



ECO/TDO/Civil Commitment

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- https://www.youtube.com/watch?v=_0aNILW6ILk



By the Numbers in Richmond FY 2015: RBHA Managed

- 41,000 phone calls
- 3,472 field evaluations
- 428 voluntary hospitalizations
- 700+ ECO's
- 1,722 TDO's

Emergency Custody Order –VA Code 37.2-808

- A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) 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 (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment



Mental Illness Definition - 37.2-100

- **Mental Illness** means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

Emergency Custody Order

37.2-808 A.

- “Dangerous Criteria:


“the 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”

Emergency Custody Order

37.2-808 A.

- Substantially Unable to Care for self:

“the 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, (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs”

- 
- is in need of hospitalization or treatment,
and
 - is unwilling to volunteer or incapable of
volunteering for hospitalization or
treatment
 - Jail or Hospital? Is this voluntary?

Emergency Custody Order

37.2-808

- Consider the following:
 - Recommendations of any examining or treating physician or psychologist, if available
 - Any past actions of person
 - Any past mental health treatment of person
 - Any relevant *hearsay* evidence
 - Any medical records available
 - Any affidavits submitted, if the witness is unavailable and it so states in the affidavit
 - Any other information available that is relevant to determination of probable cause

Release of Information

■ § 37.2-804.2. Disclosure of records.

- Any health care provider, as defined in § [32.1-127.1:03](#), or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to this chapter shall, upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to § [37.2-815](#), the community services board or its designee performing any evaluation, preadmission screening, or monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant to this chapter. Any health care provider, as defined in § [32.1-127.1:03](#), or other provider who has provided or is currently evaluating or providing services to a person who is the subject of proceedings pursuant to this chapter shall disclose information that may be necessary for the treatment of such person to any other health care provider or other provider evaluating or providing services to or monitoring the treatment of the person. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.
- Any health care provider providing services to a person who is the subject of proceedings under this chapter may notify the person's family member or personal representative of information that is directly relevant to such individual's involvement with the person's health care, which may include the person's location and general condition, in accordance with subdivision D 34 of § [32.1-127.1:03](#), unless the provider has actual knowledge that the family member or personal representative is currently prohibited by court order from contacting the person.
- Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.



Emergency Custody Order

- ECO may be requested by:
 - Any family member
 - CSB
 - Treating physician
 - Law-enforcement officer
 - “Any responsible person”

Emergency Custody Order

37.2-808 G.

- Law Enforcement Officer who has probable cause to believe that ECO criteria exist (based on his observation or reliable reports of others) may take person into custody & transport to appropriate location for hospitalization/treatment/assessment. Evaluation shall occur immediately by a community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

Emergency Custody Order

37.2-808

- Written ECO is not required.
- Time stamp
- The 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
- The CSB and Law Enforcement may determine the appropriate location for evaluation

Emergency Custody Order

37.2-808 J

- A new resource – Crisis Triage Center (CTC) has it all
- Hours of operation
- Use must be approved before transport to the CTC
 - If approved or not?
- Transportation (General Order)
- Chippenham Triage Window
- Tuckers Intake (Search GO)
- Transfer of Custody or not?



Emergency Custody Order 37.2-808.E

- Disposition:
 - Release
 - Voluntary admission
 - Involuntary admission (TDO)

Emergency Custody

37.2-808 K.

- ECO is valid for a period not to exceed 8 hours
- Time begins upon execution of the order
- For CSB to conduct an evaluation and to identify suitable TDO facility if necessary
- Completion of medical evaluation
- Time stamping the “paperless” ECO
- 8 hours to serve after issuance

Emergency Custody Order

37.2-808 N.

- If the individual is TDO'd to a state facility prior to the expiration of the 8 hour period because no other facility for temporary detention could be identified, the CSB and the state hospital may continue to attempt to identify and alternative facility for an additional 4 hours
- 7th hour protection (Deeds)
- The state hospital will be named on the TDO but more than likely will not be the final destination.
- We will wait and must contact the CSB before transportation (In New General Order)
- Hospital discharge before transport



Emergency Custody Order

37.2-808 L.

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 (FORM SAMPLE)



Emergency Custody Order

37.2-808 J.

- If ECO not executed within 8 hours of issuance it is void.
- Return unexecuted ECO to office of issuing magistrate

Emergency Custody order etc.....

- The finder of fact
 - Magistrate
- Execution of the order
 - When served upon the individual (8 Hours)
- Expiration of the order
 - “Sequential” orders
- Not required prior to the issuance of TDO



CSB/State Hospital

Responsibilities 37.2-809.1 B

- Notice of the ECO and potential admission
- Provide the results of the evaluation of the potential admission to the state facility
- The search for an alternative facility may continue
- The state facility may not refuse to admit someone who meets the criteria for a TDO (Special Circumstances always exist)



CSB/State Hospital

Responsibilities 37.2-809 E

- CSB may change the facility of temporary detention and may designate an alternative facility at any point during the period of temporary detention
- CSB must provide notice to the clerk of the court of the name and address of the alternative facility (FORM SAMPLE)

Temporary Detention Order

37.2-809

- Magistrate **shall issue** , upon sworn petition of any responsible person, treating physician or his own motion; ECO is not required
- Only after evaluation by CSB in person or by video/audio communication;
- If it appears from all evidence, including recommendation of treating physician or clinician, that criteria is met.
- A TDO may be issued without being preceded by an ECO



Temporary Detention Order

37.2-809 B

- Person has a mental illness **and** there is substantial likelihood that he will, in the near future (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm, **or** (b) suffer serious harm due to lack of capacity to protect self from harm or provide for basic human needs **and** needs hospitalization or treatment **and** is unwilling or incapable of volunteering for hospitalization/treatment.

TDOs

37.2-809.H, 37.2-814

- Shall not exceed 72 hours or until close of business on next day that is not Sat., Sun. or holiday
- No minimum time - but sufficient time to allow for completion of examiner's report, preadmission screening report and initiation of treatment to stabilize person's psychiatric condition to avoid involuntary commitment where possible

Transportation-37.2-810

- Magistrate issuing TDO shall specify the primary (RPD) law enforcement agency where the individual resides to execute the TDO and provide transportation to designated facility
- Law enforcement officer may go beyond boundaries of his jurisdiction to execute a TDO



Transportation-37.2-810

- 50 mile rules applies to TDO transportation and who the primary law enforcement agency will be
- From city/county line to the nearest boundary of the jurisdiction of where the individual is located



Transportation-37.2-810

- Transportation General Order 06-10 and Mental Health General Order 06-17

TDO Change of Facility


37.2-810 C.

- If law enforcement has custody when the change of facility is initiated, the individual shall be transported to the alternate facility
- If the individual has been transported and custody transferred to the initial TDO facility, the CSB shall request the magistrate to enter an order specifying the law enforcement agency where the person resides, or is located 50 mile rule applies

Commitment Hearing: Examination

37.2-815.B

- Comprehensive evaluation conducted in-person by psychiatrist, psychologist or mental health professional (Independent Evaluator)
- If not practicable, by two-way electronic video and audio communication system
- Translation or interpreter services shall be provided when necessary



Examination Requirements (§ 37.2-815.B)

- Clinical assessment, including mental status examination
- Determination of current use of psychotropic and other medications
- Medical and psychiatric history
- Substance use, abuse, or dependency determination, and
- Determination of whether person meets 2nd prong of commitment criteria

Examination Requirements (cont.)

37.2-815.B

- Substance abuse screening, when indicated
- Risk assessment, including evaluation of whether person meets 1st dangerousness prong of commitment criteria
- Assessment of person's capacity to consent to treatment, including his ability to maintain and communicate choice, understand relevant information, and comprehend situation and its consequences



Preadmission Screening Report

37.2-816

- CSB must provide preadmission screening report to court prior to hearing
- Report shall be admissible (no discretion to exclude) as evidence &
- Shall indicate whether person meets commitment criteria, whether there is a less restrictive alternative to inpatient treatment and recommendations for placement & treatment, including mandatory outpatient treatment where appropriate.

CSB Attendance at Hearing

37.2-817.B

- A representative of CSB preparing preadmission screening report must attend hearing in-person, or if impracticable, by telephone or two-way electronic video and audio communication system
- Court must provide time and location of hearing to CSB 12 hours prior to hearing



Commitment Hearing

37.2-817.C and D

- Recommendations of any treating physician or psychologist, if available
- Any past actions of person
- Any past mental health treatment of person
- Any examiner's certification
- Any health records available
- Preadmission screening report
- Any other relevant evidence admitted

Length of Inpatient Treatment (§ 37.2-817.C)


- Any order for involuntary inpatient treatment shall not exceed 30 days
- Any subsequent order for involuntary inpatient treatment shall not exceed 180 days

§ [18.2-308.1:3](#). Purchase, possession or transportation of firearm by persons involuntarily admitted or ordered to outpatient treatment; penalty.

A. It shall be unlawful for any person involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to § [19.2-169.2](#), involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ [37.2-814](#) et seq.) of Chapter 8 of Title 37.2, or who was the subject of a temporary detention order pursuant to § [37.2-809](#) and subsequently agreed to voluntary admission pursuant to § [37.2-805](#) to purchase, possess or transport a firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.


B. Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following his release from involuntary admission to a facility, his release from an order of mandatory outpatient treatment, or his release from voluntary admission pursuant to § [37.2-805](#) following the issuance of a temporary detention order, petition the general district court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines, after receiving and considering evidence concerning the circumstances regarding the disabilities referred to in subsection A and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not likely act in a manner dangerous to public safety and that granting the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection A do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

C. As used in this section, "treatment record" shall include copies of health records detailing the petitioner's psychiatric history, which shall include the records pertaining to the commitment or adjudication that is the subject of the request for relief pursuant to this section.



§ 37.2-1103. Emergency custody orders for adult persons who are incapable of making an informed decision as a result of physical injury or illness.

- A. Based upon the opinion of a licensed physician that an adult person is incapable of making an informed decision as a result of a physical injury or illness and that the medical standard of care indicates that testing, observation, and treatment are necessary to prevent imminent and irreversible harm, a magistrate may issue, for good cause shown, an emergency custody order for the adult person to be taken into custody and transported to a hospital emergency room for testing, observation, or treatment.
- B. Prior to issuance of an emergency custody order pursuant to this section, the magistrate shall ascertain that there is no legally authorized person available to give consent to necessary treatment for the adult person and that the adult person (i) is incapable of making an informed decision regarding obtaining necessary treatment, (ii) has refused transport to obtain such necessary treatment, (iii) has indicated an intention to resist such transport, and (iv) is unlikely to become capable of making an informed decision regarding obtaining necessary treatment within the time required for such decision.
- C. An opinion by the licensed physician that an adult person is incapable of making an informed decision as a result of physical injury or illness shall only be rendered after the licensed physician has communicated electronically or personally with the emergency medical services personnel on the scene and has attempted to communicate electronically or personally with the adult person to obtain information and medical data concerning the cause of the adult person's incapacity, has attempted to obtain consent from the adult person, and has failed to obtain consent.
- D. If there is a change in the person's condition, the emergency medical services personnel shall contact the licensed physician. If at any time the licensed physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further observation, testing, or treatment.
- E. Upon reaching the emergency room, the person shall be evaluated by a licensed physician. If the physician determines that the person meets the requirements of § [37.2-1104](#), the physician may apply for a temporary detention order pursuant to that that section. If the physician determines that the person does not meet the requirements of § [37.2-1104](#), the person shall be released from custody immediately. The person shall remain in custody until this evaluation is performed, but in no event shall the period of custody under this section exceed four hours.
- F. The law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.
- G. If an emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.



Commitment Criteria - Juveniles 16.1-345

- Because of mental illness, the minor:
- Presents a serious danger to himself or others such that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or



COMMITMENT CRITERIA- JUVENILES (CONTINUED)

- 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.



COMMITMENT CRITERIA – JUVENILES (CONTINUED)

- The minor is in need of compulsory treatment for mental illness and is reasonably likely to benefit from proposed treatment, and
- If Court finds that inpatient treatment is not least restrictive treatment, Court shall consider an order for mandatory outpatient treatment (MOT)



JUVENILE ECO/TDO CRITERIA

- Current law applies adult criteria by reference to 37.2-808 & 809
- Effective 7/1/09 an ECO or a TDO can be issued for a juvenile only if the minor meets the criteria for involuntary commitment under 16.1-345



VOLUNTARY ADMISSION

16.1-338 & 339

- Parent can admit minor less than 14 and nonobjecting minor 14 or older
- Minors in detention homes can now agree to voluntary admission to psychiatric hospitals; however, they must be returned to detention upon discharge



JUVENILE ECO/TDO

- Basic principles as the adult TDO process
- Paper
- “Paperless”