

Custody, Detention, and Commitment of Adults

Module # 3

Virginia DBHDS Certification Training for Pre-Admission Screening Evaluators and Independent Examiners

Detention and Commitment

- Emergency Custody Order (ECO): an order issued by a magistrate authorizing a person to be taken into custody and transported for an evaluation to determine if the individual meets the criteria for temporary detention and to assess the need for hospitalization and treatment pursuant to § 37.2-808. The evaluation must be completed by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and has completed a certification program approved by the DBHDS.
- Temporary Detention Order (TDO): an order issued by a magistrate pursuant to § 37.2-809 authorizing a person to be taken into custody and transported to a facility designated on the order.
- Involuntary Admission (Commitment): Inpatient treatment mandated by an order of a district court judge or special justice.
- Mandatory Outpatient Treatment (MOT): Mandated and monitored outpatient treatment ordered by a district court judge or special justice.

Timeframes of Detention and Commitment

- Emergency Custody (ECO): The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody (§ [37.2-808](#)).
 - If the ECO is going to expire and bed has not yet been found, the area state facility must be entered as the TDO facility. (Va. Code § 37.2-809.1)
 - If the individual is detained in a state facility, the state facility and an employee or designee of the community services board may continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual during the period of temporary detention. (Va. Code § 37.2-808)
- Temporary Detention (TDO): The period of custody under a TDO must not exceed 72 hours prior to a commitment hearing unless the 72 hours terminates on a Saturday,

Sunday, legal holiday or other day on which the court is lawfully closed, in which case the hearing must be held by close of business on the next business day when the court is open. (§ 37.2-809).

- TDO duration shall be sufficient to allow for
 - completion of the pre-admission screening evaluation
 - completion of the independent examination
 - initiation of treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible
- Involuntary Admission (Commitment): initially up to 30 days, to a facility designated by the community services board. An additional petition and court order is needed for a recommitment, which may be for up to 180 days.
- Mandatory Outpatient Treatment (MOT): initially up to 90 days, subsequently up to 180 days; no limit to number of subsequent orders

ECO: Magistrate's Decision Process

(Va. Code § 37.2-808(A))

- Order issued by a magistrate on sworn petition of any responsible person, treating physician, or his own motion based on probable cause to believe that the commitment criteria are met
- Responsible person includes, but is not limited to, family member, CSB, treating physician, or law enforcement officer
- When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider
 - The recommendations of any treating or examining physician or psychologist licensed in Virginia
 - Past actions of the person
 - Past mental health treatment of the person
 - Relevant hearsay
 - Medical Records
 - Affidavits submitted if witness is unavailable and it so states in the affidavit
 - Any other information that the magistrate considers relevant

ECO: Law Enforcement Decision Process

(Va. Code § 37.2-808(G))

- A law enforcement officer, based on his own observations or the reliable reports of others that a person meets the criteria for emergency custody as stated in Va. Code § 37.2-808A, make take a person into custody.
 - The officer can transport the person to an appropriate location to assess the need for hospitalization or treatment without prior authorization.

- The period of custody is eight hours.

ECO: Custody Transfer

(Va. Code § 37.2-808(B))

- Magistrate specifies the law enforcement agency and jurisdiction to execute the order and provide transportation.
- Magistrate can consider requests for alternative transportation providers, which may be a person, facility or agency including a family member or friend of the person.
 - When alternative transportation is identified and ordered, the magistrate orders the specified primary law enforcement agency to execute the order.
 - Law enforcement will transfer custody of the person to the alternative transportation provider
 - A copy of the ECO will accompany the person and be delivered by the alternative transportation provider to the CSB responsible for conducting the evaluation.
 - CSB must return a copy of the order to the court designated on the order as soon as practicable, which may be done electronically or by facsimile.
- Law enforcement or an alternative transportation provider may provide transportation to medical facility to obtain emergency medical evaluation or treatment at any time during transport
- Law enforcement or an alternative transportation provider may transfer custody to a facility or location if facility is:
 - Licensed to provide the level of security necessary to protect the person and others from harm;
 - Is actually capable of providing that security; AND
 - In cases where law enforcement is providing the transport, has entered into an MOU with the law enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody.

ECO: Process

- The CSB notifies the state facility that they have received notice of the need for the evaluation
- CSB conducts an evaluation in person or via a two way, real time video-audio communication system
- The CSB provides information to the state facility after the evaluation to enable the state facility to determine the needs of the individual

- A medical temporary detention order (medical TDO) for testing, observation, or treatment may be issued for a person subject to an ECO for a period not to exceed 24 hours. Upon completion of the medical TDO, the CSB, as soon as practicable and prior to the expiration of the medical TDO, must conduct an evaluation of the person to determine if the person continues to meet the criteria for psychiatric temporary detention.
- CSB obtains information from all readily available sources including recommendations from treating physicians or clinical psychologists and makes a determination on whether the person can be released, is willing to accept voluntary hospitalization or meets TDO criteria and is in need of hospitalization.
- If after completing the evaluation, the CSB does not recommend a TDO, the CSB must
 - notify the person who initiated emergency custody if present, the petitioner, and the onsite treating physician of the recommendation. and if the person disagrees with the recommendation the CSB
 - inform the person who initiated emergency custody that the CSB will facilitate communication between the person and the magistrate if the person disagrees with the CSB's recommendation and so requests AND
 - upon such request, arrange for such person to communicate with the magistrate as soon as practicable and prior to the expiration of the ECO. The magistrate shall consider any information provided by the person and any other recommendations of the treating or examining physician and the CSB in making his determination whether to issue a TDO.
 - The person under the ECO will remain in custody and not be released until communication with the magistrate has concluded and the magistrate has made a determination on issuing a TDO.
- If no less restrictive care alternative exists or is appropriate, the CSB determines the facility of temporary detention in accordance with § 37.2-809.1
- A written summary of the ECO and TDO procedures and the statutory protections associated with those procedures shall be given to the person
- A person remains in custody until:
 - a TDO is issued,
 - the person has been evaluated and released, or
 - the ECO expires

TDO: Process

(Va. Code § 37.2-809)

- If the CSB determines the individual meets the criteria for involuntary temporary detention, the CSB locates an appropriate willing facility for the temporary detention in accordance with § 37.2-809.1.
- The CSB determines the insurance status of the person.

- A magistrate then determines whether to issue a TDO based upon a sworn petition of any responsible person, treating physician, or upon his own motion and the evaluation conducted by the CSB
- A magistrate may issue a TDO without an ECO.
- A magistrate may issue a TDO without an in-person evaluation if such an evaluation was conducted within 72 hours OR if there is significant risk to the person or to others associated with conducting an evaluation due to:
 - physical
 - psychological, or
 - medical risk.
- The CSB shall determine the facility of temporary detention in accordance with 37.2-810..
- The CSB may change the facility of detention at any time during the TDO process if it is determined that the alternative facility is more appropriate.
- If the change occurs after custody has been transferred to the original temporary detention facility, the initial facility will be notified in writing on the required form.
- If a temporary detention facility cannot be identified before the expiration of the emergency custody order, the state facility will be designated.

TDO: Release Prior to Hearing

(Va. Code § 37.2-813)

- Prior to a hearing, the district court judge or special justice may release the person on his personal recognizance or bond set by the district court judge or special justice, if it appears from all evidence readily available, that the person does NOT meet the commitment criteria specified in subsection D of § 37.2-817 (MOT criteria).
- The director of any facility in which the person is detained may release the person prior to a hearing if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that the person does not meet the commitment criteria specified in subsection D of § 37.2-817 (MOT criteria)

Commitment Hearing

(Va. Code §§ 37.2-814 thru 817.820)

- District Court Judge or Special Justice presides
- Prior to the hearing:
 - The Court will order an independent examination
 - If individual is not represented by counsel, an attorney will be appointed

- A written explanation of the involuntary admission process and the statutory protections associated with the process shall be given to the person, and its contents shall be explained by the person's attorney
 - CSB submits pre-admission screening evaluation
 - Independent Examiner submits report
- The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence.
 - At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission and treatment
 - If the judge or special justice finds that the person is capable and willing to accept voluntary admission and treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the hospital 48 hours' notice prior to leaving the hospital. (§ 37.2- 814(B))
 - If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge or special justice shall inform the person of his right to a commitment hearing and right to counsel.

Commitment Hearing: Evidence Considered

(Va. Code § 37.2-817)

- Recommendations of treating or examining physician or psychologist licensed in VA
- Past actions of the person
- Past mental health treatment
- Pre-Admission Screening Report
- Independent Examination
- Available medical records
- Any other information deemed relevant

Hearing Attendance

(Va. Code § 37.2-817)

- Person has the right to attend hearing and to testify
- Court must provide to the CSB the time and location of the hearing at least 12 hours prior to the hearing. If the CSB representative will be present by telephonic means, the court shall provide the telephone number to the CSB.
- CSB that completed the pre-admission screening evaluation must attend in person or, if not practicable, by two way electronic video and audio or telephonic communication system

- If hearing held outside of service area, the CSB where hearing is held may attend on behalf of the CSB who completed the pre-admission screening evaluation. Attending CSB must inform pre-admission screening CSB of disposition
- Independent examiner, if not physically present, and treating physician at TDO facility shall be available whenever possible in person or by two way electronic video and audio or telephonic communication system
- If an objection is made to admission into evidence of the Independent Examiner report, the Independent Examiner **MUST** attend in person or by electronic means
- CSB representative cannot be excluded from the hearing by order of sequestration

Involuntary Admission to Treatment: Inpatient Commitment

- If person meets criteria for inpatient treatment, judge or special justice orders person involuntarily admitted to a facility designated by the CSB
- Duration: initially up to 30 days, subsequently up to 180 days
- CSB will designate the facility, which may or may not be the same facility that accepted the individual under the TDO.

Involuntary Admission to Treatment: Mandatory Outpatient Treatment

- **Three Pathways to MOT**
 - There are essentially three pathways through which a person may become subject to a mandatory outpatient treatment order:
 - At a commitment hearing, the person may be ordered directly to MOT,
 - At a commitment hearing, the person may be ordered to involuntary inpatient treatment with an option that allows for physician discharge of the person to MOT, or
 - At a commitment hearing, the person may be ordered to inpatient treatment. Later, MOT is ordered via
 - A motion for MOT entered prior to the person's discharge, or
 - A recommitment hearing.
 - **Order directly to MOT (Standard MOT) is available when...**
 - The person has a mental illness and there exists 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, if

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

PLUS

- Less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement determined appropriate,
- The person has agreed to abide by treatment plan and has the ability to do so,
- The ordered treatment will be delivered on an outpatient basis.

(Va. Code § 37.2-817(D))

○ **Order for involuntary inpatient treatment with option of physician discharge to MOT (Step-down MOT) is available when...**

- The person meets inpatient commitment criteria

PLUS

- The judge or special justice finds by clear and convincing evidence that
 - The person has a history of lack of compliance with treatment for mental illness that at least twice in the last 36 months has resulted in the person being subject to an order for involuntary inpatient admission,
 - The person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent relapse or deterioration that would likely result in the person meeting involuntary commitment criteria again,
 - Because of mental illness, the person is unlikely to voluntarily participate in outpatient treatment unless an MOT order is entered, and
 - The person is likely to benefit from MOT.
- When considering whether to discharge to MOT, the physician must determine, based on professional judgment, that the person:
 - No longer needs hospitalization,
 - Requires MOT to prevent relapse or deterioration that would likely result in meeting involuntary inpatient commitment criteria again,
 - Has agreed to abide by the discharge plan and has the ability to do so, and
 - The ordered treatment will be delivered on an outpatient basis by the CSB or designated provider.

(Va. Code § 37.2-817(C1) and (C2))

- **Order to MOT after a period of inpatient hospitalization (MOT on Motion) is available when...**

- 1) MOT is considered the appropriate disposition at a recommitment hearing because:
 - The person meets inpatient commitment criteria

PLUS

- Less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement determined appropriate,
- The person has agreed to abide by treatment plan and has the ability to do so,
- The ordered treatment will be delivered on an outpatient basis.

Or

- 2) The treating physician, a family member or personal representative, or the CSB where the facility is located, where the person resides, or where the person receives treatment files a motion for an MOT hearing prior to the person's discharge. To be eligible for MOT on Motion, the person must:
 - Have been subject to involuntary admission or subject to a temporary detention order and voluntarily admitted himself at least twice in the past 36 months.
 - Meet the criteria set forth in § 37.2-817(D)

(MOT as recommitment disposition: § 37.2-817(D); MOT on Motion: § 37.2-817(C))

Mandatory Outpatient Treatment Examples

- MOT includes, but is not limited to:
 - Outpatient individual or group therapies
 - Outpatient treatment with psychiatric medication
 - Crisis stabilization
 - Day treatment
 - Other appropriate courses of treatment that meet the needs of the person
- It must not include the use of restraints or physical force of any kind in the provision of the medication.

Mandatory Outpatient Treatment Order

(Va. Code § 37.2-817(F)-(H))

- The clerk of court must send an order for Standard MOT or MOT on Motion to the CSB required to monitor compliance with the treatment plan. The CSB must acknowledge receipt of the order within 5 business days.
- An order for standard MOT and MOT on Motion shall include an initial mandatory outpatient treatment plan developed by the CSB that completed the pre-admission screening report.
- The initial treatment plan includes:
 - Arrangements made for initial in-person appointments or contact with each service provider
 - Any relevant information regarding treatment ordered
 - Specific services to be provided
 - Name of provider who has agreed to provide each service
- Court may transfer jurisdiction to court where person resides after entry of MOT order
- CSB must remain responsible for monitoring compliance until CSB where jurisdiction is transferred acknowledges the transfer and receipt of the order to the clerk. CSB where jurisdiction is transferred has 5 business days to acknowledge receipt.
- MOT comprehensive treatment plan:
 - For Standard MOT and MOT on Motion, developed by CSB of person's residence and submitted to court within 5 working days of order for Standard MOT or MOT on Motion **or**
 - For Step-down MOT, developed by inpatient treatment provider with the person and the CSB and submitted to the court at the time of discharge to mandatory outpatient treatment. CSB must provide the person with a copy of the plan at time of discharge.
- If necessary services not available, CSB notifies court within 5 working days; hearing held within 2 days (Standard MOT and MOT on Motion)
- Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment.

MOT Comprehensive Plan

The comprehensive MOT plan (or discharge plan for Step-down MOT) must:

- Identify the specific type of service, amount, duration, and frequency of each service
- Identify the provider of each service
- Certify that services are most appropriate and least restrictive and that providers have complied and continue to comply with applicable provisions of the Department's licensing regulations
- Be prepared with the fullest participation possible of the person and his family and reflect the person's preferences to the greatest extent possible
- Specify conditions with which the person must comply

- Describe how the CSB will monitor compliance and report material noncompliance

Mandatory Outpatient Treatment Monitoring

(Va. Code § 37.2-817.1)

- The CSB where the person resides shall monitor the person's compliance with the mandatory outpatient treatment plan or discharge plan
- Monitoring compliance shall include:
 - contacting the service providers to determine if the person is complying
 - notifying the court of the person's material noncompliance
 - private providers of services shall report material noncompliance to CSB

Rescinding the MOT Order

(Va. Code § 37.2-817.3)

- If the CSB determines at any time prior to the expiration of the MOT order that the person has complied with the order and no longer meets the criteria for involuntary treatment or that continued MOT is no longer necessary for any other reason, it shall file a petition to rescind the order with the court.
- If the court agrees with the CSB's determination, the court shall rescind the order. Otherwise, the court shall schedule a review hearing.
- At any time after 30 days from entry of the MOT order, the person may petition the court to rescind the order .The court shall schedule a review hearing.
 - The monitoring CSB shall provide a preadmission screening report.
 - After considering all relevant evidence the court shall make a disposition.
 - The person may not file a petition to rescind the order more than once during a 90-day period.

Continuation of MOT

(Va. Code § 37.2-817.4)

- The monitoring CSB, the treating physician, or other responsible person may petition the court to continue the order within 30 days prior to the expiration of a mandatory outpatient treatment order.
- If the person and the monitoring CSB join the petition, the court shall grant the petition and enter an appropriate order without further hearing.
- If either the person or the monitoring CSB does not join the petition, the court shall schedule a review hearing.

- Upon receipt of the petition, the court shall order a pre-admission screening evaluation and an independent examination
- If, after observing the person, reviewing the preadmission screening report and considering the appointed examiner's certification and any other relevant evidence, the court shall make a disposition
- If the court finds that a continued period of mandatory outpatient treatment is warranted, it may continue the order for a period not to exceed 180 days. There is no limit to number of subsequent court orders at 180 day increments.
- Any order of mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is filed shall remain in effect until the disposition of the hearing.

Mandatory Outpatient Treatment: Non-Compliance

- The CSB determines what constitutes material noncompliance.
- If CSB determines that the person is not materially complying and meets commitment criteria they shall immediately request the magistrate issue an ECO or TDO
- If CSB determines person is materially non-compliant, they must:
 - Petition the court for review of MOT order within 3 days, or 24 hours if person under TDO
 - Recommend appropriate disposition
 - Copies of the petition shall be sent to the person and the person's attorney.

MOT Review Hearing

- Court shall hold review hearing within 5 business days or, if TDO, within TDO timeframes
- The clerk shall provide notice of the hearing
- The CSB shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

MOT Review Hearing: Independent Examination

- Independent Examiner (IE) must be appointed only if requested by the person, CSB, treatment provider listed in the MOT plan, or original petitioner

- If an Independent Examination is conducted, the same examination requirements apply as for an Independent Examination prior to a commitment hearing.
- If an Independent Examination is conducted, the CSB is required to arrange for the examination at a convenient location and transportation to the exam if the person is not detained and has no other source of transportation.

Examination Nonattendance

- If person fails to appear for the independent examination, the CSB must notify the court or a magistrate if the court is not available
- Court or magistrate shall issue mandatory examination order and capias,
- Primary law enforcement where person resides shall transport person to exam per capias
- If the person is taken into custody via capias, they can be held up to eight hours

MOT Hearing Nonappearance

- If a person fails to appear at hearing, court shall:
 - Reschedule the hearing;
 - Issue ECO; or
 - Issue TDO

Non-compliance Hearing Outcome

- After hearing the evidence regarding the person's material noncompliance and the person's current condition and any other relevant information listed in § 37.2-817(C), the judge or special justice shall make one of the following dispositions:
 - Upon finding that the person meets inpatient commitment criteria, he shall order the person's involuntary admission to a facility designated by the CSB for a period of treatment not to exceed 30 days;
 - Transportation to inpatient facility provided by Sheriff or other person designated by Court or Special Justice
 - Upon finding that the person continues to meet the criteria for MOT, he shall renew the order for mandatory outpatient treatment, making any necessary modifications
 - Upon finding neither of the above dispositions is appropriate, he shall rescind the order for mandatory outpatient treatment.

