

ITEM FOR CONSIDERATION

**IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM
2018 VIRGINIA GENERAL ASSEMBLY**

October 31, 2017

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ITEM FOR FURTHER CONSIDERATION

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**HUMAN SERVICES – SERVING A PETITION ON A NON-PETITIONING PARENT
PRIOR TO A MINOR’S INVOLUNTARY COMMITMENT**

PROPOSAL:

Support a change to Virginia Code § 16.1-341(B) pertaining to serving the petition and notice of the hearing upon non-petitioning parent(s) for the involuntary commitment of minors. The change would require that a “reasonable effort” be made to serve the non-petitioning parent(s), instead of requiring completed service, so that the inability to serve the non-petitioning parent(s) would not result in dismissal of the petition.

SOURCE:

Fairfax-Falls Church Community Services Board (CSB)
July 28, 2017

BACKGROUND:

When a minor 14 years or older is experiencing a psychiatric crisis and needs mental health treatment in a hospital setting but refuses such treatment, an adult can petition the Juvenile and Domestic Relations Court (JDRC) for the involuntary civil commitment of the minor (it is important to note that the consent of one parent is sufficient to hospitalize minors under 14 for mental health treatment – a minor under 14 does not need to consent). Any responsible adult (such as a parent, physician, school official, foster care parent, person having custody over a minor in detention or shelter care, a CSB staff member, or a Department of Family Services official) can initiate this petition.

The commitment hearing is statutorily required to be held no sooner than 24 hours and no later than 96 hours from the later of the time the petition was filed or the temporary detention order was issued. The JDRC appoints an attorney to represent the minor subject to the petition, and a guardian ad litem to report to the court on what is in the minor’s best interest. In addition, in Fairfax County, if the petition was filed through the Fairfax-Falls Church CSB, an attorney from the Office of the County Attorney represents the CSB and the petitioners (this service is not provided by other jurisdictions in the state). Special justices (who are appointed by the chief judge of each judicial circuit) adjudicate these commitment hearings, which are typically held in jurisdictions with a psychiatric facility licensed to accept juveniles (juveniles subject to a temporary detention order from other jurisdictions are transported to and detained at one of the few such facilities in Virginia). Because one of these facilities is in Fairfax County, the special justices in Fairfax County adjudicate commitment hearings for minors detained at the Fairfax facility, regardless of whether the minor’s permanent residence is in Fairfax County or another jurisdiction in Virginia.

Pursuant to Virginia Code § 16.1-341(B), a copy of the petition and notice of the commitment hearing “shall be served immediately upon the minor and the minor’s parents, if they are not petitioners, by the sheriffs of the jurisdiction in which the minor

and his parents are located.” This requires that process be served on both parents; other kinds of petitions filed in JDRC require service of process on at least one parent, instead of both parents.

In some cases involving the involuntary commitment of minors, the circumstances of the non-petitioning parent(s) make it impossible to serve process within the required timeframe. Such circumstances include: lack of a correct address for the non-petitioning parent(s) (due to homelessness, no fixed address, or an inaccurate address on file); the unknown identity of the child’s biological father; the non-petitioning parent(s) being out of the County (whether living or traveling to another part of Virginia, the U.S., or overseas, due to military deployment or other circumstances); the non-petitioning parent(s) being incarcerated outside of Virginia; and, a parent who is absent from the child’s life but whose rights have not been terminated. It can be particularly challenging to serve process on a non-petitioning parent who resides outside of the County within the required 96-hour timeframe (other civil matters requiring service of process outside the County typically do not include such tight timelines). Non-petitioning parents who refused to disclose their residential address or do not make themselves available for service also present a challenge.

If the non-petitioning parent(s) have not been served, the attorney representing the minor can request that the petition be dismissed, and in Fairfax County the special justices typically grant the dismissal. Following the dismissal of a petition, the minor can no longer be held at the hospital against his or her wishes. Staff estimate that the number of such petitions dismissed in FY 2016 and FY 2017 due to lack of service in Fairfax County is about 15 percent (approximately 18 out of 114 petitions); each dismissed petition could potentially result in the minor inflicting harm on himself/herself and/or others.

Update for October 31, 2017, Legislative Committee meeting:

Staff has conducted some initial outreach and begun discussions on a potential legislative strategy. Additionally, as the Legislative Committee requested, staff analyzed the possibility of using private process servers to address this issue. Virginia Code § 16.1-341(B) only provides authority for sheriffs to serve petitions and notice of the hearings on the non-petitioning parent(s) – an amendment would be needed to allow private process servers to do so. In addition to the legal barrier, there are a number of implementation concerns.

RECOMMENDATION:

Direct staff to further analyze the petitions dismissed due to lack of service in an attempt to better understand the primary obstacles to completing service. Also direct staff to begin gauging potential reactions or obstacles among General Assembly members or other stakeholders and report back to the Board at the November 28, 2017, Legislative Committee meeting. There are two potential options to consider at present. The first is to send a letter to the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century, asking them to examine this issue. The second is to

initiate legislation in the 2018 General Assembly. To ensure the public is aware of the possibility of a legislative initiative prior to the November 21, 2017, public hearing on the Legislative Program, direct staff to include language (see text below) in the draft Legislative Program for public consideration. At the November 28, 2017, Legislative Committee meeting, the Board can make a final determination about how to move this issue forward.

Potential Language for Draft Legislative Program

Parental Notification of Involuntary Commitment for Minors Experiencing Mental Health Crises

Initiate legislation to amend Virginia Code § 16.1-341(B) to require that a “reasonable effort” be made to serve the non-petitioning parent(s) when a minor is being involuntarily committed for mental health reasons, instead of requiring completed service of process on both parents, so that the inability to serve the non-petitioning parent(s) would not result in dismissal of the petition. Currently, Virginia Code requires that both parents be served within 96 hours from the time the petition is filed or a temporary detention order is issued (whichever is later) when a minor is in need of emergency in-patient mental health services (due to being a danger to themselves or to others). Serving both parents within that time frame is sometimes impossible (when a parent is out of the state or country or cannot be located), and may preclude the minor from receiving critically-needed emergency mental health treatment, to the potential detriment of the minor, his/her family, and the community.