

**Commonwealth of Virginia
Commission on Mental Health Law Reform**

Guiding Principle

The mental health services system, whatever the source of financing, should assure access to recovery-oriented services needed by persons with severe mental illness, should facilitate consumer choice, and should protect consumers and others from harm.

Goals

- I. Facilitate access to mental health services for persons in need:**
1. Assure availability of services for all persons with severe mental illness. These services include a broad array of clinical care and supportive services to help people maintain stable functioning, thereby diminishing the need for crisis services and hospitalization.
 2. Facilitate timely and safe access to mental health treatment for people in crisis, including access to the full continuum of crisis stabilization services to help alleviate acute distress and restore stability.
 3. Remove barriers to acute mental health services and specialized placements that now have unfortunate and costly effects, such as:
 - requiring involuntary commitment of people who would accept the needed treatment voluntarily;
 - requiring unduly restrictive interventions, including commitment, for persons with mental retardation experiencing mental health crises;
 - requiring emergency services for people whose primary need is for housing or respite services; and
 - causing unnecessary arrest of people with severe mental illness for minor crimes.
 4. Clarify the respective responsibilities of state and localities in assuring access to crisis care, whether voluntary or involuntary.
 5. Enhance continuity of care by strengthening the links between hospital-based services and community services needed prior to admission and upon discharge and by investing in strong and stable relationships between clients and case managers.
- II. Remove unwarranted impediments to needed treatment for people in crisis who fail to seek treatment on their own while assuring adequate screening and respecting individual rights:**

1. Examine proposals to modify criteria for emergency custody, evaluation and treatment (e.g., by eliminating the “imminence” requirement, by allowing civil intervention for acutely psychotic individuals whose impaired functioning is manifested by criminal conduct, or other modifications).
2. Examine proposals to elongate the total period of evaluation (ECO and TDO) to 4 or 5 days, accompanied by a “preliminary hearing” by an independent clinical evaluator.
3. Examine proposals to permit outpatient treatment orders in cases involving demonstrable deterioration in persons with prior history of hospitalization and deterioration.

III. Improve the quality and effectiveness of the involuntary commitment process to assure due process and promote consumer well-being:

1. “Decriminalize” the commitment process.
2. Provide safe and efficient transportation during the evaluation and commitment process and minimize the number of transports during that process.
3. Assure respondents and petitioners a meaningful opportunity to be heard throughout the process.
4. Maximize consumer choice among clinically acceptable options even after commitment proceedings have been initiated.
5. Strengthen due process protections, accompanied by necessary funding, whenever involuntary hospitalization is sought beyond a period of emergency custody and evaluation.
6. Establish and implement training for participating judges, attorneys and clinicians to promote consistent interpretation and administration of the law in areas identified by the Commission.
7. Clarify the meaning and application of commitment statutes in relation to persons with dementia and other enduring cognitive impairments and the relationship between these statutes and the guardianship and surrogate decision-making statutes.
8. Examine proposals to provide more frequent review of the need for continued commitment at lengthening intervals of, for example, 21 days, 90 days, then every 180 days.

9. Assure adequate oversight of the conditions of hospitalization during the evaluation and commitment period.

IV. Facilitate engagement and empowerment of persons with severe mental illness:

1. Emphasize the principle of respecting consumer choice among clinically acceptable alternatives in policy and practice documents, including, e.g., human rights regulations.
2. Facilitate consumer-driven use of crisis plans and advance directives in the event of impaired decisional capacity and make discussion of such plans a standard part of treatment, while promoting and respecting consumer choice.
3. Establish and implement training for clinicians and staff regarding the desirability of facilitating and respecting consumer choice to the maximum extent consistent with their ethical and legal obligations.
4. Explore the utility of linking consumer willingness to accept responsibility for treatment adherence to enhanced services or other incentives, but without compromising basic services to which consumers are entitled.
5. Explore ways of enhancing the support and involvement of families and other close associates to the maximum extent consistent with consumer preferences.

V. Facilitate access to services for children and adolescents with significant mental health needs:

1. Promote availability of adequate services, especially early intervention services for minors with emergent disorders.
2. Create conditions that will enable juvenile and domestic relations district court judges to divert minors who need mental health services from the judicial system, to facilitate treatment of those who remain under the court's jurisdiction, and to engage families in services where needed.
3. Redesign the process of involuntary hospitalization of minors to improve the quality of evaluation, facilitate parental understanding and participation, and authorize judicial intervention when urgent mental health needs are not being met.

VI. Divert offenders with severe mental illness from the criminal justice system to the maximum extent consistent with the goals of criminal justice and increase access to adequate mental health services for acutely ill offenders in jails and prisons:

1. Examine proposals to facilitate diversion of severely mentally ill offenders from the criminal justice system before or after arrest.
2. Examine alternative approaches to adjudication and disposition of mentally ill criminal defendants, including mental health courts.
3. Consider modifying civil commitment criteria to permit commitment (in lieu of otherwise authorized arrest or detention within the criminal justice system) upon showing that the person is experiencing a psychotic episode characterized by loss of rational judgment or control over his or her behavior that was manifested in the occurrence of criminal conduct.
4. Ascertain prevalence of severe mental illness and treatment needs among detainees and prisoners in jails and prisons and identify circumstances under which appropriate treatment can and cannot be provided in a jail or prison setting.
5. Enhance continuity of care by strengthening the links between jail-based and prison-based services and the community mental health services needed during detention and upon release.