

JUVENILE CIVIL COMMITMENTS AND THE PSYCHIATRIC TREATMENT OF MINORS ACT

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Virginia Office of the Attorney General

“Psychiatric Treatment of Minors Act”

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- Found at Virginia Code § § 16.1-335 through 16.1-348
- Statute separates minors below age 14 from those ages 14-17
 - ▣ Parental discretion strongest for those younger than 14
 - ▣ Minors 14-17 presumed to have a right, although limited, to decide on hospitalization

Definitions, con't.

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- “Parent”:
 - ▣ Biological or adoptive parent “who has legal custody,” including either parent if custody is joint;
 - ▣ Parent with whom the minor regularly resides;
 - ▣ Person judicially appointed as legal guardian; OR
 - ▣ Person who exercises “rights and responsibilities of legal custody” by parent’s delegation or by law (ex: DSS)

Definitions, con't.

- “Qualified Evaluator”:
 - Licensed psychiatrist or psychologist, or if **unavailable**:
 - Any mental health professional licensed through DHP as:
 - Clinical Social Worker
 - Professional Counselor
 - Marriage and Family Therapist
 - Psychiatric Nurse Practitioner
 - Clinical Nurse Specialist; or
 - Any mental health professional employed by a CSB

16.1-336.1. Admission Forms.

- A new section was added in 2010 to clarify that the Office of the Executive Secretary (OES) is responsible for preparing the petitions, orders, and other legal forms for this article, and the Department of Behavioral Health and Development Services (DBHDS) shall prepare the preadmission screening report and other clinical forms.

Parental admission of objecting minor or minor lacking capacity 14 or older

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- Governed by **Va. Code § 16.1-339**
- Parents may admit a minor fourteen or older who 1) objects to admission, or 2) is incapable of making an informed decision to a willing facility for up to **120** hours, pending an evaluation and judicial approval
 - ▣ This was changed from 96 hours on July 1, 2015 (SB779)

Parental admission of objecting minor or minor lacking capacity 14 or older, con't.

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- Facility Petition:
 - ▣ Facility must file petition for judicial approval no sooner than 24 hours and no later than 120 hours after admission with the J&DR court where the facility is located
 - This was changed from 96 hours on July 1, 2015 (SB779)
 - Copy goes to the consenting parent

Parental admission of objecting minor or minor lacking capacity 14 or older, con't.

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- Within 24 hours of admission, minor must be examined by a qualified evaluator
 - ▣ QE designated by the CSB or BHA where the facility is located
 - ▣ If admission is to a state facility, minor's resident CSB must also provide the preadmission screening report required by Va. Code § 16.1-338(B) and make written findings (except consent) before approving the admission

Parental admission of objecting minor or minor lacking capacity 14 or older, con't.

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- QE makes written report to the J&DR court where facility is located whether:
 - 1) **The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment;**
 - 2) **The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and**

Parental admission of objecting minor or minor lacking capacity 14 or older, con't.

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3) All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

- **These are the new criteria, effective July 1, 2015 (HB1717). The previous criteria paralleled those for commitment.**

Parental admission of objecting minor or minor lacking capacity 14 or older, con't.

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- The judge appoints a guardian ad litem for the minor, and counsel to represent the minor, unless the minor has retained counsel already
- Court, counsel, and GAL review petition and evaluator's report and ascertain views of minor, parent, evaluator, and attending psychiatrist
- Review to be done in the "place and manner, including the facility, as it deems to be in the best interests of the minor"

Parental admission of objecting minor or minor lacking capacity 14 or older, con't.

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- Three possible outcomes:
 - ▣ If the minor does not meet admission criteria, he will be released to consenting parent's custody
 - ▣ If the minor meets admission criteria, he will remain hospitalized for up to 90 days under court order and parental consent
 - ▣ If insufficient information is available, court will schedule a commitment hearing within 120 additional hours (changed from 96 hours as of July 1, 2015)

Parental admission of objecting minor or minor lacking capacity 14 or older, con't.

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- If the parent revokes consent at any time during hospitalization, the minor must be released within 48 hours to the parent's custody unless involuntarily committed or admitted on an emergency basis

16.1-340.3 Early Release

- Prior to a commitment hearing, the judge may release the minor to his parent if it appears from all evidence readily available that the minor does not meet the commitment criteria specified in § 16.1-345.
- The director of any facility in which the minor is detained may release the minor prior to a commitment hearing if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the minor, that the minor would not meet the commitment criteria specified in § 16.1-345 if released.

Involuntary Commitment

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- **Petition-Va. Code § 16.1-341:**
 - Filed in J&DR court **where the minor is located;** taken under oath
 - By parent or “any responsible adult”
 - Must provide name and address of petitioner and minor, and set forth specifically why minor meets commitment criteria
 - Petition for judicial approval filed by facility may function as petition for involuntary commitment, so long as it conforms to this criteria

Involuntary Commitment, con't.

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- Time frame for hearing:
 - ▣ J&DR court serving the jurisdiction in which the minor is located may schedule a hearing upon filing of the petition
 - ▣ To occur no sooner than 24 hours, and no later than 96 hours, after the petition is first filed or from the issuance of the TDO, whichever occurs later, or from the time of the hearing held pursuant to 16.1-339(C) (unless weekend or holiday)

Involuntary Commitment, con't.

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- Procedural Rights of the Minor:
 - Copies of the petition, together with notice of the hearing, are to be served immediately upon the minor and his parents (if they are not petitioners)
 - At least 24 hours before the hearing, a guardian ad litem and counsel shall be appointed for any minor without one
 - One continuance of the hearing for up to 96 hours may be granted to the minor's lawyer, for good cause shown

Involuntary Commitment, con't.

- **Va. Code § 16.1-340.4, Preadmission Screening Report**
 - Prepared by an employee or designee of the CSB that serves the area where the minor resides or, if impractical, where the minor is located.
 - Assess commitment criteria, incl. whether inpatient treatment is the least restrictive alternative that meets the minor's needs; and make recommendations for the minor's placement, care, and treatment including, where appropriate, recommendations for mandatory outpatient treatment
 - Must be admitted into evidence

Involuntary Commitment, con't.

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- **Clinical Evaluation – Va. Code § 16.1-342:**
 - CSB serving the area where the minor is located is to arrange an evaluation, if one has not been done, by a QE who “is not and will not” be treating the minor and who has no significant financial interest in the facility
 - Evaluation must be conducted in private, and should be conducted in person (or by two-way electronic means)
 - Language added in 2010 to specify that the QE cannot be excluded from the hearing pursuant to a sequestration order

Involuntary Commitment, con't

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- Clinical Evaluation, con't.:
 - ▣ In conducting an evaluation of a minor in detention or shelter care, if the evaluator finds that the minor meets the criteria for involuntary commitment, the evaluator shall so recommend, irrespective of the fact that the minor has been detained

Involuntary Commitment, con't.

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- Clinical Evaluation, con't.:
 - ▣ Petitioner, all public agencies, and all providers or programs that have/are treating the minor shall promptly deliver, upon request and without charge, all records of treatment or education of the minor

Involuntary Commitment, con't.

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- Clinical Evaluation, con't.:
 - QE must submit a written report to the court at least 24 hours before the hearing that includes his opinion of whether the minor meets commitment criteria
 - QE to attend the hearing as witness, or at least be available through two-way electronic communication
 - Copy of the report must be provided to minor's GAL and counsel

Involuntary Commitment, con't.

- Clinical evaluation, con't:
- Shall consist of:
 - ▣ A clinical assessment that includes a mental status examination (including determination of current use of medications and a medical and psychiatric history),
 - ▣ A substance abuse screening if indicated,
 - ▣ A risk assessment,
 - ▣ An assessment of the minor's capacity to consent to treatment for minors 14 and older,

Involuntary Commitment, con't.

- Clinical Evaluation, con't:
 - ▣ A review of the minor's records from the TDO facility, if the minor was previously subject to a TDO,
 - ▣ A discussion of treatment preferences with the minor or his parents,
 - ▣ An assessment of alternatives to involuntary inpatient treatment, and
 - ▣ Recommendations for the placement, care and treatment of the minor.

Involuntary Commitment, con't.

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- Hearing Procedures:
 - Court to summons all material witnesses requested by minor or petitioner
 - Rules of evidence apply and testimony is under oath, but QE's report admissible
 - Petitioner, minor, and with court approval, any other person, may present evidence and cross examine witnesses

Involuntary Commitment, con't.

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- Hearing Procedures, con't.:
 - ▣ Closed to the public unless the minor *and* petitioner request it be open
 - ▣ Records are confidential

Involuntary Commitment, con't.

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- Hearing Procedures, con't:
 - ▣ May conduct the involuntary commitment hearing using any two-way electronic audio and video communication system for appearance of any parties and witnesses
 - See specifics at Va. Code 19.2-3.1
 - ▣ When a helpful witness can not be physically present, testimony may be received by telephone

16.1-344(B) Voluntary Admission

- At the commencement of the hearing involving a minor 14 years of age or older, the court shall inform the minor of his right to be voluntarily admitted for inpatient treatment, and shall afford the minor an opportunity for voluntary admission, provided that the minor's parent consents and the minor is capable of consenting.

16.1-344(B) Voluntary Admission, cont.

- In determining whether a minor is capable of consenting to voluntary admission, the court may consider evidence of past compliance or noncompliance with treatment.
- The purpose of this paragraph was to clarify that special justices do have the authority to permit voluntary admission of minors 14 and older when the minor and parent both consent.
- The goal is to promote voluntary treatment whenever possible.

Involuntary Commitment, con't.

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- **Court must find by clear and convincing evidence that:**
 - 1) **Because of mental illness, the minor:**
 - **Presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats;**
- OR...**

Involuntary Commitment, con't.

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- **is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusional thinking or by significant impairment of functioning in hydration, nutrition, self-protection, or self-control;**

and

Involuntary Commitment, con't.

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- 2) Minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and**

- 3) If the court finds that inpatient treatment is not the least restrictive treatment, the court shall consider entering an order for MOT pursuant to § 16.1-345.2**

Involuntary commitment, con't.

- The commitment criteria remained unchanged, but as of 2010, before deciding whether a minor meets the criteria, the judge must now observe the minor and consider the following:
 - Recommendations of any treating or examining physician or psychologist,
 - Any past actions of the minor,
 - Any past mental health treatment of the minor,
 - Any qualified evaluator's report,
 - Any medical records available,
 - The preadmission screening report, and
 - Any other evidence admitted.

Involuntary Commitment, con't.

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- Parental Objection:
 - ▣ If the parent(s) with whom the minor resides are not willing to approve the proposed commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified, that such treatment is necessary to protect the minor's life, health, or normal development, and issuance of a removal or protective order is authorized

Involuntary commitment, cont.

- Language implying that a special justice could issue a removal or protective order when a parent is not willing to approve commitment was revised in 2010:
- 16.1-345(3) now reads:
 - ▣ If a special justice believes that issuance of a removal or protective order may be in the child's best interest, the special justice shall report the matter to the local department of social services for the county or city where the minor resides.

Involuntary Commitment, con't.

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- If best interests of the minor require, the court may enter an order directing the parent(s) to comply with “reasonable conditions” relating to the minor’s treatment
- CSB serving the political subdivision where the minor was evaluated is to designate the location for inpatient placement

16.1-345 Post-commitment hearing transportation

- When a judge or special justice commits a minor under this section, the judge or special justice may order that the minor be transported by either the sheriff or an alternative transportation provider (ATP).
- The ATP may be a parent, family member, friend, CSB representative, representative of the facility where the minor was detained, or any other provider trained to provide transportation in a safe manner.

16.1-345 Post-commitment hearing transportation, con't.

- If it's the sheriff's office, the judge shall order transportation by the sheriff of the jurisdiction where the minor is a resident unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In that case, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the minor.
- Transportation must commence no later than six hours after notification to the sheriff or the ATP of the judge's order.

16.1-345.2 Mandatory Outpatient Treatment

- After observing minor and considering:
 - Recommendations of any treating or examining physician or psychologist;
 - Any past actions of the minor;
 - Any past mental health treatment of the minor;
 - Any evaluation of the minor;
 - Any medical records available;
 - The pre-admission screening report; and
 - Any other relevant evidence that may have been admitted...

16.1-345.2 Mandatory Outpatient Treatment, con't.

- Court shall order MOT for up to 90 days if it finds by clear and convincing evidence that the MOT commitment criteria are met:
 1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;
 2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment;

16.1-345.2 Mandatory Outpatient Treatment, con't.

3. Less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate;
4. The minor, if 14 years of age or older, and his parents (i) have sufficient capacity to understand the stipulations of the minor's treatment, (ii) have expressed an interest in the minor's living in the community and have agreed to abide by the minor's treatment plan, and (iii) are deemed to have the capacity to comply with the treatment plan and understand and adhere to conditions and requirements of the treatment and services; and
5. The ordered treatment can be delivered on an outpatient basis by the community services board or a designated provider.

16.1-345.4(B) MOT Review (JDR judges only)

- When creating the procedures for enforcing compliance with an MOT order for juveniles, the intent was to have a civil show cause summons issued, not to create a procedure comparable to the *capias* that is issued for adults. In order to resolve confusion over this issue, 16.1-345.4(B) has been revised.
- Language about keeping a minor in custody for up to four hours until a TDO is issued was deleted.

16.1-348, Availability of Judge

- The chief judge of every juvenile and domestic relations district court shall establish and require that a judge be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this article. Such judge shall have the authority to perform the duties established by this article.
 - "Judge" means a juvenile and domestic relations district judge. In addition, "judge" includes a retired judge sitting by designation pursuant to § 16.1-69.35, substitute judge, or special justice authorized by § 37.2-803 who has completed a training program regarding the provisions of this article, prescribed by the Executive Secretary of the Supreme Court.