

MAGISTRATE INVOLVEMENT IN MENTAL HEALTH PROCESSES

Office of the Executive Secretary
Supreme Court of Virginia

How can the mentally ill receive necessary treatment?

- Voluntarily seeking inpatient/outpatient treatment
- Magistrate issued process
- Orderless emergency custody initiated by law enforcement

Magistrate Issued Process

- Magistrates may issue emergency custody orders (ECOs) or temporary detention orders (TDOs) if the statutory criteria are satisfied.
- Magistrates have unique authority to issue these processes.
- Magistrates may issue process based upon the sworn petition of a responsible party or on the magistrate's own motion.

Statutory Authority

Emergency Custody Order

- For adult respondents
 - Va. Code 37.2-808
- For juvenile respondents
 - Va. Code 16.1-340

Temporary Detention Order

- For adult respondents
 - Va. Code 37.2-809
- For juvenile respondents
 - Va. Code 16.1-340.1

Criteria for ECO/TDO

- Adult respondents
 - Mental Illness (specific diagnosis not required)
 - Risk of Harm
 - Active harm: substantial likelihood of causing serious physical harm to self or others in the near future; OR
 - Passive harm: substantial likelihood of suffering serious harm due to lack of capacity to protect self/provide for basic human needs.
 - Needs hospitalization/treatment
 - Unwilling or unable to consent to treatment

Criteria for ECO/TDO

- Juvenile respondents
 - Mental Illness
 - Risk of Harm
 - Active harm: presents serious danger to self or others likely to result in severe or irremediable injury; OR
 - Passive harm: experiencing severe deterioration in ability to care for self in developmentally age-appropriate manner.
 - Needs compulsory treatment for mental illness
 - Reasonably likely to benefit from proposed treatment

Other Statutory Requirements

- Standard of Proof: Probable Cause
- If there is probable cause to believe all criteria met, the magistrate shall issue the order.
- Magistrate must designate the “convenient location” for the mental health evaluation and select the appropriate law enforcement agency to serve the ECO.

Other Statutory Requirements

- A mental health evaluation by a CSB prescriber is required before a TDO can be issued unless one of the following exceptions applies:
 - A prior evaluation has been performed within the last 72 hours; or
 - Evidence shows that evaluation poses significant risk of harm to the respondent or others.

Inmate TDO Issues

- Different authorizing statute: Va. Code § 19.2-169.6.
- Some differences in criteria/procedure
 - Applies to inmates in the custody of local correctional facilities.
 - Requires petition from one having custody of the inmate; magistrate may not issue on own motion.
 - No criteria about inmate being unwilling or unable to seek treatment.

Orderless Emergency Custody

- Often referred to as a “paperless ECO”, though that term is misleading because no order has been issued by any judicial officer in such cases.
- Magistrates have no involvement in orderless emergency custody cases; respondent is taken into custody by law enforcement and transported directly to the CSB for evaluation.

Orderless Emergency Custody

- Sources of Authority
 - Va. Code 37.2-808(G) and (H) for adults
 - Va. Code 16.1-340 (G) and (H) for juveniles

Diversion Issues

- What happens when a magistrate is asked to issue criminal process against an individual displaying signs of mental illness?
- Under current law, magistrates may not refuse to hear criminal complaints against mentally ill individuals nor may they refuse to issue criminal process against a mentally ill individual if the magistrate has probable cause to believe the accused committed a crime.

Diversion Issues

- “On complaint of a criminal offense to any [magistrate] he shall examine on oath the complainant If upon such examination [the magistrate] finds that there is probable cause to believe the accused has committed an offense, [the magistrate] shall issue a warrant for his arrest”

Virginia Code § 19.2-72

Diversion Issues

- If a law enforcement officer seeks a criminal charge against a mentally ill defendant, Va. Code § 19.2-72 requires a magistrate to issue a criminal charge upon finding probable cause to believe the accused committed a criminal act.
- No exception for mental illness.

Diversion Issues

- If a warrant is issued for a felony or Class 1 or 2 misdemeanor, magistrate will hold a bail hearing and make a bail decision.
- Decision subject to statutory bail presumptions found in Va. Code 19.2-120 and 19.2-123; no exception for mental illness.
- Even if no presumption applies, magistrate may be unable to release a subject whose liberty constitutes an unreasonable danger to himself or the public or who is unable to understand and abide by any bail conditions.

Magistrate Training

- All new magistrates must be certified before holding hearings and issuing any process.
- The certification process includes:
 - attending a four week certification school;
 - passing a written certification examination;
 - participating in mock mental health hearings;
 - completing at least 240 hours of observation training.

Magistrate Training

- Mental health law is one of the largest blocks of instruction in certification school.
 - 11.25 hours spread over three consecutive days.
 - Training focuses on application of Virginia law, including required findings and procedural matters.
 - Magistrates are not trained to diagnose mental illness; we rely on testimony of petitioner and/or other witnesses to establish mental illness.
 - All magistrates participate in mock mental health hearings during their initial training.

Magistrate Training

- All magistrates receive additional training whenever there are changes to Virginia's mental health laws.
- Likewise, many magistrates have participated in CIT training, as instructors or participants, in jurisdictions that have CIT programs.
- Chief magistrates interact regularly with local CSB personnel.

Contact Information

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