

## OVERVIEW OF CIVIL COMMITMENT

### Constitutional and Federal Law

- No constitutional basis to confine persons with mental illness if they are dangerous to no one and can live safely in freedom (public safety)
- But no constitutional right to treatment  
*O'Connor v. Donaldson*, 422 U.S. 563 (1975)
- Individuals have a substantial liberty interest in not being confined unnecessarily for medical treatment  
*Parham v. J.R.*, 442 U.S. 584 (1979)
- Title II of Americans with Disabilities Act requires State to provide community-based treatment for persons with mental disabilities when:
  - Treatment professionals determine placement appropriate
  - Person does not oppose placement
  - Placement can be reasonably accommodated taking into account resources available and needs of others*Olmstead v. L.C.*, 527 U.S. 581 (1999)

### Emergency Custody Orders (§ 37.2-808)

- Issued by magistrate (not judge or special justice) upon sworn petition of any responsible person or on own motion
- Law-enforcement officer may also take person into custody based upon his observation or reliable reports of others
- Criteria: Person
  1. Has mental illness
  2. Presents an imminent danger to self or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for self
  3. Is in need of hospitalization or treatment, AND
  4. Is unwilling to volunteer or is incapable of volunteering for hospitalization or treatment.
- Good for only 4 hours
- Magistrate orders primary law-enforcement agency from jurisdiction where CSB performing evaluation is located to provide transportation
- Transportation includes transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment

### Temporary Detention Orders (§ 37.2-809)

- Magistrate (not judge or special justice) may issue a TDO upon sworn petition of any responsible person or his own motion, only after in-person evaluation by

CSB, including recommendation from treating physician or clinical psychologist that person:

1. Has mental illness
  2. Presents an imminent danger to self or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself
  3. Is in need of hospitalization or treatment, AND
  4. is unwilling to volunteer or incapable of volunteering for hospitalization or treatment
- CSB shall determine place of temporary detention which shall be identified on the preadmission screening report and TDO
  - TDO facility may provide emergency medical and psychiatric services within its capabilities when it determines services are in best interest of person
  - Good for 48 hours (or until next day if 48 hours terminates on Sat., Sun. or holiday)

### **TDO Transportation (§ 37.2-810)**

- Magistrate designates law-enforcement agency of jurisdiction where person resides to execute TDO and provide transportation, unless
- Person resides more than 50 miles from nearest boundary of jurisdiction in which person is located
- TDO may include transportation of person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement

### **Civil Commitment (Involuntary Admission)**

- **Voluntary admission (§ 37.2-814)**
  - Judge or special justice must afford person opportunity for voluntary admission and treatment if judge or special justice determines person is both willing and capable of seeking voluntary admission and treatment
  - Judge or special justice requires person to accept minimum period of treatment not to exceed 72 hours and to give 48 hours' notice prior to leaving
  - If incapable and unwilling, judge or special justice informs person of right to hearing and counsel, and appoints counsel if person unable to afford one
  - Written explanation of process must be provided to person
- **Examination Required (§ 37.2-815)**
  - Psychiatrist, licensed psychologist, or if not available, any mental health professional licensed and qualified in diagnosis of mental illness
  - Not related by blood or marriage to person
  - Not responsible for treating person
  - Has no financial interest in admission or treatment of person
  - Has no investment interest in facility detaining or admitting person

- Not employed by facility (except DMHMRSAS and VA)
- Must certify person
  - Does/does not present imminent danger to self or others as result of mental illness or is/is not so seriously mentally ill as to be substantially able to care for self
  - Requires/does not require involuntary inpatient treatment
- **CSB Preadmission Screening Report (§ 37.2-816)**
  - Whether person presents imminent danger to self or others as result of mental illness or is so seriously mentally ill that he is substantially unable to care for self
  - Whether person is in need of involuntary inpatient treatment
  - Whether there is no less restrictive alternative to inpatient treatment
  - Recommendations for person's placement, care and treatment
  - Report admissible as evidence of facts stated therein
- **Commitment Order (§ 37.2-817)**
  - Judge or special justice hears/receives examiner's report and preadmission screening report (if not contested, constitute sufficient evidence upon which judge/special justice may base his decision)
  - **Inpatient commitment:** Judge or special justice must find by clear and convincing evidence:
    - Person presents imminent danger to self or others as a result of mental illness or has been proven so seriously mentally ill as to be substantially unable to care for self, AND
    - Alternatives to involuntary inpatient treatment investigated and deemed unsuitable and no less restrictive alternative to involuntary inpatient treatment
    - Good for 180 days
  - **Outpatient Commitment:** judge/special justice must find by clear and convincing evidence:
    - Person presents imminent danger to self or others as result of mental illness or has been proven so seriously mentally ill as to be substantially unable to care for self
    - Less restrictive alternatives to involuntary inpatient treatment have been investigated and deemed suitable
    - Person
      - Has degree of competency necessary to understand stipulations of treatment
      - Expresses interest in living in community and agrees to abide by treatment plan, AND
      - Is deemed to have capacity to comply with treatment plan, AND
    - Treatment can be delivered on outpatient basis and monitored by CSB or designated provider

- May include involuntary treatment with antipsychotic medication under § 37.2-1102.

### **Transportation Following Commitment (§§ 37.2-829, -830)**

- Sheriff where person resides transports unless sheriff's office of that jurisdiction located more than 100 road miles from nearest boundary of jurisdiction where proceedings took place
- Judge or special justice may order person placed in custody of any responsible person for sole purpose of transportation

### **Other Involuntary Admission Schemes**

- Psychiatric Inpatient Treatment of Minors Act (§ 16.1-335 *et seq.*)
- Involuntary admission of jail inmates to psychiatric facilities (§§ 19.2-169.6, -176, -177.1)
- Restoration to competency to stand trial (§ 19.2-169.2, -169.3)
- Not guilty by reason of insanity (§ 19.2-182.2 *et seq.*)
- Civil commitment of sexually violent predators (§ 37.2-900 *et seq.*)
- Involuntary admission of prisoners with mental illness (§ 53.1-40.2)