

# Report on Major Legislation and Budget Amendments Affecting DMHMRSAS 2007

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April 3, 2007

## ▪ Legislation

### **Chapter 438, HB1790, Griffith: Freedom of Information Act; access by persons civilly committed under Sexually Violent Predators.**

This bill provides that the Freedom of Information Act does not afford any rights to persons civilly committed pursuant to the Sexually Violent Predators (SVP) Act, except in exercising their constitutionally protected rights. This same provision is currently in the Code for state, local and federal inmates, and inmates of correctional facilities operated by private providers.

### **Chapter 440, HB1793, Griffith: Sexually abnormal offense; who may conduct mental evaluation of person convicted thereof.**

This bill states that a judge may order a defendant convicted of a sexually abnormal offense to be examined by a licensed clinical social worker if a psychiatrist or clinical psychologist is not reasonably available. The licensed clinical social worker must be certified as a sex offender treatment provider and qualified by experience and by specialized training approved by the Department to perform such evaluations. Under current law, the evaluation would have to be performed by a psychiatrist or psychologist.

There currently is an inadequate pool of professionals to conduct the evaluations, especially in rural areas. This legislation will increase the availability of providers, potentially reduce the costs of the evaluations, and ensure that the providers are adequately qualified.

### **Chapter 744, HB1923, Griffith: Sex offender registry; not guilty by reason of insanity.**

This bill amends §9.1-901 of the Code to require sex offender registration for individuals found Not Guilty by Reason of Insanity (NGRI) for sex offenses. Adults and juveniles who have been found guilty of the sex offenses listed in §9.1-902 of the Code are currently required to register. The statute will apply to all those defendants found NGRI of a sex offense listed in §9.1-901, after July 1, 2007, as well as those NGRI acquittees who are currently in the custody of the Commissioner, and those NGRI acquittees who are on conditional release at the time of the enactment of this legislation.

### **Chapter 400, HB2036, Hamilton: Admission hearings, involuntary; adds providers to list by which an examiner may be employed.**

This bill amends §37.2 – 815, relating to independent examinations of persons involved in involuntary admission (commitment) hearings. Specifically, this bill changes the conflict of interest requirements to allow employees of community services boards and behavioral health authorities to conduct such examinations if they are employed by the detaining or admitting facility but otherwise free of conflicts.

This bill addresses a concern that qualified independent examiners who are willing to participate in the commitment hearing process are difficult to find in some localities (e.g., Fairfax). In the absence

of an independent examination, a commitment hearing may not occur and the order detaining the person may expire and the person may be released. This bill will reduce or eliminate current problems associated with the hearing process in some localities.

### **Chapter 829, HB2368, Nutter: Criminal cases; increases compensation of experts.**

This bill increases the limit on fees for community-based mental health evaluations for the courts from the current \$400 limit to \$750. The last time this fee level was raised was more than 20 years ago. This is a needed and welcomed action to support the mission of the criminal courts of the Commonwealth, and to relieve the pressure on the DMHMRSAS to withstand an increasing number of court orders for inpatient evaluations.

### **Chapter 485, HB2369, Brink/ Chapter 565, SB1104, Puller: Insanity; persons acquitted by reason thereof.**

This bill authorizes the Department to designate which Community Services Board (CSB) or Behavioral Health Authority (BHA) has responsibility for working with the department in the management and release planning of individuals found not guilty by reason of insanity (NGRI). The current language in the Virginia Code stipulates that the CSB serving the jurisdiction of the committing court has responsibility for participation in the acquittee management and release planning process.

This bill originated from the NGRI study that is being conducted by the Joint Behavioral Healthcare Subcommittee, and is designed to facilitate the involvement of CSBs in the acquittee release planning and conditional release monitoring processes. By providing the authority to designate which CSB/BHA should be involved in these matters, this bill allows DMHMRSAS to better coordinate planning and community care for eligible acquittees. The decision to release is always in the purview of the committing court.

### **Chapter 500, HB2530, Iaquinto/[Governor's recommendation received by Senate, SB738, Cuccinelli: Psychiatric Inpatient Treatment of Minors Act; certain judges, etc., authorized to perform hearings.](#)**

These bills clarify and define who is authorized to conduct commitment hearings for minors. In addition to domestic relations district judges, the legislation authorizes retired judges, substitute judges or special justices under 37.2-803 who have completed a training program prescribed by the Executive Secretary of the Supreme Court, and requires that a retired or substitute judge be in good standing in the Commonwealth. Additionally, it adds retired judges to receive a fee and necessary expenses.

It specifies that the special justice shall serve under the supervision and at the pleasure of the chief judge making the appointment for a period of up to six years. The special justice may be reappointed and may serve additional periods of up to six years, at the pleasure of the chief judge.

There is some minimal fiscal impact to the Supreme Court Involuntary Mental Commitment Fund.

**HB 2671, Griffith: Sexually violent predators; civil commitment.**

This bill streamlines the language in the Code sections governing civil commitment of sexually violent predators. It reduces the Commitment Review Committee (CRC) quorum from five to four members; increases the time available to the CRC for case reviews from 90 to 120 days, grants the CRC, DOC and DMHMRSAS greater access to various records, provides that the existence of records of charges or convictions can be documented by affidavits or documentary evidence, and alters certain provisions of the SVP Code to make them procedural rather than substantive or jurisdictional. This bill also adds a number of new crimes and attempted crimes to the list of qualifying SVP crimes.

These proposed changes will have a positive impact on the CRC process, easing the operational burden on the CRC, OAG, and DMHMRSAS. The addition of new crimes will increase the number of SVP commitments to the Department, thereby increasing the need to build new beds in the future.

**Chapter 513, HB2678, Ware, O.: Opiate addiction treatment; centers to refrain from providing services on Sunday, exception.**

This bill allows opiate addiction treatment centers to close on Sundays, except if the service is provided by a general hospital, private psychiatric hospital or state hospital. The Department is required to develop guidelines to ensure the health, welfare and safety of consumers and the safety of take-home doses.

At least 30 of 44 states that provide methadone services allow programs to close on Sunday. The Department is in the process of revising the licensing regulations and will make provisions for this change in statute in the revisions. In addition, the Department will issue guidelines for the safe operations of the clinics, to prevent diversion and allow Sunday closings based on the needs of the populations they serve.

**HB2776, Athey: Sex offender treatment offices; prohibited in certain residential areas.**

This bill prohibits someone from knowingly providing sex offender treatment services to convicted sex offenders in an office or similar facility located in a residentially zoned subdivision.

**Chapter 526, HB2955, Bell: Temporary detention orders; licensed physician to complete in-person evaluation.**

This bill requires a magistrate issuing a temporary detention order to consider the recommendations of any treating or examining physician licensed in Virginia, if available either verbally or in writing, prior to rendering a decision. Under current law, the recommendations of a treating physician or clinical psychologist may be considered by the magistrate prior to issuance of the detention order. This bill makes such consideration mandatory.

**HJ683, Landes/SJ395, Hanger: Substance abuse; JLARC to study actual cost to State.**

These two resolutions are similar in that they both direct the Joint Legislative Audit and Review Commission to study the cost of substance abuse to the Commonwealth. Both require a two-year study, with a first year report by November 30..

HJ 683 asked JLARC to determine the financial savings available to the Commonwealth as a result of providing treatment to offenders diverted from incarceration, and specifically, to examine (i) the policies and procedures governing treatment services, (ii) the effect treatment has on participant behavior, including differences in behavior and experience reported by respondents before and after treatment, (iii) the cost of treatment in different settings, and (iv) the economic value of such treatment to the Commonwealth. The economic value of treatment to the Commonwealth should be measured in terms of (a) costs avoided due to reductions in crime, (b) costs avoided due to reductions in mental and physical illness and disorders, and (c) shifts in income sources.

SJ 395 directs JLARC to study the impact of issues related to substance abuse on state and local fiscal expenditures. It requires JLARC to examine existing programs, the need for new programs, and funding initiatives that could potentially save significant sums of money focusing on prevention and treatment of substance abuse. The study should consider social problems aggravated by substance abuse including, but not limited to, teenage pregnancy, out-of-wedlock births, sexually transmitted diseases, domestic violence, broken families, homelessness, crime, and poor school performance. This resolution requires the Department to provide technical assistance to JLARC.

### **HJ774, Kilgore: Mental health services for children; DMHMRSAS responsible for planning and delivery thereof.**

This resolution recognizes the Department as the primary state agency responsible for the planning and delivery of mental health services in the Commonwealth. This resolution also states that neither the Department of Social Services nor the Office of Comprehensive Services is the default system for the provision of mental health services. **Martha to add something here.**

### **Chapter 7, SB890, Deeds: Involuntary mental health commitment; emergency custody order to include transportation.**

This bill amends §37.2-808 relating to execution of emergency custody orders (ECO). Specifically, the bill adds language in paragraph C. requiring transportation to a medical facility if a physician at the hospital that will admit the person for temporary detention requires a medical evaluation prior to admission. §37.2-810 is also amended to clarify that a temporary detention order (TDO) may include transportation to obtain medical screening or evaluation prior to admission to the temporary detention facility.

This bill resolves the problem of obtaining necessary medical screening and assessment for persons in emergency custody, and for obtaining such services while being transported under temporary detention. Under the present law, there is no explicit authorization or procedure with which to accomplish this absent an obvious medical emergency.

### **Chapter 564, SB1069, McDougle: Drug and alcohol treatment program; local or regional jail may establish for inmates.**

This bill allows any local or regional jail to establish a drug and alcohol treatment program for inmates housed within its facilities. It requires that such programs, modeled on programs already in use in local correctional facilities in the Commonwealth, must consist of established methods for

assisting people in eliminating the negative influence in their lives of drug or alcohol abuse and addiction. Each program is required to make a report to the General Assembly by December 1, 2007, listing the participating local facilities, the percentage of the population participating in each facility, the availability of the program on a continuing basis to recidivists regardless of the facility to which they may be committed, and the overall efficacy of the program.

**Chapter 781, SB1103, Puller: Defendants; restoration of competency.**

This bill was developed from the study of the NGRI and Competency to Stand Trial statutes, which is being conducted by the Joint Behavioral Healthcare Subcommittee of the Joint Commission on Health Care. This bill supports the process of community-based restoration to competency to stand trial, by adding language designating Community Services Boards (CSB) and Behavioral Health Authorities (BHA) as properly designated providers of treatment to restore trial competency of criminal defendants. The language further stipulates the responsibilities of the CSB or BHA in providing competency restoration, including reporting requirements to the court.

**Chapter 785, SB1134, Lambert: Insanity; petition for release of person acquitted by reason thereof.**

This bill eliminates the requirement for the Commissioner of MHMRSAS to appoint two additional evaluators to assess a Not Guilty by Reason of Insanity (NGRI) acquittee's need for inpatient hospitalization, when the Commissioner has petitioned the court for the release of the acquittee. The court will remain able to order the Commissioner to appoint two evaluators, when the acquittee has petitioned for release. This bill was a recommendation of the Joint Commission on Healthcare's NGRI study that is being conducted by the Joint Behavioral Healthcare Subcommittee.

**Chapter 570, SB1186, Blevins: Community services board members; terms of office.**

This bill amends §37.2-502 to permit governing bodies of cities and counties to reappoint a community services board (CSB) member who has served the current statutory maximum of three full three-year terms to an unlimited number of additional three year terms after a three year period has elapsed since the end of that member's last three-year term (the third of the allowable three terms in the current statute).

**SB1203, Hanger: Sexually violent predators; Attorney General, et al to study feasibility of treatment options, etc.**

As enrolled, this bill requires the Department and the Attorney General's Office to explore, as possible components of conditional release under §37.2-921, the feasibility of the use of physical castration as a treatment option and the use of residential housing facilities, operated by the Commonwealth or by private providers contracted with the Commonwealth and located on property owned by the Commonwealth. A report on the results of the examination is required by December 1, 2008.

For consideration in the Reconvened Session on April 4 is an amendment from the Governor that would change the language to say *'the feasibility of the use of a full range of treatment options'* rather than specifically *'the feasibility of the use of physical castration as a treatment option'*

If enacted, the bill postpones further consideration of castration until the feasibility of SVP castration as a preventative procedure can be studied, the availability of physicians willing to conduct the physical castration is assessed, and a set of protocols for this overall process can be articulated.

▪ **Budget**

Budget Item	FY2007	FY2008
<b><u>Establish Medical Records Transformation:</u></b> Provides non-general funds to develop and implement an electronic medical records system for state mh and mr facilities, including necessary pharmacy system upgrades as part of the implementation process.		\$4,698,133
<b><u>Expand access to specialized services for children:</u></b> Establishes four fellowships in child psychiatry and four internships in child psychology through the state's university hospital systems. Requires participants to work in an underserved area of the state.		\$493,000
<b><u>Increase access to juvenile competency restoration services:</u></b> Provides funding for the purchase of court ordered juvenile competency restoration services at the local level for CSBs to address waiting lists for competency restoration services.		\$111,530
<b><u>Restore savings at CVTC:</u></b> Restores savings at CVTC assumed in the biennial budget as part of the System Transformation initiative.	\$3,924,899	\$6,727,296
<b><u>Restore savings at SEVTC:</u></b> Restores savings at SEVTC assumed in the biennial budget as part of the System Transformation initiative.		\$825,564
<b><u>Reflect special fund revenue for operation for state facilities:</u></b> Increases special fund appropriation for state facilities to reflect revenue generated by the provision of Medicaid services and the reimbursement of drugs purchased for facility residents through the federal Medicare Part D program.	\$17,649,519	\$19,801,850
<b><u>Adjust funding for Virginia Center for Behavioral Rehabilitation:</u></b> Adjusts the appropriation for VCBR to reflect census projections resulting from the 2006 General Assembly SVP law changes. Note: 2007 General Assembly SVP law changes did not result in funding adjustments.	\$-354,911	\$-1,031,788
<b><u>Funds for mh services demonstration projects in juvenile detention centers:</u></b> Funding to replace expiring federal Juvenile Accountability Block Grant funds with general fund dollars in 5 juvenile detention centers: \$173,945. Funding for additional 9 juvenile detention centers: \$900,000		\$1,073,945
<b><u>Replace federal IV-E funds for licensing and human rights activities:</u></b> Replaces funds previously covered by the federal IV-E program for licensing children's programs and human rights activities related to programs for children and adolescents.	\$245,917	\$245,917

<b><u>Develop a plan for development of electronic health records for CSBs.</u></b>	Language	
<b><u>Expand the scope of the December, 2006 review of the Medicaid MR home-and community-based waivers and make recommendations on the continuum of care for persons with mr for the 2008-10 biennium.</u></b> Report by 10/1/07.	Language	
<b><u>Geriatric MH pilots:</u></b> Allocates \$1.0 mil in FY2008 from the federal community MH Services Block grant for 2 specialized geriatric mh services pilot programs, one in No. Virginia and one in the Virginia Peninsula		Language
<b><u>Consumer directed MH pilots:</u></b> Allocates \$750,000 in FY2008 from the federal community MH Services Block grant for the expansion and development of consumer-directed pilot programs to promote wellness, recovery and improved self-management.		Language
<b><u>Language which requires the Commissioner to work with CSBs to ensure restructuring funds meet the needs of individuals who are expected to be discharged into each region as a result of the downsizing of affected facilities.</u></b>	Language	
<b><u>Language specifying that funding for mh services for children and adolescents with serious emotional disturbances and related disorders which is provided through CSBs shall be allocated with priority placed on serving those children who are at-risk for custody relinquishment.</u></b>	Language	
<b><u>Funding for SA services focusing on recovery models and the use of best practices:</u></b> Funds are provided for services for consumers with substance use disorders, including those with opioid and/or methamphetamine addictions.		\$2,400,000
<b><u>Funding to develop and operate a real-time reporting system for public and private acute psychiatric beds in the Commonwealth:</u></b> DMHMRSAS will contract with Virginia Health Information.		\$25,000
<b><u>Start-up funding for establishment of community residential services to support 330 new MR waiver slots added in FY2008.</u></b>		\$550,000
<b><u>Funding to establish Regional Community Support Centers at SVTC AND SEVTC:</u></b> RCSC centers will provide services to mr clients that are unavailable in local communities including, but not limited to, dental services, behavioral health services, psychiatric care, program coordination, and clinic services.		\$400,000
<b><u>Capital funding for Hancock Geriatric Treatment Center for cost overruns and furnishing / equipment</u></b>	\$5,008,000	

<b>Capital project language for CVTC and SEVTC replacement facilities:</b> DMHMRSAS shall not proceed beyond planning for this [CVTC] [SEVTC] project without the approval of the General Assembly	Language	
<b><u>Language requiring DPB to provide DMAS with general funds to support salary increases for DMHMRSAS employees who are paid with Medicaid billings</u></b>	Language	
Other agencies: Related Items		
<b><u>Funding in DMAS for additional MR Waiver slots:</u></b> Introduced budget added 170 slots; General Assembly conferees added 160 slots: Total 330 new slots		\$7,573,274(GF)
<b><u>Funding in DMAS for SA Medicaid services:</u></b> Expands Medicaid services to children and adults for SA treatment services		\$5,247,458(GF)
<b><u>Funding in DMAS for 15% rate differential for Medicaid MR waiver services in No. Virginia</u></b>		\$5,297,138(GF)
<b><u>Funding in DMAS for 100 additional slots in Medicaid Individual and Family Developmental Disabilities (DD) support waiver program.</u></b>		\$1,312,363(GF)
<b><u>Language in DMAS for DMAS to continue to pursue ‘Money Follows the Person’ federal grant.</u></b>	Language	
<b><u>Funding in DMAS for increased inpatient hospital psychiatric rates:</u></b> Increasing rates paid to private providers will allow more people to be treated in private hospitals rather than in state facilities		\$3,280,427(GF)

## ▪ **Failed Legislation of Interest**

### **SB 763, Cuccinelli/SB 808, Marsh: Outpatient treatment orders; changes criteria therefore./Assisted outpatient treatment; establishes program for severely mentally ill.**

Both bills were carried over in 2006 (SB 309 and SB 18, respectively), and reviewed by a special subcommittee of Senate Education and Health chaired by Senator Quayle. The subcommittee conducted meetings and heard from a number of different stakeholders, including DHMHMRAS, VACSB, Assisted Outpatient Treatment advocates, JLARC, family members, and persons with mental illness. The Subcommittee did not come to any conclusions, and Senate Education and Health did not meet on carry-over bills, so no action was taken on this legislation.

This and other AOT bills and similar attempts to lower the threshold for involuntary care are extraordinarily controversial. Parents and some advocates will support this bill, while consumers and providers will oppose it. **Valid arguments can be made both in favor of and against this type of legislation.** On the whole, SB 808, of all others introduced, was the most **thoughtful and** comprehensive. Regardless, DMHMRSAS believes that any AOT legislation should be part of a broader policy initiative that includes services and infrastructure improvements as well.

This is an issue that the Supreme Court will continue to deal with in the Supreme Court of Virginia's Commission on Mental Health Law Reform.

### **HB 1904, Albo: Outpatient treatment orders; changes first criterion to include failure to properly take medication.**

This legislation would have added '*failure to properly take medication*' (and as a result is '*likely*' to become an imminent danger or substantially unable to care for himself at some time in the future) as a new element to the several findings that must be made by a judge or special justice in an involuntary civil commitment hearing.

This bill addresses a longstanding concern about Virginia's current civil involuntary outpatient commitment law, i.e., that people with mental illness can only be ordered into outpatient treatment if they are imminently dangerous or unable to care for themselves. Under these circumstances, combined with the other conditions necessary for involuntary outpatient commitment, few such orders are issued. This bill attempted to remedy this situation by allowing a person to be ordered into outpatient treatment before he becomes a danger to himself or others or unable to care for himself.

### **SB 981, Edwards: Involuntary commitment; transportation.**

This bill would have required the magistrate to specify in a TDO order that the county police department or sheriff would provide the transportation, if the law enforcement agency executing the TDO was a town agency and no town law-enforcement officer was reasonably available.

### **SB 1359, Edwards: Crisis intervention pilot programs for persons with mental illness.**

This bill would have required DCJS establish crisis intervention team pilot programs in up to six areas of the state by January 1, 2008.

**SB 1388, Edwards: Mental health courts; Office of Executive Secretary of Supreme Court to establish pilot program.**

This bill would have required OES/SOV to establish two to five mental health courts, that OES apply for federal grants or other funds for this purpose, and to report on the results of the pilot program.