Office of the Attorney General July 2014

Involuntary Civil Commitment Virginia Code § 37.2-800 *et seq*.

- Three step process
 - Emergency Custody Order (ECO)
 - Temporary Detention Order (TDO)
 - Commitment Hearing

ECO Virginia Code § 37.2-808

 ECO – 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

ECO

- ECO can be issued on the sworn petition of any responsible person or on the magistrate's own motion
- Issued when magistrate finds probable cause to believe that a person meets the commitment criteria
 - Mental illness
 - Substantial likelihood that person will in the near future
 - Cause serious physical harm to self or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; or
 - Suffer serious harm due to lack of capacity to protect himself from harm or to provide for his basic human needs

ECO

- Magistrate may consider
 - Recommendations of any treating or examining physician or psychologist
 - Past actions of the person
 - Past mental health treatment
 - Relevant hearsay
 - Any medical records available
 - Affidavits if the witness is unavailable and the affidavit so states
 - Any other relevant information

ECO Transportation

- Magistrate specifies:
 - Primary law enforcement agency
 - Alternative transportation provider in certain circumstances

ECO Alternative Transportation

- Where ECO is based only on a finding that person will suffer serious harm due to lack of capacity to protect himself or provide for basic human needs
- Magistrate shall consider any request to authorize transportation by an alternative transportation provider when such a provider is identified to the magistrate

ECO Alternative Transportation

- Who?
 - Person
 - Facility
 - Agency
 - Family member, friend, rep of the CSB
 - Other transportation provider trained to provide transportation in a safe manner

ECO

Alternative Transportation

- Magistrate considers information from:
 - Petitioner
 - CSB
 - Law enforcement
 - Treating physician
 - Other persons available who have knowledge of the individual
 - The proposed alternative transportation provider, when magistrate deems appropriate

ECO Alternative Transportation

- Magistrate must determine that alternative transportation provider is
 - Available
 - Willing
 - Able to provide transportation in a safe manner

ECO

Alternative Transportation

- When alternative transportation is ordered
 - Magistrate orders law enforcement to execute the ECO, take person into custody, and transfer custody to the alternative provider
 - Alternative provider gives copy of the ECO to the CSB conducting the evaluation
 - CSB returns a copy of the ECO to the court

ECO Transportation

- Transportation includes
 - Transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment (§ 37.2-808(C))
 - Transportation to a medical facility for a medical evaluation if a physician at the hospital in which the person is detained under the ECO requires a medical evaluation (§ 37.2-808(C))
 - Nothing shall preclude law enforcement from obtaining emergency medical treatment at any time for any person in custody under an ECO (§ 37.2-808(I)

"Paperless" ECO

 Law enforcement officer, based on his own observations or reports of others, may take a person into custody and transport for an evaluation if he has probable cause to believe that a person meets the commitment criteria.

ECO Duration- SB260/HB478

- ECO valid for a period not to exceed 8 hours from the time of execution
 - 8-hour period applies to paper ECOs and "paperless" ECOs
 - Old Law: 4 hours with possible 2-hour extension
 - Provision for extension has been removed
- 8 hours to execute an ECO from its issuance
 - Old law: 6 hours

§ 37.2-808(G), (K), (M)

Emergency Custody SB260/HB478

- Law enforcement agency that executes the ECO shall notify the CSB responsible for conducting the evaluation as soon as practicable after taking the person into custody.
 - Applies to paper ECOs and "paperless" ECOs

Emergency Custody SB260/HB478

 Any person taken into emergency custody shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures

ECO Transfer of Custody

- Law enforcement officer or alternative transportation provider may transfer custody of the person to the facility where the person is transported for the evaluation if the facility is
 - Licensed to provide level of security necessary to protect person and others from harm
 - Is capable of providing that level of security
 - Has entered into an agreement or MOU with law enforcement agency setting forth the terms and conditions under which it will accept transfer of custody
 - Can't require LE agency to pay fees or costs for transfer

ECO CSB Evaluator

- Skilled in the diagnosis and treatment of mental illness
- Completed a certification program approved by the Department
 - (1) a Master's degree with a major course of study in Human Services (e.g., Counseling, Social Work, Rehabilitation Counseling, Nursing) or a Master's degree or equivalent course credits in Psychology, or
 - a Virginia license as a Registered Nurse and 36 months of professional work experience with a psychiatric population

CSB Evaluators – Study SB261/HB1216

- DBHDS shall review the requirements related to qualifications, training, and oversight of individuals performing preadmission screening evaluations
- Make recommendations for increasing qualifications, training, and oversight
- Report findings to the Governor and General Assembly by December 1, 2014

TDO Virginia Code § 37.2-809

 Temporary Detention Order (TDO) – 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

TDO

- Issued on the sworn petition of any responsible person or magistrate's own motion (§ 37.2-809(B))
- Only after an in-person evaluation by CSB employee or designee (§ 37.2-809(B))
 - Exception: TDO may be issued without an ECO evaluation if the person has been examined within the previous 72 hours by the CSB or there is significant physical, psychological, or medical risk to the person or others associated with conducting such evaluation. (§ 37.2-809(D))

TDO Criteria

- Issued when magistrate finds probable cause to believe that a person meets the commitment criteria (§ 37.2-809(B))
- Magistrate may consider
 - Recommendations of any treating or examining physician or psychologist
 - Past actions of the person
 - Past mental health treatment
 - Relevant hearsay
 - Any medical records available
 - Affidavits if the witness is unavailable and the affidavit so states
 - Any other relevant information
 - (§ 37.2-809(C))

TDO

Facility of Temporary Detention

- CSB must determine the facility of temporary detention in accordance with new § 37.2-809.1
- Must be identified on the preadmission screening report
- Must be indicated on the TDO
- Person shall remain in custody of law enforcement until custody has been accepted by the facility identified in the TDO

§ 37.2-809(E)

 DBHDS shall develop and administer a webbased acute psychiatric bed registry to contain information about available acute beds in public and private inpatient psychiatric facilities and residential crisis stabilization units to facilitate identification and designation of facilities for temporary detention of individuals who meet the TDO criteria

- Bed registry shall:
 - Include descriptive information for each inpatient psychiatric facility and residential crisis stabilization unit, including contact information
 - Provide real-time information about the number of beds available and for each bed:
 - The type of patient that may be admitted
 - The level of security provided
 - Any other information to allow identification of appropriate facilities for temporary detention § 37.2-308.1(B)

- Registry shall allow searches by:
 - CSBs
 - Inpatient psychiatric facilities
 - Residential crisis stabilization units
 - Health care providers working in an ER or other facility rendering emergency medical care

- Who is required to participate in the bed registry?
 - State facilities
 - CSBs
 - Private inpatient providers licensed by DBHDS
- Participants must designate employees to submit information to the system and serve as a point of contact for requests for information

§ 37.2-308.1(C)

- Upon receiving notification of the need for an evaluation, the CSB shall contact the state facility serving the area in which the CSB is located and notify it that the individual will be transported to it upon the issuance of a TDO if an alternative facility cannot be identified by the expiration of the 8-hour emergency custody period
- Upon completion of the evaluation, CSB shall provide information about the individual to the state facility to allow it to determine the services the individual will require on admission

§ 37.2-809.1(A)

- Once notified, the state facility may conduct a search for an alternative facility
 - May contact another state facility if it is unable to provide temporary detention and appropriate care
- If state facility finds an alternative facility, it shall notify the CSB and the CSB shall designate the alternative facility on the preadmission screening report

- A state facility shall not fail or refuse to admit an individual who meets the criteria for a TDO unless an alternative facility agrees to accept the individual
- An individual who meets the criteria for a TDO shall not be released from the custody of the CSB

§ 37.2-809.1(B)

- If a facility of temporary detention cannot be identified by the expiration of the 8-hour emergency custody period, the individual shall be detained in the state facility
- State facility shall be indicated on the TDO

§ 37.2-809(E)

Temporary Detention HB1172-Change of facility

- CSB may change the facility of temporary detention and may designate an alternative facility at any point during the period of temporary detention
 - Must determine that the alternative facility is a more appropriate facility given the specific security, medical, or behavioral needs of the person
 - CSB must provide notice to the clerk of name and address of the alternative facility

Temporary Detention HB1172-Change of facility

- If facility of temporary detention is changed, transportation is provided in accordance with § 37.2-810
 - If law enforcement or an alternative transportation provider has custody of the person when the change is made, individual shall be transported to alternative facility
 - If individual has been transported to initial TDO facility, CSB shall request the magistrate to enter an order specifying an alternative transportation provider or, if no alternative transportation provider, the local law enforcement agency where the person resides or is located if 50-mile rule is applicable

TDO Transportation

- Magistrate specifies the primary law enforcement agency to provide transportation
- Magistrate may order alternative transportation under the same conditions that it is permitted during an ECO
- Order may include transportation to a medical facility to obtain further evaluation or treatment as may be required by a physician at the admitting temporary detention facility
- Nothing shall preclude law enforcement from obtaining emergency medical treatment at any time for a person in custody under a TDO

Temporary Detention – Transportation HB323

 In determining the primary law enforcement agency to provide transportation, magistrate shall specify in the TDO the law enforcement agency of the jurisdiction where the person resides or any other willing law enforcement agency that has agreed to provide transportation

Temporary Detention S260/HB478

 Person detained shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures
TDO Duration

 Duration of temporary detention shall be sufficient to allow for completion of the preadmission screening report, the independent examination, and initiation of mental health treatment to stabilize the person

§ 37.2-809(H)

Temporary Detention SB260/HB574

- Commitment hearing shall be held within 72 hours of execution of the TDO
- If 72-hour period ends on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, person may be detained until COB on the next business day when the court is open
 - Old Law: 48 hours

Hearing - Timing

- Held after sufficient time to allow for completion of the preadmission screening report, the independent examination, and initiation of mental health treatment to stabilize the person but within 72 hours of execution of the TDO unless Saturday, Sunday, or legal holiday and then extended to next business day (§ 37.2-814(A))
- At least 12 hours prior to the hearing, the court shall provide the CSB with the time and location of the hearing. (§ 37.2-817(B))

Hearing

- Held before a district court judge or special justice
- Individual is represented by counsel, who provides a written explanation of the process and explains it prior to the hearing (§ 37.2-814(C), (D))
- Petitioner is given notice of the place, date, and time of hearing (§ 37.2-814(F))
- Open to the public (§ 37.2-820)

Hearing - Reports

- Preadmission screening report (§ 37.2-816)
 - Shall be admitted as evidence of the facts stated therein
- Independent examination (§ 37.2-815)
 - May be accepted into evidence unless objected to, in which case the examiner must attend the hearing in person or by electronic communication

Hearing - Attendance

- An employee of the CSB that prepared the preadmission screening report must attend the hearing (§ 37.2-817(B))
 - If physical attendance is not practicable, shall participate through electronic communication
- Independent examiner, if not physically present, and the treating physician at the facility of temporary detention must be available whenever possible for questioning through electronic communication (§ 37.2-817(A))

Hearing - Evidence

- Judge or special justice may consider:
 - Recommendations of any treating or examining physician or psychologist
 - Past actions of the person
 - Past mental health treatment
 - Examiner's certification
 - Preadmission screening report
 - Any health records available
 - Any other relevant evidence that was admitted

§ 37.2-817(C)

Hearing - Disposition

- Possible Dispositions
 - Voluntary Admission
 - Involuntary Admission
 - Mandatory Outpatient Treatment
 - Three types: MOT, Step-down MOT, MOT on Motion
 - Release

§ 37.2-817

Annual Report SB260/HB293

- DBHDS must submit an annual report on June 30 of each year to the Governor and Chairmen of House Appropriations and Senate Finance
 - Number of notifications of individuals in need of facility services by CSBs
 - Number of alternative facilities contacted by CSBs and state facilities
 - Number of temporary detentions provided by state facilities and alternative facilities, the lengths of stay, and the cost of the detentions

Task Force – LE Study SB260/HB478

- Governor's Task Force on Improving Mental Health Services and Crisis Response shall identify and examine issues related to the use of law enforcement in the involuntary admission process
 - Consider options to reduce the amount of resources needed to detain individuals during the ECO, including the amount of time spent transporting. Options shall include:
 - Developing crisis stabilization units in all regions
 - Contracting for retired officers to provide transportation
- Report of findings and recommendations to Governor and General Assembly by October 1, 2014

Information Regarding Crisis Strategies HB1222

- Secretaries of Public Safety and HHR shall encourage the dissemination of information about specialized training in evidence-based strategies to prevent and minimize mental health crises. Strategies shall include:
 - CIT training
 - Mental Health First Aid
- Information disseminated to law enforcement, first responders, ER personnel, school personnel, and other interested parties

Mandated Services

 The core of services provided by community services boards within the cities and counties that they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. The core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, developmental, and substance abuse services necessary to provide individualized services and supports to persons with mental illness, intellectual disability, or substance abuse. Community services boards may establish crisis stabilization units that provide residential crisis stabilization services.

§ 37.2-500