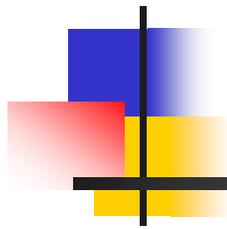


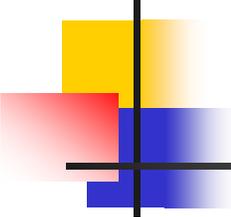
Overview of 2009 Legislation

Jane D. Hickey
Allyson K. Tysinger
Karen A.D. Walters
Office of the Attorney General
June 2009



Civil Commitment Changes

Procedural Changes

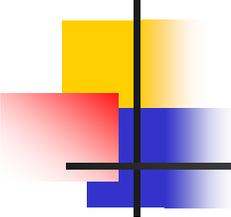


4-Hour Custody/Extension

HB 2060(Hamilton)/SB 1083 Howell

- Clarifies 2008 legislation that period of emergency custody initiated by law enforcement is effective for 4 hours
- Requires magistrate to extend law enforcement initiated period of custody additional 2 hours for good cause shown, including allowing
 - CSB to locate suitable TDO facility
 - Completion of medical evaluation

§ 37.2-808, HB 2060 effective February 23, 2009

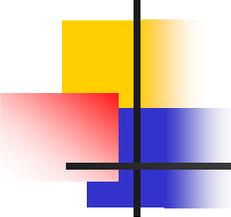


2-Hour NGRI Custody Extension

HB 2060(Hamilton)/SB 1083(Howell)

- Requires magistrate to extend emergency custody orders issued by judge, special justice or magistrate for 2 hours upon good cause shown for NGRIs on conditional release

§ 19.2-182.9, HB 2060 effective February 23, 2009; SB 1083 effective April 8, 2009



Examiners/CSB Attendance

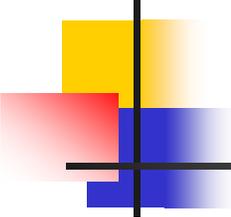
HB 2060(Hamilton)/SB 1083(Howell)

- Prohibits exclusion of examiner from hearing pursuant to order of sequestration of witnesses

§ 37.2-815, HB 2060 effective February 23, 2009

- Prohibits exclusion of CSB employee, or employee representing CSB that prepared preadmission screening report, from hearing pursuant to order of sequestration of witnesses

§ 37.2-817, HB 2060 effective February 23, 2009



CSB Attendance/Reports

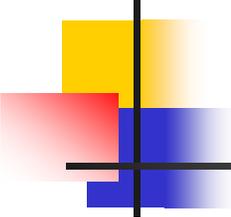
HB 2060(Hamilton)/SB1083(Howell)

- Any employee of CSB that prepared preadmission screening report, not actual employee that prepared report, meets hearing attendance requirement

§ 37.2-817, HB 2060 effective February 23, 2009

- Preadmission screening report required to be admitted into evidence and made part of record; admissibility not discretionary with court

§ 37.2-816, HB 2060 effective February 23, 2009



CCRE Reporting

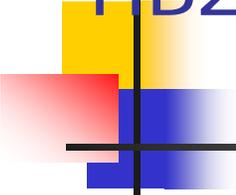
HB 2060(Hamilton)/SB1083(Howell)

- Clerks continue to be required to forward MOT orders by close of business on day of receipt
- Clerks required to certify and forward any order of involuntary admission or certification of voluntary admission of person subject to TDO to CCRE
 - As soon as practicable, but not later than
 - Close of business on next following business day from day of receipt

§37.2-819, HB 2060 effective February 23, 2009

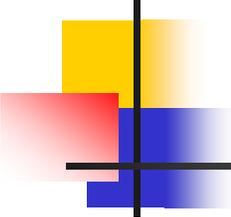
Law Enforcement Custody

HB2486 (Hamilton)/SB1079 (Howell)



- Clarifies that law-enforcement officer who takes custody of person may go beyond territorial limits of his jurisdiction to obtain assessment of need for hospitalization
- Clarifies if person has consented to transport for MH assessment or evaluation beyond officer's territorial limits and revokes consent, law-enforcement may take custody up to 4 hours if person otherwise meets criteria (2 hour extension provisions apply)
- Enactment clause reflects that these provisions are declarative of existing law

§ 37.2-808

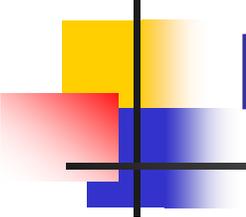


Examiners

HB 1948(Shuler)

- Adds marriage and family therapists to list of professionals who may conduct independent examinations for involuntary commitment hearings if psychiatrist or psychologist not available
- Must complete certification program approved by DMHMRSAS

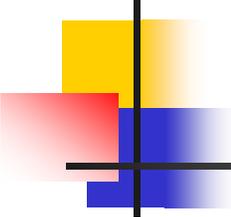
§ 37.2-815



Voluntary Admissions - Evidence

HB 2257 (Albo)

- In determining whether person is capable of consenting to voluntary admission under § 37.2-814, judge/special justice may consider evidence of person's past compliance/non-compliance with treatment

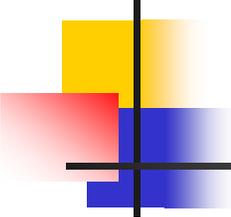


Special Justice Expenses

SB 1078(Howell)

- Permits special justices to be reimbursed for necessary parking, tolls and postage, in addition to mileage
- Attorneys, mental health professionals and interpreters are reimbursed for necessary expenses, but prior to July 1st special justices were not

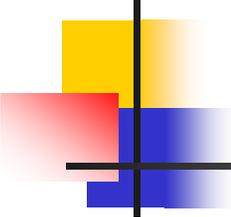
§ 37.2-804



Special Justice Appointments

SB 1081 (Howell)

- Special justice serves under supervision and at pleasure of chief judge of the judicial circuit
- Previously served under supervision and at pleasure of chief judge who appointed him
- In many circuits, chief judge rotates or chief judge making appointment may have retired resulting in no supervision



Forms

SB 1082(Howell)

- Office of Executive Secretary of Supreme Court (OES) responsible for preparing petitions, orders and other legal forms for ECO, TDO and commitment process, and distribution to clerks
- DMHMRSAS responsible for preparing preadmission screening report, examination and clinical forms and distribution to CSBs, providers and state facilities

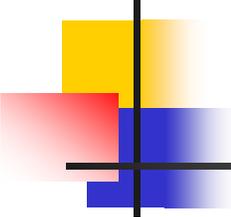
§ 37.2-801

Forms

SB 1082(Howell)

- Previously, DMHMRSAS responsible for preparation and distribution of admission forms approved by the Attorney General
- OES previously prepared all court forms, including ECOs, TDOs, but not commitment petition, preadmission screening, examiner report or order
- DMHMRSAS staff not attorneys – more logical for court to prepare court forms and DMHMRSAS to prepare clinical forms

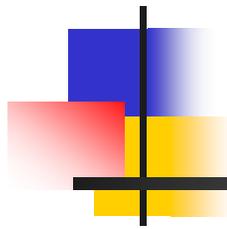
§ 37.2-801



Open Hearings – Failed

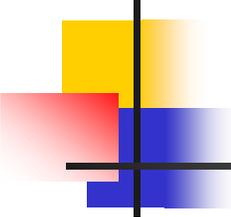
HB 2156(Toscano)/SB 1080(Howell)

- Would have codified court's discretion to close commitment hearing and provided standards for closure
- Concern regarding public's right to know and general rule that court hearings are open
- End result – law unchanged
- Hearings are open to the public
 - Can be closed at the court's discretion for good cause shown
 - 2003 Op. Va. Att'y Gen. 124; 1996 Op. Va. Att'y Gen. 166
 - Perreault v. Free Lance-Star, 276 Va.375, 666 S.E.2d 352 (2008)



Crisis Intervention Teams

Establishes Statewide Procedures



Crisis Intervention Teams

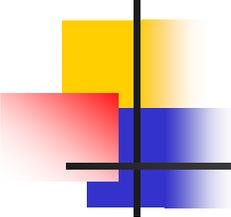
SB 1294 (Edwards)

- By January 1, 2010, DCJS and DMHMRSAS shall support the development and establishment of CIT programs throughout the Commonwealth.
- Such teams shall assist law-enforcement officers in responding to crisis situations involving persons with mental illness and/or substance abuse.

§ 9.1-187 (A)

- DCJS in consultation with DMHMRSAS and other stakeholders shall develop a training program for all persons involved in CIT programs

§ 9.1-188

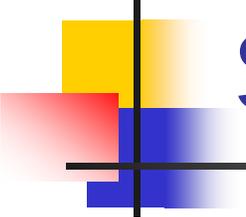


Crisis Intervention Teams

SB 1294 (Edwards)

- Goals of CIT programs shall be
 - Provide immediate response by specially trained officers
 - Reduce time officers spend awaiting assessment
 - Provide a therapeutic location or protocol for assessment for officers to bring individuals in crisis
 - Afford a sense of dignity to individuals in crisis
 - Reduce likelihood of physical confrontation
 - Decrease arrest and use of force
 - Identify underserved populations and link to care

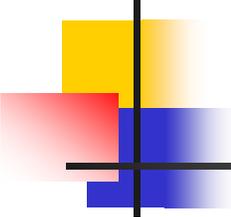
§ 9.1-187(A)



Crisis Intervention Teams

SB 1294 (Edwards)

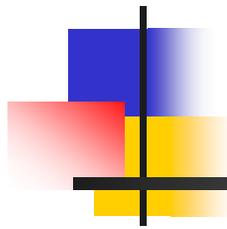
- Each crisis intervention team shall develop a protocol that permits law-enforcement to release a person with mental illness and/or substance abuse when the CIT has determined that the person is sufficiently stable and to refer the person for emergency treatment services



Crisis Intervention Teams

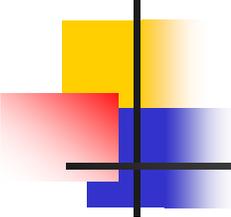
SB 1294 (Edwards)

- By November 1, 2009, DCJS and DMHMRSAS shall submit a report to the Joint Commission on Health Care (JCHC) outlining the status of the CIT programs
§ 9.1-187(C)
- By November 15, 2009, 2010, and 2011, DCJS and DMHMRSAS shall submit a report to the JCHC assessing the impact and effectiveness of CIT programs in meeting the program goals
§ 9.1-190



Advance Directives

Mental Health Overview

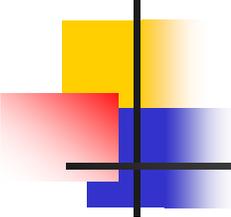


Advance Directives

HB 2396(Bell)/SB 1142(Whipple)

- Significantly expands Health Care Decisions Act to permit advance directives beyond end of life decisions and appointment of health care agent to include instructions for all health care decisions, including mental health care and MH facility admissions

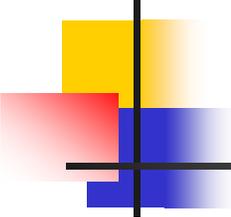
§ 54.1-2981 et seq.



Advance Directives Procedure

- Any adult capable of making an informed decision may make an advance directive to:
 - Specify health care declarant does or does not authorize
 - Appoint agent to make health care decisions
 - Specify an anatomical gift after death of all declarant's body or organ, tissue or eye donation

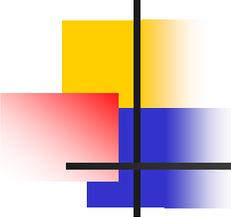
§ 54.1-2983



Advance Directives Research

- Advance directive may authorize agent to approve declarant's participation in research approved by institutional review board that
 - Offers prospect of direct therapeutic benefit to declarant or
 - That aims to increase scientific understanding of any condition declarant may have or
 - Promotes human well-being even though offers no prospect of direct benefit to declarant

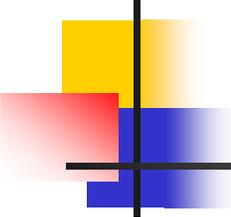
§ 54.1-2983.124



Advance Directives Exclusions/Limitations

- HCDA amended to provide that provisions in Chapter 8 of Title 37.2 apply, notwithstanding any contrary instruction in advance directive
- Advance directive may be used to authorize admission of patient to a mental health facility, only if admission is otherwise authorized under Chapter 8 of Title 37.2
 - I.e., admission procedures in Title 37.2 control over Advance Directive

§ 54.1-2983.3

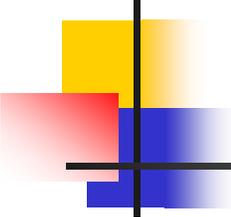


Advance Directives

Mental Health Admissions

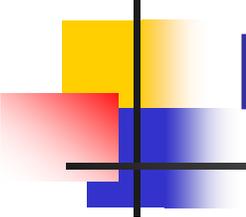
- New § 37.2-805.1 section permits agent appointed in advance directive or guardian to admit incapacitated person to MH facility for up to 10 days if:
 - Physician on staff or designated by admitting facility examines person and makes specific findings in writing
 - CSB pre-admission screening required for admission to DMHMRSAS facilities

§ 37.2-805.1



Advance Directives Physician Findings

- Physician on staff or with privileges at MH facility must examine person and find in writing that person:
 - Has a mental illness
 - Is incapable of making an informed decision, as defined in HCDA, regarding admission
 - Is in need of treatment in MH facility
 - Facility is willing to admit person, and



Advance Directives Physician Findings

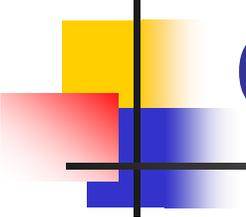
For Health Care Agent Admissions:

- Person has executed advance directive in accordance with HCDA authorizing his agent to consent to his admission, and
- If protesting admission, given specific authorization for agent to make decisions even in event of his protest

For Guardian Admissions:

- Guardianship order specifically authorizes guardian to consent to admission to MH facility

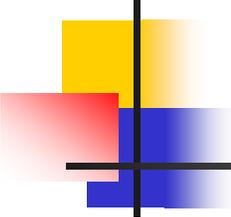
§ 37.2-805.1



Advance Directives Guardianship Order

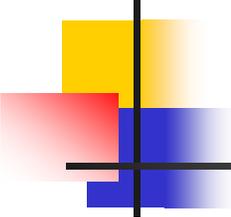
- Order must find by clear and convincing evidence:
 - Person has severe and persistent mental illness significantly impairing person's capacity to exercise judgment or self-control, as confirmed by evaluation of psychiatrist
 - Person's condition unlikely to improve in foreseeable future, and
 - Guardian has formulated plan for providing ongoing treatment of person's illness in least restrictive setting

§§ 37.2-805.1, 37.2-1009



Advance Directives Guardianship Order

- Guardian may not have professional relationship with incapacitated person or be employed by or affiliated with facility where person resides
- If admission exceeds 10 days, person must be ordered to involuntary inpatient admission under § 37.2-817 (note: ECO/TDO not necessary)

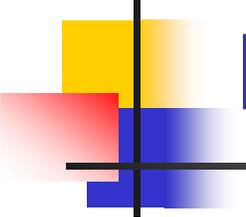


Advance Directives

Specific MH Provisions

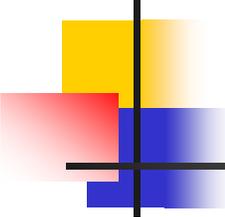
- Declarant may authorize agent to consent to his admission to mental health facility for no more than 10 days provided declarant does not protest admission at that time and physician makes necessary findings in § 37.2-805.1
- Declarant may authorize his admission to mental health facility over his protest, but **only if declarant's physician or clinical psychologist attests in the advance directive that declarant is capable of making informed decision and understands consequences of this provision**

§ 54.1-2984



Advance Directives Execution/Revocation

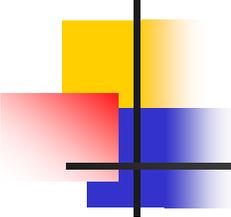
- Advance Directive must be signed by two witnesses
§ 54.1-2984
- Need not be notarized unless filed with the Advance Directive Registry maintained by Virginia Department of Health (not yet operative)
§ 54.1-2995
- May be revoked by declarant who is capable of understanding nature and consequences of his actions
§ 54.1-2985



Advance Directives Capacity Determinations

- Incapable of making informed decision for both § 37.2-805.1 and HCDA means
 - Adult is incapable of making informed decision about providing, continuing, withholding or withdrawing specific health care treatment or course of treatment because he is unable
 - To understand the nature, extent or probable consequences of proposed health care decision or
 - To make rational evaluation of risks and benefits of alternatives to that decision

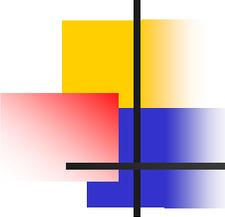
§§ 37.2-805.1 and 54.1-2982



Advance Directives Capacity Determinations

- Attending physician must diagnose and certify in writing prior to providing, continuing, withholding, or withdrawing health care and no less frequently than every 180 days, and
- Obtain second certification based on personal examination from physician or licensed clinical psychologist not currently involved in treatment of person
 - Unless independent physician or clinical psychologist not reasonably available

§ 54.1-2987.1



Advance Directives

Capacity Determinations

- Notice of incapacity determination must be provided to patient as soon as practical and to extent capable of receiving notice before treatment is provided
- Notice must also be provided to patient's agent or other substitute decision maker
- Single physician may reverse determination in writing at any time

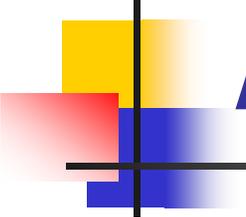
§ 54.1-2983.2

Advance Directives

Preservation of other Laws

- Provisions of Health Care Decisions Act do not alter or limit authority that otherwise exists under common law, statutes or regulations of Commonwealth
 - Of a health care provider to provide health care, or
 - Of a person's agent, guardian or other legally authorized representative to make decisions on behalf of incapacitated person
- e.g., guardianship, judicial authorization for treatment, Human Rights Regulations

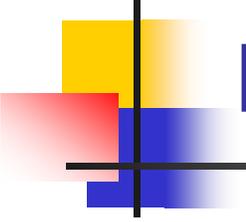
§ 54.1-2992



Interagency Civil Admissions Advisory Council - HB 2064(Hamilton)

- Interagency Civil Admissions Advisory Council eliminated -
- Established in 2005
- Purpose was to
 - Study issues related to ECOs, TDOs, Admission, Involuntary inpatient/outpatient treatment
 - Propose recommendations and provide advice
 - Improve coordination and effectiveness of commitment process

§ 2.2-2690 et seq.



DMHMRSAS Name Change

HB 2300(Caputo)/SB 1117(Ticer)

- Changes Name of DMHMRSAS to:

Department of Behavioral Health and
Developmental Services (DBHDS)