

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION ON**

**The Study of the
Transportation of
Persons with
Mental Illness**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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1992**



COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

IN RESPONSE TO
THIS LETTER TELEPHONE
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F. L. RUSSELL
EXECUTIVE DIRECTOR

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ATTORNEY GENERAL'S OFFICE
H. LANE KNEEDLER

December 10, 1991

TO: The Honorable L. Douglas Wilder, Governor of Virginia
and Members of the General Assembly

In a letter dated April 30, 1991, Speaker A. L. Philpott requested the Virginia State Crime Commission to study the transportation of persons certified for admission to a hospital.

Pursuant to §9-125 of the Code of Virginia, a study was conducted by the Commission during 1991. I have the honor of submitting herewith the study report and recommendations on the transportation of persons with mental illness.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elmon T. Gray".

Elmon T. Gray
Chairman

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From the Senate of Virginia:

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Study of the Transportation of Persons with Mental Illness

TABLE OF CONTENTS

I.	Authority for Study	1
II.	Members Appointed to Serve	1
III.	Executive Summary	2
IV.	Study Design	4
V.	Background	6
	a. Introduction	6
	b. Applicable Law	7
	c. Conclusions	9
VI.	Study Goals/Objectives	10
VII.	Discussion of Survey Results	11
	a. Sheriffs' Survey	11
	b. Community Services Boards' Survey	11
VIII.	Findings and Recommendations	13
IX.	Additional Issues and Responses	18
X.	Acknowledgements	21
	Appendix A - Speaker Philpott's Letter Requesting Study with HJR 427	A-1
	Appendix B - Schedule of Site Visits	B-1
	Appendix C - <u>Code of Virginia</u> §37.1-71	C-1
	Appendix D - <u>Code of Virginia</u> §§37.1-67.1 - 37.1-67.3	D-1
	Appendix E - Sheriffs' Survey	E-1
	Appendix F - Community Services Boards' Survey	F-1
	Appendix G - Proposed Legislation	G-1

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Study of the Transportation of Persons with Mental Illness

I. Authority for Study

During the 1991 legislative session, Delegate Clifton A. Woodrum patroned House Joint Resolution 427 directing the Virginia State Crime Commission to "study the transportation of persons certified for admission to a hospital." This bill was withdrawn and, in a letter dated April 30, 1991, Speaker A. L. Philpott formally requested that the Commission place the issue of transportation of mentally ill persons on its 1991 agenda for study. (See Appendix A.)

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission "to study, report, and make recommendations on all areas of public safety and protection." Section 9-127 of the Code of Virginia provides that "the Commission shall have the duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in Section 9-125, and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study of transportation of mentally ill persons.

II. Members Appointed to Serve

At the April 16, 1991 meeting of the Crime Commission, Chairman Senator Elmon T. Gray of Sussex selected Delegate V. Thomas Forehand, Jr. to serve as Chairman of the Corrections Issues Subcommittee studying the transportation of mentally ill persons. The following members of the Crime Commission were selected to serve on the subcommittee:

Delegate V. Thomas Forehand, Jr., Chesapeake
Senator Howard P. Anderson, Halifax
Delegate Robert B. Ball, Sr., Henrico
Senator Elmo G. Cross, Jr., Hanover
Mr. Robert F. Horan, Jr., Fairfax
Rev. George F. Ricketts, Sr., Richmond
Delegate Clifton A. Woodrum, Roanoke

III. Executive Summary

During the 1991 legislative session, Delegate Clifton A. Woodrum patroned House Joint Resolution 427 directing the Virginia State Crime Commission to "study the transportation of persons certified for admission to a hospital." This bill was subsequently withdrawn, and Speaker A. L. Philpott formally requested that the Commission study the transportation of persons with mental illness.

During the course of the study, the subcommittee held a series of six site visits across the Commonwealth, providing a forum for sheriffs and deputies, mental health system representatives and judicial officials to voice their concerns and discuss their recommendations for improvement. These meetings were further intended to help enhance local working relationships among meeting participants through more effective communication and a heightened understanding of each other's duties and responsibilities.

Additionally, the subcommittee conducted surveys of all Virginia sheriffs and Community Services Board (CSB) executive directors. The data collected from the surveys and the information gathered at the site visits as to the nature and extent of problems with mental health transports was carefully documented and clearly reflected in the subcommittee's findings and final recommendations.

The recommendations of the Corrections Issues Subcommittee pertaining to the transportation of persons with mental illness are as follows:

Legislative Recommendations:

- Amend and reenact §15.1-138 of the Code to specifically provide authorization for police officers to execute and serve emergency custody orders (ECO's).
- Amend and reenact §37.1-67.1 of the Code of Virginia to require a **face-to-face** evaluation by a designated public or private sector mental health evaluator of all persons to be detained before a temporary detention order (TDO) can be issued.
- Amend and reenact §37.1-67.1 of the Code to provide statewide jurisdiction for law enforcement officers serving ECO's and TDO's.
- Amend and reenact §37.1-71 to delete "on the same day." This change would assure that a sheriff, who, for example, is given a transportation order at 11:00 p. m. would not be in violation of the Code for not delivering the person "on the same day," but that the order for transport would still be executed immediately.

Budget Recommendations:

- Support the request of the Virginia Compensation Board to the Governor that the formula for determining the number of law enforcement sheriffs' deputies be based on a ratio of 1 deputy per 1,800 population in FY93 and 1 deputy per 1,600 population in FY94.
- Support the request of the Virginia Compensation Board to the Governor for restoration of sheriffs' overtime in the amount of \$867,000.
- Support the request of the Virginia State Sheriffs Association to the Virginia Compensation Board and the Joint Subcommittee Studying the Staffing and Funding of Constitutional Officers that staffing standards for local jails be implemented based on a ratio of 1 deputy per 3 inmates in jails built after July 1, 1990, and 1 deputy per 5 inmates over the operational capacity in order to address overcrowding. At present, staffing standards for local jails built prior to July 1, 1990 should be based upon a staffing analysis conducted by the Department of Corrections. (Note: Delegate Robert B. Ball, Sr. abstained from voting on this recommendation.)

Administrative Recommendations:

- Encourage meetings among local CSB workers, sheriffs' deputies, police officers where applicable, magistrates, special justices and any others involved in the ECO, TDO and civil commitment processes in order to develop appropriate solutions to local problems.
- The Supreme Court of Virginia, with assistance from the Virginia State Crime Commission staff, should pursue grant funding in order to provide comprehensive training on the ECO, TDO and civil commitment processes to all special justices in the Commonwealth.
- The Department of Mental Health, Mental Retardation and Substance Abuse Services, with assistance from the Virginia Association of Community Services Boards, should review other states' initiatives in the area of outpatient commitment programs, develop guidelines for a model outpatient commitment program for consideration in Virginia and determine the resources necessary to implement such a program. The DMHMRSAS and the CSB's should report their findings and recommendations to the Virginia State Crime Commission.
- The Supreme Court of Virginia should redesign the TDO and ECO forms to include, on an "if known" and/or alleged basis, the same basic information about the person's physical appearance that is presently provided on criminal warrants (i. e., hair and eye colors, race, age, weight, etc.). In addition, space should be

provided for additional comments in order to offer the magistrate or special justice completing the form an opportunity to include other relevant information, such as whether the person is known to be armed with a weapon, under the influence of drugs or alcohol or prone to violence. Finally, the TDO and ECO forms should also be modified so that they are more easily distinguished from each other (i. e., different colored forms).

- The Crime Commission staff, with assistance from the Virginia State Sheriffs Association and the Department of Mental Health, Mental Retardation and Substance Abuse Services, should carefully examine the legal issues surrounding reciprocal agreements with the states of Maryland, North Carolina and Tennessee that would allow detained persons to be transported to hospitals in these neighboring states. (Note: The subcommittee as well as the full Crime Commission did not vote to formally approve this recommendation; however, the subcommittee Chairman directed the staff to further explore the concept of reciprocal agreements.)
- The Crime Commission staff, with assistance from the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Virginia Association of Community Services Boards and the Virginia State Sheriffs Association, should develop a procedures manual which clearly and comprehensively addresses the issuance and execution of ECO's and TDO's and emphasizes related transportation requirements. The manual should be printed and distributed to all Virginia sheriffs and applicable police chiefs, chief magistrates and community services boards' executive directors and should be made available upon request to any other interested parties.

IV. Study Design

This study provided an opportunity for a statewide examination of the problems experienced by the courts, sheriffs and mental health workers due to mental health transportation duties. The study attempted to garner maximum input from sheriffs and public sector mental health practitioners across the Commonwealth in order to develop recommendations acceptable to both professions.

Additionally, this study explored ways to streamline the civil commitment transportation process in order to minimize the fiscal impact on sheriffs' offices. Consequently, the study required the collaboration of sheriffs, magistrates, special justices, the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, mental institutions and hospitals and the Community Services Boards (CSB's) which evaluate mentally ill persons for commitment purposes.

At site visits and work group meetings, sheriffs and mental health practitioners met to voice their concerns and recommendations. The site visits were primarily designed to involve meetings with the sheriff and/or his deputies to discuss the problems surrounding mental health transport duties and also to include meetings with CSB representatives to discuss these issues from their perspective. Another important objective of these meetings was to help to improve the working relationship between sheriffs and mental health practitioners through better understanding of each other's duties and responsibilities and through improved communications.

Delegate Forehand, subcommittee chairman, and Commission staff held a preliminary meeting with Tidewater-area sheriffs to identify problems associated with the present system of transporting mentally ill persons and to receive their recommendations. The staff met separately with Tidewater-area CSB executive directors to discuss the problems cited by sheriffs and to examine possible solutions. At that time, Commission staff concluded that the remaining site visits should be held jointly, involving representatives from sheriffs' offices as well as CSB's, as a more effective means to foster improved communications and working relationships.

Based on testimony heard at the initial Chesapeake meetings and at the Greensville and Roanoke site visits concerning the significant role of magistrates in the commitment processes, staff deemed it necessary to involve magistrates at this stage of the study. Consequently, staff discussed the work of the study with a representative from the Supreme Court of Virginia and invited that representative in addition to several local chief magistrates to participate in the Front Royal, Richmond and Chesapeake site visits.

The information gathered at the site visits as to the nature and extent of problems with mental health transports has been carefully documented and incorporated into the findings and recommendations and additional issues presented in this report. (See Appendix B for site visit schedule and participants.) During the course of this study, project staff has made site visits to the following locations:

May 29, 1991 - Newport News (mental health only)
May 30, 1991 - Chesapeake (sheriffs only)
June 11, 1991 - Greensville
June 25, 1991 - Roanoke
July 18, 1991 - Front Royal
August 7, 1991 - Richmond
October 3, 1991 - Chesapeake (mental health and sheriffs)

The subcommittee conducted a survey of all Virginia sheriffs and a similar survey of all CSB executive directors. Results of the sheriffs survey were tabulated and presented to the subcommittee at its June 13, 1991 meeting. Results of the CSB survey were presented at the subcommittee's August 29, 1991 meeting. Meetings of, and reports to, the subcommittee took place as follows:

Initial Report/Meeting	June 13, 1991
Interim Report/Meeting	August 29, 1991
Final Report/Meeting	October 22, 1991

- The subcommittee presented its final findings and recommendations, and the full Commission approved the subcommittee report in its entirety on December 10, 1991.

Additionally, an interagency work group was established and met on several occasions first to develop the CSB survey and then to examine the issues raised and problems discussed at the site visits and to evaluate the feasibility and impact of proposed recommendations. Participants include Commission staff, a designated staff person from the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), the executive directors of the Virginia State Sheriffs Association and the Virginia Association of Community Services Boards (VACSB) and several representatives from urban, suburban and rural CSB's.

V. Background

Introduction

During the 1991 General Assembly session, Delegate Clifton A. Woodrum of Roanoke requested the Virginia State Crime Commission to study the problems created for sheriffs who are required to transport mentally ill persons for evaluation and civil commitment. Sheriffs throughout the Commonwealth assert that there is insufficient manpower, long distances between facilities, delays at area hospitals, competing and conflicting duties of sheriffs and the associated security concerns related to transporting mentally ill persons who may be considered dangerous to themselves or others. Consequently, the Virginia State Sheriffs Association also expressed concern about these problems and requested the study. Additionally, the Commission received a federal grant in the amount of \$9,997 from the National Institute of Corrections to fund this endeavor.

Sheriffs are responsible by statute in Virginia for the transportation of persons with mental illness being held pending involuntary and voluntary commitment as well as all persons held in local jails. Code of Virginia §§37.1-71 et. seq. requires that persons certified for admission to a state hospital by the court must be "delivered to the care of the sheriff . . . who shall forthwith on the same day deliver such person

to the proper hospital." (See Appendix C.) The sheriff of the jurisdiction where the person resides is responsible for transporting the person, unless the sheriff's office is located more than 100 miles from the jurisdiction in which the proceedings took place. In the latter case, it is the responsibility of the sheriff of the jurisdiction in which the proceedings took place to transport the person. Additionally, a sheriff is prohibited by law from confining mentally ill persons awaiting transfer to a hospital or institution in cells with criminals.

According to a telephone survey conducted by Commission staff, local police departments in at least 15 jurisdictions statewide are currently assisting sheriffs' offices with these transportation duties pursuant to local agreements. Additionally, in at least one jurisdiction, all mental health transports are provided by the local police department.

In Virginia, mental health, mental retardation and substance abuse services are provided through a network of community services boards (CSB) and state-operated facilities, hospitals and training centers. By statute, CSB's are the local governmental agencies which are responsible for delivering such services to their respective jurisdictions. CSB's were established to provide services in the most accessible, therapeutic and least restrictive settings, utilizing all available community resources and the clients' natural support systems (i.e., family, friends, work, etc.) CSB's function as services providers, client advocates, community educators, program developers and planners, advisors to their local governments and as the focal point for fiscal and programmatic accountability. CSB's offer varying combinations of services including emergency (mandatory), local inpatient, outpatient, day support, residential, and prevention and early intervention services. Virginia's 40 CSB's provide services in every city and county in the Commonwealth. Private sector mental health providers also play an important role in the delivery of these services. In fact, according to testimony from representatives of the mental health system, a significant number of petitions and commitments which require transportation by law enforcement officers are initiated each year by the private sector.

Applicable Law

In Virginia, the involuntary civil commitment process reflects an emphasis on judicial decision-making tempered with medical/clinical expertise. The statutes are designed to support a variety of outcomes, including prompt intervention with persons in crisis, protection of due process rights, and disposition of cases through the most appropriate and least restrictive treatment alternative. The statutes depend heavily on the development of local operational practices. Implementation of Virginia's involuntary civil commitment statutes requires, at a minimum, the involvement and cooperation of mental health professionals (both public and private sector), judicial officers, law enforcement officers and state and private

psychiatric hospitals in order to meet the clinical needs of persons in crisis and the legal and logistical requirements of the involuntary civil commitment process.

Section 37.1-67.1 of the Code of Virginia describes the emergency custody and temporary detention provisions of the involuntary civil commitment process as it applies to both adults and minors. (See Appendix D.) The emergency custody procedure was enacted in 1990 to enable face-to-face evaluation of persons experiencing psychiatric emergencies prior to the issuance of a temporary detention order requiring hospitalization. The emergency custody procedure may be initiated by any person (such as a family member, a mental health professional, or other concerned individual) through a judicial order or by a law enforcement officer without an order if there is probable cause. The evaluation of the person taken into custody in this manner must take place in a convenient and appropriate location and must occur immediately. The statute specifies that the evaluator be a person who is skilled in the diagnosis and treatment of mental illness and who is designated by the community services board. The period of emergency custody may not exceed four hours. The statute also requires CSB's to provide a list of evaluators and locations at which evaluations may take place to each general district court within its catchment area. The emergency custody procedure is intended to allow the individual in crisis to be evaluated promptly and safely in virtually any location that is mutually agreeable to mental health professionals and law enforcement officers (except in jails). This procedure was enacted to reduce the use of criminal arrest as a method of taking custody of a person for evaluation and is also intended to reduce or eliminate inappropriate or unnecessary use of temporary detention, which is a more expensive, restrictive and disruptive intervention. (In many rural areas, for example, temporary detention would require that law enforcement officers transport the person to a hospital outside of the CSB catchment area.) The emergency custody procedure offers maximum flexibility to local officials to develop efficient and mutually satisfactory local operating procedures for disposition of emergencies involving persons who may be mentally ill and in need of care. A person may be released from emergency custody or referred to voluntary treatment options. The person may also be detained under a temporary detention order, although an emergency custody evaluation is not a prerequisite for temporary detention.

Temporary detention is used when an individual has been deemed by a judge or magistrate to be mentally ill and in need of hospitalization, and the person will not accept voluntary treatment. The judge or magistrate may then issue a temporary detention order, which requires the individual to be taken by a law enforcement officer to any "willing" psychiatric hospital for a period of time not to exceed 48, 72, or 96 hours, depending upon the circumstances. During this period of time, the hearings described in §§37.1-67.2 and 37.1-67.3 must occur.

A law enforcement officer may at any time obtain emergency medical treatment for a person in his custody and may be directed to obtain medical treatment for the person in his custody prior to placement in a temporary detention facility. CSB's are required to use only specific DMHMRSAS facilities (their primary or back-up hospitals) for hospitalization, but there are otherwise no standards regarding which law enforcement agencies (police or sheriff) should execute ECO's and TDO's; which private hospitals should be used for TDO's; nor what distance local law enforcement officers should have to travel to transport an individual for evaluation under an ECO or hospitalization under a TDO.

Section 37.1-67.2 of the Code describes the "preliminary hearing" which takes place during the period of temporary detention and which is the prerequisite to an involuntary commitment hearing. (See Appendix D.) In a preliminary hearing, the individual is afforded the opportunity for voluntary admission in lieu of involuntary commitment. Persons accepting voluntary admission at the preliminary hearing must remain in the inpatient hospital to which they are admitted for a minimum period of treatment (up to 72 hours) and must give 48 hours notice prior to leaving the hospital. Such voluntary patients are transported by sheriffs to the appropriate hospital (if different from the detention facility) as set forth in §37.1-71.

Section 37.1-67.3 describes the commitment hearing through which an individual may be ordered by a judge to undergo either involuntary inpatient hospitalization or outpatient treatment for up to 180 days. (See Appendix D.) To be hospitalized under this statute, a person must be found (1) to present an imminent danger to himself or others as a result of mental illness or (2) to be so seriously mentally ill as to be substantially unable to care for himself. The court must also find that there is no less restrictive alternative which is suitable for the person's care. At the commitment hearing, the court hears evidence related to the person's psychiatric condition from a court-appointed examiner. In addition, the court is required to request a pre-admission screening report and a placement recommendation from the CSB, although the judge may dispose of the case without this information. Transportation of individuals hospitalized under this statute is provided by sheriffs, as described in §37.1-71.

Conclusions

Virginia civil commitment statutes allow a high degree of flexibility for CBS's, judicial officials and law enforcement officers to develop the most efficient and responsive operating procedures for their localities. Consequently, local operations differ widely from jurisdiction to jurisdiction. However, optimal efficiency and responsiveness can only occur through joint planning and ongoing problem-solving. These objectives are most readily achieved through effective local working relationships and participation in specialized training for all professionals involved in the civil commitment processes.

VI. Study Goals/Objectives

Based upon the requirements of HJR 427, the following issues and objectives were approved by the subcommittee for consideration:

- Review procedures for transporting persons certified for admission to a hospital;
- Determine the practice in such instances;
- Identify any obstacles and problems with the procedure and practice; and
- Evaluate the need for amending the statutes to allow the sheriffs' offices 24 hours to transport mentally ill persons certified for admission to state hospitals.

The Commission shall pursue the following activities in furtherance of the above-mentioned objectives:

- Review and analyze the laws regulating the transportation of mentally ill persons involved in civil commitment proceedings, and determine what changes in the law, if any, are needed;
- Research, survey, analyze and document the problems related to transportation of mentally ill persons experienced by sheriffs and their deputies, the CSB's, special magistrates, courts, hospitals and mental institutions, and make recommendations for improvement based on the research results;
- Review the laws and procedures in place in other states related to the civil commitment process and transportation of mentally ill persons by sheriffs, and determine which, if any, provide a model for changing the present laws and procedures in Virginia;
- Develop legislative, budgetary and administrative recommendations, which could include a proposal for training sheriffs' deputies to alleviate the problems as revealed by the survey process, and pursue consensus among the affected agencies and officials;
- Produce a manual explaining the civil commitment process related to transportation of mental health clients, and distribute it to Virginia's sheriffs, mental health practitioners and CSB's, and to court service units as needed.

VII. Discussion of Survey Results

Sheriffs' Surveys

Commission staff conducted an on-site survey of sheriffs at their annual Spring Conference. The Virginia State Sheriffs Association subsequently distributed surveys to sheriffs not in attendance. Of the 125 sheriffs surveyed, 102 (82 percent) responded. The Virginia House of Delegates Office of Computer Operations tabulated the data from the surveys. (See Appendix E.)

Results indicate that responding sheriffs' offices handle an average of 13 transports each month for the purpose of mental health evaluation and/or civil commitment. The average amount of time spent per transport is 4.31 hours, and the average round trip distance traveled is 126 miles. Most sheriffs' offices assign two deputies per transport. This is especially problematic for sheriffs with small offices who must draw from very limited manpower and resources to perform these transports. Fifty percent of the respondents indicated that most manhours are spent transporting the subject, while 44 percent said most manhours are spent waiting for the subject's mental health evaluation to be completed. In addition, 77 percent of the respondents indicated that transports most frequently occur during the evening hours. Forty-seven percent of the respondents perceived problems with the present temporary detention order (TDO) process. Of those responding, 44 percent felt that the present mileage radius for transports (100 miles) as provided in the Code is not appropriate, with 20 percent indicating that the most appropriate distance would be within their jurisdictions only and 17 percent indicating that a radius of less than 100 miles would be most appropriate. Sixty-eight percent of the respondents indicated that they do not have a joint written agreement with their CSB's concerning transports.

Based on the results of this survey, the Compensation Board prepared a budget addendum requesting restoration of sheriffs' offices funding for overtime at \$867,000 each year. Prior to and during FY91, funds which accrued as a result of turnover and vacancies in positions were used to fund overtime. These funds were discontinued and overtime was not approved pursuant to the budget reduction plans in FY92.

Community Services Boards' Surveys

An interagency work group comprised of Commission staff and DMHMRSAS, CSB and Sheriffs Association representatives, with the assistance of the VACSB Management Information Systems committee, developed a survey instrument which was distributed by the VACSB to the executive directors of Virginia's 40 CSB's. Of the 40 CSB's surveyed, 39 (98 percent) responded. The

Virginia House of Delegates Office of Computer Operations tabulated the data from the surveys. (See Appendix F.)

According to the survey results, for the month of May, 1991, a collective total of approximately 19,290 emergency contacts were made at CSB's statewide. Of this number of contacts, approximately 1,393 (7 percent) required transportation by a law enforcement officer for emergency custody orders (ECO's), temporary detention orders (TDO's), and/or civil commitments. Of the number requiring transportation by law enforcement officers, 1,188 or 85 percent (189 ECO's; 716 TDO's; and 283 other commitments) were the result of face-to-face contacts with CSB staff. Additionally, respondents estimated the average total amount of time spent by CSB staff on each case involving evaluation and commitment at 3.42 hours.

For the month of May, 1991, 38 percent of the respondents indicated that most transports for ECO's were required during the afternoon (noon - 7:00 p.m.). Fifty-five percent indicated that most transports for TDO's were required during the afternoon. Thirty-eight percent indicated that most transports for commitments were required during the afternoon. It should be noted that the CSB survey indicated that most transports were required during the afternoon, whereas the sheriffs' survey indicated that transports most frequently occur during the evening hours.

Ninety-two percent of the respondents replied that there are designated sites their CSB's use for ECO's in their catchment areas. Ninety-two percent replied that there are designated sites their CSB's use for TDO's in their catchment areas. Eighty-two percent replied that there are designated sites their CSB's use for commitments in their catchment areas. It is important to note that the aforementioned sites are available for evaluation and pre-screening only and do not represent holding facilities for ECO's, TDO's or civil commitments.

Sixty-eight percent of those responding to the survey indicated that the waiting time involved in the evaluation and commitment processes experienced by sheriffs is necessary for the security of persons involved. Thirteen percent indicated that the waiting time is necessary for other legitimate reasons, such as obtaining information, collecting the proper papers and securing a bed space. This data substantiates that the role of law enforcement is essential in the area of security. In addition, 58 percent indicated that they encounter emergency service transportation problems related to the jurisdictional boundaries of the law enforcement agencies within their CSB areas.

Sixty-six percent of respondents have a procedure/manual that addresses transportation procedures for ECO's, TDO's, and civil commitments. Of those with a procedure/manual, 72 percent indicated that work on this product included collaboration with law enforcement officers. Finally, 53 percent of respondents

indicated that, if a person were required to be held for up to 24 hours after a commitment hearing before transportation, there would not be a suitable place in their catchment area where he/she could stay.

VIII. Findings and Recommendations

Finding I

On average, sheriffs' offices statewide collectively handle a total of 1,625 mental health transports each month. However, sheriffs' transportation duties are not currently addressed in their funding from the Virginia Compensation Board. In addition, the budget reductions experienced by sheriffs' offices last year have further impacted their ability to perform mental health transports. Furthermore, sheriffs in areas with a high volume of mental health transports and in areas with only one mental health evaluation site serving numerous jurisdictions have indicated a unique transport problem which may justify enhanced staffing patterns.

Recommendation 1: Support the request of the Virginia Compensation Board to the Governor that the formula for determining the number of law enforcement sheriffs' deputies be based on a ratio of 1 deputy per 1,800 population in FY93 and 1 deputy per 1,600 population in FY94.

Recommendation 2: Support the request of the Virginia Compensation Board to the Governor for restoration of sheriffs' overtime in the amount of \$867,000.

Recommendation 3: Support the request of the Virginia State Sheriffs Association to the Virginia Compensation Board and the Joint Subcommittee Studying the Staffing and Funding of Constitutional Officers that staffing standards for local jails be implemented based on a ratio of 1 deputy per 3 inmates in jails built after July 1, 1990, and 1 deputy per 5 inmates over the operational capacity in order to address overcrowding. At present, staffing standards for local jails built prior to July 1, 1990 should be based upon a staffing analysis conducted by the Department of Corrections. (Note: Delegate Robert B. Ball, Sr. abstained from voting on this recommendation.)

Finding II

Problems with mental health transports often occur on a regional basis, differing significantly among urban, suburban and rural areas of the state. These difficulties are frequently characterized by a lack of training and communication among the key players involved in the emergency custody order (ECO), temporary detention order (TDO) and civil commitment processes.

The Department of Criminal Justice Services has proposed that the Basic Law Enforcement Model Lesson Plan be amended to include instruction on the ECO and TDO processes. Pending approval of the plan, this training will be provided as part of the core curriculum which must be successfully completed by all state and local police officers and law enforcement deputy sheriffs.

In several localities, special justices have been appointed by the Circuit Court and are responsible for issuing TDO's and conducting preliminary and commitment hearings. At present, there is no requirement that these special justices receive any training in this area. However, in the past, the Institute on Law, Psychiatry and Public Policy at the University of Virginia has conducted training in this area, on a contract basis, for all Virginia special justices. According to participants, the training was both well-attended and highly beneficial.

Recommendation 4: Encourage meetings among local CSB workers, sheriffs' deputies, police officers where applicable, magistrates, special justices and any others involved in the ECO, TDO and civil commitment processes in order to develop appropriate solutions to local problems.

Recommendation 5: The Supreme Court of Virginia, with assistance from the Virginia State Crime Commission staff, should pursue grant funding in order to provide comprehensive training on the ECO, TDO and civil commitment processes to all special justices in the Commonwealth.

Finding III

Sheriffs often receive requests to transport the same persons repeatedly. These persons are committed and released numerous times each year, placing a significant burden on sheriffs' offices to provide transportation and an even greater hardship on all elements of the mental health system to provide treatment.

According to mental health system representatives, persons with chronic mental illness may require several hospitalizations in one year for treatment and stabilization. For persons with chronic mental illness, rehospitalizations do not necessarily indicate that community treatment has failed. Rather, short-term inpatient care may be an essential component of community treatment for some persons with severe and persistent conditions. For such persons, the ability to function for any length of time in the community is an indication of successful treatment.

The DMHMRSAS and the CSB's are implementing alternatives to inpatient commitment. The sections of the Code dealing with civil commitment currently provide for outpatient commitment. This alternative may be used to decrease the number of individuals who are committed to a hospital multiple times during a

year. Whereas outpatient commitment is permitted, there have been no additional resources allocated to the CSB's to expand the necessary service alternatives. Other states, including North Carolina, have recently expended the resources necessary to fund successful involuntary outpatient commitment programs.

Recommendation 6: The Department of Mental Health, Mental Retardation and Substance Abuse Services, with assistance from the Virginia Association of Community Services Boards, should review other states' initiatives in the area of outpatient commitment programs, develop guidelines for a model outpatient commitment program for consideration in Virginia and determine the resources necessary to implement such a program. The DMHMRSAS and the CSB's should report their findings and recommendations to the Virginia State Crime Commission.

Finding IV

The present TDO and ECO forms do not provide any information as to the physical description of persons to be transported. In addition, these forms do not currently provide space for additional comments. Consequently, sheriffs have testified that, when officers arrive on the scene to perform these transports, they are not equipped with adequate information describing the individual's physical appearance or any other details that might further prepare officers for the situation they are about to enter. Furthermore, the TDO and ECO forms are very similar in appearance and may be confusing to officers executing the orders.

Recommendation 7: The Supreme Court of Virginia should redesign the TDO and ECO forms to include, on an "if known" and/or alleged basis, the same basic information about the person's physical appearance that is presently provided on criminal warrants (i. e., hair and eye colors, race, age, weight, etc.). In addition, space should be provided for additional comments in order to offer the magistrate or special justice completing the form an opportunity to include other relevant information such as whether the person is known to be armed with a weapon, under the influence of drugs or alcohol or prone to violence. Finally, the TDO and ECO forms should also be modified so that they are more easily distinguished from each other (i. e., different colored forms).

Finding V

Sheriffs in jurisdictions which closely border other states (i. e., the counties of Accomack, Northampton and Greensville and the city of Bristol) must travel long distances to transport persons for ECO's, TDO's and civil commitments to hospitals in Virginia when there are hospitals in other states (i. e., Maryland, North Carolina and Tennessee, respectively) which are located in much closer proximity to their offices. According to the affected sheriffs, the travel time required to perform

mental health transports would be significantly decreased if they were permitted to take persons to hospitals in adjacent states.

Recommendation 8: The Crime Commission staff, with assistance from the Virginia State Sheriffs Association and the Department of Mental Health, Mental Retardation and Substance Abuse Services, should carefully examine the legal issues surrounding reciprocal agreements with the states of Maryland, North Carolina and Tennessee that would allow detained persons to be transported to hospitals in these neighboring states. (Note: The subcommittee did not formally vote on this recommendation; however, the Chairman directed the staff to further explore the concept of reciprocal agreements.)

Finding VI

Although several localities have developed their own procedures manuals pertaining to ECO's and TDO's, there is no statewide manual available at this time for reference by the involved parties. Study participants have indicated that such a manual would be an invaluable resource in this area. Furthermore, the production of this manual is a condition under the National Institute of Corrections grant which funded this study.

Recommendation 9: The Crime Commission staff, with assistance from the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Virginia Association of Community Services Boards and the Virginia State Sheriffs Association, should develop a procedures manual which clearly and comprehensively addresses the issuance and execution of ECO's and TDO's and emphasizes related transportation requirements. The manual should be printed and distributed to all Virginia sheriffs and applicable police chiefs, chief magistrates and community services boards' executive directors and should be made available upon request to any other interested parties.

Finding VII

Local emergency mental health systems are highly dependent on effective collaboration between mental health providers, judicial officials, and law enforcement officers (deputy sheriffs and police officers). The responsiveness and efficiency of these emergency mental health systems are enhanced when the specific roles and responsibilities of these local agencies are clear. At present, there is undue confusion among police officers about the limits of their authority in this area, resulting in unnecessary delays and complications in responding to mental health emergencies.

Recommendation 10: Amend and reenact §15.1-138 of the Code to specifically provide authorization for police officers to execute and serve emergency custody orders. (See Appendix G-2.)

Finding VIII

At present, in 85% of the public sector cases which require transportation by law enforcement officers, persons who need emergency mental health treatment are seen and evaluated face-to-face by a mental health professional who makes a recommendation to the judicial officer. However, in some instances (i. e., in 205 cases statewide for the month of May 1991), in both urban and rural areas of the state, TDO's are being issued over the telephone without the person to be committed having been evaluated face-to-face by a mental health practitioner. This practice may promote unnecessary and/or inappropriate commitments, thereby increasing the number of transports required by sheriffs and jeopardizing the individual's constitutional right to due process. Sheriffs assert that, if the Code were to mandate a face-to-face evaluation prior to the issuance of a TDO, the number of TDO's issued would decrease significantly because unnecessary and inappropriate petitions for commitment would be considerably reduced if not altogether eliminated.

The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Community Services Boards (CSB's) support the need to conduct a face-to-face evaluation prior to the issuance of a temporary detention order; however, they do not favor a statutory mandate. The DMHMRSAS and the CSB's maintain that this requirement would be an additional mandate imposed upon localities and the mental health system without adequate resources for implementation. In addition, they assert that there are some very legitimate instances when face-to-face evaluation is either not possible or not necessary (i. e., an individual who has an extensive history with the CSB). Furthermore, the DMHMRSAS and the CSB's hold that such a mandate would result in an increased burden and expense on both sheriffs and mental health practitioners because it would require that sheriffs always take the person into custody and bring him to a convenient location where he can be evaluated prior to the issuance of a TDO.

Recommendation 11: Amend and reenact §37.1-67.1 of the Code of Virginia to require a **face-to-face** evaluation by a designated public or private sector mental health evaluator of all persons to be detained before a temporary detention order can be issued. (See Appendix G-4.)

Finding IX

The Code does not currently provide statewide jurisdiction for law enforcement officers serving mental petitions. Consequently, when officers from areas with one CSB serving multiple jurisdictions transport a person under an ECO to an evaluation site outside of their jurisdiction and a TDO is subsequently issued, the officers do not have the authority to serve the TDO because they are no longer

within their jurisdiction. In such cases, the officers already on the scene would be forced to violate the Code in order to serve the TDO outside of their jurisdiction.

Recommendation 12: Amend and reenact §37.1-67.1 of the Code to provide statewide jurisdiction for law enforcement officers serving ECO's and TDO's. (See Appendix G-4.)

Finding X

Section 37.1-71 of the Code of Virginia currently requires that, once a person has been certified for admission to a hospital and has been delivered to the care of the sheriff, the sheriff shall "forthwith on the same day deliver such person to the proper hospital." (See Appendix C.) According to sheriffs, requests for transports frequently occur during the late evening hours, and it is sometimes logistically impossible to deliver the person "on the same day." However, persons with mental illness and their family members need access to treatment immediately when they are in crisis situations. In addition, the Code specifies that persons with mental illness shall not be held in local jails. The proposed change would not permit a sheriff's office to request that a CSB "hold" a person in need of treatment. According to the CSB survey results, the majority of CSB's do not have a suitable "holding" facility in their catchment areas.

Recommendation 13: Amend and reenact §37.1-71 to delete "on the same day." This change would assure that a sheriff, who, for example, is given a transportation order at 11:00 p. m. would not be in violation of the Code for not delivering the person "on the same day," but that the order for transport would still be executed immediately. (See Appendix G-12.)

IX. Additional Issues and Responses

The following additional issues were identified through the surveys and site visits and were responded to in writing by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS):

Issue I

State hospitals have sometimes been unwilling to accept persons certified for admission.

Response: DMHMRSAS psychiatric facilities accept all patients referred through the involuntary civil detention or commitment process. State psychiatric facilities, however, are also authorized under § 37.1-70 of the Code to deny admission to persons who are deemed to be inappropriate for treatment in a psychiatric facility and may return these persons to their communities. State facilities may also refer

an individual who is in need of immediate medical treatment directly to a medical facility. Study data do not support a conclusion that admissions are denied without good cause.

Issue II

A medical screening may be required prior to admission in hospitals without medical facilities, and sheriff's deputies may have to wait for this to be completed.

Response: State psychiatric hospitals are not full-service medical care facilities. While some medical conditions can be managed effectively at Department facilities, many others present life-threatening problems if not treated in a medical setting. These include lacerations, internal bleeding, head injury, high fever or other unstable vital signs, acute toxicity, poisoning or drug overdose, chest pain, respiratory distress, severe intoxication, impending miscarriage or delivery, etc. Section 37.1-67.1 of the Code authorizes emergency medical evaluation and treatment of persons while in a law enforcement officer's custody, and state psychiatric hospitals have used this authorization to pursue medical screening prior to admission. The DMHMRSAS also recognizes, however, that there are inconsistencies in state hospital medical screening requirements and has organized a committee of the medical directors of state facilities to develop statewide policy in this area.

Issue III

Sheriffs do not feel that they should be responsible for transporting the elderly, persons with primarily medical problems or others who obviously pose no threat to themselves or to the safety of the public.

Response: It is not clear to the DMHMRSAS on what basis it has been determined that elderly persons, individuals with medical problems, or other mentally ill persons who are transported by sheriffs "obviously pose no threat to themselves or to the safety of the public." By definition, these individuals have exhibited behavior which is judged to put them at risk.

Issue IV

For a variety of reasons, persons to be committed are not always referred/committed to the nearest available mental health facility, private or public. Sheriffs' offices must assume the considerable mileage and manhours required to perform these transports.

Response: The DMHMRSAS operates nine psychiatric facilities. Most of these facilities are specialized treatment programs (e. g., geriatric, child/adolescent, acute

care, etc.) which are not appropriate for all patients. All CSB's, however, have prescribed DMHMRSAS facilities to which they must refer their patients. Facility assignments are generally prescribed to minimize the distance from the CSB to the treatment facility. These assignments are currently under Departmental review because of population changes throughout the state as well as changes in the availability of certain programs.

The DMHMRSAS is not aware, however, of comparable "facility assignments" in the private sector, which, as of May, 1991, included 12 freestanding psychiatric hospitals with a total of 1,010 beds and 30 psychiatric units in general hospitals with a total of 836 beds. This study did not address the factors associated with hospital utilization patterns in the private sector.

X. Acknowledgements

The members extend special thanks to the following agencies and individuals for their cooperation and valuable assistance to this study effort:

City of Chesapeake Sheriff's Office
The Honorable John R. Newhart

City of Richmond Sheriff's Office
The Honorable Andrew J. Winston

City of Roanoke Sheriff's Office
The Honorable W. Alvin Hudson
Major George Macmillan, Chief Deputy

Crossroads Community Services Board
Will Rogers, Executive Director

Greensville County Sheriff's Office
The Honorable Earl D. Sasser

New River Valley Community Services Board
Kathy Pollock, Supervisor of Emergency Services

Prince William Community Services Board
Paul Borzellino, Coordinator of Emergency Services

Richmond Community Services Board
Ann Davis, Chief of Mental Health Services

Southampton County Sheriff's Office
The Honorable Vernie Francis

Supreme Court of Virginia
Robert N. Baldwin, Executive Secretary
Kenneth Montero, Director of Legal Research
Ronald Neely, Magistrate Technical Assistant

Virginia Association of Chiefs of Police
Jay Cochran, Executive Director

Virginia Association of Community Services Boards
Mary Ann Bergeron, Executive Director

Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services

James M. Martinez, Jr., Director of Adult Services
Martha Mead, Director of Legislation and Public Relations
Russell C. Petrella, Director of Mental Health Services

Virginia House of Delegates

Office of Computer Operations

Sharon Crouch, Systems Director
Darryl Bareford, System Support Specialist
Tim Knappenberger, System Support Specialist

Virginia State Sheriffs Association

John W. Jones, Executive Director

Warren County Sheriff's Office

The Honorable Lynn Armentrout

Western State Hospital

John Beghtol, Assistant Director for Community Services

The members would also like to express their sincere appreciation to all of those who attended and participated in the regional site visits.

APPENDIX A



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

COMMITTEE ASSIGNMENTS:
RULES (CHAIRMAN)

A. L. PHILPOTT
SPEAKER
SPEAKER'S ROOM
STATE CAPITOL
RICHMOND, VIRGINIA 23219
ELEVENTH DISTRICT

April 30, 1991

Mr. Frederick L. Russell
Executive Director, Virginia State
Crime Commission
General Assembly Building, 8th Floor
910 Capitol Street
Richmond, Virginia 23219

Re: House Joint Resolution No. 427

Dear Mr. Russell:

During the 1991 Session of the General Assembly, the House Committee on Rules considered House Joint Resolution No. 427, which would direct the Virginia State Crime Commission to study the transportation of persons certified for admission to a hospital.

The House Rules Committee, after a careful review of the resolution, determined that the objectives of House Joint Resolution No. 427 could be achieved by requesting the Virginia State Crime Commission to examine the issues raised in the resolution and to determine an appropriate solution to any problems it might substantiate during the course of the study.

The Commission is requested to report any findings and recommendations relative to House Joint Resolution No. 427 to the 1992 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

Your consideration and cooperation in this matter would be appreciated.

Sincerely,



A. L. Philpott
Speaker of the House

enclosure
cc: The Honorable Clifton A. Woodrum

1991 SESSION

LD9083598

HOUSE JOINT RESOLUTION NO. 427

Offered January 22, 1991

Directing the Virginia State Crime Commission to study the transportation of persons certified for admission to a hospital.

Patron—Woodrum

Referred to the Committee on Rules

WHEREAS, on occasion, families and courts are faced with the difficult decision of securing the commitment of certain persons to mental health facilities; and

WHEREAS, under the Virginia statutes, persons in need of mental health services may be committed voluntarily or involuntarily; and

WHEREAS, persons believed to be in need of such services may be temporarily detained to determine the need for hospitalization, and many such evaluations are conducted at area hospitals; and

WHEREAS, persons in need of mental health services may be temporarily detained for evaluation and observation in area hospitals at any time during a 24-hour period, and a commitment hearing may not be conducted until the second day; and

WHEREAS, when a person has been certified for admission to a state hospital by a court, current state law requires such "person to be delivered to the care of the sheriff of the jurisdiction in which the person resides for transport, forthwith on the same day, to the hospital in which he has been committed" except under certain conditions; and

WHEREAS, insufficient manpower, long distances between facilities and delays at area hospitals, other responsibilities and duties of the sheriff, and notification to transport a person at odd or inconvenient hours, create an extreme hardship and difficulty on such sheriffs to transport the person on the same day; and

WHEREAS, area hospitals in which mentally ill persons are evaluated charge sheriff's offices for holding such persons by the calendar day rather than the customary billing day extended to other patients; and

WHEREAS, transporting mentally ill persons is particularly dangerous, especially at night, and jail security and safety are severely compromised when deputies are assigned to transport these persons; and

WHEREAS, allowing sheriff's offices 24 hours to transport and deliver such persons to state hospitals following the commitment hearing, would provide additional time for planning and arranging transportation, reduce logistical problems, minimize potential hazards, and encourage hospitals to change their billing procedures for mentally ill persons; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission is directed to study the transportation of persons certified for admission to a hospital. The Commission shall review the procedures for transporting persons certified for admission to a hospital, determine the practice in such instances, identify any obstacles and problems with the procedure and practice, and evaluate the need for amending the statutes to allow the sheriff's offices 24 hours to transport mentally ill persons certified for admission to state hospitals.

All agencies of the Commonwealth shall provide assistance upon request in the manner deemed appropriate by the Commission.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1992 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The costs of this study are estimated to be \$5,500 and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly for the conduct of this study. A-3

APPENDIX B

Schedule of Site Visits

Tuesday, June 11, 1991 - Greenville 9:30 a.m.

Greenville County Board of Supervisors Meeting Room
301 South Main Street
Emporia, Virginia

Participants:

CSB:
District 19 CSB

Sheriffs:
Counties of Dinwiddie, Greenville, Prince George,
Surry, Sussex and Cities of Colonial Heights
Emporia, Hopewell, and Petersburg

Tuesday, June 25, 1991 - Roanoke 10:00 a.m.

Municipal Bldg., 4th Floor
Roanoke City Council Chambers
215 West Church Avenue
Roanoke, Virginia

Participants:

CSB's:
Alleghany Highlands:

Sheriffs:
County of Alleghany and the City of
Clifton Forge

Central Virginia:

Counties of Amherst, Appomattax,
Bedford, Campbell and the City of
Lynchburg

Cumberland Mountain:

Counties of Buchanan, Russell and
Tazewell

Danville - Pittsylvania:

County of Pittsylvania and the City
of Danville

Dickenson County:

County of Dickenson

Highlands:

County of Washington and the City
of Bristol, VA.

Mount Rogers:

Counties of Bland, Carroll, Grayson,
Smyth, and Wythe

New River:

Counties of Floyd, Giles, Montgomery,
Pulaski, and the City of Radford

Piedmont Regional:

Counties of Franklin, Henry, Patrick
and the City of Martinsville

Planning District I:

Counties of Lee, Scott, Wise and the
City of Norton

MH Services of the
Roanoke Valley:

Counties of Botetourt, Craig and
Roanoke and the Cities of Roanoke and
Salem

Thursday, July 18, 1991 - Front Royal 10:00 a.m.

Participants:

CSB's:

Harrisonburg-
Rockingham:

Sheriffs:

County of Rockingham and the City of
Harrisonburg

Northwestern:

Counties of Clarke, Frederick, Page,
Shenandoah, Warren and the City of
Winchester

Rappahannock Area:

Counties of Caroline, King George,
Spotsylvania, Stafford and the City
of Fredericksburg

Rappahannock-Rapidan:

Counties of Culpeper, Fauquier,
Madison, Orange and Rappahannock

Region Ten:

Counties of Albemarle, Fluvanna,
Greene, Louisa, Nelson and the City
of Charlottesville

Rockbridge Area:

Counties of Bath and Rockbridge and
the Cities of Buena Vista

Valley:

Counties of Augusta and Highland and
the Cities of Staunton and Waynesboro

Alexandria:

City of Alexandria

Arlington:

County of Arlington

Fairfax-Falls Church:

County of Fairfax and the Cities of
Fairfax and Falls Church

Loudoun County:

County of Loudoun

Prince William County:

County of Prince William

Wednesday, August 7, 1991 - Richmond 10:00 a.m.

General Assembly Building
Appropriations Hearing Room, 9th Floor
General Assembly Building
Richmond, Virginia

Participants:

CSB's:

Chesterfield:

Crossroads:

Goochland-Powhatan:

Hanover:

Henrico Area:

Richmond:

Southside:

Sheriffs:

County of Chesterfield

Counties of Amelia, Buckingham,
Charlotte, Cumberland, Lunenburg,
Nottoway and Prince Edward.

Counties of Goochland and Powhatan.

County of Hanover

Counties of Charles City, Henrico and
New Kent.

City of Richmond

Counties of Brunswick, Halifax, and Mecklenburg

Thursday, October 3, 1991 - Chesapeake 10:00 a.m.

Chesapeake Sheriff's Office

Participants:

CSB's:

Chesapeake:

Colonial:

Eastern Shore:

Hampton-Newport News:

Middle Peninsula -
Northern Neck:

Norfolk:

Portsmouth:

Virginia Beach:

Western Tidewater:

Sheriffs:

City of Chesapeake

Counties of James City, York and the
City of Williamsburg

Counties of Accomac and Northampton.

Cities of Hampton and Newport News

Counties of Essex, Gloucester, King &
Queen, King William, Lancaster,
Mathews, Middlesex, Northumberland,
Richmond and Westmoreland

City of Norfolk

City of Portsmouth

City of Virginia Beach

Cities of Franklin and Suffolk and the Counties of
Isle of Wight and Southampton

APPENDIX C

ARTICLE 2.

Transportation of Admitted Persons; Escape.

§ 37.1-71. **Transportation of person certified for admission.** — When a person has been certified for admission to a hospital under §§ 37.1-67.2 through 37.1-67.4 or § 37.1-67.6, such person may be delivered to the care of the sheriff, as specified in this section, who shall forthwith on the same day deliver such person to the proper hospital.

The sheriff of the jurisdiction where the person is a resident shall be responsible for transporting the person unless the sheriff's office of such jurisdiction is located more than 100 miles from the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100 miles from the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person. The cost of transportation of any person so applying or certified for admission pursuant to §§ 37.1-67.2 through 37.1-67.4 shall be paid by the Commonwealth from the same funds as for care in jail.

If any state hospital has become too crowded to accommodate any such person certified for admission therein, the Commissioner shall give notice of the fact to all sheriffs and shall designate the hospital to which they shall transport such persons. (Code 1950, §§ 37-71, 37-79, 37-116; 1950, pp. 904, 907; 1964, c. 640; 1968, c. 477; 1970, c. 673; 1971, Ex. Sess., c. 155; 1972, c. 639; 1976, c. 671; 1980, c. 582; 1987, c. 719; 1989, cc. 334, 534; 1990, c. 94.)

The 1989 amendments by cc. 334 and 534 were identical and substituted "100 miles" for "thirty-five miles" in the second and third sentences of the first paragraph.

The 1990 amendment, in the first paragraph, in the first sentence deleted "applied or has" preceding "been certified for admission," substituted "§ 37.1-67.2 through 37.1-67.4 or § 37.1-67.6" for "§ 37.1-65 or §§ 37.1-67.1 through 37.1-67.4," and deleted "or the patient may be sent for by the director" following "to the proper hospital" at the end of the sentence; divided the former first paragraph into the present first and second paragraphs by deleting "In cases in which the person is transported by the sheriff" preceding "The sheriff of the jurisdiction"; in the present second paragraph, substituted "person" for "patient" in two places in the first sentence and two places

in the second sentence, deleted the former third sentence, which read: "When this is impossible such person shall be kept and cared for by the sheriff in some convenient institution approved pursuant to regulations promulgated by the Board, until such person is conveyed to the proper hospital," in the present third sentence, deleted "care and" preceding "transportation of any person," substituted "§§ 37.1-67.2 through 37.1-67.4" for "§ 37.1-65 or §§ 37.1-67.1 through 37.1-67.4," and substituted "by the Commonwealth" for "from the state treasury," and deleted the former last sentence, which read: "The cost of care and transportation of a person certified for admission to a private hospital shall be paid by the petitioner"; and inserted "state" near the beginning of the last paragraph.

APPENDIX D

Title 37.1.

Institutions for the Mentally Ill; Mental Health Generally.

CHAPTER 2.

ADMISSIONS AND DISPOSITIONS IN GENERAL.

Article 1.

Admissions.

- Sec.**
37.1-67.1. Involuntary detention; issuance and execution of order.
37.1-67.3. Same; involuntary admission and treatment.

Article 3.

Retention of Patients.

- Sec.**
37.1-89. Fees and expenses.

Article 5.

Residence.

- 37.1-97. Children born in state hospitals.**

ARTICLE 1.

Admissions.

§ 37.1-67.1. Involuntary detention; issuance and execution of order.

— Any judge as defined in § 37.1-1 or a magistrate may, upon the sworn petition of any responsible person or upon his own motion based upon probable cause to believe that a person is mentally ill and in need of hospitalization, issue an emergency custody order requiring any person within his judicial district to be taken into custody and transported to a convenient location to be evaluated by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness to assess the need for hospitalization. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that any person is mentally ill and in need of emergency evaluation for hospitalization, may take that person into custody and transport him to an appropriate location to assess the need for hospitalization without prior judicial authorization. Such evaluation shall be conducted immediately. The person shall remain in custody until a temporary detention order is issued or until the person is released but in no event shall the period of custody exceed four hours. If it appears from all evidence readily available that the person is mentally ill and in need of hospitalization, the judge, or magistrate upon the advice of such person skilled in the diagnosis and treatment of mental illness, may issue an order of temporary detention which may include transportation of the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement.

The officer executing the order of temporary detention shall place such person in some convenient and willing institution or other willing place for a period not to exceed forty-eight hours prior to a hearing. If the forty-eight-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday or legal holiday, but in no event may he be detained for longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. For purposes of this section, a Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday. Nothing herein shall preclude a law-enforcement officer from

obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. The institution or other place of temporary detention shall be approved pursuant to regulations of the Board. Except as provided herein for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, such person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.

In any case in which temporary detention is ordered pursuant to this section upon petition of a person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the judge or magistrate executing the order of temporary detention shall place such person in a hospital designated by § 19.2-169.6 B, or if such facility is not available, the defendant shall be detained in a jail or other place of confinement for persons charged with criminal offenses and shall be transferred to such hospital as soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant, either (i) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be represented by counsel as specified in § 37.1-67.3. In any case in which temporary detention is ordered pursuant to this section upon petition for involuntary commitment of a minor, the petition shall be filed and the hearing scheduled in accordance with the provisions of § 16.1-341.

On such petition and prior to a hearing as authorized in §§ 37.1-67.2, 37.1-67.3 or § 16.1-341, the judge may release such person on his personal recognizance or bond set by the judge if it appears from all evidence readily available that such release will not pose an imminent danger to himself or others. In the case of a minor, the judge may release the minor to his parent.

If an order of temporary detention is not executed within twenty-four hours of its issuance, or within such shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or if such office is not open, to any judge or magistrate thereof. Subsequent orders may be issued upon the original petition within ninety-six hours after the petition is filed. However, a magistrate must again obtain the advice of a person skilled in the diagnosis or treatment of mental illness prior to issuing a subsequent order upon the original petition. Any petition for which no order of temporary detention or other process in connection therewith is served on the subject of the petition within ninety-six hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

The chief judge of each general district court shall establish and require that a judge, as defined in § 37.1-1, or a magistrate as provided by this section, be available seven days a week, twenty-four hours a day, for the purpose of performing the duties established by this section. Each community services board shall provide to each general district court and magistrate's office within its jurisdiction a list of persons who are available to perform the evaluations required herein as well as the locations at which such evaluations may take place. (1974, c. 351; 1975, cc. 237, 433; 1976, c. 671; 1980, c. 582; 1981, c. 463; 1986, cc. 478, 629; 1987, c. 96; 1988, c. 98; 1989, c. 716; 1990, cc. 429, 728; 1991, c. 159.)

The 1991 amendment added the last sentence in the third paragraph, and in the fourth paragraph, substituted "§§ 37.1-67.2, 37.1-67.3

or § 16.1-341" for "§ 37.1-67.2 or § 37.1-67.3," and added the second sentence.

expiration of 180 days unless involuntarily committed by further petition and order of a court as provided herein or such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.

Any person committed pursuant to this section for whom a subsequent commitment order is being sought prior to the expiration of the 180-day commitment period shall not be entitled to a separate preliminary hearing prior to such commitment hearing. The procedures required by § 37.1-67.2 or by this section shall be followed at such commitment hearing. The judge shall render a decision on such petition after the appointed examiner has presented his report, either orally or in writing, and after the community services board which serves the political subdivision where the person resides has presented a prescreening report, either orally or in writing, with recommendations for that person's placement, care and treatment. (1976, c. 671; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636.)

The 1991 amendment added the third and fourth paragraphs, and deleted the former last sentence of the section stating "The judge shall also permit the petitioner to testify at the hearing."

§ 37.1-67.2. Same; opportunity for voluntary admission; preliminary hearing. — The judge, when a person is produced pursuant to § 37.1-67.1, shall inform him of his right to apply for voluntary admission and treatment as provided for in § 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall hold a preliminary hearing to ascertain if such person is then willing and capable of seeking voluntary admission and treatment. If the person is capable and willingly accepts voluntary admission and treatment, the judge shall require him to accept voluntary admission for a minimum period of treatment and after such minimum period, not to exceed seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital, during which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and the requirement for prescreening by a community services board or community mental health clinic as provided in § 37.1-65.

Any person committed pursuant to § 37.1-67.3 for whom a subsequent commitment order for recommitment is being sought prior to the expiration of the 180-day commitment period shall not be entitled to a separate preliminary hearing prior to a commitment hearing for recommitment. The proceedings required to be conducted at a preliminary hearing by this section or by § 37.1-67.3 shall be conducted at the commitment hearing. (1976, c. 671; 1979, c. 426; 1980, c. 582; 1987, cc. 415, 416.)

Law Review. — For an article discussing the involuntary commitment of minors in Virginia, see 13 U. Rich. L. Rev. 695 (1979). For article on vocational rehabilitation and the

release of Virginia's criminally insane, see 16 U. Rich. L. Rev. 543 (1982).

Applied in *Schmidt v. Goddin*, 224 Va. 474, 297 S.E.2d 701 (1982).

§ 37.1-67.3. Same; involuntary admission and treatment. — If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge shall inform such person of his right to a commitment hearing and right to counsel. The judge shall ascertain if a person whose admission is sought is represented by counsel, and if he is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense. The commitment hearing shall be held within forty-eight hours of the execution of the detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified terminates on a Saturday, Sunday or a legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday or legal holiday, but in no event may he be detained for a period longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday. Prior to such hearing, the judge shall fully inform such person of the basis for his detention, the standard upon which he may be detained, the right of appeal from such hearing to the circuit court, the right to jury trial on appeal, and the place, date, and time of such hearing.

If such person is incapable of accepting or unwilling to accept voluntary admission and treatment as provided for in § 37.1-67.2, a commitment hearing shall be scheduled as soon as possible, allowing the person who is the subject of the hearing an opportunity to prepare any defenses which he may have, obtain independent evaluation and expert opinion at his own expense, and summons other witnesses.

To the extent possible, during the commitment hearing, the attorney for the person whose admission is sought shall interview his client, the petitioner, the examiner described below, and any other material witnesses. He shall also examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings.

The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence.

Notwithstanding the above, the judge shall require an examination of such person by a psychiatrist who is licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such a psychiatrist or clinical psychologist is not available, a physician or psychologist who is licensed in Virginia and who is qualified in the diagnosis of mental illness. All such examinations shall be conducted in private. The judge shall summons the examiner who shall certify that he has personally examined the individual and has probable cause to believe that he is or is not mentally ill, that such person does or does not present an imminent danger to himself or others, and requires or does not require involuntary hospitalization. The judge, in his discretion, may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection to the acceptance of such written certification by the person or his attorney. The judge shall not render any decision on the petition until such examiner has presented his report either orally or in writing.

Except as otherwise provided in this section, prior to making any adjudication that such person is mentally ill and shall be confined to an institution pursuant to this section, the judge shall request from the community services board which serves the political subdivision where the

person resides a prescreening report, and the board or clinic shall provide such a report within forty-eight hours or within seventy-two hours if the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. The report shall state whether the person is deemed to be mentally ill, an imminent danger to himself or others and in need of involuntary hospitalization, whether there is no less restrictive alternative to institutional confinement and what the recommendations are for that person's care and treatment. If the prescreening report is not received by the judge within the specified period, the judge shall proceed to dispose of the case without the board's or clinic's recommendation. In the case of a person sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should be confined pursuant to this section without requesting a prescreening report from the community services board.

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (iii) that alternatives to involuntary confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to institutional confinement and treatment, the judge shall by written order and specific findings so certify and order that the person be placed in a hospital or other facility for a period of treatment not to exceed 180 days from the date of the court order. Such placement shall be in a hospital or other facility designated by the community services board which serves the political subdivision in which the person was examined as provided in this section. If the community services board does not provide a placement recommendation at the commitment hearing, the person shall be placed in a hospital or other facility designated by the Commissioner.

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (iii) that less restrictive alternatives to institutional confinement and treatment have been investigated and are deemed suitable, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, or such other appropriate course of treatment as may be necessary to meet the needs of the individual. The community services board which serves the political subdivision in which the person resides shall recommend a specific course of treatment and programs for provision of such treatment. The community services board shall monitor the person's compliance with such treatment as may be ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to § 37.1-67.2 or this section.

The judge shall also order that the relevant medical records of such person be released to the facility or program in which he is placed upon request of the treating physician or director of the facility or program. Except as provided in this section, the relevant medical records, reports, and court documents pertaining to the hearings provided for in this section and § 37.1-67.2 shall be kept confidential by the court if so requested by such person, or his counsel, with access provided only upon court order for good cause shown. Such records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such person shall be released at the

APPENDIX E

Survey: Transportation of Mentally Ill Persons

Name

Jurisdiction

Telephone

1. a) Number of sworn deputies: _____
b) Number of deputies on duty (per shift):
Morning _____ Evening _____ Midnight _____ Other _____

2. a) Population Served: _____
b) Geographic size of area served: _____ (sq. miles)

3. Primary area of responsibility:
Law Enforcement _____
Law Enforcement plus Jail _____
Jail Only _____

4. a) Number of transports by your office in an average month for the purpose of mental health evaluation and/or civil commitment. _____
b) Average number of round trip miles traveled per transport. _____
c) Number of deputies assigned per transport. _____
d) Average amount of time spent per transport. _____

5. Where are most manhours spent during transport?
Transport _____
Waiting for mental health evaluation _____
Other _____

6. During which shift do transports most frequently occur?
Morning _____ Evening _____ Midnight _____ Other _____

7. How often are you required to transport a person for evaluation and then later to return to transport the **same person** for commitment?
Never _____ Seldom _____ Sometimes _____ Frequently _____ Always _____

8. a) Do you perceive any problems with the temporary detention order (T. D. O.) process?
Yes _____ No _____

b) If Yes, please explain. _____

9. a) In your opinion, is the present mileage radius for transports (100 miles), as provided in the Code of Virginia, appropriate?
Yes _____ No _____

b) If not, what would be the most appropriate distance?
More than 100 miles _____ Less than 100 miles _____
Within your jurisdiction only _____ Other _____

10. Do you have a joint written agreement concerning transports with your Community Services Board?
Yes _____ No _____

11. What is the biggest problem you encounter with mental health transports?

12. If you have no problem, and the mental health transport process is working satisfactorily in your jurisdiction, please explain. _____

APPENDIX F

**SURVEY: TRANSPORTATION BY LAW ENFORCEMENT OFFICERS OF PERSONS
UNDER ECO, TDO & CIVIL COMMITMENT**

Community Services Board

Contact

Telephone

1. In May, 1991, how many FTEs did your CSB designate for emergency services work?

2. A) How do you provide your emergency services?

On call _____
On site _____
Both on call/on site _____

B) How many FTEs are assigned to emergency services?

On call FTEs _____
On site FTEs _____
Both on call/on site _____

Comments:

3. Of the FTEs noted in question 1, how many are available and appropriate to transport clients in an emergency?

4. A) How many CSB vehicles are available for emergency transportation?

B) Are other vehicles available for emergency transportation?

Yes _____ No _____

(cont'd. from question 4)

If yes, how many? _____

Comments:

5. Is special training required of the staff identified in question 1 in order for them to provide emergency transportation?

Yes _____ No _____

If yes, describe training.

6. Please describe any emergency service transportation problems, especially those related to the geography of your CSB.

7. Do you encounter emergency service transportation problems related to the jurisdictional boundaries of the law enforcement agencies within your CSB area?

Yes _____ No _____

If yes, please describe.

8. How many emergency contacts were made at your CSB in May, 1991? (Include telephone and face-to-face.)

This is based on: Actual data _____
Estimated data _____

9. Of this number of contacts, how many required transportation by a law enforcement officer for Emergency Custody Order (ECO), Temporary Detention Order (TDO), and/or civil commitment?

This is based on: Actual data _____
Estimated data _____

10. Of the number requiring transportation by law enforcement officers, how many were the result of face-to-face contacts with CSB staff?

ECO _____
TDO _____
Commitment _____

This is based on: Actual data _____
Estimated data _____

11. In May, 1991, when was most transportation by law enforcement officers required? (Check one response for each category of legal order.)

Table with 6 columns: Morning (6am-noon), Afternoon (noon-7pm), Evening (7pm-10pm), Night (10pm-6am), Holiday, Sat/Sun. Rows: ECO, TDO, Commt.

Comments: (If May 1991 was atypical, please explain.)

12. For FY 1991, how many other ECOs, TDOs and civil commitments were initiated by the private sector in your CSB area which required transportation by law enforcement officers?

ECO _____
TDO _____
Commitment _____

(Cont'd from question 12)

This is based on: Actual data _____
Estimated data _____

Comments:

13. Are there designated sites your CSB uses for ECOs in the catchment area?

Yes _____ No _____

If yes, how many are there? _____

14. Are there designated sites your CSB uses for TDOs in the catchment area?

Yes _____ No _____

If yes, how many are there? _____

15. Are there designated sites your CSB uses for commitments in the catchment area?

Yes _____ No _____

If yes, how many are there? _____

Comments:

16. Please estimate the average total amount of time spent by staff on a case involving evaluation and commitment. (Time should include transportation, arranging for a bed, conducting examinations, etc.)

Comments:

17. Sheriffs have indicated that there is a lot of waiting time involved in the evaluation and commitment process. Do you perceive this waiting time as:

- a. _____ necessary for security for persons involved
- b. _____ necessary for other reasons (please specify on comment line)
- c. _____ not a necessary use of sheriffs' time.

Comments:

18. Describe the most significant problem that occurs on a regular basis having to do with transportation by law enforcement officers within your CSB area.

19. Do you have a procedure/manual that addresses transportation procedures for ECO, TDO, and civil commitment?

Yes _____ No _____

(Cont'd from question 19)

If so, did work on this procedure/manual include collaboration with law enforcement officers?

Yes _____ No _____

Please explain.

20. If the mental health transportation process is working satisfactorily in your CSB area, what has been most helpful in making the process work?

21 A). If a person were required to be held for up to 24 hours after a commitment hearing before transportation, is there a suitable place in your catchment area where he/she would stay?

Yes _____ No _____

B). What difficulties, if any, might be experienced in using this place ?

22. Would training and consultation around the emergency services transportation issue with your CSB, local law enforcement agencies, and the judicial system be beneficial in a collaborative and problem-solving environment? Please explain.

23. Please explain any specific administrative solutions you might offer to the transportation issues addressed in this survey.

Please return your completed survey by July 12 in the enclosed self-addressed, stamped envelope or fax it to the Crime Commission at (804) 786-0913. In addition, please send a copy of your survey to VACSB, 615 Twin Ridge Lane, Richmond, VA 23235 or fax it to VACSB at 804-330-3141.

APPENDIX G

1 D 12/5/91 Nowell C 12/6/91 scw

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact § 15.1-138 of the Code of Virginia,
4 relating to powers and duties of police force.

5

6 Be it enacted by the General Assembly of Virginia:

7 1. That § 15.1-138 of the Code of Virginia is amended and reenacted
8 as follows:

9 § 15.1-138. Powers and duties of police force.--The officers and
10 privates constituting the police force of counties, cities and towns
11 of the Commonwealth are hereby invested with all the power and
12 authority which formerly belonged to the office of constable at common
13 law in taking cognizance of, and in enforcing the criminal laws of the
14 Commonwealth and the ordinances and regulations of the county, city or
15 town, respectively, for which they are appointed or elected. Each
16 policeman shall endeavor to prevent the commission within the county,
17 city or town of offenses against the law of the Commonwealth and
18 against the ordinances and regulations of the county, city or town;
19 shall observe and enforce all such laws, ordinances and regulations;
20 shall detect and arrest offenders against the same; shall preserve the
21 good order of the county, city or town; and shall secure the
22 inhabitants thereof from violence and the property therein from
23 injury.

24 Such policeman shall have no power or authority in civil matters,
25 except that a policeman of a county, city or town may execute and

1 serve an order of temporary detention and an emergency custody order
2 and may exercise such other powers as may be specified for
3 law-enforcement officers pursuant to § 37.1-67.1, but a policeman of a
4 city or town shall in all other cases execute such warrants or summons
5 as may be placed in his hands by any magistrate for the county, city
6 or town and shall make due return thereof.

7 Except as otherwise specifically provided in the charter of any
8 city or town, such policeman shall not receive any fee or other
9 compensation out of the state treasury or the treasury of the city or
10 town for any service rendered under the provisions of this chapter
11 other than the salary paid him by the city or town and a fee as a
12 witness in cases arising under the criminal laws of the Commonwealth.
13 And except as otherwise specifically provided in the charter of any
14 city or town, such policeman shall not receive any fee as a witness in
15 any case arising under the ordinances of his city or town; nor for
16 attendance as a witness before any magistrate in his city or town.
17 If, however, it shall become necessary or expedient for him to travel
18 beyond the limits of the county, city or town in his capacity as a
19 policeman, he shall be entitled to his actual expenses, to be allowed
20 and paid as is now provided by law for other expenses in criminal
21 cases.

22 Nothing contained in this section shall be construed as
23 prohibiting a policeman of a county, city or town from claiming and
24 receiving any reward which may be offered for the arrest and detention
25 of any offender against the criminal laws of this or any other state
26 or nation.

27

#

1 D 12/5/91 Nowell C 12/6/91 jah

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact §§ 15.1-131 and 37.1-67.1 of the Code of
4 Virginia, relating to involuntary detention.

5

6 Be it enacted by the General Assembly of Virginia:

7 1. That §§ 15.1-131 and 37.1-67.1 of the Code of Virginia are amended
8 and reenacted as follows:

9 § 15.1-131. Police, etc., may be sent beyond territorial limits;
10 reciprocal agreements between counties, cities or towns and certain
11 private police forces for mutual aid.--Whenever the necessity arises
12 for the enforcement of laws designed to control or prohibit the use or
13 sale of controlled drugs as defined in § 54.1-3401 or laws contained
14 in Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2, or
15 during the execution of the provisions of § 37.1-67.1 relating to
16 orders for temporary detention for mental health evaluation or during
17 any emergency resulting from the existence of a state of war, internal
18 disorder, or fire, flood, epidemic or other public disaster, the
19 policemen and other officers, agents and employees of any county, city
20 or town and the police of any state-supported institution of higher
21 learning appointed pursuant to § 23-233 may, together with all
22 necessary equipment, lawfully go or be sent beyond the territorial
23 limits of such county, city or town or such state-supported
24 institution of higher learning to any point within or without the
25 Commonwealth to assist in meeting such emergency or need. However,

1 the police of any state-supported institution of higher learning may
2 be sent only to a county, city or town within the Commonwealth, or
3 locality outside the Commonwealth, whose boundaries are contiguous
4 with the county or city in which such institution is located. No
5 member of a police force of any state-supported institution of higher
6 learning shall be sent beyond the territorial limits of the county or
7 city in which such institution is located unless such member has met
8 the requirements established by the Department of Criminal Justice
9 Services as provided in ~~paragraph~~subdivision 2 (i) of § 9-170 ef-
10 ~~this-Code-~~.

11 In such event the acts performed for such purpose by such
12 policemen or other officers, agents or employees and the expenditures
13 made for such purpose by such county, city or town or a
14 state-supported institution of higher learning shall be deemed
15 conclusively to be for a public and governmental purpose and all of
16 the immunities from liability enjoyed by a county, city or town or a
17 state-supported institution of higher learning when acting through its
18 policemen or other officers, agents or employees for a public or
19 governmental purpose within its territorial limits shall be enjoyed by
20 it to the same extent when such county, city or town or a
21 state-supported institution of higher learning within the Commonwealth
22 is so acting, under this section or under other lawful authority,
23 beyond its territorial limits.

24 The policemen and other officers, agents and employees of any
25 county, city or town or a state-supported institution of higher
26 learning when acting hereunder or under other lawful authority beyond
27 the territorial limits of such county, city or town or such
28 state-supported institution of higher learning shall have all of the

1 immunities from liability and exemptions from laws, ordinances and
2 regulations and shall have all of the pension, relief, disability,
3 workers' compensation and other benefits enjoyed by them while
4 performing their respective duties within the territorial limits of
5 such county, city or town or such state-supported institution of
6 higher learning.

7 Subject to the approval of the Congress of the United States, the
8 governing body of any county, city or town or a state-supported
9 institution of higher learning, may in its discretion, enter into
10 reciprocal agreements for such periods as they deem advisable with any
11 county, city or town, within or without the Commonwealth, including
12 the District of Columbia, in order to establish and carry into effect
13 a plan to provide mutual aid through the furnishing of its police and
14 other employees and agents together with all necessary equipment in
15 the event of such need or emergency as provided herein. No county,
16 city or town or state-supported institution of higher learning, shall
17 enter into such agreement unless the agreement provides that each of
18 the parties to such agreement shall: (1) waive any and all claims
19 against all the other parties thereto which may arise out of their
20 activities outside their respective jurisdictions under such
21 agreement; and (2) indemnify and save harmless the other parties to
22 such agreement from all claims by third parties for property damage or
23 personal injury which may arise out of the activities of the other
24 parties to such agreement outside their respective jurisdictions under
25 such agreement.

26 The principal law-enforcement officer, in any city, county or
27 town or of a state-supported institution of higher learning having a
28 reciprocal agreement with a jurisdiction outside the Commonwealth for

1 police mutual aid under the provisions hereof, shall be responsible
2 for directing the activities of all policemen and other officers and
3 agents coming into his jurisdiction under the reciprocal agreement,
4 and while operating under the terms of the reciprocal agreement, the
5 principal law-enforcement officer is empowered to authorize all
6 policemen and other officers and agents from outside the Commonwealth
7 to enforce the laws of the Commonwealth of Virginia to the same extent
8 as if they were duly authorized law-enforcement officers of any city,
9 county or town or a state-supported institution of higher learning in
10 Virginia.

11 The governing body of any city, county or town or a
12 state-supported institution of higher learning in the Commonwealth is
13 authorized to procure or extend the necessary public liability
14 insurance to cover claims arising out of mutual aid agreements
15 executed with other cities, counties or towns outside the
16 Commonwealth.

17 The policemen, and other officers, agents and employees of a
18 county, city or town or a state-supported institution of higher
19 learning serving in a jurisdiction outside the Commonwealth under a
20 reciprocal agreement entered into pursuant hereto are authorized to
21 carry out the duties and functions provided for in the agreement under
22 the command and supervision of the chief law-enforcement officer of
23 the jurisdiction outside the Commonwealth.

24 § 37.1-67.1. Involuntary detention; issuance and execution of
25 order.--Any judge as defined in § 37.1-1 or a magistrate may, upon the
26 sworn petition of any responsible person or upon his own motion based
27 upon probable cause to believe that a person is mentally ill and in
28 need of hospitalization, issue an emergency custody order requiring

1 any person within his judicial district to be taken into custody and
2 transported to a convenient location to be evaluated by a person
3 designated by the community services board who is skilled in the
4 diagnosis and treatment of mental illness to assess the need for
5 hospitalization. A law-enforcement officer who, based upon his
6 observation or the reliable reports of others, has probable cause to
7 believe that any person is mentally ill and in need of emergency
8 evaluation for hospitalization, may take that person into custody and
9 transport him to an appropriate location to assess the need for
10 hospitalization without prior judicial authorization. Such evaluation
11 shall be conducted immediately and in person. The person shall
12 remain in custody until a temporary detention order is issued or until
13 the person is released but in no event shall the period of custody
14 exceed four hours. If it appears from all evidence readily available
15 that the person is mentally ill and in need of hospitalization, the
16 judge, or magistrate upon the advice of such person skilled in the
17 diagnosis and treatment of mental illness, may issue an order of
18 temporary detention which may include transportation of the person to
19 such other medical facility as may be necessary to obtain emergency
20 medical evaluation or treatment prior to placement.

21 A law-enforcement officer may lawfully go to or be sent beyond
22 the territorial limits of the county, city, or town in which he serves
23 to any point in the Commonwealth for the purpose of executing any
24 order for temporary detention or emergency custody pursuant to this
25 section. The officer executing the order of temporary detention shall
26 place such person in some convenient and willing institution or other
27 willing place for a period not to exceed forty-eight hours prior to a
28 hearing. If the forty-eight-hour period herein specified terminates on

1 a Saturday, Sunday or legal holiday, such person may be detained, as
2 herein provided, until the next day which is not a Saturday, Sunday or
3 legal holiday, but in no event may he be detained for longer than
4 seventy-two hours or ninety-six hours when such legal holiday occurs
5 on a Monday or Friday. For purposes of this section, a Saturday,
6 Sunday, or legal holiday shall be deemed to include the time period up
7 to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal
8 holiday. Nothing herein shall preclude a law-enforcement officer from
9 obtaining emergency medical treatment or further medical evaluation at
10 any time for a person in his custody as provided in this section. The
11 institution or other place of temporary THRU detention shall be
12 approved pursuant to regulations of the Board. Except as provided
13 herein for defendants requiring hospitalization in accordance with
14 subdivision A 2 of § 19.2-169.6, such person shall not be detained in
15 a jail or other place of confinement for persons charged with criminal
16 offenses.

17 In any case in which temporary detention is ordered pursuant to
18 this section upon petition of a person having custody of a defendant
19 in accordance with subdivision A 2 of § 19.2-169.6, the judge or
20 magistrate executing the order of temporary detention shall place such
21 person in a hospital designated by § 19.2-169.6 B, or if such facility
22 is not available, the defendant shall be detained in a jail or other
23 place of confinement for persons charged with criminal offenses and
24 shall be transferred to such hospital as soon as possible thereafter.
25 The hearing shall be held, upon notice to the attorney for the
26 defendant, either (i) before the court having jurisdiction over the
27 defendant's case, or (ii) before a judge as defined in § 37.1-1 in
28 accordance with the provisions of § 37.1-67.4, in which case the

1 defendant shall be represented by counsel as specified in § 37.1-67.3.
2 In any case in which temporary detention is ordered pursuant to this
3 section upon petition for involuntary commitment of a minor, the
4 petition shall be filed and the hearing scheduled in accordance with
5 the provisions of § 16.1-341.

6 On such petition and prior to a hearing as authorized in §§
7 37.1-67.2, 37.1-67.3 or § 16.1-341, the judge may release such person
8 on his personal recognizance or bond set by the judge if it appears
9 from all evidence readily available that such release will not pose an
10 imminent danger to himself or others. In the case of a minor, the
11 judge may release the minor to his parent.

12 If an order of temporary detention is not executed within
13 twenty-four hours of its issuance, or within such shorter period as is
14 specified in the order, the order shall be void and shall be returned
15 unexecuted to the office of the clerk of the issuing court or if such
16 office is not open, to any judge or magistrate thereof. Subsequent
17 orders may be issued upon the original petition within ninety-six
18 hours after the petition is filed. However, a magistrate must again
19 obtain the advice of a person skilled in the diagnosis or treatment of
20 mental illness prior to issuing a subsequent order upon the original
21 petition. Any petition for which no order of temporary detention or
22 other process in connection therewith is served on the subject of the
23 petition within ninety-six hours after the petition is filed shall be
24 void and shall be returned to the office of the clerk of the issuing
25 court.

26 The chief judge of each general district court shall establish
27 and require that a judge, as defined in § 37.1-1, or a magistrate as
28 provided by this section, be available seven days a week, twenty-four

1 hours a day, for the purpose of performing the duties established by
2 this section. Each community services board shall provide to each
3 general district court and magistrate's office within its jurisdiction
4 a list of persons who are available to perform the evaluations
5 required herein as well as the locations at which such evaluations may
6 take place.

7

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1 D 12/5/91 Nowell C 12/6/91 scw

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact § 37.1-71 of the Code of Virginia,
4 relating to transportation of mentally ill.

5

6 Be it enacted by the General Assembly of Virginia:

7 1. That § 37.1-71 of the Code of Virginia is amended and reenacted as
8 follows:

9 § 37.1-71. Transportation of person certified for
10 admission.--When a person has been certified for admission to a
11 hospital under §§ 37.1-67.2 through 37.1-67.4 or § 37.1-67.6, such
12 person may be delivered to the care of the sheriff, as specified in
13 this section, who shall forthwith ~~en-the-same-day-deliver~~ such person
14 to the proper hospital.

15 The sheriff of the jurisdiction where the person is a resident
16 shall be responsible for transporting the person unless the sheriff's
17 office of such jurisdiction is located more than 100 miles from the
18 jurisdiction in which the proceedings took place. In cases where the
19 sheriff of the jurisdiction of which the person is a resident is more
20 than 100 miles from the jurisdiction in which the proceedings took
21 place, it shall be the responsibility of the sheriff of the latter
22 jurisdiction to transport the person. The cost of transportation of
23 any person so applying or certified for admission pursuant to §§
24 37.1-67.2 through 37.1-67.4 shall be paid by the Commonwealth from the
25 same funds as for care in jail.

1 If any state hospital has become too crowded to accommodate any
2 such person certified for admission therein, the Commissioner shall
3 give notice of the fact to all sheriffs and shall designate the
4 hospital to which they shall transport such persons.

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