

## Behavioral Health Care Subcommittee

### Joint Commission on Health Care

#### Role of Psychiatrists and Psychologists in Emergency Custody Orders, Temporary Detention Orders and Involuntary Civil Commitment

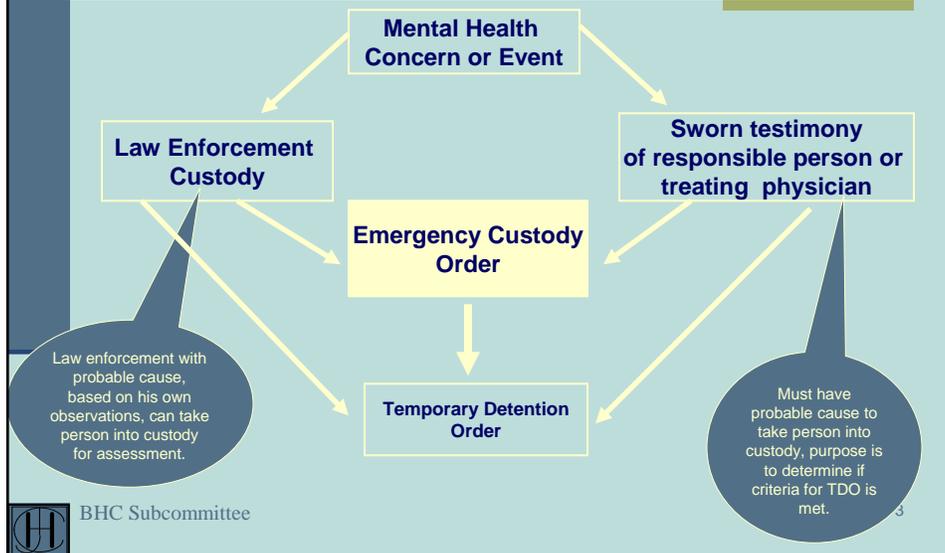
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## Background

- Senator Houck and Delegate Hamilton requested, that as part of its 2008 Workplan, JCHC report on:
  - the availability of psychiatrists in Virginia, their role in emergency custody orders (ECOs), temporary detention orders (TDOs) and involuntary commitment hearings, and
  - methods to increase the recruitment and retention of psychiatrists including, but not limited to, the expansion of financial incentives, scholarships and fellowships at the Commonwealth's schools of psychiatry.



## Emergency Custody Order Process



## Emergency Custody Orders (ECOs)

- Probable cause for an ECO exists when “any person
  - (i) has mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future,
    - (a) 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
    - (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs
  - (ii) is in need of hospitalization or treatment, and
  - (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.” *Code of Virginia § 37.2-808*

## ECO Determination

- “When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider:
  - (1) The recommendations of any treating or examining physician or psychologist licensed in Virginia, if available,
  - (2) Past actions of the person,
  - (3) Any past mental health treatment of the person,
  - (4) Any relevant hearsay evidence,
  - (5) Any medical records available,
  - (6) Any affidavits submitted, ....
  - (7) Any other information available.” *Code of Virginia § 37.2-808*

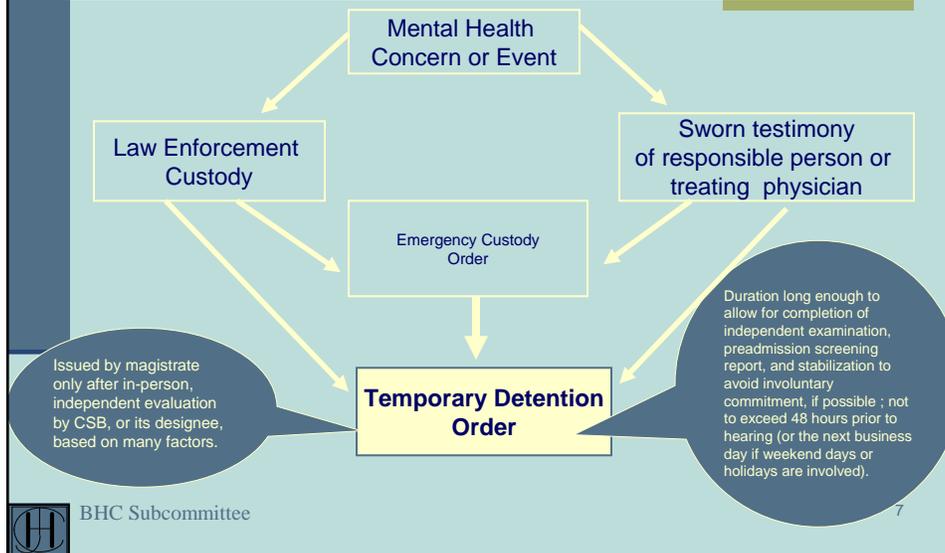


## Once ECO Issued

- Once an ECO is issued, the person is taken to a convenient location “to be evaluated to determine whether the person meets the criteria for temporary detention.” *Code of Virginia § 37.2-808*
- “The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the ECO expires.” *Code of Virginia § 37.2-808*
  - If an ECO is not executed within four hours of its issuance, the order shall be void.



## Temporary Detention Process



## TDO Evaluation

- The in-person evaluation to determine whether a TDO should be issued is completed by an employee or designee of the local community services board (CSB).
  - The CSB evaluator must be “skilled in the assessment and treatment of mental illness” and must complete a certification program approved by DMHMRSAS.

*Code of Virginia § 37.2-809*
  - The CSB evaluator is more likely to be a licensed clinical social worker or licensed professional counselor rather than a psychologist or psychiatrist.

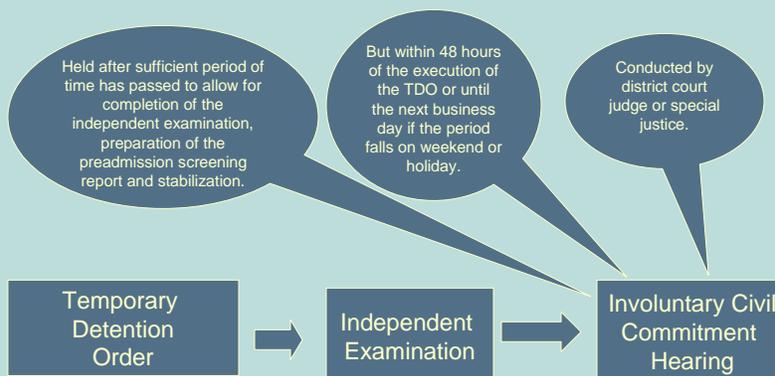
## TDO Determination by Magistrate

- “When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider
  - (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available,
  - (ii) any past actions of the person,
  - (iii) any past mental health treatment of the person,
  - (iv) any relevant hearsay evidence,
  - (v) any medial records available,
  - (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and
  - (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.”

*Code of Virginia § 37.2-809*



## Involuntary Civil Commitment Hearing



## Independent Examination

- The district court judge or special justice “shall require an examination of the person who is the subject of the [commitment] hearing.”
- The independent examiner is required to be a “psychiatrist or a psychologist who is licensed in Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of mental illness, or



## Independent Examination

- If such a psychiatrist or psychologist is not available, a mental health professional who
  - (i) is licensed in Virginia through the Department of Health Professions as a clinical social worker, professional counselor, psychiatric nurse practitioner, or clinical nurse specialist,
  - (ii) is qualified in the assessment of mental illness, and
  - (iii) has completed a certification program approved by”  
DMHMRSAS. *Code of Virginia § 37.2-815*



## Independent Examination

- The examination is required to be a comprehensive evaluation that consists of
  - “(i) a clinical assessment that includes a mental status examination;  
determination of current use of psychotropic and other medications;  
a medical and psychiatric history; a substance use, abuse, or dependency determination; and  
a determination of the likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs;



## Independent Examination

- (ii) a substance abuse screening, when indicated;
- (iii) a risk assessment that includes an evaluation of the likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any;
- (iv) an assessment of the person’s capacity to consent to treatment, including his ability to maintain and communicate choice, understand relevant information, and comprehend the situation and its consequences;



## Independent Examination

- (v) a review of the temporary detention facility's records for the person, including the treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes;
- (vi) a discussion of treatment preferences expressed by the person or contained in a document provided by the person in support of recovery;
- (vii) an assessment of alternatives to involuntary inpatient treatment and
- (viii) recommendations for the placement, care, and treatment of the person." *Code of Virginia § 37.2-815*



## Independent Examination

- The judge or special justice "shall summons the [independent] examiner who shall certify that he has personally examined the person and state whether he has probable cause to believe that the person
  - (i) has a mental illness and that there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) 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 (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and
  - (ii) requires involuntary inpatient treatment."

*Code of Virginia § 37.2-815*

