

Mental Health Law Reform

Overview of 2008 General Assembly Action

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1

2008 General Assembly Action

- General Assembly made most sweeping reforms in mental health law since the 1970s
- Addressed all Virginia Tech Review Panel recommendations
- Appropriated just under \$ 42 Million new dollars for:
 - Emergency mental health services, including crisis stabilization services
 - Increased case managers, clinicians
 - Children’s mental health services
 - Jail diversion projects

2

2008 General Assembly Action

- Substantive law changes related to:
 - Commitment criteria for adults
 - Procedural requirements
 - Mandatory outpatient treatment
 - Disclosure and privacy provisions
 - Firearms reporting
 - Juvenile commitment procedures
- Most changes contained in Omnibus Bills HB 499(Hamilton)/SB 246(Howell)

3

New Commitment Criteria

- “Imminent” Removed from Dangerous Criteria:
“the person has a mental illness and there is 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”

HB 499 (Hamilton)/SB 246 (Howell)/ HB 559(Bell)

4

Commitment Criteria

- More specificity added to Substantially Unable to Care for Self criteria:

“the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs”

HB 499 (Hamilton)/SB 246 (Howell)/ HB 559(Bell)

5

Emergency Custody Order Renewals

Permitted magistrate to renew 4-hour ECO for up to 2 additional hours (6 hours total) for good cause:

- For CSB to identify suitable TDO facility,
or

- Completion of medical evaluation

HB 499(Hamilton)/SB 246(Howell)HB
583(Marsden)

6

ECO Custody Transfer

- Law enforcement permitted to transfer custody of person to crisis stabilization or other facility if:
 - Facility licensed to provide security
 - Is actually capable of providing security needed
 - Has entered into agreement with law enforcement agency

HB 401(Hamilton)/SB 81(Cuccinelli)

7

Information/Evidence Considered for ECOs/TDOs/Commitment

- Lists in detail information magistrate may consider when issuing an ECO or TDO, including
 - recommendations of any treating physician
 - relevant hearsay evidence
- Lists in detail evidence special justice must consider, including
 - Pre-admission screening report
 - Independent examiner report

HB 499(Hamilton)/SB 246(Howell)/HB 1144(Fralin)

8

No Minimum Timeframe for Conducting Commitment Hearing

- Still shall not exceed 48 hours or until close of business on next day that is not Sat., Sun., or holiday
- No minimum time - but sufficient time to allow for completion of examiner's report, preadmission screening report and initiation of treatment to stabilize person's psychiatric condition to avoid involuntary commitment where possible

HB 499(Hamilton)/SB 246(Howell)

9

Examiner – Qualifications

- Specified qualifications of independent examiner:
- Psychiatrist or Psychologist licensed in Va. and qualified in diagnosis of MI
- If not available:
 - Licensed clinical social worker
 - Licensed professional counselor
 - Psychiatric nurse practitioner
 - Clinical nurse specialist, and
 - Must complete certification program approved by DMHMRSAS

HB 499(Hamilton)/SB 246(Howell)

10

Examination Requirements

- Provided a comprehensive list of what examination must consist of, including clinical assessment and review of TDO facility records, labs and toxicology reports, admission forms and nurses notes

HB 499(Hamilton)/SB 246(Howell)

11

Examiner/Physician Attendance at Hearing

- Required examiner and treating physician to attend the hearing or be available for questioning by telephone or two-way electronic video and audio communication system

HB 499(Hamilton)/SB 246 (Howell)/HB 560(Bell)

12

CSB Attendance at Hearing

- Required CSB to attend hearing in-person, or if impracticable, by telephone or two-way electronic video and audio communication system
- Provided detailed procedures when hearing outside CSB area and another CSB attends on behalf of CSB of person's residence, including provisions for delivery of reports and receipt of orders entered
- Court must provide time and location of hearing to CSB 12 hours prior to hearing

HB 499(Hamilton)/SB 246(Howell)/HB 560(Bell)

13

Length of Inpatient Treatment

- Reduced duration of initial involuntary inpatient treatment order from 180 days to 30 days
- Any subsequent order for involuntary inpatient treatment shall not exceed 180 days

HB 499(Hamilton)/SB 246(Howell)

14

Mandatory Outpatient Treatment Criteria

Same commitment criteria as for inpatient
treatment; plus

Ordered treatment must be deliverable on
outpatient basis by CSB or designated provider

- Services must actually be available in community,
and
- Providers of services must actually agree to deliver
the services

HB 499(Hamilton)/SB 246 (Howell)

15

Mandatory Outpatient Treatment Duration

- Provided for duration of MOT not to
exceed 90 days (Any continuances not to
exceed 180 days)
 - Required MOT order to designate CSB
where person resides to:
 - Monitor implementation of MOT plan, and
 - Report any material noncompliance to court
- HB 499(Hamilton)/SB 246(Howell)

16

MOT Requirements

- Required CSB to develop initial treatment plan and comprehensive plans filed with court and attached to order
- Provided detailed requirements for:
 - CSB monitoring of compliance and reporting to court
 - Court review hearings, including provisions for extension or rescission of orders, transfer of venue
 - Transportation to hearings and exams
 - Mandatory examination orders and capias
 - Requires Clerk service of notices of hearings and orders

HB 499(Hamilton)/SB 246(Howell)

17

Hearing Records

- Required special justice to record only one hearing per tape - SB 142(Edwards)
- Permitted person subject of hearing to obtain copy
- Required all court documents maintained confidential. Person may waive in writing
- Permitted dispositional order only to be provided upon written motion if court finds disclosure in interests of person or public
- Required records be available to all treatment providers and CSB, including MOT providers

HB 499(Hamilton)/SB 246(Howell)

18

Privacy Disclosures

- Required all providers to disclose to one another all information for a person involved in juvenile or adult commitment hearings, or jail transfer hearings and to:
 - Magistrate, juvenile intake officer
 - Court
 - Attorney, guardian ad litem
 - Evaluator, examiner
 - CSB
 - Law enforcement officer (limitations on information provided and its use)
- HB 499(Hamilton)/SB 246 (Howell)/HB 576(Watts)

19

Privacy – ECOs, TDOs, Court Orders

- Also required all ECOs, TDOs and court orders to provide for disclosure of health records to other health care providers and to those involved in process.

HB 499(Hamilton)/SB 246(Howell)/HB 576(Watts)

20

Privacy Disclosures - Immunity

- Provided immunity from civil liability for health care providers disclosing records as part of process unless
- Intended harm or acted in bad faith

HB 576(Watts)

21

Reports to CCRE

- Required Clerk to forward prior to close of business on day of receipt, any order for
 - Involuntary admission to facility
 - Mandatory outpatient treatment
 - Any person volunteering for admission who was subject of TDO, or
 - Found incompetent to stand trial under 19.2-169.2

HB 815(Albo)/SB 216(Edwards)

22

Restoration of Firearms Rights

- Provided a process by which person may petition general district court for restoration of right to possess firearm
- De novo right of appeal to circuit court
- Specified criteria for restoration of rights
HB 815(Albo)/SB 216(Edwards)

23

Psychiatric Inpatient Treatment of Minors Act

- Extended maximum period of temporary detention from 72 hours to 96 hours
HB 582(Marsden)/SB 276(Cuccinelli)
- Required appointment of both counsel and guardian ad litem for minor in commitment hearing
SB 247(Howell)

24

Psychiatric Inpatient Treatment of Minors Act

- Closed gap making minor incapable of making informed decision treated as parental admission of objecting minor age 14 or older

HB 400(Hamilton)/SB 67(Howell)

- Provided no need for service of petition and notice of hearing when petition withdrawn in addition to dismissed

HB 402(Hamilton)/SB 68(Howell)