



FAIRFAX - FALLS CHURCH

Community Services Board

Involuntary Psychiatric Hospitalization of Minors



*Information for Petitioners,
Family Members and Concerned Others*

Prepared by staff of the Merrifield Crisis Response Center

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Notice:

The information contained in this pamphlet is not intended to be legal advice and is for informational purposes only. For legal advice related to your own situation, you should consult a lawyer.

Overview

The psychiatric hospitalization of a minor (a person under 18 years of age) against his or her will is a treatment option that is pursued **only** when all less restrictive treatment options have been exhausted or deemed unsuitable.

Taking away a minor’s personal freedom, even with the good intention of providing mental health treatment, is such a serious step that the Virginia legislature has established strict requirements that must be met before a minor can be involuntarily hospitalized.

Involuntary hospitalization occurs only when a minor’s psychiatric condition causes a situation where the minor “presents a serious danger to self or others to the extent that severe or irremediable injury is likely to result, or is experiencing a serious deterioration of his/her ability to care for self.

The process starts with the issuance of a Temporary Detention Order (TDO) and the scheduling of a Commitment Hearing. The involuntary hospitalization of minors is done in accordance with the Code of Virginia, Sections 16.1-335 through 16.1-348, as amended.

What is a Temporary Detention Order?

A TDO is a court order issued by a judicial officer called a Magistrate that requires a minor to be held in a psychiatric facility for a period of 1 to 5 days until a commitment hearing is held. How long the minor is hospitalized before the hearing occurs depends upon when the TDO is issued and whether there is an intervening weekend or legal holiday. Magistrates are available to issue a TDO every day of the year, 24 hours a day.

Magistrates can conduct hearings in person or by videoconference, and are available around the clock at two locations in Fairfax County:

Fairfax Adult Detention Center
10520 Judicial Drive
Fairfax, VA 22030
703-246-2178, TTY 711

Mount Vernon Governmental Center
2511 Parkers Lane
Alexandria, VA 22306
703-780-8580, TTY 711

When is a TDO needed?

- **Minor under the age of 14** – A minor younger than 14 years of age may be admitted to a willing psychiatric hospital solely upon the application and consent of a parent. Since the minor does not need to consent or agree

to the admission, usually a **TDO is not needed** to have such minor hospitalized.

- **Minor 14 or over the age of 14, non-objecting** – A minor 14 years of age and older who **does not object** to admission to a willing psychiatric hospital can be admitted upon the joint application and consent of the minor and a parent. Since the minor is agreeing to the hospitalization, this is considered a “voluntary” admission and therefore a **TDO is not needed**.
- **Minor 14 or over the age of 14, objecting** – A minor 14 years of age and older who (1) **objects** to admission to a psychiatric hospital, or (2) is **incapable of making an informed decision** about treatment may be admitted to a willing psychiatric hospital upon the application and consent of a parent for up to 120 hours. If the hospital is not willing to admit the minor, a TDO must be sought and issued to hospitalize the minor.

How is a TDO issued?

A TDO is issued in response to a request by a “Petitioner” and, except in rare circumstances, only after completion of an in-person assessment within the preceding 72 hours by a “Certified Prescriber.” The Petitioner is typically the minor’s parent, or may be any responsible adult, and is the person who is requesting involuntary hospitalization of the minor. In Fairfax County, and the Cities of Fairfax and Falls Church, the Certified Prescriber is a mental health clinician who is employed by the Fairfax-Falls Church Community Services Board (CSB) and is certified by the state to conduct TDO evaluations.

The purpose of the Certified Prescriber’s assessment is to determine whether the minor meets the TDO criteria specified under the law. Based on the results, the Certified Prescriber will either recommend that the minor be involuntarily hospitalized under a TDO, or not recommend such hospitalization, and, therefore, a TDO is unlikely to be issued.

If a TDO is issued, the results of the assessment are documented in a Preadmission Screening Report (“Prescreening”) that is sent to the hospital for use at the commitment hearing. The Certified Prescriber is also required to ascertain the insurance status of the minor and determine the facility where the minor will be hospitalized. The Certified Prescriber will inform the Petitioner and the “on-site treating physician” if hospitalization under a TDO is not being recommended.

What criteria have to be met for the TDO to be issued?

To issue the TDO, the Magistrate, based on all evidence readily available, must decide that:

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

In addition to the Petition, to which the Prescreening is attached, prior to deciding whether or not to issue the TDO, the Magistrate may consider (i) any recommendation from a physician or clinical psychologist treating the minor, (ii) the recommendations of any treating or examining physician or psychologist licensed in Virginia, (iii) any past actions of the minor, (iv) any past mental health treatment of the minor, (v) any relevant hearsay evidence, (vi) any medical records available, (vii) any affidavits submitted, if the witness is unavailable, and (viii) any other information available that the Magistrate considers relevant, which may include the recommendation of the minor's parents.

How does the minor get safely to the hospital?

After the TDO is issued, a law enforcement officer will usually bring the TDO to where the minor is located, take the minor into custody, and transport the minor to the hospital. During transportation to the hospital, police officers will usually place the minor in handcuffs, for safety reasons.

A Magistrate may authorize in the TDO that the minor be taken to the hospital by an "alternative transportation provider" if the Magistrate determines that the provider is available and willing to provide the transportation and can do so in a safe manner. At the discretion of the Magistrate, alternative transportation can be provided by a parent, family member, or friend of the minor; a representative of the CSB; or a transportation provider with trained personnel who can provide such transportation. If such transportation is authorized, the police officer will

bring the court order to where the minor is located, take the minor into custody, and transfer custody to the alternative transportation provider identified in the TDO.

Where is the minor hospitalized?

Every attempt will be made to have the minor admitted to a local hospital that accepts juveniles. However, this is not always possible. In the event that a bed cannot be located locally, every attempt will be made to find an available bed for the minor as close to where the minor resides as possible.

- If the minor is admitted to a local facility in Fairfax County, the commitment hearing will be held by a Fairfax County Special Justice at that Hospital.
- If there is not an available bed in Fairfax County and the minor is detained to a hospital elsewhere in Virginia, the commitment hearing will be held by a Special Justice or Judge in the jurisdiction where that hospital is located.

The Certified Prescreeener will give the Petitioner the name and address of the hospital where the minor will be admitted where the commitment hearing will be held. In the back of this pamphlet is a list of hospitals where the minor might be admitted. There is also space to record the name and address of the hospital where the minor will be admitted.

When does the commitment hearing occur?

When the minor is **admitted to a local facility**, the commitment hearings are held in a meeting room and are **scheduled to begin at 7 a.m.** Hearings usually take place 36-96 hours after the TDO was issued. **The Certified Prescreeener will give the Petitioner the date and location of the hearing.**

When the Petitioner arrives at the Hospital, he/she will be escorted to the hearing room. Usually, several hearings are scheduled on any given day, and there is no way of knowing in advance which case will be heard first. When many cases have to be heard, there may be a wait of several hours or more. **It is absolutely essential that the Petitioner and any witnesses be present when the case is called. If the Petitioner and/or witnesses are not present to provide first-hand information, the TDO will likely be dismissed and the minor will be released from the hospital.** Rules of Evidence and legal procedures apply to the commitment hearing, which is a court proceeding even though it takes place in a hospital and not in a courthouse.

For minors **admitted to hospitals outside of Fairfax County**, the starting time, date, and location of the commitment hearing will vary depending on the jurisdiction in which the hospital is located and when the TDO was issued. The Certified Prescriber will provide the Petitioner with that information.

Information about the date, location, and starting time of a commitment hearing can also be obtained by contacting the hospital where the minor has been admitted or by contacting Emergency Services at the Merrifield Center (703-573-5679, TTY 711).

In the back of this pamphlet there is a space to record the location, date and time of the hearing.

Who attends the commitment hearing?

Those attending the commitment hearing include: the minor, hospital security, his/her court-appointed Attorney, a court-appointed Guardian Ad Litem, a Special Justice, and a Deputy Sheriff for his security, a Qualified Evaluator, a CSB representative, the Petitioner, an attorney provided by Fairfax County to the Petitioner in any Fairfax-Falls Church CSB case and any witnesses who are attending the hearing to testify.

What is the role of the Special Justice?

The Special Justice like any other judge, conducts the hearing and determines the final outcome of the hearing. The Special Justice is appointed by the Chief Judge of the Circuit Court, must be a licensed attorney in the state of Virginia, and is required to complete specialized training.

What is the role of the Qualified Evaluator?

In Fairfax County, the Qualified Evaluator (QE) is usually a clinical psychologist who is skilled in the diagnosis and treatment of mental illness. Prior the hearing, the QE conducts an evaluation of the minor in order to provide an independent expert clinical opinion about whether the minor, because of a mental illness, (1) presents a serious danger to himself or others to the extent that 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 delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-

control. The QE will also make specific recommendations for the minor's placement, care and treatment and offer an opinion about (i) whether the minor meets the criteria for court-ordered inpatient treatment, (ii) whether the minor is in need of compulsory (court-ordered) treatment and is likely to benefit from that treatment and (iii) whether inpatient treatment is the least restrictive alternative that meets the minor's needs. The QE's written report is submitted to the Special Justice/Court and placed in the minor's record at least 24 hours before the hearing.

What is the role of the Assistant County Attorney?

The Assistant County Attorney represents Fairfax County and the Fairfax-Falls Church CSB. At the hearing, the Assistant County Attorney may obtain testimony from the Petitioner and any witnesses and will seek to have the Special Justice order the disposition sought by the CSB. The Assistant County Attorney may, with the written consent of the Petitioner, represent the Petitioner at the hearing if the wishes of the CSB and Petitioner are the same. The Assistant County Attorney may call the Petitioner prior to the hearing. In any event, the Petitioner is free to retain an attorney to represent him/her or to represent himself/herself at the hearing. For minors whose petition was filed by a CSB other than the Fairfax-Falls Church CSB, the Fairfax County Assistant County Attorney is not involved in those hearings. A Petitioner may choose to hire an attorney, at his/her own expense, to represent him/her at the hearing to elicit admissible testimony, provide legal advice, and to respond to legal issues that may be raised at the hearing.

What is the role of the court-appointed attorney?

The minor's court-appointed attorney, at State expense, represents the minor at the hearing. According to Virginia law this attorney is **obligated to "articulate the wishes of the minor"** and **"fully represent the minor in the proceedings."** This means that if the minor wants to be discharged from the hospital, his/her attorney will challenge the opinion and testimony of those who think the minor should remain in the hospital. Before the hearing, the minor's attorney obtains information by interviewing the minor, the minor's parents, the Petitioner, the Qualified Evaluator, any witnesses and by reviewing diagnostic and treatment records. During the hearing, this attorney's role is to present witnesses on behalf of the minor and to cross-examine opposing witnesses.

What is the role of the Guardian Ad Litem?

The Guardian Ad Litem is an attorney who, at State expense, represents what is in the **best interest** of the minor. Before the hearing, the Guardian Ad Litem obtains information by interviewing the minor and reviewing the Petition, the Prescreening and the Qualified Evaluator's report, and ascertains the views of the minor, the minor's consenting parent(s), the Qualified Evaluator, and the attending psychiatrist. The Guardian Ad Litem recommends to the Special Justice/Court whether or not the minor should remain in the hospital.

What is the role of the CSB Representative?

A clinician from the Fairfax-Falls Church Community Services Board attends each hearing and is available to provide relevant paperwork to the Special Justice, assist the petitioner and family members with information about mental health services, arrange the location of a hospital bed for minors who are committed or agreed to sign into the hospital at the time of the hearing, and to link individuals to Mandatory Outpatient Treatment if so ordered. Petitioners and family members for minors whose petition was filed by a CSB other than the Fairfax-Falls Church CSB are directed to the CSB that serves the minor for information about resources in that community.

What is the role of the Petitioner?

The Petitioner is the person who requests that the minor be involuntarily hospitalized and is an essential part of the TDO process. **A TDO will not be issued without a Petitioner.** Petitioners are often family members or friends but can be other mental health professionals or responsible adult. The primary role of the Petitioner is to present testimony about the facts and circumstances upon which the TDO was requested and/or bring witnesses who can provide such testimony. According to Virginia law, the Petitioner shall be given the opportunity to present evidence and cross examine witnesses at the hearing.

The testimony of the Petitioner or witnesses at the hearing is a practical necessity. If the Petitioner and/or witness are not present to provide first-hand evidence about the minor's behavior – especially those behaviors and threats that have resulted in, or could result in, physical harm – there is the strong possibility that the petition will be dismissed at the hearing due to insufficient evidence. When that happens, the minor is free to leave the hospital.

The Petitioner will be asked to complete and sign a “Petition for Certification for Involuntary Admission for Treatment” State form. On this form the Petitioner is required to provide specific information to support the request for a TDO. The form will be notarized and later filed in Court.

The Petitioner is strongly encouraged to bring other witnesses to the hearing so they can provide supporting testimony. You and your witnesses should be available by phone to the Qualified Evaluator prior to the hearing to provide information about why the TDO was sought. Petitioners are also encouraged to bring to the hearing any relevant physical evidence (for example, photographs, audio recordings, texts, letters, and documents, etc.) **Do not bring any type of weapon as physical evidence. Instead, take a photograph of the weapon so that you can testify that the picture is of the weapon the minor had.**

What testimony should the petitioner provide?

The Virginia Rules of Evidence and Civil Procedure apply to the commitment hearing the same as if it took place in a courthouse, instead of in a hospital. The testimony of the Petitioner should include **first-hand** observations about what the minor has done or said that makes him/her a serious danger to self or others (as demonstrated by recent acts or threats), or that indicates the minor is exhibiting a serious deterioration in his/her ability to care for self in an age-appropriate manner. The testimony should focus on the minor’s recent behavior and any threats that the Petitioner has **personally witnessed/heard**. A definition of “recent” varies depending on the situation; but may encompass relevant facts from the past few days or weeks or longer.

Testimony should be as **direct and precise as possible** and **provide relevant factual details**. The Petitioner’s opinion that the minor is a serious danger to self or others or is experiencing a serious deterioration in ability to care for self will likely not be admissible nor sufficient evidence of the need for involuntary commitment. Rather, testimony should focus on facts and specific examples of the minor’s recent behavior and threats as observed/heard by the Petitioner. This may include recent statements made by the minor **directly to** the Petitioner or statements the Petitioner personally heard the minor make to others. Documents recently written by the minor may be relevant. Remember to include evidence related to the minor’s refusal to seek or cooperate with voluntary psychiatric treatment.

If the Petitioner does not have firsthand evidence, then it is **absolutely essential** that the Petitioner bring witnesses who do have such information. While there are limited exceptions, Virginia law does not allow the Petitioner or witnesses to testify about what someone else told them or about behavior they have not personally seen or heard. Such evidence is rarely admissible because it is not reliable and is considered “hearsay” under the Rules of Evidence.

What happens at the hearing?

At the start of the hearing, the Special Justice makes introductions. The Special Justice will then advise the minor of his or her legal rights, including the right of a minor, who is fourteen years of age or older, to request voluntary admission for inpatient treatment assuming the parents consent. If the minor does not volunteer, the Special Justice will then listen to the testimony of the Petitioner, the witnesses, the Qualified Evaluator, and the report of the Guardian Ad Litem. The minor is not required to testify but may choose to do so. The minor’s attorney may “cross-examine” (ask questions of) each the Petitioner’s and each witness. After all the testimony has been completed the Special Justice will make a decision.

What are the possible hearing outcomes?

The possible outcomes of the hearing process include the following:

- **Voluntary Admission** – At the start of the hearing, the Special Justice will inform the minor, if the minor is fourteen years old or older, of his/her right to be voluntarily admitted for inpatient treatment. Then, if the minor is capable of consenting to the voluntary admission **and** the minor’s parents consent to the voluntary admission, the Special Justice will allow the minor to voluntarily remain in the hospital. When deciding whether or not the minor is capable of consenting to a voluntary admission, the Special Justice may consider evidence regarding the minor’s past compliance or noncompliance with treatment. If the minor is allowed to be voluntarily admitted, the Special Justice will not “commit” the minor to inpatient treatment nor order the minor to participate in Mandatory Outpatient Treatment. According to Virginia law, a voluntary admission of a minor cannot exceed 90 days unless further action is taken.
- **Dismissal of the Petition** – The law has certain requirements regarding the format and service of the TDO and other necessary documents such

as the Petition. If these legal requirements are not met, the Special Justice may dismiss the Petition. The Petition may also be dismissed if the Special Justice decides the evidence does not meet the clear and convincing burden of proof to order an involuntary commitment. If the Petition is dismissed, the minor is free to leave the hospital and will not be ordered to receive any type of psychiatric treatment. Dismissal of the Petition does not prevent the minor from agreeing to stay in the hospital.

- **Commitment to Inpatient Treatment** – When the Special Justice orders a commitment to inpatient treatment, the minor is under a court order to be involuntarily admitted to a hospital and is required to remain in the hospital for a maximum period of 90 days, unless discharged by the hospital sooner. To be committed, the Special Justice must find, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irreparable injury is likely to result, as evidenced by recent acts or threats or (ii) 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; *and*
2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; *and*
3. Inpatient treatment is the least restrictive treatment setting.

According to Virginia law, a minor committed to inpatient treatment shall be discharged from the facility when he/she no longer meets the commitment criteria as determined by appropriate hospital medical staff review. Further involvement of the Court is not required. Within 10 days of the date of the order committing the minor, the minor can appeal the decision to the Circuit Court.

- **Mandatory Outpatient Treatment (MOT)** – The Special Justice may order the minor to participate in a period of outpatient treatment. This is referred to as Mandatory Outpatient Treatment (MOT). The duration of the MOT is determined by the Special Justice but cannot **exceed 90 days**. When MOT is ordered, the minor is released from the hospital. To order MOT, the Special Justice must find, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irreparable injury is

likely to result, as evidenced by recent acts or threats or (ii) 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; *and*

2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; *and*
3. Less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate; *and*
4. The minor, if 14 years of age or older, and his parents (i) have sufficient capacity to understand the stipulations of the minor's treatment, (ii) have expressed an interest in the minor's living in the community and have agreed to abide by the minor's treatment plan, and (iii) are deemed to have the capacity to comply with the treatment plan and understand and adhere to conditions and requirements of the treatment and services; *and*
5. The ordered treatment can be delivered on an outpatient basis by the community services board or a designated provider.

In Fairfax County, a minor who has been ordered into MOT must report to and be seen at Emergency Services in the Merrifield Center (8221 Willow Oaks Corporate Drive, Fairfax, VA 22031) after the hearing to review the court order and start the treatment process.

According to Virginia law, when a minor is ordered to participate in MOT, his/her compliance with treatment must be monitored by the CSB that serves the jurisdiction where the minor resides. Failure of the minor to adhere to the terms of the MOT order could result in a revocation of the MOT. Before the MOT order expires, it may be continued for a period not to exceed 90 days or it may be rescinded.

Within 10 days of the entry of the order placing the minor into MOT, the minor can appeal the decision to the Circuit Court.

Can the minor's parents object to the proposed commitment to inpatient treatment?

According to Virginia law, if the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the commitment to inpatient treatment will be ordered only if the Special Justice

determines (i) that the minor meets the commitment criteria, and (ii) that such treatment is necessary to protect the minor’s life, health, safety or normal development. The Special Justice may also issue a court order directing either or both of the minor’s parents to comply with reasonable conditions relating to the minor’s treatment if it is determined that such an order is in the best interests of the minor.

What happens after the hearing?

What happens after the hearing is determined by two factors: the disposition reached at the hearing and which hospital the minor had been admitted to under the TDO.

A minor who had been admitted to a hospital under the TDO is free to leave the hospital if the Petition was dismissed or if he/she was placed into MOT at the hearing.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated by the Qualified Evaluator. If the community services board does not provide a placement recommendation, the minor shall be placed in a mental health facility designated by the Commissioner of Behavioral Health and Developmental Services.

The minor may be able to remain at the hospital where he/she had been admitted under the TDO or may need to be transferred to another facility. This decision is made based on bed availability, health insurance coverage, and whether or not a particular hospital will accept the minor for admission. Every effort will be made to have the minor hospitalized at a local psychiatric facility for minors in Fairfax County. However, a minor may have to be transferred to another hospital that treats minors in Virginia or to the Commonwealth Center for Children and Adolescents at 1355 Richmond Avenue, Staunton, Virginia 24401 (the closest State hospital that serves minors) if no other hospital bed is available.

Who is responsible for the cost of treatment?

During the detention period, the cost of all treatment provided while the individual is hospitalized under the TDO is the responsibility of the individual. When the individual is covered by private health insurance, Medicare, or Medicaid, the hospital can seek reimbursement from these

insurance carriers. In cases where the individual is not covered by insurance and is demonstrably unable to pay the cost of treatment, the hospital can ask for reimbursement from the Commonwealth of Virginia's indigent patient fund.

After the commitment hearing, the cost of all treatment is the responsibility of the individual, even when he or she is committed or hospitalized as a voluntary admission. When the individual is covered by insurance, he/she is admitted to a facility that accepts his/her insurance and the hospital will seek reimbursement from the insurance carrier. Uninsured minors are usually referred for hospitalization to the Commonwealth Center for Children and Adolescents, a state facility, where the cost of treatment is determined by the individual's income level and ability to pay. If space is not available there, the individual may be admitted to a private facility using a state fund that covers the cost of the hospitalization. Concerns about the cost of treatment and the payment for treatment should be directed to a hospital social worker.

If you have further questions...

Please call CSB Merrifield Crisis Response Center (24 hours a day) or the Mobile Crisis Unit (8 a.m. until midnight) at 703-573-5679, TTY 711.

Admitting Hospital

Name/Address:

Phone:

Commitment Hearing

Location/Address:

Phone:

Day/Date:

Time:

Notes

Notes

Fairfax – Falls Church Community Services Board

Merrifield Crisis Response Center

Emergency Services

8221 Willow Oaks Corporate Drive

Lower Level

Fairfax, Virginia 22031

703-573-5679, TTY 711

www.fairfaxcounty.gov/community-services-board



This publication can be made available in alternative format upon request. Please call 703-573-5679, TTY 711, and allow a reasonable period of time for preparation of the material.