Civil Commitment Laws: A Survey of the States

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Presentation Goals:

1. **Background on the commitment process in the United States**
2. **Trends and developments in treatment laws nationally**
3. **How do Virginia laws compare?**
4. **What opportunities are there to improve Virginia's treatment process?**

The Need for Civil Commitment Laws

Voluntary treatment for any medical condition is always desirable. However, the nature of severe mental illness is that it attacks the brain - the very organ central to the capacity for making a choice. As a result, every state has established civil commitment laws.

Civil commitment is a legal mechanism in which a court orders treatment for an individual with severe mental illness who meets pre-established criteria. Civil commitment occurs in all states, but the standards and procedures vary.

Civil Commitment Statutes

TYPE # 1- <u>DANGEROUSNESS STANDARD</u>

- **Every state includes dangerousness as a criteria for inpatient commitment, stemming from the U.S. Supreme Court decision in in *O'Connor v. Donaldson*.**
- **Interpretations of "danger" have largely progressed beyond solely requiring imminent physical danger to self or others evidenced by overt acts.**

IOWA CODE § 229.1(15).

- **Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment.**

Civil Commitment Statutes

TYPE #2 - GRAVELY DISABLED STANDARD

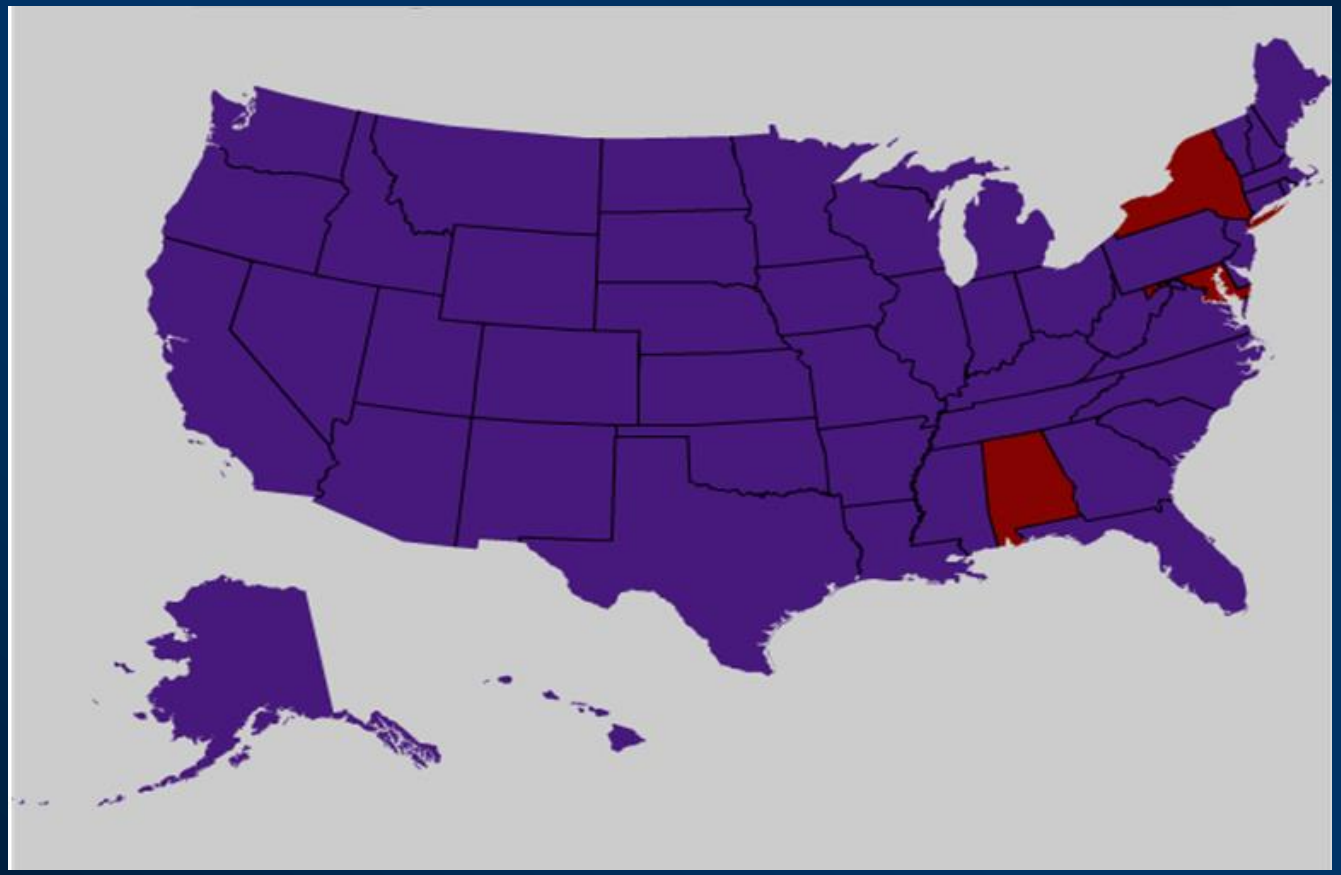
Focuses on the person's inability to meet his or her basic survival needs, e.g., food, clothing and/or shelter.

WASHINGTON STATE REV. CODE WASH. § 71.05.020.

- **Is in danger of serious physical harm from failure to provide for essential human needs of health or safety; or**
- **Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her safety.**

"It is clear that the State has a legitimate interest under its police and parens patriae powers in protecting the community from the dangerously mentally ill and in providing care to those that are unable to care for themselves." *In re Detention of LaBelle*, 728 P.2d 138, 143(Wash. 1986)

States with Gravely Disabled Standards: 46 States



Civil Commitment Statutes

TYPE #3 – <u>NEED-FOR-TREATMENT STANDARD</u>

Typically provides for commitment to treatment based on:

- **inability to seek needed psychiatric and medical care;**
- **inability to make an informed medical decision;**
- **the person's need for intervention to prevent further physical, psychiatric or emotional deterioration.**

Reflects *O'Connor*: "[E]ven if there is no foreseeable risk of self-injury or suicide, a person is literally 'dangerous to himself' if for physical or other reasons he is helpless to avoid the hazards of freedom…"

Civil Commitment Statutes

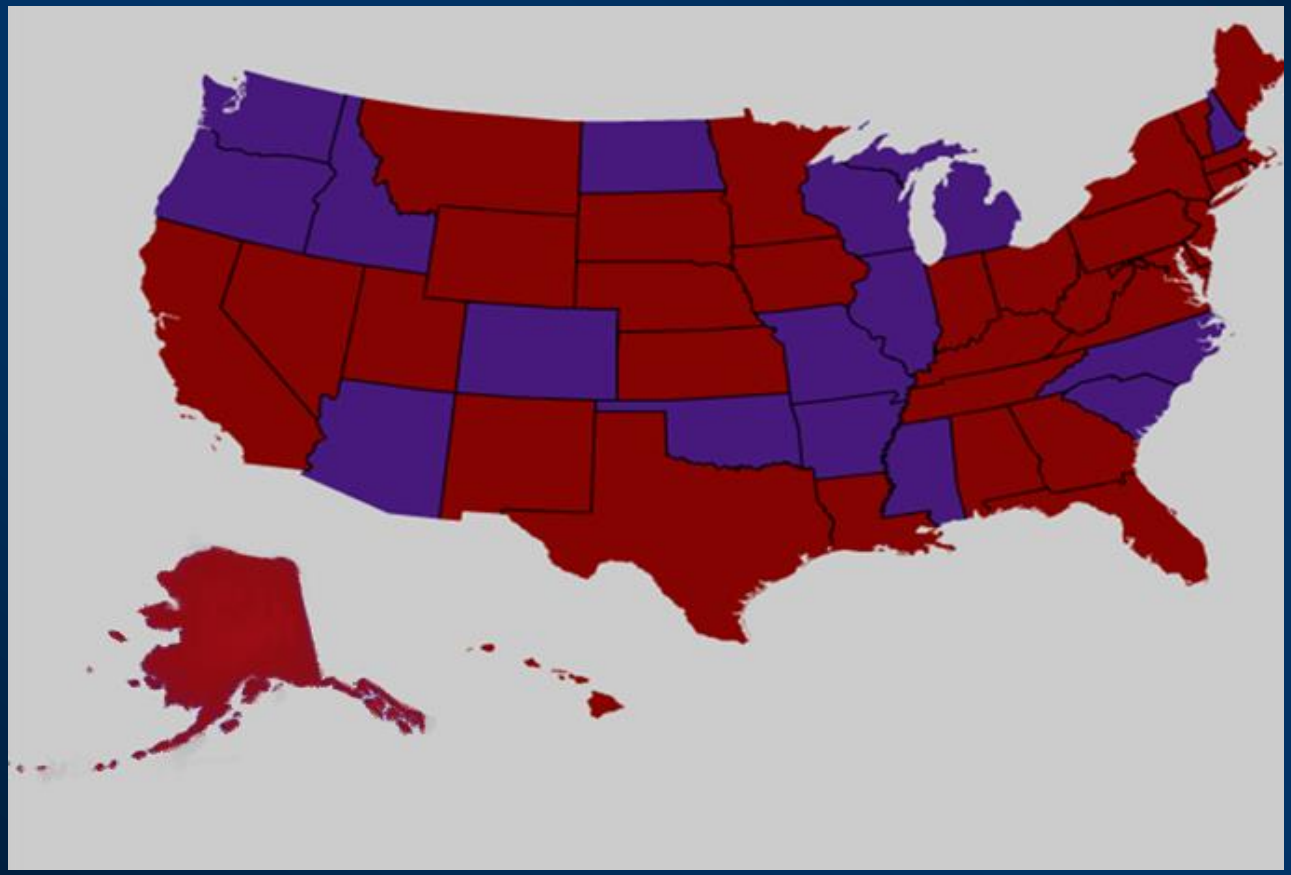
TYPE #3 – NEED-FOR-TREATMENT STANDARD

WISCONSIN'S FIFTH STANDARD - STAT. ANN. § 51.20(1)(a)(2)(e)F:

- **Substantially unable to make informed treatment choice, needs care or treatment to prevent deterioration, and**
- **Substantially probable that if untreated will lack services for health or safety and suffer severe mental, emotional or physical harm that will result in the loss of ability to function in community or loss of cognitive or volitional control over thoughts or actions.**

"There is a rational basis for distinguishing between a mentally ill person who retains the capacity to make an informed decision about medication or treatment and one who lacks such capacity. The latter is helpless, by virtue of an inability to choose medication or treatment, to avoid the harm associated with the deteriorating condition." *State of Wisconsin v. Dennis H*, 647 N.W, 2d at 851, 862 (Wisc. 2002).

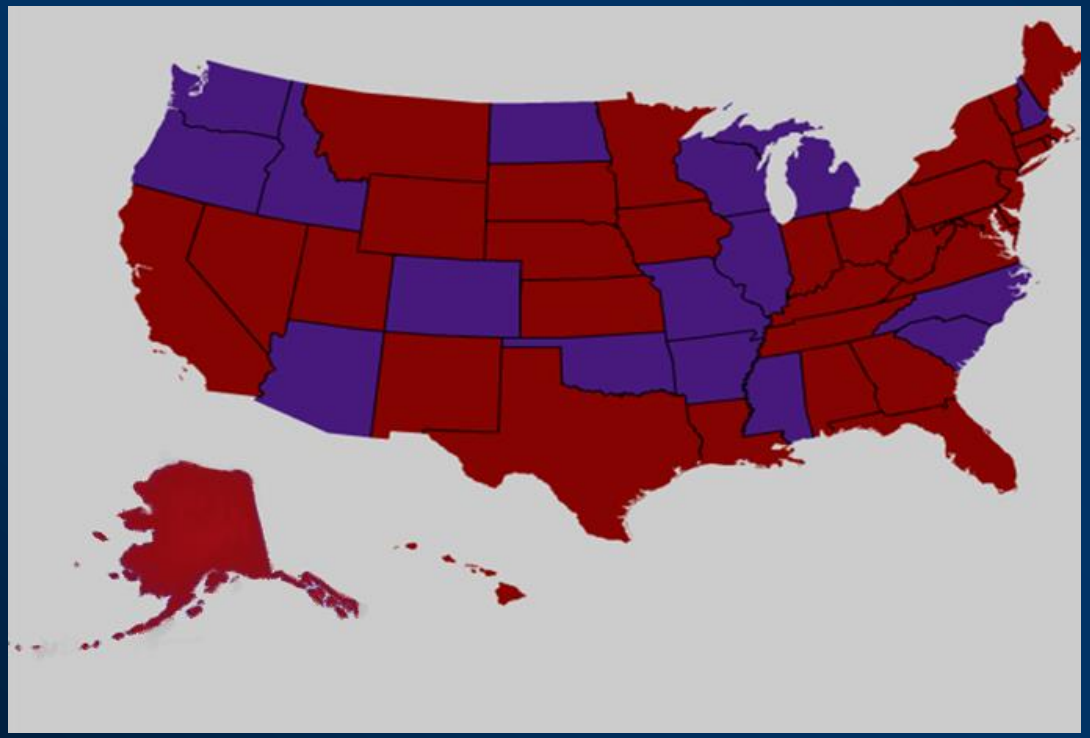
Over Half of the Nation Incorporates Need-For-Treatment Standards



National Trend is Toward Adoption of Need-for-Treatment Standards

"A new standard for involuntary commitment will be created to include individuals who are not currently dangerous but whose mental illness, if untreated, could deteriorate to the point of harm…"

- New Jersey Governor Chris Christie, 7/2/14



Anosognosia

“Lack of insight" – the single largest reason why individuals with schizophrenia and bipolar disorder do not take their medications. Affects approx. 50% of individuals with schizophrenia & 40% of individuals with bipolar disorder.

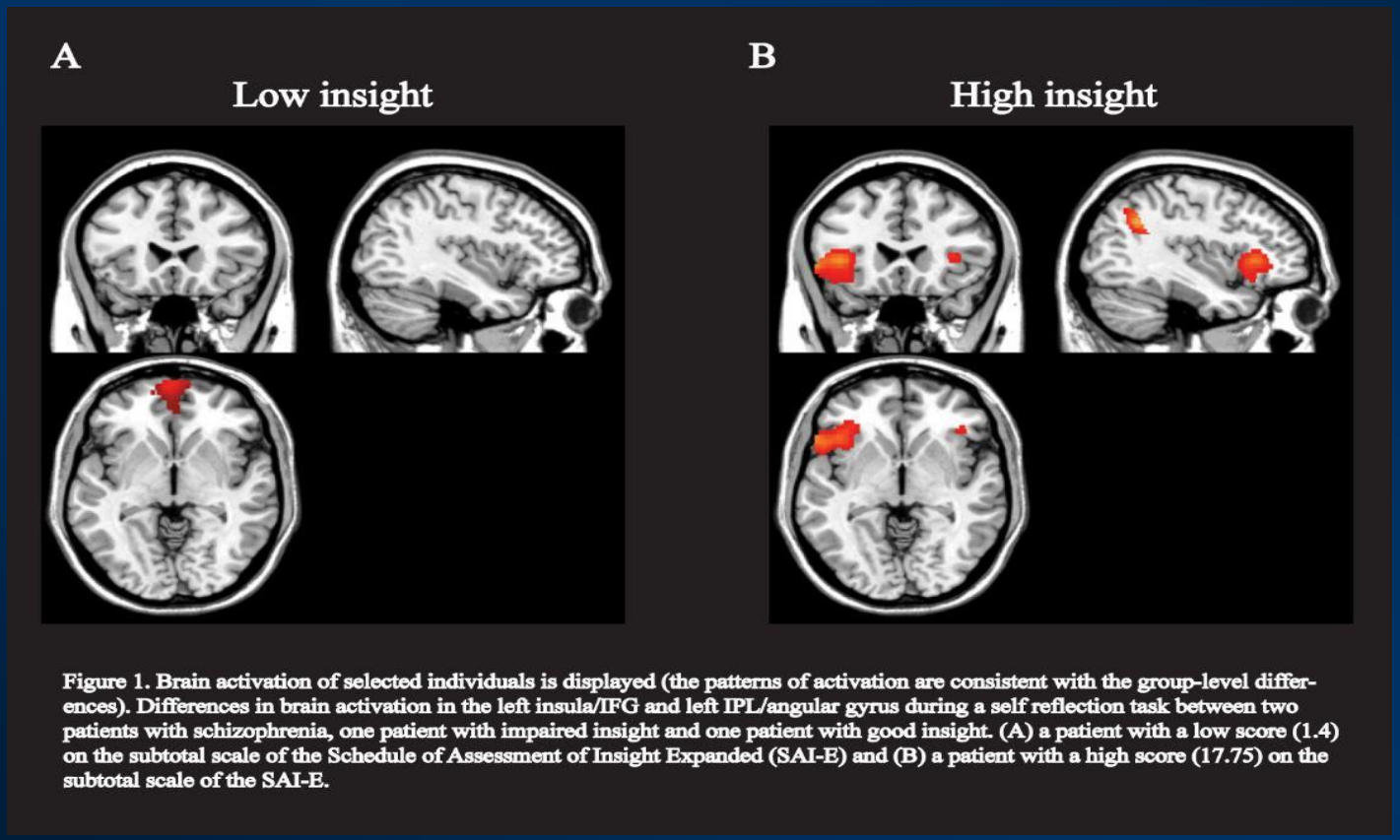


Figure 1. Brain activation of selected individuals is displayed (the patterns of activation are consistent with the group-level differences). Differences in brain activation in the left insula/IFG and left IPL/angular gyrus during a self reflection task between two patients with schizophrenia, one patient with impaired insight and one patient with good insight. (A) a patient with a low score (1.4) on the subtotal scale of the Schedule of Assessment of Insight Expanded (SAI-E) and (B) a patient with a high score (17.75) on the subtotal scale of the SAI-E.

Consequences: The Revolving Door

McKenna, J (2011)

- Homelessness
- Incarceration
- Victimization
- Violence
- Increased hospitalizations
- Poorer course of illness
- Higher relapse rates

Benefits of Need-for-Treatment Standards

Lower Rates of Homicide

- A 2011 study published in Social Psychiatry and Psychiatric Epidemiology found a significant association between broader state commitment standards and lower rates of homicide.

Provides for Earlier Treatment

- A 2008 study concluded that mental health laws requiring a patient to be assessed as dangerous before they can receive involuntary treatment are associated with significantly longer duration of untreated psychosis (DUP).

Broader commitment standards can also provide benefits to families, law enforcement and the mental health system by reducing the likelihood of unnecessary deterioration and decompensation, limiting need for lengthy hospitalization or contact with law enforcement.

Assisted Outpatient Treatment

- **Court-ordered treatment (including medication) for individuals who have a history of treatment noncompliance, as a condition of their remaining in the community.**
- **45 states permit some form of AOT**
- **Also referred to as outpatient commitment/mandatory outpatient commitment (MOT).**
- **Two types of AOT standards:**
  1) **Unitary standards for both inpatient & outpatient commitments (e.g. Wisconsin, Idaho)**
  2) **Separate AOT and inpatient standards (e.g. New York, California, Ohio)**

Idaho's Court-ordered Outpatient Treatment Law

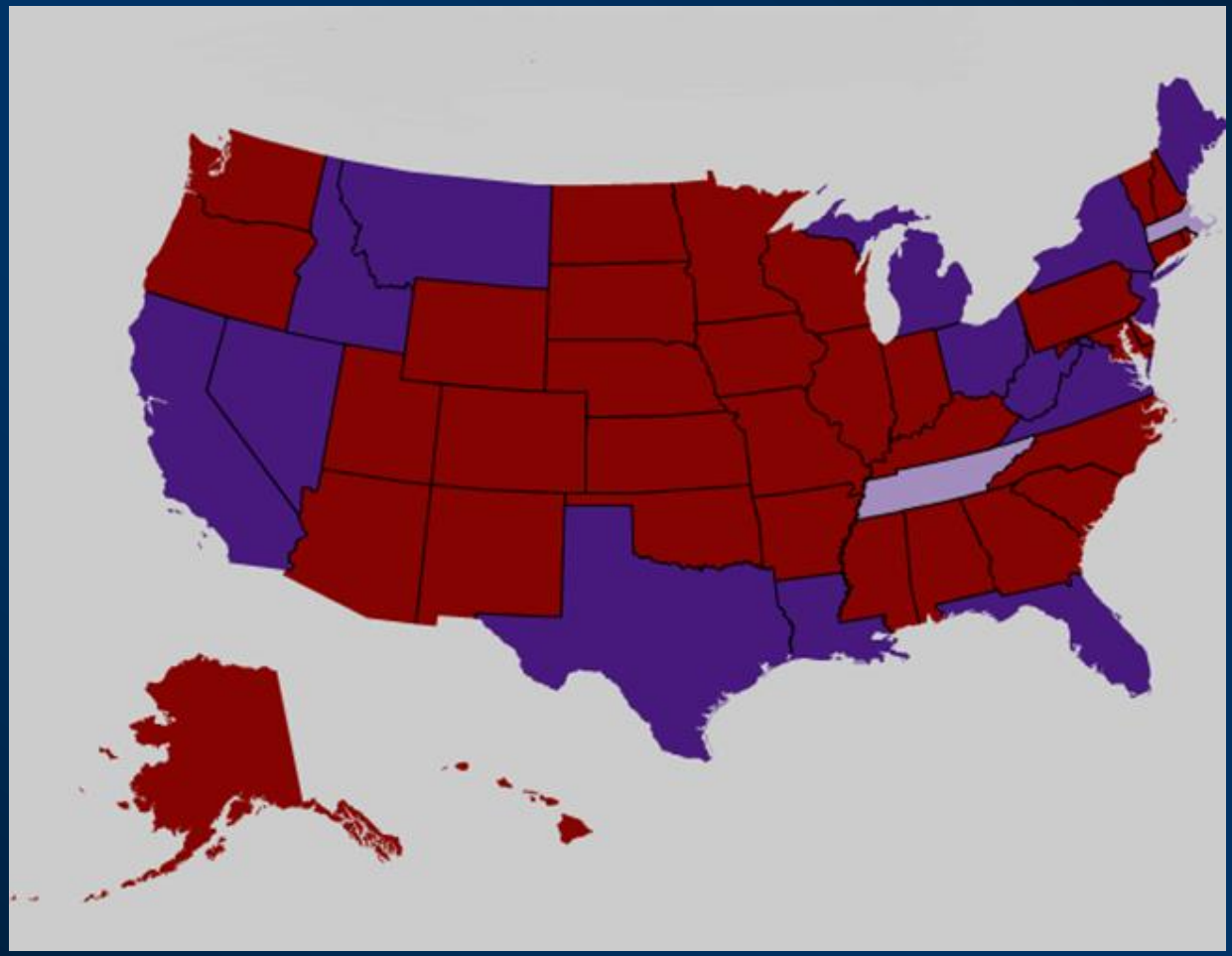
- **Same criteria for both inpatient & outpatient;**
- **Adds insight-based deterioration prevention criteria to both danger & gravely disabled standards**
  - **[L]acks insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will**
    - **continue to physically, emotionally or mentally deteriorate to the point that the person will, in the reasonably near future, inflict physical harm on himself or another person.**
    - **in the reasonably near future, be in danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs such as nourishment, essential clothing, medical care, shelter or safety**

New York's Kendra's Law

Court must find, by clear and convincing evidence:

- **Is at least 18 years old; suffering from a mental illness;**
- **Is unlikely to survive safely in the community without supervision, based on a clinical determination;**
- **Has a history of lack of compliance with treatment for mental illness that has:**
  - **Hospitalized at least twice within the last thirty–six months; or**
  - **Resulted in one of more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last forty–eight months; and**
- **As a result of his or her mental illness, unlikely to voluntarily participate in the outpatient treatment that would enable him or her to live safely in the community; and**
- **In view of his or her treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration; and**
- **Is likely to benefit from assisted outpatient treatment.**

States That Have Authorized AOT Since 2000



Virginia's Commitment Standard

VA CODE ANN. § 37.2-817(C)

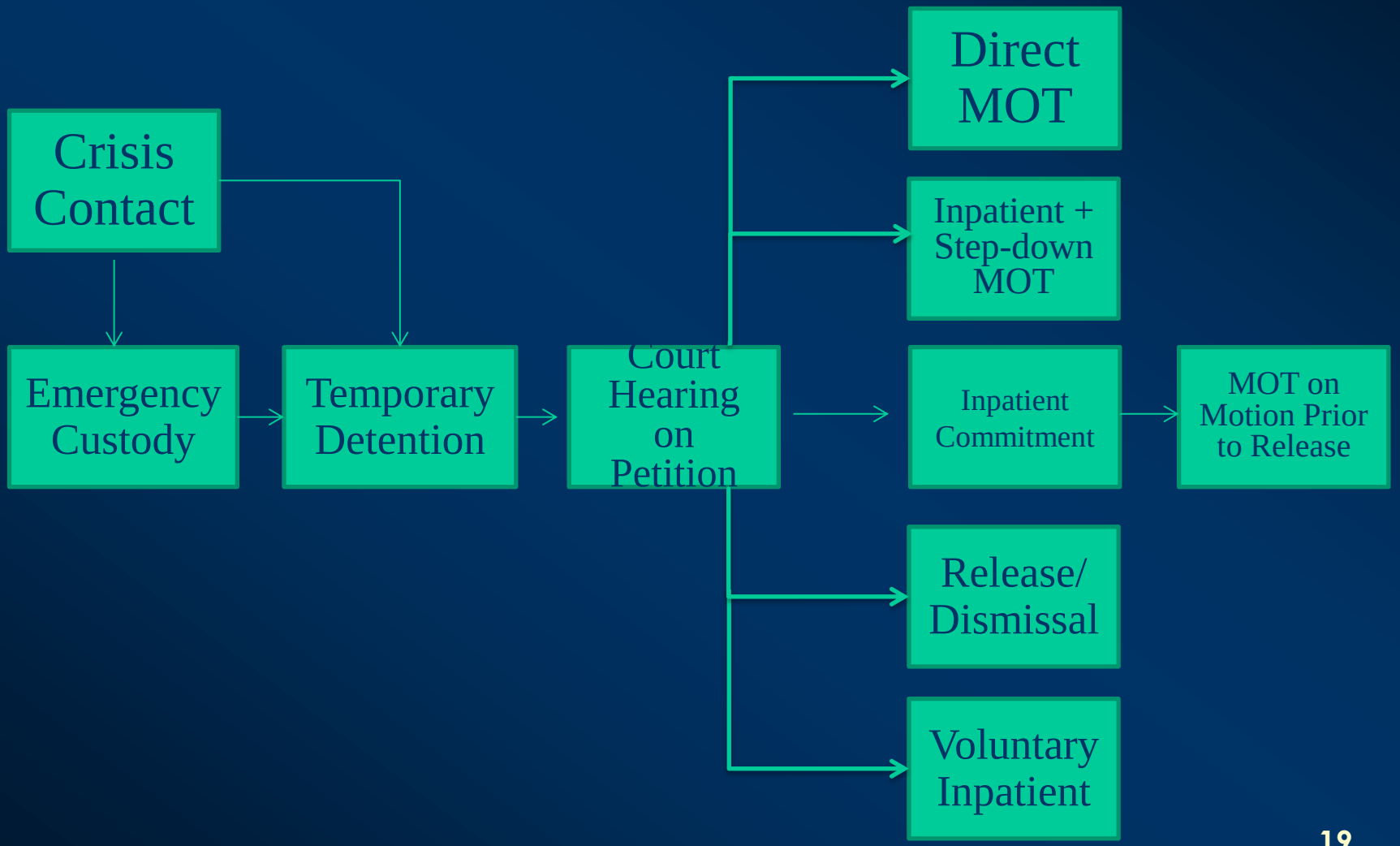
a) **Person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will in the near future,**

(1) **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**

(2) **Suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs**

Note that (2) omits "physical" from standard for harm to allow for commitment based on harms such as financial, medical, loss of employment, custody of children, etc.

Virginia Commitment Process



Mandatory Outpatient Treatment (MOT) | Type 1 – Step-Down MOT

VA CODE § 37.2-817(C)(1) "Step-down MOT"

- **Authorization is provided at time of hearing for MOT to follow inpatient treatment.**
- **Individual meets standard required to authorize involuntary admission; and**
  - **at least two involuntary admissions in the past 36 months caused by non-compliance with treatment;**
  - **Is in need of MOT following inpatient treatment to prevent a relapse or deterioration that would be likely to result in the person again meeting the criteria for involuntary admission;**
  - **Is, as a result of his/her mental illness, unlikely to voluntarily participate in outpatient treatment after completing inpatient treatment; and**
  - **Is likely to benefit from MOT.**
- **Family members or other non-parties to commitment hearing may not petition for MOT.**

Mandatory Outpatient Treatment (MOT) | Type 2 – MOT On Motion Prior to Release

VA CODE § 37.2-817(C)(2) – "MOT on Motion Prior to Release."

- **MOT ordered at special hearing prior to discharge from inpatient facility.**
- **Treating physician, family member, personal representative, or CSB may petition.**
- **Must still meet same commitment standard as inpatient; PLUS**
  - **MOT is the appropriate and available as a less restrictive alternative means of treatment.**
  - **the patient must have had at least two involuntary admissions, or two voluntary admissions following TDOs, or one of each, in the prior 36 months.**

For the judge to find that MOT is "available," certain additional findings must be made by clear and convincing evidence. Specifically, that:

- **The person has agreed to abide by his treatment plan & has the ability to do so;**
- **The ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person; and**
- **The treatment plan services are "actually available" in the community.**

Mandatory Outpatient Treatment (MOT) | Type 3 – Direct MOT

VA CODE § 37.2-817(D) – "Direct MOT"

- **MOT is ordered at the commitment hearing, in lieu of inpatient treatment.**
- **Person must meet the commitment standard – sub. likely to cause or suffer harm; and**
- **MOT is the appropriate and available as a less restrictive alternative means of treatment.**

To find that MOT is "available," additional findings are necessary:

- **The person has agreed to abide by his treatment plan and has the ability to do so;**
- **Treatment will be delivered on an outpatient basis by the CSB or designated provider; and**
- **Services are "actually available" in the community**
- **Only for a period of 90 days**

Recommendations

- Clarify and consolidate commitment standards
- Train on or update treatment standard to promote consistent implementation
- Expressly allow MOT use in manner proven by other states (standard + length)
- Eliminate logical inconsistencies in MOT standard (i.e. volunteer for mandatory program)
- Monitor TDO period length & ECO implementation closely

TAC Helpline

- The Treatment Advocacy Center provides information, assistance and needed referrals to families in crisis.
- Email info@treatmentadvocacycenter.org
- www.treatmentadvocacycenter.org

More information about anosognosia and assisted treatment than any other online source