Commission on Mental Health Law Reform

In September, 2006, the Supreme Court of Virginia initiated the Commission on Mental Health Law Reform. In 2007, the 26-member Commission, working through five major task forces including 75 additional stakeholders, created a blueprint for reform, including:

- Improved access to a broad array of voluntary mental health services;
- Use of person-centered approaches to reduce coercive care;
- Reducing criminalization through diversion of persons with mental illness from arrest and jail; and
- Redesigning the involuntary commitment process to be more consistent, fair and effective for all

The April 2007 Virginia Tech shootings and the ensuing investigations accelerated the focus on the commitment process, and the 2008 legislative session produced comprehensive, bipartisan legislation reforming the Virginia’s commitment laws in the following areas:

- Criteria for involuntary treatment - The strict “imminent danger” standard for commitment was eliminated and replaced with a standard requiring “substantial likelihood” of harm “in the near future.” The revised language is clearer, more specific, and more flexible, making it easier to determine if someone is eligible for involuntary treatment. Clearer language also reduces variations in interpretation, so that criteria are applied more consistently across jurisdictions. All clinicians and judicial officers now use this standard.
- Extension of emergency custody period from four to six hours – This change allows more time, when necessary, to complete the required examinations and locate an appropriate placement for the person.
- Mandatory outpatient treatment (MOT) procedures - Comprehensive procedures for ordering, delivering and monitoring court-ordered mandatory outpatient treatment were enacted.
- Involvement of community services boards (CSB) attendance (or participation by teleconference) at all commitment hearings is required to ensure that people don’t “fall through the cracks” after a court order is issued.
- Admissible evidence - Changes allow significantly more evidentiary information to be considered by magistrates, judges and special justices when making decisions about court-ordered treatment.
- Training for court-appointed examiners and CSB preadmission screeners – New training requirements for examiners and CSB evaluators were enacted and implemented, and DBHDS maintains an extensive online training curriculum for CSB and independent examiners.
- Disclosures – New statutes clarified when personal health information could be disclosed to other parties for the purpose of implementing court-ordered treatment. These changes reduced confusion among treatment providers and strengthened care coordination.

Other 2008 Code changes related to the Virginia Tech shootings included:

- Codification of Executive Order 50 regarding purchase of firearms – Governor Kaine issued Executive Order 50 immediately following the shootings to correct a confusing aspect of existing law regarding submission of involuntary treatment orders from courts to the State Police Central Criminal Records
Provisions of EO 50 were codified in 2008 so that all involuntary treatment orders (inpatient and outpatient), as well as voluntary treatment following temporary detention, are now reported to and entered timely into the Central Criminal Records Exchange for gun purchase background checks.

Substantive changes also reconciled certain differences between Virginia law and federal law regarding gun purchases, and changed the provisions for restoring a person’s right to purchase a firearm following involuntary mental health treatment, acquittal by reason of insanity, or a finding of incompetent to stand trial.

- Higher Education bills, including the following:
  - Notification to parents – Public institutions are now required to notify parents of a dependent child who has been found to meet the criteria for commitment by a student health or counseling center.
  - Emergency warning systems – Each public institution must have a comprehensive, prompt and reliable first warning and emergency notification system for students, staff and faculty.
  - Threat assessment teams – Requires each public institution to establish a threat assessment team to reduce violence on campus.
  - Disclosure of mental health records – Allows public and private higher education institutions to request complete student records, including mental health records, from entering students. Such records are kept confidential.

In 2009, legislative reforms included the following legislation recommended by the Commission:

- Alternative transportation – Amendments were enacted to allow persons other than law enforcement (e.g., family, CSB) to provide transportation during emergency custody and temporary detention under certain conditions.
- Health Care Decisions Act – Comprehensive changes to the Health Care Decisions Act (Virginia’s advance directive law) allow instructional directives in circumstances other than end-of-life, including psychiatric advance directives, so that persons with mental illness can have more choice about the care they receive when in crisis.
- Clean-up of 2008 statutes – Several modest changes were made to address oversights and unanticipated problems created by the 2008 legislation.

In 2010, legislation was enacted in the following areas:

- Treatment of Minors Act – The Treatment of Minors Act (involuntary commitment of juveniles) was completely rewritten to eliminate multiple cross-references, clarify procedure, and make this law a self-contained, comprehensive statute (Commission bill).
- Appeals – Clarification of the involuntary commitment appeals procedure was enacted (Commission bill)
- “Step-down” mandatory outpatient treatment - Procedures were added to allow an order for inpatient commitment followed by mandatory outpatient treatment. (This bill was requested by Attorney General Cuccinelli.)