Joint Commission on Health Care

Use of Mandatory Outpatient Treatment for Persons in Need of Substance Abuse Treatment

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Study Mandate

- In 2011, JCHC staff presented a report on HJR 682 (O'Bannon), regarding whether involuntary commitment procedures can and should be used to treat chronic substance use disorder in the Commonwealth. Report findings include:
  - The *Code of Virginia* currently allows for the use of involuntary commitment procedures for persons in need of substance abuse treatment.
  - Involuntary commitment procedures are not often used for this purpose for a variety of reasons.
  - Involuntary commitment to inpatient treatment in most cases is better suited to compel treatment for mental illness; however, mandatory outpatient treatment is potentially a better disposition for persons with chronic substance use disorder.
- JCHC members voted to include in the 2012 work plan, a study of whether mandatory outpatient treatment can be structured to address more effectively the needs of persons in need of substance abuse treatment.

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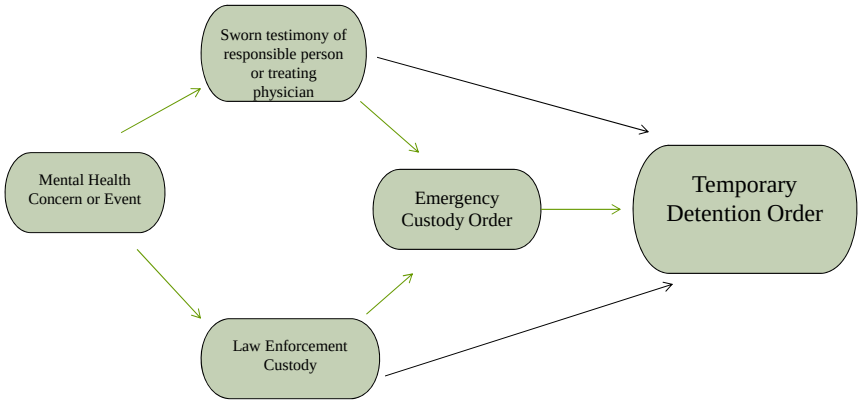
Temporary Detention Process



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Involuntary Civil Commitment

Temporary Detention Order → Independent Examination → Involuntary Civil Commitment Hearing

Held after sufficient period of time has passed to allow for completion of the independent examination, preparation of the preadmission screening report and stabilization but within 48 hours of the execution of the TDO or until the next business day if the period falls on weekend or holiday.

Conducted by district court judge or special justice.

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Criteria for Involuntary Commitment

- The person:

  (i) has a mental illness and that there is 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, and

  (ii) requires involuntary inpatient treatment."

  Code of Virginia § 37.2-815

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Current Use of Involuntary Commitment Procedures for Substance Use Disorder

- According to discussions with CSB staff, involuntary admission for a primary diagnosis of substance use disorder is rare, although individuals involuntarily committed due to mental illness often also have a substance use disorder.
  - The commitment process does not adequately address the needs of persons who are seriously harming themselves due to substance abuse because the behavior does not rise to the standard for commitment.
    - The commitment process focuses on behavior more than diagnosis.
  - By the time of the commitment hearing, the person typically is no longer intoxicated, suicidal, or dangerous and does not want treatment.

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Mandatory Outpatient Treatment in Virginia

- *Code of Virginia* §37.2-817(D) states that mandatory outpatient treatment can be ordered if the person meets the standard for involuntary commitment and "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…."
- In addition, the person needs to have sufficient capacity to understand the stipulations of his treatment, express an interest in living in the community and agree to abide by his treatment plan, and have the capacity to comply with the treatment plan and understand and adhere to conditions and requirements of the treatment and services.
  - Finally, the ordered treatment must be able to be delivered on an outpatient basis by the community services board or designated provider.

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Use of Mandatory Outpatient Treatment

- The Commission on Mental Health Law Reform reported that mandatory outpatient treatment (MOT) was ordered in less than 1% of all involuntary commitment hearings during 2010.
  - Of the MOT orders, 1/3rd of the individuals required substance abuse treatment in addition to mental health treatment.
- When MOT was ordered, the individual expressed a willingness to accept treatment, and it was ordered in accordance with the independent examiner's recommendation.
  - Most of the individuals agreed to outpatient treatment because they did not want to be hospitalized.

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Use of Mandatory Outpatient Treatment

- CSBs reported that the limited use of MOT was due to numerous factors:
  - Special justices are reluctant to order MOT because of the associated ongoing responsibility of overseeing compliance.
  - Lack of resources
    - Some CSBs will refuse if there are no treatment resources
    - Long waiting lists for services
  - Confusion over the criteria
    - Belief that if the standard for inpatient commitment is met, then the individual needs inpatient commitment, not outpatient treatment.

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The Voluntary Versus Involuntary Issue

- Additionally, there are varying schools of thought as to whether to compel involuntary treatment, especially for a substance use disorder.
  - Civil rights concerns.
  - The argument that for substance abuse treatment to be effective, the individual must want treatment and must take an active role in his recovery.
    - Bias as to whether substance use disorder is an illness versus a behavior that someone is able to control.
    - To compel treatment to an unwilling participant is a waste of scarce resources.
    - Effective treatment for substance abuse requires adequate resources for follow-up care and on-going treatment.
    - There are not enough resources to address the needs of those willing to pursue treatment.

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Use of MOT in Prince William County

- The CSB in Prince William County is an example of a CSB that actually increased the use of MOT.
  - Generally MOT was used when the client:
    - Was likely to harm himself/herself or
    - Was unable to protect himself/herself or to provide for his/her basic human needs.
  - Approximately 1/3rd of the clients placed on MOT were required to receive substance abuse treatment services as well as services for mental illness.

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Use of MOT in Prince William County

- Prince William County CSB representatives indicated that two aspects of their civil commitment process made MOT more feasible:
  - They waited a full 48 hours before initiating the involuntary commitment hearing to give clients more time to consider and agree to treatment on an outpatient basis; and
  - A second evaluation was completed immediately prior to the hearing to give the client another opportunity to express a willingness to participate in outpatient treatment.
- The MOT was found to meet the needs of clients who "fall somewhere in between inpatient care and dismissal" and the clients generally were very cooperative with treatment.

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Use of MOT in the Commonwealth

- Staff of CSBs and the Department of Behavioral Health and Developmental Services (DBHDS) noted the following reasons for so few MOT orders for substance abuse treatment:
  - MOT is not used frequently, even for mental health issues.
  - CSBs have not agreed on a standard substance abuse assessment tool.
  - Involuntary commitment hearings are often held within 24 hours of the TDO; too soon for an accurate substance abuse assessment.
  - There is a lack of substance abuse service capacity:
    - Average wait time of 18 days, which also compromises the necessary continuum of care
    - Limited access to detoxification and residential treatment
    - Even less access to medical detoxification.
      - Fewer than 100 beds for medical detoxification in the Commonwealth.

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Use of MOT in the Commonwealth

- CSBs also indicated that MOT:
  - Is rarely a practical tool:
    - The person often is not well-known to the CSB
    - Resource commitment is large, especially if persons are not known to the CSB
    - There are generally no effective sanctions for noncompliance.
  - There are logistical problems on the backend as well, including who in the private sector will be responsible for monitoring and reporting back to the Court.

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MOT as a Tool for Treating Persons with Chronic Substance Use Disorder

- Mandatory outpatient treatment can work as evidenced by the success of court-mandated treatment as related to such criminal acts as DUI.
- The challenges for the MOT population include the lack of penalties for noncompliance, the required resources, and the willingness to participate in treatment.
- However, MOT could be used more effectively if, at the least,
  - A standard substance abuse assessment tool were adopted and used, and
  - The TDO period could be increased to 72 hours, or at a minimum require that at least 24 hours pass before initiating the involuntary commitment hearing.

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Creating Opportunities: A Plan for Advancing Community-Focused Services in Virginia

- The Implementation Report for DBHDS's *Creating Opportunities* plan recognizes the unmet need for substance abuse services and includes the following objective and priority:
  - " Enhance access to a consistent array of substance abuse services across Virginia.
    - As resources become available, expand statewide capacity and fill identified gaps in the substance abuse services in areas such as medication assisted treatment, detoxification services, uniform screening and assessment for substance abuse, intensive outpatient services, [and] case management…."

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Policy Options

Option 1: Take no action.

Option 2: Introduce legislation to amend Titles 19.2 and 37.2 of the *Code of Virginia* to increase the maximum time period for a temporary detention order to 72 hours.

Option 3: Introduce legislation to amend Titles 19.2 and 37.2 of the *Code of Virginia* to require that at least 24 hours elapse between execution of the temporary detention order and the commitment hearing for involuntary admission.

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Public Comments

Written public comments on the proposed options may be submitted to JCHC by close of business on October 26, 2012.

Comments may be submitted via:

- E-mail: jhoyle@jchc.virginia.gov
- Fax: 804-786-5538
- Mail: Joint Commission on Health Care
  P.O. Box 1322
  Richmond, Virginia 23218

Comments will be summarized and included in the Decision Matrix which will be discussed during the JCHC meeting on November 7th.

JCHC website - http://jchc.virginia.gov

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