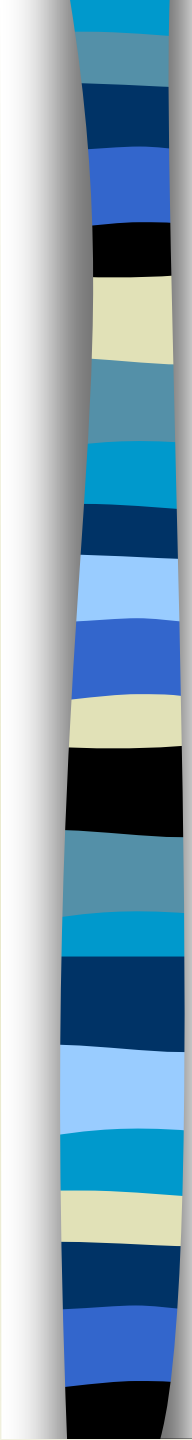




Civil Commitment Procedures & Related Issues

Presented By

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Chief Magistrate
16th Judicial District



Emergency Custody & Temporary Detention Orders

Commonly Referred to as:

- Medical Care ECOs and TDOs
- Mental Health ECOs and TDOs



What is an ECO/TDO?

Emergency Custody & Temporary Detentions

To obtain a face-to-face meeting between a professional mental health evaluator and a person thought to be mentally ill (“respondent”) in order for the evaluator to form an opinion and provide expert evidence as to whether the respondent needs hospitalization or treatment for a mental illness and otherwise meets statutory criteria for issuance of a temporary detention order.



Authority

The Code of Virginia authorizes judicial intervention to order law enforcement personnel to take into custody and transport for needed mental health evaluation and care or medical evaluation and care a person who is unwilling or, in some cases, unable to consent to such care. A magistrate is authorized to order such custody on an emergency basis for short periods.



Medical Care ECO/TDOs

Medical Care ECO:

The purpose of a medical ECO is to require, in the case of a gravely injured or ill adult person who is

- (1) resistant to emergency medical care and
- (2) resistant to transportation to an emergency care facility and
- (3) is incapable of making an informed decision,

that such person be transported against the person's will to a hospital emergency room for testing, observation, or treatment for a brief time in order to provide opportunity for a licensed physician to perform a medical evaluation and provide necessary emergency medical care.



Other Areas of ECO/TDOs

Criminal Defendants:

Incarcerated defendants:

- a. Defendant in jail awaiting trial
- b. Convicted defendant in jail awaiting sentencing
- c. Convicted and sentenced defendant serving the sentence in a local correctional facility
- d. Convicted and sentenced defendant serving the sentence in a State correctional facility

Conditionally Released Persons:

Conditionally released persons (persons who are released from incarceration or detention subject to certain continuing requirements relating to conduct), in the following categories:

- a. Conditionally released acquittee (a person released from mental hospitalization on conditions after having been acquitted of a crime by reason of insanity)
- b. Conditionally released sexually violent predator

Medical Care ECO/TDOs

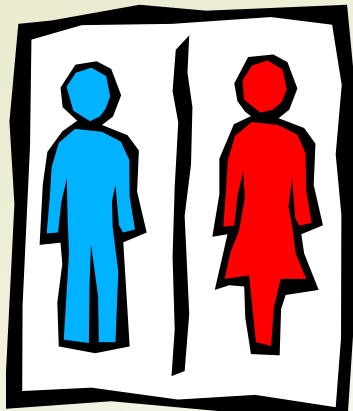
Medical Care TDO:

The purpose of a medical emergency TDO is to authorize short-term testing, observation, or treatment of a physical or mental disorder when necessary to prevent imminent death, disability, or serious irreversible condition in the case of a person who, due to the disorder, is incapable of making an informed decision regarding treatment of the disorder or is incapable of communicating such a decision.



Mental Health Categories

ADULTS



MINORS



Mental Health - ECO

A proceeding to issue a ECO is initiated in one of two ways:

(1) On the magistrate's own motion

OR

(2) A sworn petition of a treating physician or any other responsible person

Responsible person???





Mental Health - ECO

A “responsible person” is defined in Va. Code § 37.2-800 and includes the following persons:

- (1) A family member, as defined in Va. Code § 37.2-100
- (2) A community services board or behavioral health authority
- (3) A treating physician of the respondent
- (4) A law enforcement officer



Mental Health - ECO

Other Responsible Persons

A Magistrate may find that another person not in a category listed above is a responsible person for purposes of the statute. The Magistrate would base that finding on such factors as maturity, education, experience, powers of discernment, and, of course, reliability and credibility. Other responsible persons could include, for example, a pastor, a neighbor, a work supervisor, a co-worker, and an adult roommate.



Mental Health - ECO

- (1) Temporary detention for further evaluation and care pursuant to a DC-894A, TEMPORARY DETENTION ORDER – MAGISTRATE or DC-895, TEMPORARY DETENTION ORDER – MAGISTRATE (JUVENILE), issued by a Magistrate
- (2) Release of the respondent for either of the following reasons:
 - a. A finding that the respondent does not meet the statutory criteria for temporary detention
 - b. Expiration of the ECO
- (3) Voluntary acceptance of mental health care services by the respondent



Mental Health - ECO

Requirements to Issue ECO for Adult:

- Location
- Respondent has mental illness or substance abuse condition
- Must be a likelihood of resulting harm that the respondent will, in the near future, either:
 - (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;

OR

 - (2) Suffer serious harm (not necessarily physical harm) due to his lack of capacity to protect himself from harm or to provide for his basic human needs.

Mental Health – ECO

“Mental Health” Defined:

Virginia Code § 37.2-100 defines the term “mental illness” as “a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.”





Mental Health - ECO

Substance Abuse Defined:

Under Va. Code § 37.2-800, a Magistrate is to consider substance abuse as being a mental illness for the purposes of ECOs and TDOs.

Virginia Code § 37.2-100 defines the term “substance abuse” to mean “the use of drugs, enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior and (iii) because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.”



Mental Health – ECO

- Hospitalization or treatment needed
- No consent:
Respondent is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.



Mental Health – ECO

Requirements to Issue ECO for Minor:

- Minor has mental illness or substance abuse condition
- Because of mental illness, the minor:
 - (1) presents a serious danger to himself or others to the extent that a severe or irremediable injury is likely to result (as evidenced by recent acts or threats); or
 - (2) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner (as evidenced by delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control).
- The minor is in need of compulsory treatment for mental illness and is reasonably likely to benefit from the proposed treatment.

Mental Health – ECO

Standard of Proof:



Probable cause that all of the statutory criteria has been met



Mental Health – ECO

Who Performs Evaluation?

Employee or designee of local community services board

Location of Mental Evaluation?

Convenient Location and is specified in ECO

Who Transports?

Law enforcement agency serves order on respondent and takes respondent into custody...unless ATP.

How Long?

4 Hours with 2 hour extension if show good cause

Unexecuted Orders?

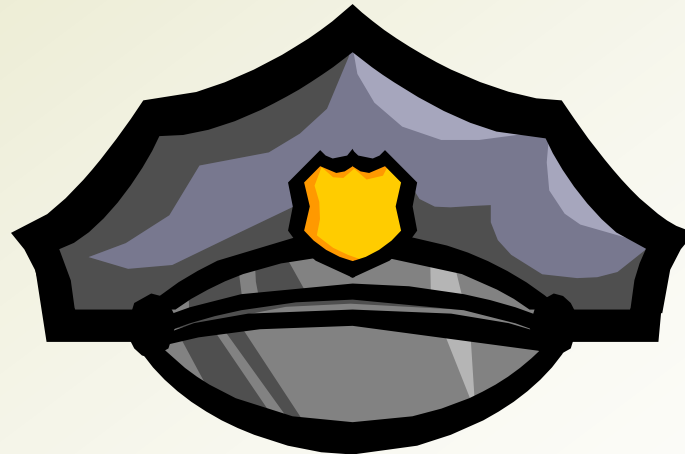
Court open? Returnable Court...Court Closed? Magistrate

Successive Orders? Prohibited

Mental Health – ECO

Law Enforcement Initiated w/o ECO

4 hour time limit with 2 hour extension





Mental Health – TDO

Purpose:

The purpose of a TDO is to require short-term detention of a person believed to be mentally ill and not harmless (referred to as the “respondent”) in an approved mental health institution in order to provide for an in-depth evaluation by mental health professionals in preparation for a formal commitment hearing to be conducted in the case by a judge or another judicial officer known as a special justice.

Relationship to ECO:

An ECO is not a prerequisite for issuance of a TDO. It is not necessary for the magistrate to issue an ECO if evaluation of the respondent by an employee or designee of the local community services board is achieved by other means.



Mental Health – TDO

Possible Outcomes:

When a respondent is detained under a TDO, the court (usually a special justice of the court) is required to hold a commitment hearing within 48 hours (or, depending on whether a weekend or holiday intervenes, up to 96 hours) after execution of the order.

The commitment hearing could result in any of the following actions under Va. Code § 37.2-817:

- (1) Involuntary admission to a facility for inpatient treatment
- (2) Involuntary admission to mandatory outpatient treatment
- (3) Release



Mental Health - TDO

How Initiated?

Same as ECO

Findings Required?

Same statutory criteria as ECO

Evaluation?

Before the TDO hearing takes place, an employee or designee of the local community services board must conduct an evaluation of the respondent by either of the following two means:

- (1) In person
- (2) By two-way electronic video and audio communication system as authorized in Va. Code § 37.2-804.1

UNLESS...



Mental Health - TDO

Exceptions:

The requirement for evaluation is waived under subsection D of Va. Code § 37.2-809 in either of the following circumstances:

- (1) The respondent has been personally examined within the previous 72 hours by an employee or designee of the local community services board, or
- (2) There is a significant physical, psychological, or medical risk to the respondent or to others associated with conducting the evaluation.



Mental Health - TDO

Time Limits?

A law enforcement officer has 24 hours in which to execute a TDO, calculated from the time the magistrate issues the temporary detention order. A Magistrate may specify in the TDO a shorter period for execution of the order.

Unexecuted Order?

Same as ECO

Successive TDOs?

Same as ECO

Statutory Proof?

Same as ECO



Questions?

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