

Implementation Checklist #1

Implementation of Involuntary Civil Commitment Procedures for Adults (§37.2- 808 et seq.)

This document provides guidance for implementing statutory amendments related to the involuntary civil admission process for adults with mental illness that were enacted by the 2008 General Assembly. This document primarily addresses new procedures enacted in 2008, but some requirements that existed prior to July 1, 2008 are also addressed where existing law is affected by the amended statute. This document is intended to facilitate community planning and problem-solving, and to support a consistent understanding and application of these laws in the Commonwealth. This document does not constitute legal advice.

Department of Mental Health, Mental Retardation and Substance Abuse Services

July 8, 2008

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The first page describes general requirements for an effective community emergency mental health response system. The operational requirements can be used to check whether your local stakeholder team has in place the necessary pieces to ensure full stakeholder participation and comprehensive implementation and oversight of the local system. The operational requirements can be used as a checklist, and can provide useful information for collaboration, quality improvement and system development with local stakeholders.

General Requirement	Operational Requirement
<p>Community Planning Structure: Effective implementation of the new laws and services requires collaborative planning, good communication and joint problem-solving involving all the affected stakeholders within each [judicial district] [CSB service area] [other region], including</p> <ul style="list-style-type: none"> • Consumers and families • Magistrates • CSB personnel, including regional staff • Chief judges, judges and special justices • Court clerks • Private hospitals • Emergency room physicians • State hospitals • Police • Sheriffs • Regional jail administrators • Attorneys involved in involuntary commitment process for adults • Examiners who perform evaluations under 37.2-815 	<ul style="list-style-type: none"> <input type="checkbox"/> There is a structure in place to bring stakeholder leadership together to plan and monitor implementation of the new statutes and services. <input type="checkbox"/> All the necessary players are included in the process (as described at left). <input type="checkbox"/> Each involved stakeholder organization has designated a point of contact for operational planning and problem- solving, and the point of contact is made known to other stakeholders. <input type="checkbox"/> The structure and process enables and supports joint problem-solving and quality improvement. <input type="checkbox"/> The community plan and procedures address all the required elements (see below). <input type="checkbox"/> All staff of the stakeholder organizations that will be responsible for implementing the new plan and procedures have been trained (or otherwise informed) about the new law and their roles in implementation.

The following pages include specific guidance, by Code section. In the left column is the Code citation. The middle column shows what is required by statute, and the right column shows what is needed to ensure that the statute is implemented as written and intended. The operational requirements can be used to check whether your local system has in place the necessary pieces to ensure complete implementation of the new statutory requirement, and whether your system operations conform to statutory intent. This can be useful information for collaboration, quality improvement and system development with local stakeholders.

Code Reference	Statutory Change/Requirement	Operational Requirement (Y/N)
In several sections of the Code, wherever the former criteria appeared.	New criteria have been enacted for civil emergency custody, temporary detention, involuntary commitment, and emergency treatment of jail inmates. The new criteria replace the old “imminent danger” and “inability care for self” standards with new language (not quoted here) that is significantly more specific. The new language is clearer, and so promotes more consistent and, thereby, fairer application in practice. In the case of the “imminent danger” criterion, the new language is less restrictive than the old language.	<input type="checkbox"/> Parties involved in interpreting this language have discussed and reached a common understanding of what these criteria mean. [Note: For background and reference, see Commission on MH Law Reform <i>Commitment Task Force Report and Understanding and Applying Virginia’s New Statutory Civil Commitment Criteria</i> by Bruce J. Cohen, Richard J. Bonnie, and John Monahan (June 4, 2008)]
§37.2-808	Magistrate may grant one 2-hour extension of ECO (i.e., 6 hours total) upon finding good cause. ECO extension may be requested by family member, CSB staff, treating physician or law-enforcement officer.	<input type="checkbox"/> Procedure is in place to enable any authorized person to request extension of ECO directly to a magistrate on duty at any time of day. <input type="checkbox"/> Procedure is in place to communicate magistrate’s authorization for extension (in a suitable acceptable form) to the officer having custody of person, as well as to community services board staff and others involved.
§37.2-808.A	Magistrate may consider several specific sources of information when considering whether to issue an ECO.	<input type="checkbox"/> Magistrates are aware of the possible sources of information authorized in this section. <input type="checkbox"/> Procedures are in place to communicate available information that should be considered to the magistrate when needed. <input type="checkbox"/> Magistrates use this information, as needed, in practice.
§37.2-808.E	Law-enforcement officers may transfer custody of a person under ECO to a facility or location under	<input type="checkbox"/> Facility accepting transfer of custody is licensed by DMHMRSAS and capable of providing appropriate security for persons in care, and

	specified conditions.	<input type="checkbox"/> Facility and law enforcement agency(s) have entered into a memorandum of understanding describing the terms of the arrangement to transfer custody, (under what conditions,etc.), and <input type="checkbox"/> Each participating entity follows the agreed-upon procedures set forth in the MOU.
§37.2-809.B	Evaluation conducted by the CSB may be performed by two-way electronic video and audio communication system under specified conditions.	<input type="checkbox"/> If electronic means is used for evaluation, technology used provides live, simultaneous, two-way audio and video communication, and is secure from interception, as set forth in statute.
§37.2-809.C	Magistrate may consider several specific sources of information, in addition to the petition, when considering whether to issue a TDO.	<input type="checkbox"/> Magistrates are aware that they may consider the specified sources of information when deciding to issue a TDO. <input type="checkbox"/> Procedures are in place to communicate available information that should be considered, including recommendations of treating or examining physicians, to the magistrate when needed. <input type="checkbox"/> Magistrates use this information, as needed, in practice.
§37.2-809.K	CSB must communicate to petitioner and treating physician when TDO is not recommended.	<input type="checkbox"/> CSBs evaluator informs the petitioner (if any) and any on-site physician(s) whenever CSB evaluator recommends against issuance of a TDO. <input type="checkbox"/> CSB and other stakeholders ensure that contact information for magistrates is readily available at multiple sites so that family members, physicians and others who may want that information can easily get it when notified of recommendation against TDO or at any other time. <input type="checkbox"/> Magistrates are accessible to any petitioner or treating physician who may wish to contact them following a CSB recommendation against issuance of a TDO.
§37.2-809.H and §37.2-814	Duration of TDO: Maximum duration of temporary detention period is unchanged, but time period prior to hearing shall be sufficient 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.	<input type="checkbox"/> Magistrate delivers (or sends by fax) a copy of any TDO issued to the court [or clerk] in which jurisdiction the detention facility is located immediately upon issuance. <input type="checkbox"/> The court [or clerk] appoints examiner and attorney as soon as practicable after receipt of TDO. <input type="checkbox"/> Court [or clerk] notifies examiner and attorney of the name and location of

		<p>person being detained, and the planned date, time and location of hearing.</p> <p><input type="checkbox"/> Attorney meets with consumers prior to hearing to review written information, and prepares consumer's defense in accordance with consumer's preferences.</p> <p><input type="checkbox"/> Court [or clerk] coordinates with TDO facilities to schedule hearings flexibly, to allow necessary exams to be completed and to allow treatment to begin.</p> <p><input type="checkbox"/> Court [or clerk] notifies petitioner of place and time of hearing.</p> <p><input type="checkbox"/> Court [or clerk] notifies CSB that completed exam (i.e., exam prior to TDO) of the place, date and time of planned hearing at least 12 hours in advance of the hearing.</p> <p><input type="checkbox"/> CSB coordinates participation in hearing with attending CSB (if different) and coordinates completion of preadmission screening report and disposition recommendations to be presented at hearing.</p>
§37.2-815.A	<p>Appointed examiners: The types of professionals who may perform the examinations required under this section have changed. In addition, the specific qualifications for these professionals have also changed (except for psychiatrists and licensed psychologists)</p>	<p><input type="checkbox"/> Each court jurisdiction has in place a process to identify, with stakeholders, appropriately qualified examiners who are willing and available to serve.</p> <p><input type="checkbox"/> All appointed examiners who participate in hearings have the prerequisite qualifications set forth in statute, and are free of conflict of interest.</p> <p>[Note: See June 26, 2008, <i>Reform Guidance Memo #3: Certification of Independent Examiners and CSB Evaluators</i>, from James S. Reinhard, MD]</p>
§37.2-815.B & §37.2-815.C.	<p>General requirements for conducting examinations: Several general requirements are set forth in statute.</p>	<p><input type="checkbox"/> Procedures are in place to allow in-person examination or, when necessary, electronic exam.</p> <p><input type="checkbox"/> If electronic means is used for evaluation, the technology used provides live, simultaneous, two-way audio and video communication, and is secure from interception, as set forth in statute.</p> <p><input type="checkbox"/> All exams are conducted in private.</p> <p><input type="checkbox"/> Court secures translation services, translators and interpreters when non-English speaking or deaf/hearing impaired consumers are involved.</p>

§ 37.2-815.B	<p>Required elements of examination: The statute requires the independent examiner to complete an extensive inquiry into several specific areas pertinent to understanding the person’s clinical status, current circumstances, capacity, and other relevant areas of inquiry in order to prepare a report and recommendations for the person’s placement care and treatment.</p>	<p><input type="checkbox"/> Examiners are knowledgeable about the required components of the examination, and new DMHMRSAS Form 1006-IE.</p> <p><input type="checkbox"/> In each case, examiner completes all required components of comprehensive exam prior to hearing.</p> <p><input type="checkbox"/> TDO facility records, including any advance directive or health care power of attorney or similar document, are available for examiner to review.</p> <p><input type="checkbox"/> Examiner meets with consumer, discusses consumers’ perspective and treatment preferences as expressed in person or in another form (such as a WRAP plan) and incorporates this information into report and recommendations.</p> <p><input type="checkbox"/> If person has appointed a health care decision-maker, examiner interviews that person and incorporates this information into report and recommendations.</p>
§37.2-815.C §37.2-817.A.	<p>Submission of Examination to Court: The statute requires submission of the examination written report to the court in advance of the hearing, and participation in the hearing by the examiner under certain circumstances.</p>	<p><input type="checkbox"/> Examiners’ written reports (DMHMRSAS Form 1006-IE and any other documents) are submitted to court [or clerk] prior to hearing for review.</p> <p><input type="checkbox"/> Procedures are in place for examiner to attend hearing in person or electronically if objection is raised to written report.</p> <p><input type="checkbox"/> Even when written report raises no objections, examiners are available for questioning, either via electronic means or in person, whenever needed.</p> <p><input type="checkbox"/> If electronic communication is used for hearing participation, the technology used provides live, simultaneous, two-way audio and video communication, and is secure from interception, as set forth in §37.2-817.A.</p>
§37.2-817.A;	<p>Participation by the treating physician in the hearing is required, whenever possible</p>	<p><input type="checkbox"/> Hearings are scheduled at times when treating physicians are available to attend or participate.</p> <p><input type="checkbox"/> Treating physicians are available for participation via electronic means or in person whenever needed in hearings.</p> <p><input type="checkbox"/> TDO facility has technology in place to allow participation by treating physician when needed as required by law.</p> <p><input type="checkbox"/> If electronic means is used for treating physician’s participation,</p>

		technology used provides live, simultaneous, two-way audio and video communication, and is secure from interception, as set forth in statute.
§37.2-816;	CSB preadmission screening report required prior to hearing.	<input type="checkbox"/> Procedures are in place to ensure that, at least 12 hours before the hearing, the court provides the time and location of each hearing to the CSB that prepared (or is responsible for preparing) the preadmission screening report. <input type="checkbox"/> CSB that completes the preadmission screening report delivers the report to court prior to the hearing in each case. [See <i>Uniform Preadmission Screening and Report Form</i> , DMHMRSAS.]
§37.2-817.B	CSB participation in hearing: The CSB that prepares the preadmission screening report, or another CSB, must attend the hearing in-person, or if impracticable, by telephone or two-way electronic video and audio communication system.	<input type="checkbox"/> Procedures are in place to ensure that, at least 12 hours before the hearing, the court provides the time and location of each hearing to the CSB that prepared (or is responsible for preparing) the preadmission screening report. <input type="checkbox"/> Arrangements are in place to ensure that the local CSB attends or participates in each commitment hearing held in the CSB's service area that involves a person from that service area for whom the CSB has completed a preadmission screening report. <input type="checkbox"/> Arrangements are in place by which a CSB representative from the service area in which the hearing is held attends each commitment hearing involving a person from outside the CSB service area in which the hearing is held. <input type="checkbox"/> Procedures are in place to ensure that, prior to the hearing; the CSB that prepared a preadmission screening report sends the report to the CSB attending the hearing, either by certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means. <input type="checkbox"/> Procedures are in place to update the preadmission screening report when indicated in situations where the preadmission screening has been completed prior to the issuance of a temporary detention order. The updated report should reflect any changes in the person's status or circumstances at the time of the hearing (e.g., as a result of treatment provided during detention, new information about community support options, etc.) and any revised dispositional recommendations that may be warranted.

<p>§37.2-817.C and D</p>	<p>Commitment Hearing – Evidence to be considered: Special justices may consider several specific sources of information when considering the disposition of a case.</p>	<p><input type="checkbox"/> Special justices are trained in and knowledgeable about evidence that may be considered at the commitment hearing.</p> <p><input type="checkbox"/> Different special justices apply the rules of evidence consistently and in accordance with statute within each judicial district.</p>
<p>§37.2-817.C, §37.2-817.E</p>	<p>Duration of Involuntary Treatment Orders: Initial order for involuntary inpatient treatment shall not exceed 30 days. Initial order for mandatory outpatient treatment not to exceed 90 days. Subsequent (re)commitment orders up to 180 days.</p>	<p><input type="checkbox"/> Parties involved are knowledgeable about the maximum duration of initial involuntary treatment orders.</p> <p><input type="checkbox"/> Initial inpatient commitment orders do not exceed 30 days, MOT orders do not exceed 90 days.</p>
<p>§ 37.2-817.D et seq.</p>	<p>Mandatory Outpatient Treatment Orders: The new statute sets forth a detailed scheme for ordering mandatory outpatient treatment (MOT) for persons who meet the criteria for involuntary treatment under certain conditions.</p>	<p><input type="checkbox"/> All parties involved, including courts, CSBs, law enforcement agencies, private providers, consumers and families, attorneys and examiners understand the concept of mandatory outpatient treatment as articulated in <i>Code</i>.</p> <p><input type="checkbox"/> Each community, with all stakeholders, has developed a process to implement MOT when conditions are met.</p> <p><input type="checkbox"/> Explicit MOT procedures are in place that meet statutory requirements and intent, and address the following components:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Understanding and applying the MOT criteria and other conditions that must be in place to order MOT. <input type="checkbox"/> Developing the initial MOT treatment plan. CSBs must have a process in place to develop the initial MOT treatment plan as part of the preadmission screening or another process, prior to the commitment hearing, so that MOT can be a dispositional recommendation with the necessary providers, monitoring, etc, in place when the order is issued. <input type="checkbox"/> Developing the comprehensive MOT treatment plan within 5 working days of issuance of any initial MOT treatment plan and order. <input type="checkbox"/> Procedures for filing the MOT plan with the court, and for disseminating the plan to appropriate persons (person, attorney, providers, etc). <input type="checkbox"/> Procedures for transfer of MOT cases between CSBs and courts. <input type="checkbox"/> Procedures for monitoring MOT compliance in accordance with statutory requirements.

		<input type="checkbox"/> Procedures for reporting, as needed or as required, to the court having jurisdiction over the case. <input type="checkbox"/> Procedure to ensure that all persons subject to MOT orders are informed about the opportunity to petition the court for rescission of the MOT order after 30 days. Such information should be provided in writing to the person.
§ 37.2-817.1.B et seq.	Non-Compliance with MOT orders: CSBs and courts play an active ongoing role in implementing and managing MOT after the order is issued. The new statute sets forth extensive procedures for monitoring and responding to compliance issues.	<input type="checkbox"/> All parties involved, including courts, CSBs, law enforcement agencies, private providers, consumers and families, attorneys and examiners understand the mandatory outpatient treatment monitoring and follow-up requirements and their responsibilities as articulated in <i>Code</i> . <input type="checkbox"/> Explicit MOT procedures that meet statutory requirements and intent are in place in each court jurisdiction to address the following components: <ul style="list-style-type: none"> <input type="checkbox"/> CSB procedure to assertively follow up with any person under an MOT order, or any provider, whenever there is any instance of non-compliance or when such follow-up is warranted for any other reason. <input type="checkbox"/> Procedures to determine “material non-compliance” (as distinct from other reasonable deviations from the ordered MOT plan). <input type="checkbox"/> Joint procedures between CSB, providers and court to report material non-compliance and petition for review to determine appropriate action and disposition. <input type="checkbox"/> Court procedures to ensure that parties (person and attorney, any others) are notified of petition and any other relevant action. <input type="checkbox"/> Procedures to initiate ECO and TDO when appropriate.
§37.2-817.2	Court review of MOT plan: Extensive procedures are established in <i>Code</i> to describe the process of court review of MOT treatment plans when necessary.	<input type="checkbox"/> All parties involved, including courts, CSBs, law enforcement agencies, private providers, consumers and families, attorneys and examiners understand the mandatory outpatient treatment plan review process and their responsibilities as articulated in <i>Code</i> . <input type="checkbox"/> Explicit MOT procedures that meet statutory requirements and intent are

		<p>in place to address the following components:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Procedures for the judge or special justice to schedule review hearings within five days after receipt of petitions for review of MOT plan (or within TDO timeframe if applicable). <input type="checkbox"/> Procedure for clerk to notify specified persons and entities of the hearing. <input type="checkbox"/> Procedures for court to appoint original counsel (when MOT order was issued) or new counsel when indicated. <input type="checkbox"/> Procedures for CSBs to provide transportation, when indicated, to the hearing. <input type="checkbox"/> Procedures for appointment of examiner when requested, and procedures for CSB to arrange for examination at a convenient location and time prior to the hearing, including providing transportation to the person. <input type="checkbox"/> Procedure for participation of examiner at hearing, when necessary. Procedure requesting and issuing a mandatory examination order and capias through the court or by magistrate when person fails to appear for exam. <input type="checkbox"/> Procedures for continuing hearing or other disposition under §37.2-817.2.C <input type="checkbox"/> Procedures for managing dispositions under §37.2-817.2.D, including renewal of the MOT order with amendments to the MOT treatment plan, communication with law enforcement for transportation if required.
§ 37.2-817.3;	<p>Rescission of MOT Order: Procedures are established in <i>Code</i> to describe the process of rescinding a mandatory outpatient treatment order.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> All parties involved, including courts, CSBs, law enforcement agencies, private providers, consumers and families, attorneys and examiners understand the process of rescinding mandatory outpatient treatment orders and their responsibilities as articulated in <i>Code</i>. <input type="checkbox"/> Explicit MOT procedures that meet statutory requirements and intent are in place to address the following components: <ul style="list-style-type: none"> <input type="checkbox"/> Conditions under which CSB will petition court for rescission of MOT order.

		<input type="checkbox"/> Procedure for persons subject to MOT order to petition court for rescission of order. <input type="checkbox"/> Procedure for court to schedule hearing, provide notice to parties and other individuals, etc. <input type="checkbox"/> Procedure for CSB to complete preadmission screening report and communicate report to court prior to hearing.
§ 37.2-817.4	<p>Continuation of MOT Order: New procedures are established in <i>Code</i> to describe the process of continuing a mandatory outpatient treatment order. Within 30 days of expiration of MOT Order, CSB, any treating physician or other responsible person may petition to extend MOT order. If person and CSB agree (if CSB is not petitioner), court shall extend order without hearing</p>	<input type="checkbox"/> All parties involved, including courts, CSBs, law enforcement agencies, private providers, consumers and families, attorneys and examiners understand the process of continuing mandatory outpatient treatment orders and their responsibilities as articulated in <i>Code</i> . <input type="checkbox"/> Explicit MOT procedures are in place to address the following components, and these procedures meet statutory requirements and intent. <ul style="list-style-type: none"> <input type="checkbox"/> Procedure enabling CSBs, treating physicians, and other responsible persons to petition court for continuation of MOT. <input type="checkbox"/> Procedure for court to notify the person and CSB, if appropriate, and allow the opportunity for these parties to join the petition. <input type="checkbox"/> Procedures for appointment and participation of examiner as required. <input type="checkbox"/> Procedure for CSB preadmission screening.