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April 30, 2008

## Virginia's Changing Mental Health Laws

In the aftermath of the Virginia Tech shootings, almost 150 bills were introduced to the House and Senate dealing with mental health reform in Virginia this year. The Virginia Tech Panel, the Supreme Court Mental Health Law Reform Commission, and bi-partisan legislative support contributed to the final approved reform package. On April 9, 2008, one week before the first anniversary of the Virginia Tech shootings, Governor Tim Kaine signed 26 mental health bills into law. They will take effect in July.

Virginia's mental health laws had not been significantly reformed in thirty years. Governor Kaine said the "changes will bring Virginia in line with nearly every other state in several ways, including lowering the standard under which a mentally ill person can be forced into treatment." Set forth below is a summary of the most significant changes in Virginia mental health laws which will be effective July 1, 2008.

Currently, for a person to be involuntarily committed, the judge must determine by clear and convincing evidence that "the person presents an *imminent danger* to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be

substantially unable to care for himself." Va. Code §37.2-808(A) and 37.2-809(B). The "imminent danger" standard is very high, and often hard to prove. The new law will lower the standard for court ordered treatment from "imminent danger" to a "substantial likelihood" that the person will cause serious physical harm to himself or others, or that he suffers serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. This legislation should allow individuals who need mental health treatment to receive it, and prior to the time that they become imminent danger to themselves or others.

The emergency custody statute, Va. Code § 37.2-808, will also outline what a judge may consider when determining if probable cause exists to issue an emergency custody order (ECO). The newly revised statute provides for the following judicial consideration:

"(1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any



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relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.” The same elements will be considered in connection with an involuntary temporary detention order (TDO) pursuant to Va. Code § 37.2-809(C).

New laws will also allow expanded disclosure of mental health records. For example, healthcare providers can disclose records related to inpatient treatment of minors to a magistrate, juvenile intake officer, the court, the minor’s attorney, the guardian *ad litem*, the evaluator, the Community Service Board (CSB) or behavioral health authority performing certain functions, or a law enforcement officer “any and all information that is necessary and appropriate to enable each of them to perform his duties under this article.” Va. Code § 16.1-337(B); see also Va. Code § 37.2-804.2, Disclosure of records.

The time a person can be detained under an ECO for observation will be extended from four hours to six hours, upon a finding by the magistrate that good cause exists for the extension.

Representatives of the local community service boards are required to participate in commitment hearings. The representative must either “attend the hearing in person, or if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system. . .” Va. Code

37.2-817 (B). If the CSB representative that prepared the report cannot attend in person or via electronic means, and the hearing is held outside of the CSB’s service area, a representative of the board serving the area in which the hearing is held may attend and participate on behalf of the CSB board that prepared the preadmission screening report.

The commitment hearing cannot take place until the requisite medical examination has been completed, the CSB preadmission screening report has been completed, and mental health treatment has been initiated to stabilize the person’s psychiatric condition to avoid involuntary commitment where possible. However, the hearing must be held within 48 hours of the execution of the temporary detention order. See Va. Code § 37.2-814.

If mandatory outpatient treatment is ordered, the new code provisions provide specific requirements for what information must be outlined in the order, including specific services, identification of the provider who has agreed to provide the services, arrangements for the initial in-person appointment, and any other relevant information. Within five days after the order is entered, the CSB has to file a comprehensive outpatient treatment plan.

Law enforcement officials transporting a person pursuant to an ECO may transfer custody of the person to certain facilities, meeting certain criteria. Specifically,

The law-enforcement agency providing transportation pursuant to this section may transfer custody of the person to the facility or location to which the person is transported for the evaluation required in subsection B or G if the facility or location (i) is



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licensed to provide the level of security necessary to protect both the person and others from harm, (ii) is actually capable of providing the level of security necessary to protect the person and others from harm, and (iii) has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody. Va. Code § 37.2-808.

There are also some changes for law enforcement in regard to temporary detention orders. A person subject to a TDO must “remain in the custody of law enforcement until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by the facility identified in the temporary detention order.” Va. Code § 37.2-809.

Finally, the courts will be required to forward information about involuntary mental health commitments to a federal database used to check the records of potential gun buyers.

Universities will also have to implement changes, specifically resulting from the Virginia Tech massacre, including development of written emergency management plans and establishment of threat assessment teams. By January 1, 2009, they must establish comprehensive emergency notification systems.

The General Assembly approved two studies related to mental health issues. The first one charges the Joint Commission on Health Care “to

receive, review, and evaluate the impact of certain recommendations and legislation on the mental health system in the Commonwealth. The Commission shall consider and assess the recommendations of the Chief Justice's Commission on Mental Health Law Reform, the Virginia Tech Review Panel, the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services, other committees and commissions proposing recommendations related to the involuntary commitment process specifically and the system of mental health services in the Commonwealth, and legislation enacted by the 2008 Session of the General Assembly and signed into law by the Governor.” SJ 42.

The second study directs the Joint Commission on Health Care to continue its study of young minority adults and their need for mental health treatment. Specifically, it directs the Joint Commission to:

- (i) estimate the number of mentally disabled young adults by gender, age, and racial and ethnic classification, in the geographical regions of the Commonwealth;
- (ii) identify the prevailing mental health and emotional disorders and their etiology among minority young adults;
- (iii) identify the mental health needs of minority citizens, particularly minority young adults in Virginia;
- (iv) determine the number of racial and ethnic minority persons who receive mental health treatment each year and the facilities providing such care;
- (v) determine whether mental health care providers are trained to provide culturally competent mental health treatment;
- (vi) assess the need for culturally competent mental health treatment in Virginia;
- (vii) review federal and state laws and regulations governing the



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confidentiality of health care, mental health treatment, and medical records and identify the conditions and the extent to which medical records information may be disclosed to parents and family members to assist them in obtaining health, social services, and mental health treatment for mentally disabled young adults; (viii) recommend ways and alternatives, within the law, to provide parents and family members of mentally disabled young adults the ability to obtain needed health, social services, and mental health treatment for such persons without involuntary commitment; and (ix) consider such other related matters as the Commission may determine necessary to address the objectives of this resolution. SJ 46.

Several mental health issues were not acted upon this year, but will likely be considered in the very near future, including establishing mental health courts, evaluation of assisted outpatient

treatment programs, implementation of advanced psychiatric directives, and development of a civil commitment transportation system that does not rely completely on law enforcement.

In addition, the General Assembly approved \$42 Million in additional funding, which will be used to train staff members in Virginia's 40 Community Service Boards, provide 24-hour, 7-day per week psychiatric consultation, and expand the crisis stabilization programs.

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