FINAL REPORT OF THE
VIRGINIA COMMISSION ON YOUTH

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

Admission of Minors to a Mental Health Facility for Inpatient Treatment

COMMONWEALTH OF VIRGINIA
RICHMOND
2023

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Jessica Jones-Healey
The Honorable Chris Rehak

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I. Authority for Study

Section 30-174 of the *Code of Virginia* establishes the Commission on Youth and directs it to "study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." This section also directs the Commission to "encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services." Section 30-175 of the *Code of Virginia* outlines the powers and duties of the Commission on Youth and directs it to "undertake studies and to gather information and data ... and to formulate and report its recommendations to the General Assembly and the Governor."

During the 2023 General Assembly Session, Delegate Anne Ferrell Tata introduced House Bill 1923. As introduced, this bill made the following amendments to the *Code of Virginia*: increase from 14 years of age to 16 years of age the minimum age requiring the consent of a minor prior to his or her admission to a mental health facility for inpatient treatment; increase from 14 years of age to 16 years of age the minimum age for a minor who objects to his or her admission to a mental health facility to be admitted to such mental health facility for up to 120 hours upon the application of such minor's parent; and add addiction as a reason for a minor to be admitted to a mental health facility for inpatient treatment.

The bill was passed by indefinitely with a letter by the House Courts of Justice Committee. In a letter dated April 1, 2023, Delegate Rob B. Bell, Chair of the House Courts of Justice Committee, requested that the Commission on Youth review House Bill 1923, *Minors; admission to mental health facility for inpatient treatment* (Tata) and the concepts it addresses and make recommendations for the 2024 Session of the General Assembly. The Commission adopted a study plan on admission of minors to a mental health facility for inpatient treatment at its May 15, 2023 meeting.

II. Members Appointed to Serve

The Commission on Youth is a standing legislative commission of the Virginia General Assembly. The Commission has twelve member positions: six Delegates, three Senators, and three citizens appointed by the Governor.

Membership of the Virginia Commission on Youth for the 2023 study year is listed below.

Delegate Emily M. Brewer, Isle of Wight, Chair
Delegate Carrie E. Coyner, Chesterfield
Delegate Tara A. Durant, Stafford
Delegate Karrie K. Delaney, Fairfax
Delegate Irene Shin, Fairfax

Delegate Anne Ferrell H. Tata, Virginia Beach
Senator Barbara A. Favola, Arlington, Vice-Chair
Senator David W. "Dave" Marsden, Fairfax
Senator David R. Suetterlein, Roanoke County
Avi D. Hopkins, Chesterfield
Jessica Jones-Healey, Smithfield
Christian "Chris" Rehak, Radford

III. Executive Summary

During the 2023 General Assembly Session, Delegate Anne Ferrell Tata introduced House Bill 1923. As introduced, this bill made the following amendments to the *Code of Virginia*: increase from 14 years of age to 16 years of age the minimum age requiring the consent of a minor prior to his or her admission to a mental health facility for inpatient treatment; increase from 14 years of age to 16 years of age the minimum age for a minor who objects to his or her admission to a mental health facility to be admitted to such mental health facility for up to 120 hours upon the application of such minor's parent; and add addiction as a reason for a minor to be admitted to a mental health facility for inpatient treatment.

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Commission on Youth staff met with numerous stakeholders over the year to review the process for admission of minors to a mental health facility for inpatient treatment in Virginia and explore potential recommendations for improvement. The topics explored in these interviews included: changing the age of consent of the minor, knowledge of the admission process by the public and practitioners, and substance use treatment access.

Draft study findings and recommendations were presented at the Commission's September 19, 2023 meeting. The Commission received written public comment through November 13, 2023. After receiving public comment at the November 20, 2023 meeting, the Commission on Youth approved the following recommendations:

Recommendation 1:

Amend the *Code of Virginia* §16.1-338 and § 16.1-339 to state the age of parent and minor consent for entering inpatient substance use treatment. The current law (14 for minor

objection) is not explicitly stated but rather implied. (AND) Amend the *Code of Virginia* to add clarifying language to §16.1-339 to state that if a minor is being granted admission to a willing facility under the application of a parent, then a temporary detention order (TDO) shall not be required under this section.

Recommendation 2:

Request the Department of Behavioral Health and Developmental Services to put together a work group with Virginia Association of Chiefs of Police, Virginia Sheriffs' Association, the Virginia Association of Community Services Boards (VACSB), the Virginia Magistrates Association, Office of the Executive Secretary of the Supreme Court of Virginia, and any other relevant stakeholders to consider options for the transportation of minors that can be admitted under §16.1-339, as is currently done for emergency custody orders and temporary detention orders as described in § 16.1-340.1. DBHDS shall make any recommendations to the Commission on Youth by November 1, 2024.

Recommendation 3:

Request the Department of Behavioral Health and Developmental Services to provide a page on its website geared towards the public that describes the laws, options, and frequently asked questions as they relate to the Psychiatric Treatment of Minors Act. The information posted shall be done with the assistance of mental health, substance abuse, and disability experts and advocates.

Recommendation 4:

Request the Department of Social Services update guidance, and have the Department of Social Services Director send a letter to local departments of social services describing the admission of minors to inpatient treatment process, including §16.1-339.

Recommendation 5:

Request the Department of Behavioral Health and Developmental Services provide educational materials to the Psychiatric Society of Virginia, the Virginia Academy of Clinical Psychologists, and community services boards for further dissemination to their members on the voluntary and involuntary admissions process for minors to a mental health facility for inpatient treatment. DBHDS should consult the Juvenile Law and Practice in Virginia manual, Office of the Executive Secretary of the Supreme Court of Virginia training materials, and information provided by Virginia’s medical schools.

Recommendation 6:

Request the Department of Behavioral Health and Developmental Services work with

CSBs to target American Rescue Plan Act (ARPA) and other available one time federal funds towards higher intensity substance use services for minors. These services are American Society of Addiction Medicine (ASAM) criteria level 2.5 and higher.

IV. Study Goals and Objectives

The goal of this study was to conduct a comprehensive review of the age and consent issues dealing with the admission of minors to a mental health facility for inpatient treatment under §16.1-338 and §16.1-339 of the *Code of Virginia*.

During the 2023 General Assembly Session, Delegate Anne Ferrell Tata introduced House Bill 1923. As introduced, this bill made the following amendments to the *Code of Virginia*: increase from 14 years of age to 16 years of age the minimum age requiring the consent of a minor prior to his or her admission to a mental health facility for inpatient treatment; increase from 14 years of age to 16 years of age the minimum age for a minor who objects to his or her admission to a mental health facility to be admitted to such mental health facility for up to 120 hours upon the application of such minor's parent; and add addiction as a reason for a minor to be admitted to a mental health facility for inpatient treatment.

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A. IDENTIFIED ISSUES

- Under current law, *Code of Virginia* § 16.1-338, a minor younger than 14 years of age may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent. A minor 14 years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parent.
- House Bill 1923 sought to address the issue of a child who is 14 or 15 years old and who refuses to consent to inpatient treatment that the parent consents to the child receiving.
- In 2015, the Joint Commission on Health Care conducted a study that looked at options to allow a minor to consent for inpatient treatment at a mental health facility without the consent of the minor’s parent. That study looked at ways to address the problem of a child wanting inpatient treatment and a parent objecting. No action was taken on that study’s policy options.

- Under current law, *Code of Virginia* § 54.1-2969, a minor shall be deemed an adult for the purpose of consenting to outpatient care, treatment, or rehabilitation for mental illness or emotional disturbance.

B. STUDY ACTIVITIES

The Commission on Youth was tasked with carrying out the following study activities according to the study mandate. Given the authority for study outlined above, Commission staff completed the study process, which involved the analysis of relevant statutes and other state laws, and conducting interviews with individuals representing interested stakeholders. The Commission on Youth completed the following study activities:

- Review and analyze Virginia's laws, policies, and procedures related to the following:
  - Virginia's Psychiatric Treatment of Minors Act
  - Youth's decision making consent ages in other relevant areas
- Conduct background and literature reviews:
  - Other states' youth mental health decision making consent statutes and policies
  - Pathways to provide services to minors who have refused treatment
  - Mature Minor Doctrine
  - Federal laws and regulations regarding minor inpatient treatment
- Interview impacted stakeholders:
  - Community Services Boards
  - Inpatient Mental Health Facility Treatment Providers
  - Office of the Attorney General
  - Virginia Department of Behavioral Health and Developmental Services
  - Virginia Poverty Law Center
  - Virginia's Court Improvement Program – Office of the Executive Secretary of the Supreme Court of Virginia
  - Youth and Families
  - Youth Mental Health Treatment Advocates
- Present findings and recommendations to the Commission on Youth.
- Receive public comment.
- Prepare final report.

V. Methodology

The findings and recommendations of this study are based on a number of distinct activities conducted by the Commission on Youth.

A. STAKEHOLDER INTERVIEWS

In order to accomplish the work of this study, the Commission on Youth was directed to interview impacted stakeholders in its review of House Bill 1923, *Minors; admission to mental health facility for inpatient treatment*.

Commission on Youth staff met with representatives from the following organizations:

- Circuit Court judge
- disAbility Law Center of Virginia (dLCV)
- Division of Legislative Services
- Institute of Law, Psychiatry and Public Policy (ILPPP) at the University of Virginia
- Juvenile and Domestic Relations Court Judges
- National Alliance on Mental Illness (NAMI)
- Office of the Attorney General
- Office of the Secretary of Health and Human Resources
- Parents
- Psychiatric Residential Treatment Facility (PRTF)
- Psychiatric Society of Virginia
- Substance Abuse and Addiction Recovery Alliance (SAARA) of Virginia
- VBA Commission on the Needs of Children
- Virginia Association of Community Services Boards (VACSB)
- Virginia Chapter of the American Academy of Pediatrics
- Virginia Department of Behavioral Health and Developmental Services
- Virginia Hospital and Healthcare Association (VHHA)
- Virginia Poverty Law Center (VPLC)
- Virginia's Court Improvement Program – Office of the Executive Secretary of the Supreme Court of Virginia

The interviews focused on the potential impact of increasing the minimum age requiring the consent of a minor prior to his or her admission to a mental health facility for inpatient treatment from 14 years of age to 16 years of age. Interviewed stakeholders were also asked about the concept of adding addiction as a reason for a minor to be admitted to a mental health facility for inpatient treatment.

In addition to stakeholder interviews, Commission staff attended a substance use roundtable held in Norfolk at Slover Library on August 10, 2023. The purpose of this meeting was to hear from parents of children impacted by substance use and discuss the need for more treatment options for children. State and local agencies' representatives, members of the executive and legislative branches, and staff of the Office of the Attorney General also attended this meeting. At this meeting, parents explained their experiences interacting with or searching for substance use treatment options for their child.

Following interviews with stakeholders and discussion with impacted agencies, Commission staff put together draft recommendations to put forward to the full Commission on Youth at its September 19, 2023 meeting.

B. RESEARCH AND ANALYSIS

In addition to stakeholder interviews, staff did an extensive 50-state survey on inpatient treatment for mental health and substance use. Staff gathered this information by using Westlaw, Lexis, Fastcase, National Conference of State Legislatures (NCSL), and the *Journal of Child & Adolescent Substance Abuse*. This 50-state survey can be found at Appendix B.

Commission on Youth staff met with officials from the Wisconsin Department of Health Services to gather information about their Department's "Clients Rights" page. Wisconsin has a detailed website on the admission process for a minor to inpatient treatment. Commission staff used this information to compare to what public facing information is available on government websites in Virginia.

Staff also reviewed other journals or papers on this topic, including:

- What Can Parents Do? A Review of State Laws Regarding Decision Making for Adolescent Drug Abuse and Mental Health Treatment (2015), *Journal of Child & Adolescent Substance Abuse*
- Minor Consent Requirement for Voluntary Inpatient Psychiatric Treatment (2014) and Minor Consent for Voluntary Inpatient Psychiatric Treatment (2015), *The Joint Commission on Health Care*
- Resource Document on Consent for Voluntary Hospitalization of Minors (2022), *American Psychiatric Association*
- Psychiatric Commitment of Minors (2021), *Juvenile Law and Practice in Virginia*

Review of these articles and other papers on this topic was useful in understanding the approach that other states take on minor inpatient treatment laws and for understanding the history of minor inpatient treatment in Virginia.

Commission staff also requested the National Alliance on Mental Illness (NAMI) Virginia send out survey questions on the age of admission and substance use to its members on behalf of the Commission on Youth. NAMI Virginia is a nonprofit organization with the goal of promoting recovery and improving the quality of life for Virginians living with serious mental illness through support, education, and advocacy. Information gathered from this survey was included as the Commission drafted and presented draft recommendations for this study.

Finally, Commission on Youth staff, at the invitation of Ashley K. Tunner, Richmond Juvenile and Domestic Relations District Court Judge, attended a § 16.1-339 commitment hearing.

These above research activities informed Commission staff in preparing and presenting findings and recommendations to the Commission on Youth.

VI. Background and Analysis

A. ADMISSION PROCESS UNDER *CODE OF VIRGINIA* §§ 16.1-338 AND 16.1-339

The Commission on Youth looked to the Psychiatric Treatment of Minors Act during this study. Under § 16.1-338 of the Act, the process for parental admission of minors younger than 14 and non-objecting minors 14 years of age or older is explained, and under § 16.1-339, the process for parental admission of an objecting minor 14 years of age or older is explained. Below is a detailed description of these sections, and how the process is carried out, including the admission timeline, criteria, parties to the process, and the potential decisions by the court.

The Statutes Explained

The Psychiatric Treatment of Minors Act includes an admission process for inpatient treatment of minors younger than 14 and non-objecting minors 14 years of age or older, and it includes a process for an objecting minor 14 years of age or older. The *Code of Virginia* at § 16.1-338 for minors younger than 14 and non-objecting minors 14 years of age or older states, "a minor younger than 14 years of age may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent. A minor 14 years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parent." When admitted under this section, a minor must receive an evaluation by a qualified evaluator within 48 hours of admission to a private facility. A qualified evaluator is defined under §16.1-336 as a licensed psychiatrist or psychologist, or if unavailable any mental health professional licensed through the Department of Health Professions: Clinical Social Worker, Professional Counselor, Marriage and Family Therapist, Psychiatric Nurse Practitioner, Clinical Nurse Specialist, and any mental health professional employed by a Community Services Board. Because the minor is under the age of 14 or is a non-objecting minor 14 or older, no judicial review process is required after the minor is admitted. A minor under this section may be admitted for up to 90 days.

The *Code of Virginia* at § 16.1-339 states that a minor 14 years of age or older who (i) objects to admission or (ii) is incapable of making an informed decision may be admitted to a willing facility for up to 120 hours, pending the review required by subsections B and C, upon the application of a parent. In order for an objecting minor 14 years of age or older to be admitted, the minor's parents must apply their minor child to a willing facility, and the minor can then be admitted for as long as 120 hours while they await review by a qualified evaluator. Once the review is complete, the report is submitted to the juvenile and domestic relations (JDR) district court in the same district in which the facility is located. During the admission process, the facility files a petition for judicial

approval, and the minor is appointed a guardian ad litem and counsel. The court and the guardian ad litem will then review the petition and the qualified evaluator's report. During this process, they will ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. This review is done in whichever setting is best for the minor. The court then makes its determination, and the minor is either released back into their consenting parent's custody, admitted for up to 90 days, or remains in the hospital for up to an additional 120 hours while the court conducts a commitment hearing under different criteria.

The Admission Process

Admission Timeline – Any minor admitted under §16.1-339 shall be examined within 24 hours of their admission by a qualified evaluator designated by the community services board serving the area where the facility is located. If the 24-hour time period expires on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the 24 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is not lawfully closed.

Once the qualified evaluator has conducted their review and written a report, the report is submitted to the JDR district court. From that point, the facility shall file a petition for judicial approval no sooner than 24 hours and no later than 120 hours after admission with the JDR district court. Once the petition has been received, the minor is assigned a guardian ad litem and counsel for representation. The review is then conducted by the court, and a determination is made whether the minor will be released back to their parent, admitted for up to 90 days, or detained for an additional 120 hours for a commitment hearing under different criteria.

Admission Criteria – After the minor is reviewed by the qualified evaluator, the evaluator will prepare a report that includes written findings to determine whether: (1) the minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; (2) the minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and (3) all available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor. Once the report is written, the qualified evaluator will submit the report to the JDR district court for the jurisdiction in which the facility is located.

Upon admission, the facility shall file a petition for judicial approval no sooner than 24 hours and no later than 120 hours after admission with the JDR district court within the appropriate jurisdiction. The petition shall include the three criteria listed above, and a copy shall be delivered to the minor's consenting parent.

Parties to the Process – Once the petition has been received and the qualified evaluator's report has been submitted, the judge shall appoint a guardian ad litem for the minor and counsel to represent the minor, unless it has been determined that the minor has retained counsel. A copy of the qualified evaluator's report is provided to the minor's guardian ad litem and counsel.

The court and the guardian ad litem shall review the petition and evaluator's report and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist.

The Court's Determination – This review will be conducted in such place and manner, including the facility, as deemed to be in the best interests of the minor. Based upon its review and the recommendations of the guardian ad litem, the court shall order one of the following dispositions:[1]

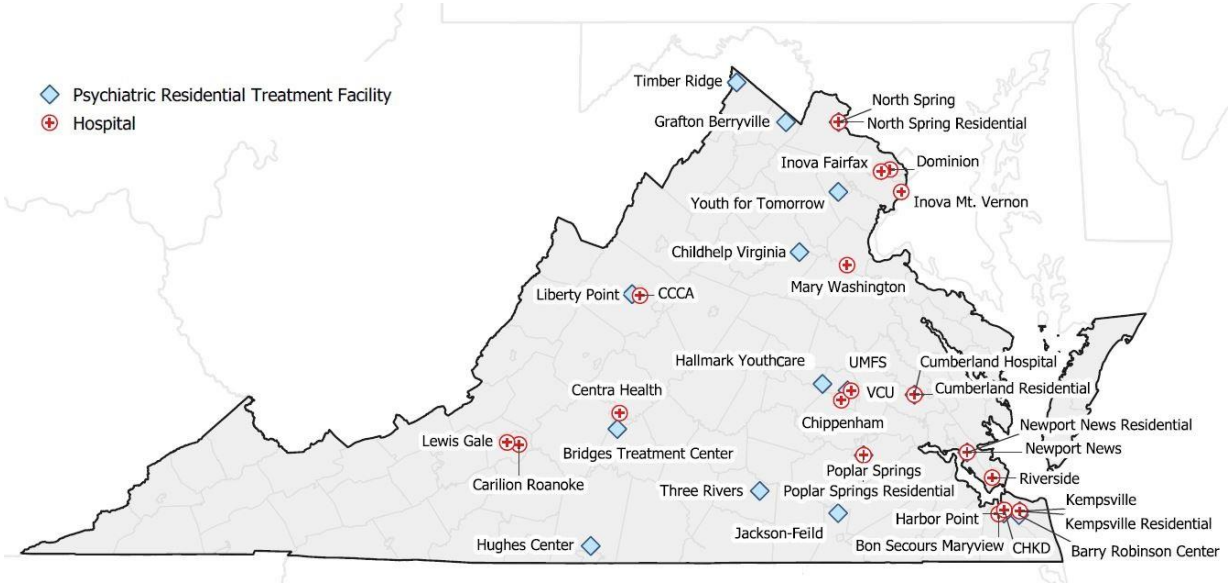
> (1) If the court finds that the minor does not meet the criteria for admission specified in subsection B, the court shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.
>
> (2) If the court finds that the minor meets the criteria for admission specified in subsection B, the court shall issue an order authorizing continued hospitalization of the minor for up to 90 days on the basis of the parent's consent.
>
> (3) If the court determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the three criteria specified, the court shall schedule a commitment hearing that shall be conducted in accordance with the procedures specified in §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to 120 additional hours pending the holding of the commitment hearing.

Admitting Facilities

Currently, 17 mental health hospitals including 1 psychiatric state hospital in Virginia admit minors for inpatient treatment.[2] This is illustrated on map 1 below. Also included on this map are the psychiatric residential treatment facilities (PRTFs) for minors across the state. A PRTF is a step down from an inpatient hospital, and they offer services, such as individual and group therapy, and can offer crisis stabilization. While PRTFs do not admit minors through an admission process prescribed by §§ 16.1-338 and 16.1-339, these facilities do evaluate the consent of the minor during the admission process, and these facilities follow the age of 14 distinction on consent designated in the Psychiatric Treatment of Minors Act.[3]

[1] *Code of Virginia* §16.1-339.
[2] DBHDS Licensed Provider Search website, https://vadbhdsprod.glsuite.us/GLSuiteWeb/Clients/vadbhds/Public/ProviderSearch/ProviderSearchSearch.aspx.
[3] Email correspondence with Jackson-Feild CEO, August 28, 2023.

Map 1: Locations of Psychiatric Hospitals and Residential Treatment Facilities for Minors in Virginia [4] *



There are around 600 beds available at private inpatient hospitals, including the Commonwealth's one public psychiatric hospital for minors, the Commonwealth Center for Children and Adolescents in Staunton.[5] Currently, there are 600 licensed beds in Virginia. The staffed beds are less than this number, and changes are based on a hospital's current staff recruitment and retention and the staff to patient ratios needed for the level of the unit. The number of staffed beds is not collected by the Department of Behavioral Health and Developmental Services (DBHDS). Staffing and the medical needs of children are two of the main issues that affect the ability of a hospital to admit a minor to inpatient treatment, either voluntarily or involuntarily.

B. HISTORY OF MINOR CONSENT LAWS IN VIRGINIA

Prior to 1976, Virginia law permitted the voluntary admission of minors for inpatient treatment by a parent or any person standing in loco parentis to the minor up until age 18. This was changed in 1976, when the *Code of Virginia* was amended to no longer distinguish between minors and adults for voluntary and involuntary commitment procedures. Post 1976, parents in Virginia had to follow the adult involuntary commitment process in order to get their child inpatient treatment.

At the same time as Virginia was changing its law on the involuntary commitment process, the *J.L. v. Parham* case out of Georgia was making its way up to the Supreme Court. In this case, the U.S. District court held that children were entitled to the procedural due process safeguards of

[4] Graphic provided by the Department of Behavioral Health and Developmental Services (DBHDS). *Note: Licensed Provider Search does not include Bon Secours Maryview.
[5] Data Reporting on Children and Adolescents 1st Qtr FY22, The Department of Behavioral Health and Developmental Services, (2021), https://rga.lis.virginia.gov/Published/2021/RD641/PDF.

notice, opportunity to be heard, and counsel.[6] The Supreme Court reversed the lower court's decision 3 years later and stated in their written opinion, "Notwithstanding a child's liberty interest in not being confined unnecessarily for medical treatment,…parents -- who have traditional interests in and responsibility for the upbringing of their child -- retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse…Parents do not always have absolute discretion to institutionalize a child; they retain plenary authority to seek such care for their children, subject to an independent medical judgment."[7] Virginia's pre-1976 statute is congruous with the Court's decision, but no changes were instituted to the post-1976 statute for many years.

In 1990, Virginia enacted the Psychiatric Inpatient Treatment of Minors Act, which provided the distinction that at 14 years of age, a minor had the right to either consent or revoke their consent for inpatient treatment. This decision was largely based on the work done by the 1989 joint committee study.[8] While the study did not specifically comment on the age of 14, the report noted that the current process did not account for the differences in a minor's capacity to consent to treatment as they matured. Further, the study noted that the current process "necessitates the use of involuntary procedures for many children who are not capable of informed consent but who are not objecting or who may even desire hospitalization."[9]

In 2008, the law changed to mandate court appointed counsel for involuntary commitment proceedings for objecting minors who were 14 years of age or older, adding in more safeguards for the admission of minors for inpatient treatment. In 2010, the Psychiatric Inpatient Treatment of Minors Act became the Psychiatric Treatment of Minors Act. This Act created a stand-alone juvenile commitment act, and it eliminated all cross references to the adult commitment statutes.

The most recent change occurred in 2015, following the Joint Commission on Health Care's 2014 study. The study resulted in a few changes to the *Code of Virginia* at §§ 16.1-338 and 16.1-339. These changes made to these statues were as follows[10]:

> i) Increase the time that a non-consenting minor 14 or older could be held in an inpatient mental health facility from 96 to 120 hours (a temporary detention order (TDO) is still 96 hours);
>
> ii) Make the basis for judicial authorization to continue hospitalization despite the minor's objection consistent with the criteria for a voluntary admission of a consenting minor; and

[6] J.L. v. Parham, 412 F. Supp. 112 (M.D. Ga. 1976).
[7] Parham v. J.R., 442 U.S. 584 (1979).
[8] Report of the Joint Subcommittee studying Admission of Minors to Psychiatric Facilities, (1989), https://rga.lis.virginia.gov/Published/1989/HD71/PDF.
[9] Ibid.
[10] Joint Commission on Health Care (JCHC) Newsletter (2015), https://jchc.virginia.gov/2015%20Newsletter.pdf.

iii) Require that facility staff notify a parent immediately if their child 14 or older objects to further inpatient treatment while providing the parent with an explanation of the procedures for requesting continued treatment.

The criteria for admission of minors for inpatient treatment has remained the same since 2015.

C. OTHER STATE COMPARISONS

The Commission on Youth researched statutes of all fifty states, plus D.C., during this study. Staff gathered this information by using Westlaw, Lexis, Fastcase, National Conference of State Legislatures (NCSL), and the *Journal of Child & Adolescent Substance Abuse*. A full compilation of the 50-state survey can be found at Appendix B. Each of the states and D.C. were categorized by the nature of the statute language. The "parent consent only" category refers to those states whose statute only permits parent consent regarding the admission of minors for inpatient mental health or substance use treatment. The "minor consent sufficient" category refers to those states whose statute gives the minor consent to admit themselves without a parent's consent. The "either parent or minor consent" category refers to those states whose statute permits a minor to consent to admission and explicitly states that a parent can always admit their minor child. The "both parent and minor consent" category refers to those states whose statutes require both the parent and the minor's consent for admission of the minor. Chart 1 below designates each state in its respective category.

Chart 1: States' Laws on Treatment Consent Categorized by Type of Authority[11]

Type of Authority	Voluntary Inpatient Mental Health Treatment	Voluntary Inpatient Substance Use Treatment
Parent Consent Only	19 states & D.C.	9 states
Minor Consent Sufficient	13 states	23 states
Either Parent or Minor Consent	15 states	15 states
Both Parent and Minor Consent	4 states (Virginia)	2 states (Virginia)

[11] Note: No specific law regarding voluntary inpatient substance use treatment was identified for Wyoming and Washington D.C.

Below are examples of the statutes enacted in North Carolina, Maryland, and Tennessee and descriptions of how they differ from Virginia's current statute regarding the admission of minors for inpatient mental health and substance use treatment. Each of these states represent a different type of authority compared to Virginia.

North Carolina

North Carolina details the admission of minors into mental health treatment facilities and substance use treatment facilities in the same statute.

North Carolina Stat. Ann. § 122C-221.

(a)Except as otherwise provided in this Part, a minor may be admitted to a facility if the minor is mentally ill or a substance abuser and in need of treatment…[I]n consenting to medical treatment when consent is required, and in any other legal procedure under this Article, the legally responsible person shall act for the minor.

North Carolina is grouped into the "parent only" consent category because, as their statute states, the person legally responsible for the minor must admit said minor for treatment. North Carolina does not set an age at which the minor can admit themselves for mental health or substance use treatment. This differs from Virginia, as Virginia permits minors, with the consent of their legal guardian at the age of fourteen, to admit themselves for mental health and substance use treatment. A minor in Virginia cannot admit themselves to inpatient mental health or substance use treatment without the consent of their parent or legal guardian at any age.

Maryland

Maryland details the admission of minors into mental health treatment facilities and substance use treatment facilities in the same statute.

Maryland Health Gen. Code Ann. § 20-102.

Substance use

(c) A minor has the same capacity as an adult to consent to:
(1) Treatment for or advice about drug abuse;
(2) Treatment for or advice about alcoholism;

Refusal of treatment

(c-1) The capacity of a minor to consent to treatment for drug abuse or alcoholism under subsection (c)(1) or (2) of this section does not include the capacity to refuse treatment for drug abuse or alcoholism in an inpatient or intensive outpatient alcohol or drug abuse

treatment program certified under Title 8 of this article for which a parent or guardian has given consent.

Psychological treatment

(d) A minor has the same capacity as an adult to consent to psychological treatment as specified under subsection (c)(1) and (2) of this section if, in the judgement of the attending physician or a psychologist, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual.

Maryland is grouped into the "minor only" consent category because the provided statute only specifies that minor consent is necessary to seek inpatient mental health and substance use treatment. This specific statute does provide that while the minor does have the authority to admit themselves for inpatient mental health or substance use treatment, the minor does not have the authority to refuse treatment their parent or guardian has admitted them to. This differs from Virginia's statute because Maryland does not set an age at which the minor has this authority, only the consent of the minor is required for treatment, and Maryland's statute specifically denies the minor the right to refuse certain inpatient and intensive outpatient treatment. At the age of fourteen, a minor in Virginia can refuse treatment, even if their parent or guardian wants them to be admitted, triggering a court process.

Tennessee

Tennessee has two separate statutes detailing its admission of minors into mental health treatment facilities and substance use treatment facilities.

Tennessee Code Ann. § 33-6-201. – Mental Illness

(a) The following persons may apply for admission to a public or private hospital or treatment resource for diagnosis, observation, and treatment of a mental illness or serious emotional disturbance:

(1) A person who is sixteen (16) years of age or over and who does not lack capacity to apply under § 33-3-218;

(2) A parent, legal custodian, or legal guardian who is acting on behalf of a child;

Tennessee Code Ann. § 33-10-105. – Substance Use

Admission to inpatient programs under this chapter shall be governed by § 33-6-201, title 33, chapter 6, part 4 and title 33, chapter 6, part 5.

Tennessee is grouped into the "parent or minor" consent category because the statute provides an avenue for either the parent to admit the minor or the minor to admit themselves. Further, Tennessee sets the age when a minor can exercise this authority at sixteen years of age. This differs from Virginia's statute due to the age being set at sixteen, not fourteen, and Tennessee sets out the authority for either the parent or the minor to admit the minor into a mental health or substance use treatment facility. In Virginia, starting at the age of fourteen, a minor and their parent or guardian must both consent for the minor to receive inpatient mental health or substance use treatment.

Other States Law Variations on Inpatient Treatment

In addition to age and type of authority ("parent only," "minor only," "parent or minor," and "parent and minor"), there are the following matters of variation when comparing states' inpatient age of consent laws.

First, one variation would be the use of a judicial hearing. States are not required to have a judicial hearing, going back to the 1979 *Parham vs. J.R.* Supreme Court case. Rather, the review to admit a minor to inpatient treatment could be that of a review by a psychiatrist who makes a determination. Virginia requires a judicial hearing when a minor over 14 objects.

Another variation is whether a minor can be held for any time at an inpatient facility while a decision is being made. Most states have some waiting or holding period (Virginia's is 5 days), where a minor can be in a hospital awaiting a hearing. Virginia's waiting period for minors was changed from 96 to 120 hours in 2015.

Finally, another difference from state to state is whether the standard of admission after a minor's objection is the same as a voluntary or involuntary commitment. This is best described by asking the question, once a minor objects, whether the criteria of admission is at a higher level than that of a voluntary admission. In Virginia, as discussed earlier in the section on the history of minor consent laws in Virginia, the criteria was previously the same as a temporary detention order or an involuntary commitment. Since 2015, however, the criteria for admission has been the same as the voluntary admission of minors, which is the process described in *Code of Virginia* §16.1-338.

D. ANALYSIS

Clarifications Needed to the § 16.1-339 Statute and Reasons for Lack of Use Compared to the Temporary Detention Order (TDO) Process

This study looked at the number of recent court petitions for civil cases filed in all Juvenile & Domestic Relations courts under § 16.1-339. In 2022, 97 petitions were filed under *Code* § 16.1-

339.[12] That number is significantly lower than the number of TDO's executed for minors in recent years. In fiscal year 2022, 1,902 TDO petitions were executed, and in fiscal year 2023, 1,915 TDO petitions were executed.[13]

The gulf between the use of the §16.1-339 versus the TDO process is one area the Commission explored. Two initial reasons are, first, TDO's do not require or need a parent's consent, and second, a TDO is necessary if a parent or guardian and a CSB is unable to find an admitting hospital. In emergencies, where a parent is not available or a hospital does not have capacity, a TDO can still be sought, unlike a § 16.1-339 admission.

Additionally, the need for transportation to a hospital and an awareness gap were also explored as reasons why a TDO might be pursued versus a § 16.1-339 admission. These points are summarized in Psychiatric Commitment of Minors (2021), *Juvenile Law and Practice in Virginia*:

> In practice, although [under § 16.1-339] a voluntary objecting minor's admission is allowed when an adolescent 14 or older does not consent to hospitalization but that child's parent does consent, many of those cases are nonetheless admitted under temporary detention orders. This is sometimes a function of the perceived need for law enforcement transportation, which is not provided for in the case of a voluntary admission. In other cases, it is likely that temporary detention orders are pursued because that has been the historical approach as the voluntary objecting minor provision has continued to evolve.

The issue of a minor in crisis needing transportation to the hospital was discussed as a barrier to using § 16.1-339 and an area stakeholders believed could be addressed through further study. Additionally, it was suggested that the awareness gap raised by stakeholders, as well as an issue of an evolving historical approach, could be remedied by adding language to the *Code*. Added *Code* language could state that a TDO shall not be required for a minor to be admitted to a willing facility upon the application of a parent pursuant to § 16.1-339.

Finally, one other area seen as in need of clarification was that of substance use treatment at an inpatient mental health facility for minors. House Bill 1923 (2023), which precipitated this study, sought to add addiction as a reason for a minor to be admitted to a mental health facility for inpatient treatment. In conducting this study, the Commission found that 49 other states reference inpatient substance use treatment in their inpatient treatment laws. Currently, Virginia includes substance abuse as part of their definition of mental illness, but does not reference substance abuse in § 16.1-339. The Commission on Youth spoke to parents and stakeholders who stated that adding a reference to substance abuse to the inpatient admitting statutes for minors would add clarity to the process and awareness of substance use treatment availability.

[12] Office of the Executive Secretary, Supreme Court of Virginia, Juvenile and Domestic Relations District Court case management system. Provided as entered by the clerks of court.
[13] Email correspondence with DBHDS, August 31, 2023.

Access and Understanding of Information

While Virginia has been striving to make improvements to ensure all minors in need of help are able to access it, there are some areas that can be improved. First, in order to ensure that minors are getting necessary treatment, reliable information must be accessible to the minors and their parents. During this study, it became evident that this is an area where Virginia is lacking. For example, when you type into a Google search, "Can I make my 15-year-old child go to rehab in Virginia?" after scrolling down the first page of results, the only resource that pops up is a link to the *Code of Virginia*, Psychiatric Treatment of Minors Act. While the availability of the text of the law is helpful, there are no results that tell a parent or minor how to go about this process, or even where to begin. Virginia has excellent resources for information and support. However, these resources do not appear to be adequately advertised to the public. The same results pop up when a Google search is made from the view point of a minor using a question such as "Can my parents make me get psychiatric treatment at 15 in Virginia?" Further, in discussions with parents who were searching for resources to help them navigate the admission process, they mentioned a lack of awareness to the resources offered by the state or their locality.

There are 39 Community Services Boards (CSBs) and one Behavioral Health Authority in Virginia, which serve as the primary point of entry into the Commonwealth's public behavioral health and developmental services system. If a link to the Community Services Boards, via the Department of Behavioral Health and Developmental Services website, were to pop up on search sites, parents and minors alike would be able to more readily access the information needed to make their decision on next steps.

During this study, the Commission interviewed representatives from Wisconsin's Department of Health Services on their inpatient treatment admission process for minors and looked to their website as a potential model on which Virginia could base a platform. Wisconsin has a robust website, which details the laws surrounding the admission of minors for inpatient treatment, as well as how to navigate and complete the process. A resource such as this would be helpful for Virginians looking to navigate the admission of a minor for inpatient treatment. Wisconsin's resource page is set up through their Department of Health Services. Since Virginia already has a page dedicated to CSBs on its Department of Behavioral Health and Developmental Services website, this could be an excellent source to provide information similar to what Wisconsin provides for its minors and parents seeking more information and resources.

During the study, the Commission inquired about other interested parties that could benefit from more explanation and information on the §16.1-339 process. The Commission identified local department of social services (LDSS) workers who act in the role of parents for foster care children. While many, if not most, local departments work closely with the CSB in their area, and an LDSS employee can often turn to a CSB for expertise, the Commission did hear about a lack of familiarity with the § 16.1-339 objecting minor process versus the TDO process at the social

services level. Currently, there is no guidance on this topic provided to LDSS workers.

The Commission also identified qualified evaluators, such as psychiatrists and psychologists, who could benefit from more information on the § 16.1-339 process. The Commission heard from psychiatrists, psychologists, and other medically trained stakeholders that they did not know that there was a different admission criteria and timeline separate from the TDO process for admitting a minor under §16.1-339. The Commission heard that part of the confusion might be because hospitals currently use a 2018 protocol on the Criteria for Medical Assessment Prior to Admission to a Psychiatric Hospital for children.[14] This document does not reference the Psychiatric Treatment of Minors Act and only references the adult TDO process and *Code* sections.

A common theme from stakeholders was that developing and making more information available to the public and certain interested parties would help educate and potentially lessen the use of the TDO process when it is not necessary.

Discussion over Raising the Age of Consent

The initial consideration of this study was whether the age of consent or objection of a minor to inpatient treatment should be raised from 14 years of age to 16 years of age. As displayed in the 50-state survey, the age varies amongst different states. However, the age stays mostly between 14 and 16. The Commission led many conversations with different stakeholders, who held a variety of thoughts and opinions on this topic.

Some psychiatrists and pediatricians felt the current age of 14 struck the right balance between the agency of the minor, and the current court process provided the appropriate remedy for objections by a minor. It was also brought to the Commission's attention that instead of the minor objecting, there were instances when the parent was the one objecting and the minor sought to be admitted for inpatient treatment. This is a result of the stigma that surrounds mental health and substance use treatment. In these situations, a minor would have to pursue a temporary detention order (TDO) and have a next friend file on his or her behalf, if his or her parents objected.

The Commission also heard from other youth and disability advocates who argued that Virginia should avoid moving away from seeking youth input on their treatment. One point that was brought up was that today's youth are better informed than previous youth when it comes to mental health and addressing mental health concerns, and taking them out of the equation would have detrimental results on their mental health treatment, in some instances.

From those individuals who were open to raising the age of objection, Commission staff heard that it is not uncommon for a youth to object to inpatient treatment. The argument being made here is that an objection by an older minor tends to not be based on a well thought out consideration of

[14] https://dbhds.virginia.gov/assets/doc/about/masg/peds-medical-assessment-and-screening-guidelines-11-5-2018.pdf.

the inpatient treatment plan presented to the minor. Another point made during these discussions was that when a parent and minor come to a hospital setting in agreement, and the minor then changes his or her mind, everyone involved in the minor's treatment faces a difficult situation. Instances where a minor changes his or her mind are always the hardest to deal with, according to the feedback the Commission received, and raising the age to address situations like this would be beneficial. Additionally, a number of stakeholders stressed that for a voluntary or involuntary commitment, the inpatient treatment option is always the last resort. This idea is codified in § 16.1-339 and aligns with today's medical approach of focusing on outpatient services in the community.

Finally, one argument discussed was that raising the age would make it easier for a parent to find an admitting facility and avoid a court process. Raising the age from 14 to 16 years of age would have a beneficial effect of permitting psychiatric residential treatment facilities (PRTFs) to take older kids whom they are currently not able to admit because of their lack of consent. This effect was also discussed in the Joint Commission on Health Care's 2014 report.[15]

Overall, there were many opinions regarding raising the age for consent or objection of a minor for inpatient treatment from 14 years of age to 16 years of age. All of these opinions were supported by examples, with the importance placed on helping as many minors as possible.

VII. Findings and Recommendations

After presenting findings and recommendations at the Commission on Youth's November 20, 2023 meeting and receipt of public comment, the Commission approved and adopted the following recommendations:

Make clarifications to the Psychiatric Treatment of Minors Act:

> **Recommendation 1:** Amend the *Code of Virginia* §16.1-338 and § 16.1-339 to state the age of parent and minor consent for entering inpatient substance use treatment. The current law (14 for minor objection) is not explicitly stated but rather implied. (AND) Amend the *Code of Virginia* to add clarifying language to §16.1-339 to state that if a minor is being granted admission to a willing facility under the application of a parent, then a temporary detention order (TDO) shall not be required under this section.

Request review of transportation options for youth needing inpatient treatment:

> **Recommendation 2:** Request the Department of Behavioral Health and Developmental Services to put together a work group with Virginia Association of Chiefs of Police,

[15] Minor Consent Requirement for Voluntary Inpatient Psychiatric Treatment, Senate Bill 184 (Senator McWaters) and House Bill 1097 (Delegate LeMunyon), The Joint Commission on Health Care, (2014), https://rga.lis.virginia.gov/Published/2014/RD459/PDF.

Virginia Sheriffs' Association, the Virginia Association of Community Services Boards (VACSB), the Virginia Magistrates Association, Office of the Executive Secretary of the Supreme Court of Virginia, and any other relevant stakeholders to consider options for the transportation of minors that can be admitted under §16.1-339, as is currently done for emergency custody orders and temporary detention orders as described in § 16.1-340.1. DBHDS shall make any recommendations to the Commission on Youth by November 1, 2024.

Improve public guidance for age of admission process:

Recommendation 3: Request the Department of Behavioral Health and Developmental Services to provide a page on its website geared towards the public which describes the laws, options, and frequently asked questions as they relate to the Psychiatric Treatment of Minors Act. The information posted shall be done with the assistance of mental health, substance abuse, and disability experts and advocates.

Update Department of Social Services' guidance:

Recommendation 4: Request the Department of Social Services update guidance, and have the Department of Social Services Director send a letter to local departments of social services describing the admission of minors to inpatient treatment process, including §16.1-339.

Provide educational materials to qualified examiners and local CSBs:

Recommendation 5: Request the Department of Behavioral Health and Developmental Services provide educational materials to the Psychiatric Society of Virginia, the Virginia Academy of Clinical Psychologists, and community services boards for further dissemination to their members on the voluntary and involuntary admissions process for minors to a mental health facility for inpatient treatment. DBHDS should consult the Juvenile Law and Practice in Virginia manual, Office of the Executive Secretary of the Supreme Court of Virginia training materials, and information provided by Virginia's medical schools.

Support use of federal funds for higher intensity services:

Recommendation 6: Request the Department of Behavioral Health and Developmental Services work with CSBs to target American Rescue Plan Act (ARPA) and other available one time federal funds towards higher intensity substance use services for minors. These are services ASAM level 2.5 and higher.

VIII. Acknowledgments

The Virginia Commission on Youth extends appreciation to the numerous stakeholders who were interviewed for their assistance on this study. A list of stakeholders is found in the methodology section of this report and in the Commission's presentation on this topic on September 19, 2023, which is also included as Appendix C.

Also, a special thank you to Judge Ashley K. Tunner, Richmond Juvenile and Domestic Relations District Court, for inviting Commission staff to listen in to a §16.1-339 hearing.

Finally, the Commission on Youth would like to recognize its law intern for her assistance on this study, Ashlyn Hilburn, University of Richmond School of Law.

Appendix A

HOUSE BILL NO. 1923
Offered January 11, 2023
Prefiled January 10, 2023

*A BILL to amend and reenact §§ **16.1-338** and **16.1-339** of the Code of Virginia, relating to admission of minors to mental health facility for inpatient treatment.*

Patron-- Tata

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ **16.1-338** and **16.1-339** of the Code of Virginia are amended and reenacted as follows:

§ **16.1-338**. Parental admission of minors younger than 16 and nonobjecting minors 16 years of age or older.

A. A minor younger than ~~14~~ *16* years of age may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent. A minor ~~14~~ *16* years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parent.

B. Admission of a minor under this section shall be approved by a qualified evaluator who has conducted a personal examination of the minor within 48 hours after admission and has made the following written findings:

1. The minor appears to have a mental illness *or addiction* serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and

2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and

3. If the minor is ~~14~~ *16* years of age or older, that he has been provided with an explanation of his rights under this Act as they would apply if he were to object to admission, and that he has consented to admission; and

4. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide, in lieu of the examination required by this section, a preadmission screening report conducted by an employee or designee of the community services board and shall ensure that the necessary written findings have been made before approving the admission. A copy of the written findings of the evaluation or preadmission screening report required by this section shall be provided to the consenting parent and the parent shall have the opportunity to discuss the findings with the qualified evaluator or employee or designee of the community services board.

C. Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the

minor's treatment and has been explained to the parent consenting to the admission and to the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured. A copy of the plan shall be provided to the minor and to his parents.

D. If the parent who consented to a minor's admission under this section revokes his consent at any time, or if a minor ~~14~~ *16 years of age* or older objects at any time to further treatment, the minor shall be discharged within 48 hours to the custody of such consenting parent unless the minor's continued hospitalization is authorized pursuant to § **16.1-339**, **16.1-340.1**, or **16.1-345**. If the 48-hour time period expires on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If a minor ~~14~~ *16 years of age* or older objects to further treatment, the mental health facility shall (i) immediately notify the consenting parent of the minor's objections and (ii) provide to the consenting parent a summary, prepared by the Office of the Attorney General, of the procedures for requesting continued treatment of the minor pursuant to § **16.1-339**, **16.1-340.1**, or **16.1-345**.

E. Inpatient treatment of a minor hospitalized under this section may not exceed 90 consecutive days unless it has been authorized by appropriate hospital medical personnel, based upon their written findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the minor and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the minor's condition.

F. Any minor admitted under this section while younger than ~~14~~ *16 years of age* and his consenting parent shall be informed orally and in writing by the director of the facility for inpatient treatment within 10 days of his ~~fourteenth~~ *sixteenth* birthday that continued voluntary treatment under the authority of this section requires his consent.

G. Any minor ~~14~~ *16* years of age or older who joins in an application and consents to admission pursuant to subsection A, shall, in addition to his parent, have the right to access his health information. The concurrent authorization of both the parent and the minor shall be required to disclose such minor's health information.

H. A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.

§ **16.1-339**. Parental admission of an objecting minor ~~14~~ *16* years of age or older.

A. A minor ~~14~~ *16* years of age or older who (i) objects to admission or (ii) is incapable of making an informed decision may be admitted to a willing facility for up to 120 hours, pending the review required by subsections B and C, upon the application of a parent. If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide the preadmission screening report required by subsection B of § **16.1-338** and shall ensure that the necessary written findings, except the minor's consent, have been made before approving the admission.

B. A minor admitted under this section shall be examined within 24 hours of his admission by a qualified evaluator designated by the community services board serving the area where the facility is located. If the 24-hour time period expires on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the 24 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The evaluator shall prepare a report that shall include written findings as to whether:

1. The minor appears to have a mental illness *or addiction* serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment;

2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and

3. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

The qualified evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction in which the facility is located.

C. Upon admission of a minor under this section, the facility shall file a petition for judicial approval no sooner than 24 hours and no later than 120 hours after admission with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. To the extent available, the petition shall contain the information required by § **16.1-339.1**. A copy of this petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the judge shall appoint a guardian ad litem for the minor and counsel to represent the minor, unless it has been determined that the minor has retained counsel. A copy of the evaluator's report shall be provided to the minor's counsel and guardian ad litem. The court and the guardian ad litem shall review the petition and evaluator's report and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. The court shall conduct its review in such place and manner, including the facility, as it deems to be in the best interests of the minor. Based upon its review and the recommendations of the guardian ad litem, the court shall order one of the following dispositions:

1. If the court finds that the minor does not meet the criteria for admission specified in subsection B, the court shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.

2. If the court finds that the minor meets the criteria for admission specified in subsection B, the court shall issue an order authorizing continued hospitalization of the minor for up to 90 days on the basis of the parent's consent.

Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem and to counsel for the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured.

3. If the court determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the criteria specified in subsection B, the court shall schedule a commitment hearing that shall be conducted in accordance with the procedures specified in §§ **16.1-341** through **16.1-345**. The minor may be detained in the hospital for up to 120 additional hours pending the holding of the commitment hearing.

D. A minor admitted under this section who rescinds his objection may be retained in the hospital pursuant to § **16.1-338**.

E. If the parent who consented to a minor's admission under this section revokes his consent at any time, the minor shall be released within 48 hours to the parent's custody unless the minor's continued hospitalization is authorized pursuant to § **16.1-340.1** or **16.1-345**. If the 48-hour time period expires on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

F. A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.

Appendix B

50-state survey- Inpatient and Substance use decision-making treatment Code Cites:

State	Mental Health Treatment	Drug Treatment
Alabama	Ala. Code § 22-8-10. 22-8-4.	Ala. Code § 22-8-6.
Alaska	Alaska Stat. Ann. § 47.30.300.	*Id.*
Arizona	Ariz. Revised Stat. Ann. § 36-2272	Ariz. Revised Stat. Ann. § 44-133.01.
Arkansas	Ark. Code § 20-9-602.	*Id.*
California	Cal. Welfare & Inst. Code Ann. § 6002.10.	Cal. Welfare & Inst. Code Ann. § 6002.10
Colorado	Colo. Stat. Ann. § 27-65-104.	Colo. Stat. Ann. § 27-81-109.
Connecticut	Conn. Stat. Ann. § 17a-79.	Conn. Stat. Ann. § 17(a)-682.
Delaware	Del. Code Ann. 16 § 5003.	Del. Code Ann. 16 § 2210.
Florida	Fla. Stat. Ann. § 394.4625.	Fla. Stat. Ann. § 397.601.
Georgia	Ga. Stat. Ann. § 37-3-20.	Ga. Stat. Ann. § 37-7-20.
Hawaii	Haw. Stat. Ann. § 577-29.	Haw. Stat. Ann. § 577-26
Idaho	Idaho Code Ann. § 66-318.	Idaho Code Ann. § 39-307.
Illinois	Ill. Stat. Ann. § 5/3-502.	Ill. Stat. Ann. § 210/4.
Indiana	Ind. Code Ann. § 12-26-3-2	Ind. Code Ann. § 12-23-12-1.
Iowa	Iowa Code Ann. § 229.2.	Iowa Code Ann. § 125.33.
Kansas	Kan. Stat. Ann. § 59-2949.	Kan. Stat. Ann. § 59-29b49.
Kentucky	Ky. Stat. Ann. § 214.185.	Ky. Stat. Ann. § 214.185.
Louisiana	La. Ch. Code Ann. Art. 1464, 1468.	La. Ch. Code Ann. Art. 1468.
Maine	Me. Stat. Ann. 34B § 3831.	Me. Stat. Ann. Tit. 22 § 1502
Maryland	Md. Health Gen. Code Ann. § 10-609.	Md. Health Gen. Code Ann. § 20-102.

State	Mental Health Treatment	Drug Treatment
Massachusetts	Mass. Ann. Laws Part 1 Tit. XVII Ch. 123 § 10.	Mass. Gen. Laws Ann. Part 1 Tit. XVI Ch. 112 § 12E.
Michigan	Mich. Complied Laws Ann. § 330.1498d.	Mich. Compiled Laws Ann. § 330.1264.
Minnesota	Minn. Stat. Ann. § 253B.03.	Minn. Stat. Ann. § 253B.04.
Mississippi	Miss. Code Ann. § 41-21-103.	Miss. Code Ann. § 41-30-21.
Missouri	Mo. Stat. Ann. § 632.110.	Mo. Stat. Ann. § 631.105.
Montana	Mont. Code Ann. 53-21-112.	Mont. Code Ann. § 41-1-402.
Nebraska	Neb. Rev. Stat. Ann. § 71-918; Neb. Rev. Stat. Ann. § 43-2101.	*Id.*
Nevada	Nev. Stat. Ann. § 433A.140.	Nev. Stat. Ann. § 129.050.
New Hampshire	N.H. Admin. Code 613.10.	N.H. Stat. Ann. § 172:13
New Jersey	N.J. Stat. Ann. § 4:74-7A(c).	N.J. Stat. Ann. § 9:17A-4.
New Mexico	N.M. Stat. Ann. §§ 32A-6A-14, 15, 21.	*Id.*
New York	N.Y. MH Law § 9.13.	N.Y. MH Law § 22.11.
North Carolina	N.C. Stat. Ann. § 122C-221.	*Id.*
North Dakota	N.D. Cent. Code Ann. § 25-03.1-04.	*Id.*
Ohio	Ohio Rev. Code Ann. § 5122.02.	Ohio Rev. Code Ann. § 3719.
Oklahoma	Okla. Stat. Ann. Tit 43A § 5-503.	*Id.*
Oregon	Or. Stat. Ann. § 426.220.	*Id.*
Pennsylvania	Penn. Stat. 50 § 7201; Penn. Stat. 35 § 10101.1.	Penn. Stat. 71 § 1690.112.
Rhode Island	R.I. Gen. Laws § 40.1-5-6.	R.I. Gen. Laws § 23-1.10-9.
South Carolina	S.C. Code Ann. § 44-24-20.	S.C. Code Ann. § 44-52-20.

State	Mental Health Treatment	Drug Treatment
South Dakota	S.D. Codified Laws § 27A-15-5.	S.D. Codified Laws § 34-20A-50.
Tennessee	Tenn. Code Ann. § 33-6-201.	Tenn. Code Ann. § 33-10-105.
Texas	Tex. Stat. & Code Ann. § 572.001.	Tex. Stat. & Code Ann. § 462.022.
Utah		Utah Code Ann. § 62A-15-301.
Vermont	Vt. Stat. Ann. Tit. 18 § 7503.	Vt. Stat. Ann. Tit. 18 § 4226.
Virginia	Va. Stat. Ann. § 16.1-338.	Inpatient: No specific law (In practice follows §§ 16.1-338-339) Outpatient: § 54.1-2969(E).
Washington	Wash. Rev. Code Ann. § 71.34.500.	*Id.*
West Virginia	W.Va. Code Ann. § 27-4-1.	*Id.*
Wisconsin	Wis. Stat. Ann. § 51.13.	*Id.*
Wyoming	Wyo. Stat. Ann. § 25-10-106.	No Specific Law
District of Columbia	D.C. Code Ann. § 7-1231.14.	No Specific Law

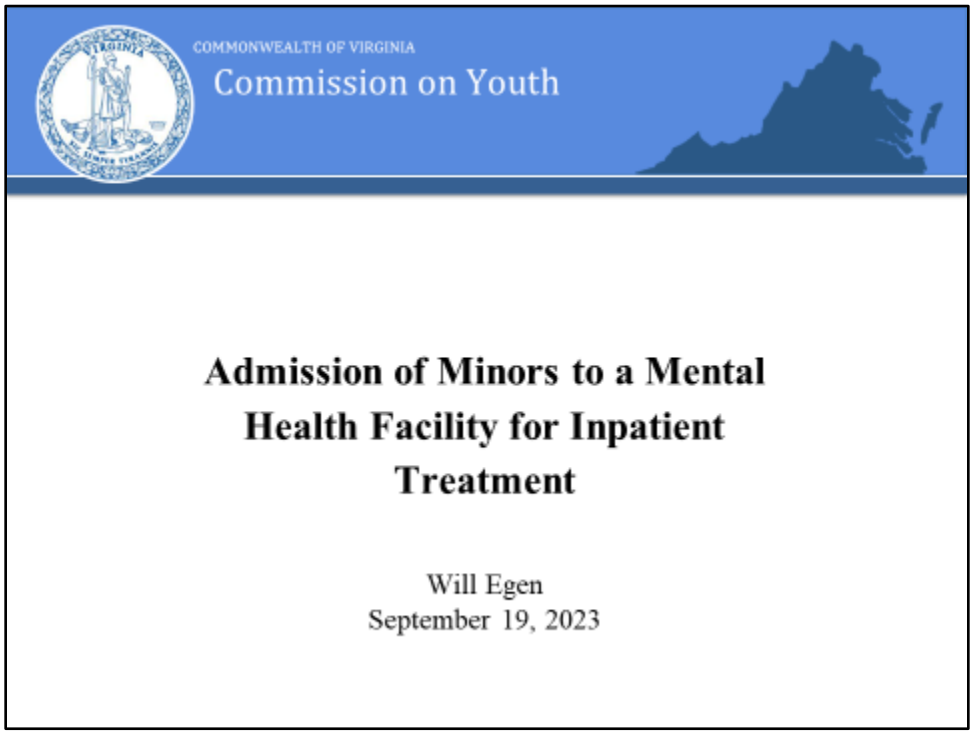
50-state survey- Inpatient and Substance use decision-making categorization by law:

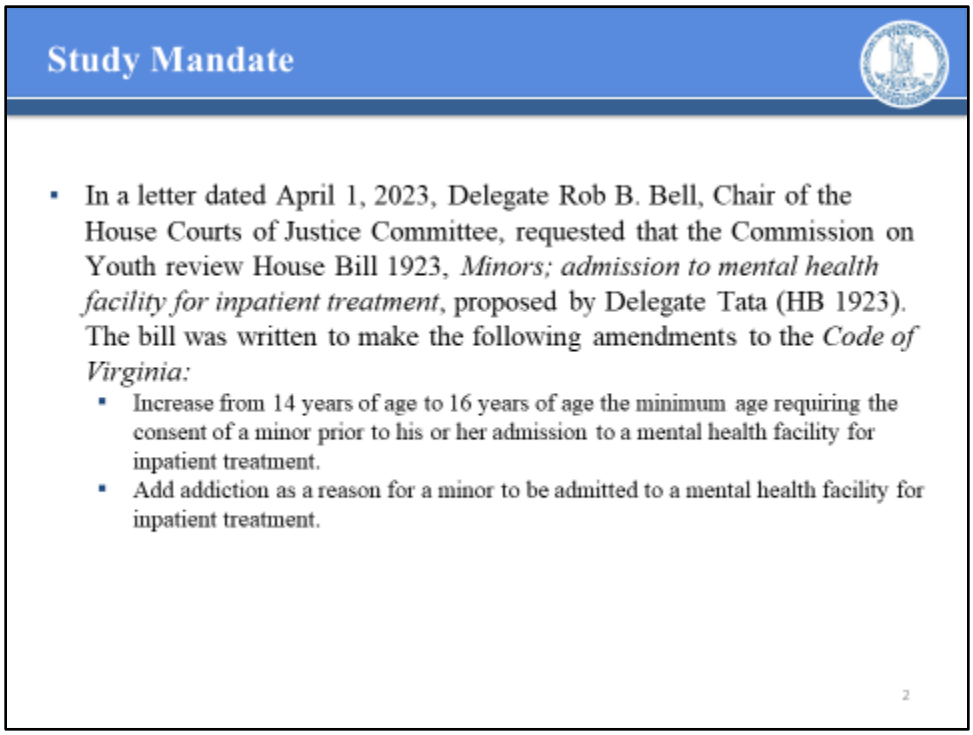
State	Voluntary Inpatient Mental Health Treatment	Voluntary Inpatient Substance Abuse Treatment
Alabama	Minor at 14 Parent can override	Minor
Alaska	Parent	Parent
Arizona	Parent	Minor at 12
Arkansas	Minor or Parent	Minor or Parent
California	Minor at 14	Minor at 14 In junction with mental health crisis
Colorado	Minor at 15 Parent at anytime	Minor
Connecticut	Minor at 14 or Parent	Minor or Parent
Delaware	Parent	Minor at 14 or Parent
Florida	Parent with informed consent of a minor 17 or younger	Minor
Georgia	Parent	Parent
Hawaii	Minor at 14	Minor
Idaho	Minor at 14 after notice to parent	Minor or Parent
Illinois	Minor at 16	Minor at 12
Indiana	Parent	Minor
Iowa	Parent	Parent
Kansas	Minor at 14 or Parent	Minor at 14 or Parent
Kentucky	Parent	Minor
Louisiana	Minor at 16	Minor at 16
Maine	Parent	Minor

State	Voluntary Inpatient Mental Health Treatment	Voluntary Inpatient Substance Abuse Treatment
Maryland	Minor at 16	Minor or Parent
Massachusetts	Minor at 16 or Parent	Minor at 12
Michigan	Minor or Parent	Minor
Minnesota	Minor at 16 or Parent	Minor at 16 or Parent
Mississippi	Parent	Parent
Missouri	Parent	Minor or Parent
Montana	Minor at 16 or Parent	Minor
Nebraska	Parent	Parent
Nevada	Parent	Minor
New Hampshire	Parent	Parent
New Jersey	Minor at 14	Minor
New Mexico	Minor at 14	Minor at 14
New York	Minor at 16	Minor
North Carolina	Parent	Parent
North Dakota	Minor or Parent	Minor or Parent
Ohio	Minor or Parent	Minor
Oklahoma	Minor at 16 or Parent	Minor at 16 or Parent
Oregon	Parent	Parent
Pennsylvania	Minor at 14 or Parent	Minor
Rhode Island	Both Parent and Minor	Minor or Parent
South Carolina	Minor at 16	Minor at 16
South Dakota	Parent	Minor or Parent
Tennessee	Minor at 16 or Parent	Minor at 16 or Parent
Texas	Minor at 16	Minor at 16 or Parent
Utah	Parent	Parent
Vermont	Minor at 14	Minor at 12

State	Voluntary Inpatient Mental Health Treatment	Voluntary Inpatient Substance Abuse Treatment
Virginia	Both Parent and Minor at 14	Both Parent and Minor at 14
Washington	Minor at 13	Minor at 13
West Virginia	Minor or Parent	Minor or Parent
Wisconsin	Both Parent and Minor at 14	Both Parent and Minor at 14
Wyoming	Parent	No Specific Law
District of Columbia	Parent	No Specific Law

Appendix C


COMMONWEALTH OF VIRGINIA
Commission on Youth
Admission of Minors to a Mental Health Facility for Inpatient Treatment
Will Egen
September 19, 2023


Study Mandate
In a letter dated April 1, 2023, Delegate Rob B. Bell, Chair of the House Courts of Justice Committee, requested that the Commission on Youth review House Bill 1923, Minors; admission to mental health facility for inpatient treatment, proposed by Delegate Tata (HB 1923). The bill was written to make the following amendments to the Code of Virginia:
Increase from 14 years of age to 16 years of age the minimum age requiring the consent of a minor prior to his or her admission to a mental health facility for inpatient treatment.
Add addiction as a reason for a minor to be admitted to a mental health facility for inpatient treatment.
2

Interviewed Stakeholders

- Circuit Court Judge
- Department of Behavioral Health and Developmental Services
- disAbility Law Center of Virginia (dLCV)
- Division of Legislative Services
- Institute of Law, Psychiatry and Public Policy (ILPPP) at the University of Virginia
- Juvenile and Domestic Relations Court Judges
- National Alliance on Mental Illness (NAMI)
- Office of the Attorney General
- Office of the Executive Secretary of the Supreme Court of Virginia
- Office of the Secretary of Health and Human Resources
- Parents
- Psychiatric Residential Treatment Facility (PRTF)
- Psychiatric Society of Virginia
- Substance Abuse and Addiction Recovery Alliance (SAARA) of Virginia
- VBA Commission on the Needs of Children
- Virginia Association Of Community Services Boards (VACSB)
- Virginia Chapter of the American Academy of Pediatrics
- Virginia Hospital and Healthcare Association (VHHA)
- Virginia Poverty Law Center (VPLC)

3

Additional Methodology

- Reviewed 2014 and 2015 reports from the Joint Commission on Health Care on Minor Consent Requirement for Voluntary Inpatient Psychiatric Treatment and Minor Consent for Voluntary Inpatient Psychiatric Treatment.
- Identified statutes on inpatient treatment for mental health and substance use for the 50 states using Westlaw, Lexis, Fastcase, National Conference of State Legislatures (NCSL), and the Journal of Child & Adolescent Substance Abuse.
- Requested the National Alliance on Mental Illness (NAMI) Virginia send out survey questions on the age of admission and substance use to its members on behalf of the Commission on Youth.
- Met with officials from the Wisconsin Department of Health Services to discuss and learn about their Department's "Clients Rights" page.
- Staff attended a § 16.1-339 commitment hearing.

4

Substance Use Meeting in Norfolk

- On August 10, 2023 Commission staff attended a substance use meeting at Slover Library.
- In attendance were legislators, state and local agencies representatives, and parents and families.
- Discussed the barriers to accessing substance use treatment for minors:
  - Difficult to access inpatient treatment for young people who are not presently suicidal.
  - Location options and bed capacity of inpatient and residential treatment facilities.
- Discussed the need for more recovery options:
  - Expansion of recovery schools in Virginia.
  - Lack of peer mentors in the same age group.

5

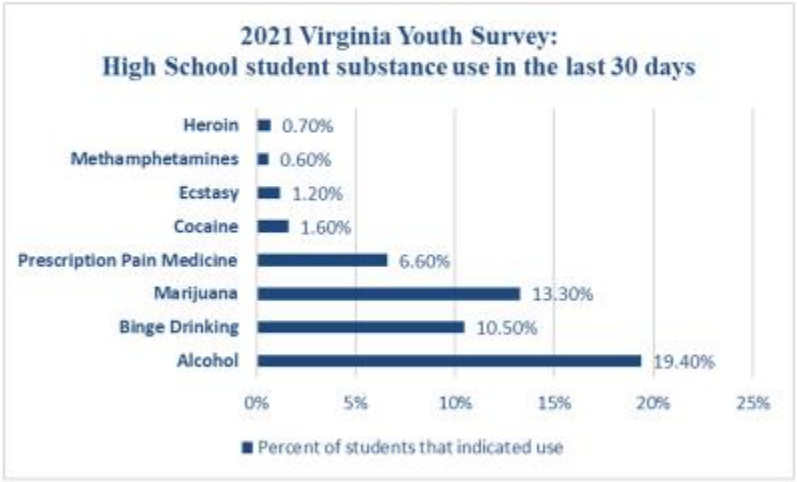
Virginia Youth Mental Health

- According to the 2021 Virginia Youth Survey regarding high school students in Virginia:
  - **38.2%** of students felt sad or hopeless every day for two weeks or more.
  - **20.5%** of students answered that they seriously considered attempting suicide, during the 12 months before the survey.
  - The percentage of students who strongly agree or agree that they feel good about themselves is **52.1%**.

Source: https://www.vdh.virginia.gov/virginia-youth-survey/data-tables/.

6

Virginia Youth Substance Use

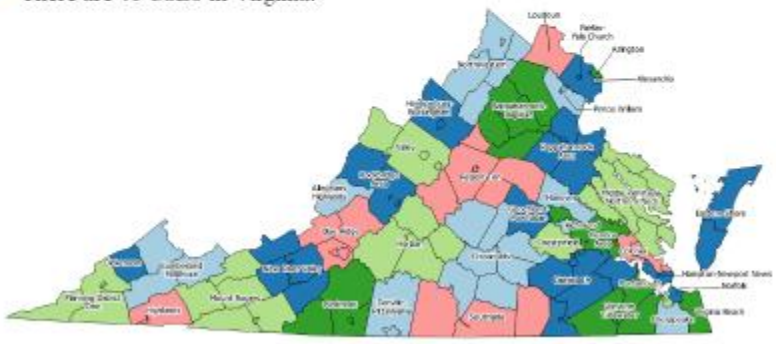


Source: https://www.vdh.virginia.gov/virginia-youth-survey/data-tables/.

7

Community Services Boards in Virginia

- Virginia's community services boards (CSBs) are the primary point of entry into the Commonwealth's public behavioral health and developmental services system.
- CSBs help provide treatment for mental health issues, substance use and addiction, and intellectual and developmental disabilities for adults and children.
- There are 40 CSBs in Virginia.



Source: https://dbhds.virginia.gov/community-services-boards-csbs/.

8

Children's Behavioral Health Service Array

More intensive and costly

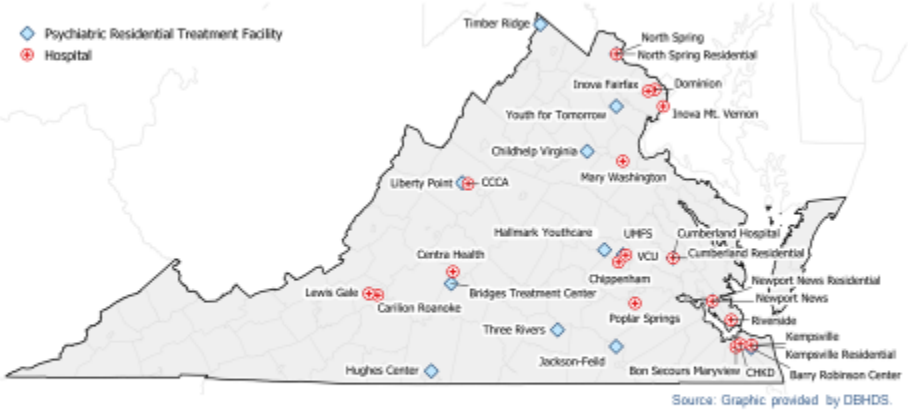
Less intensive

- Acute **inpatient care** for mental health treatment needs occurs at a public or private acute care psychiatric unit of a hospital or free-standing psychiatric hospital. Substance abuse detox or substance abuse residential treatment can occur here.
- A step down from inpatient care is treatment at a **Psychiatric Residential Treatment Facility (PRTF)**. These facilities offer comprehensive treatment services, such as individual and group therapy and can offer crisis stabilization.
  - All PRTFs now include addiction and recovery as a treatment offering.

Source: https://dbhds.virginia.gov/developmental-services/children-and-families/system-of-care/.

9

Locations of Psychiatric Hospitals and Residential Treatment Facilities for Minors in Virginia



Source: Graphic provided by DBHDS.

- There are approximately 600 licensed inpatient psychiatric beds for minors in Virginia.
- There are 18 PRTFs in Virginia.* Bed space varies by treatment (Ex. Hallmark Youthcare: 84 beds total. Substance abuse treatment: 14 Female beds and 12 Male beds).

Source: https://rga.lis.virginia.gov/Published/2021/RD641/PDF.
Source: https://www.hallmarkyouthcare.org/about-us/.

*DBHDS provider search website includes 3 additional PRTF's not pictured: Grafton, Berryville; Harbor Point, Portsmouth; Poplar Springs, Petersburg.

10

Addressing Gaps In Substance Use Services

- Ex. Mount Rogers opened PATH CSU a 12-bed crisis stabilization unit for youth who are experiencing a behavioral health or substance abuse crisis opened July 2023 in Wythe County.
- DBHDS statewide needs assessment on adolescent substance use interviewed providers and heard:
  - There is a disjointed or nonexistent system of care, and overall lack of available substance use treatment for adolescents.
  - Higher levels of care, specifically inpatient treatment options designed for adolescent clients are needed.
  - A need for specialized treatment for youth with co-occurring mental health and substance use issues
- Issue: Need for more substance use integrated services; clinically managed medium intensity residential services (ASAM 3.5); medically monitored high intensity inpatient services (ASAM 3.7).

Source: https://www.csa.virginia.gov/Content/doc/Enhancing_Virginia%27s_System_of_Care_2022.pdf 11
Photo: WYCB

The Inpatient Treatment of Minors Laws and Issues

12

Parental admission of objecting and nonobjecting minors

- **Relevant sections found under the Psychiatric Treatment of Minors Act, which governs all inpatient treatment of minors.**
  - *Code of Virginia* §§ 16.1-335 - 348.
- ***Code of Virginia* § 16.1-338** Parental Admission of Minors Younger than 14 and Non-objecting Minors 14 Years of Age or Older
  - "A minor younger than 14 years of age may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent. A minor 14 years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parent."
- ***Code of Virginia* § 16.1-339** Parental Admission of an Objecting Minor 14 Years of Age or Older
  - "A minor 14 years of age or older who (i) objects to admission or (ii) is incapable of making an informed decision may be admitted to a willing facility for up to 120 hours, pending the review required by subsections B and C, upon the application of a parent."

13

Definitions

- **Consent**
  - Voluntary, express, and informed agreement to treatment.
  - Given by a minor fourteen or older AND by a parent or legally authorized custodian.
- **Mental Health Facility**
  - Public or Private.
  - Operated or licensed by Department of Behavioral Health and Developmental Services.
- **Mental Illness**
  - "Substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgement or capacity to recognize reality or control behavior. May include **substance abuse**, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to include mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior."

Source: §16.1-336.

14

Definitions Cont'd

- **Parent**
  - Biological or adoptive parent "who has legal custody," including either parent if custody is joint.
  - Parent with whom the minor regularly resides.
  - Person judicially appointed as legal guardian; or
  - Person who exercises "rights and responsibilities of legal custody" by parent's delegation or by law (Ex: Department of Social Services).
- **Qualified Evaluator**
  - Licensed psychiatrist or psychologist, or if unavailable:
    - Any mental health professional licensed through the Department of Health Professions: Clinical Social Worker; Professional Counselor; Marriage and Family Therapist; Psychiatric Nurse Practitioner; Clinical Nurse Specialist, and; Any mental health professional employed by a Community Services Board.

Source: §16.1-336.

15

Criteria for Admission

§ 16.1-338 (voluntary) and § 16.1-339 (objecting)

- The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment;
- The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment;
- If the minor is 14 years of age or older, that he has been provided with an explanation of his rights under this Act as they would apply if he were to object to admission, and that he has consented to admission; and **[Only 16.1-338]**
- All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

§ 16.1-340 (ECO), § 16.1-340.1 (TDO), & § 16.1-345 (Involuntary)

- Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;
- The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and
- If the court finds that inpatient treatment is not the least restrictive treatment, the court shall consider entering an order for mandatory outpatient treatment pursuant to § 16.1-345.2. **[Only 16.1-345]**

16

Initial Evaluation, Judicial Review, Commitment Timeframe

- **Initial Evaluation – Criteria for admission is recorded at this stage.**
  - § 16.1-338 (voluntary) – Private facility: Within 48 hours by a qualified evaluator. CCCA: Preadmission screening report by a CSB employee.
  - § 16.1-339 (objecting) – Qualified evaluator designated by CSB shall examine the minor within 24 hours.
- **Judicial Review**
  - No review necessary for § 16.1-338 (voluntary)
  - § 16.1-339 (objecting) – the facility shall file a petition to the JDR court no sooner than 24 hours and no later than 120 hours after admission. (This is also the admitting time.)
    - The judge shall appoint a guardian ad litem and counsel for the minor.
    - The court and the guardian ad litem shall review the petition and evaluator's report and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist.
    - The court shall conduct its review in such place and manner, including the facility, as it deems to be in the best interests of the minor.
- **Commitment Timeframe**
  - Inpatient treatment of a minor hospitalized under either section may not exceed 90 consecutive days. (More leeway for §16.1-338 (voluntary))

17

History of Minor Consent Requirement Laws

- **Prior to 1976** – Virginia statute authorized the voluntary admission of minors on the request of the parent or any person standing in loco parentis to such minor.
- **1976** – *Code of Virginia* was amended to not distinguish between minors and adults for voluntary and involuntary commitment procedures.

Parham v. J.R., 442 U.S. 584 (1979) – "Notwithstanding a child's liberty interest in not being confined unnecessarily for medical treatment,…parents -- who have traditional interests in and responsibility for the upbringing of their child -- retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse…Parents do not always have absolute discretion to institutionalize a child; they retain plenary authority to seek such care for their children, subject to an independent medical judgment."

18

History of Minor Consent Requirement Laws

- **Psychiatric Inpatient Treatment of Minors Act (1990)** – 14 year old distinction for consent and revocation of consent is codified.
- **2008 law update** - Court shall appoint counsel for involuntary commitment proceedings for objecting minors 14 years or older.
- **Psychiatric Treatment of Minors Act (2010)** – Creates a stand alone juvenile commitment act.
- **2015 changes to *Code* §§ 16.1-338 and 16.1-339**
  - i) increase the time that a non-consenting minor 14 or older could be held in an inpatient mental health facility from 96 to 120 hours; (TDO is still 96 hours.)
  - ii) make the basis for judicial authorization, to continue hospitalization despite the minor's objection, consistent with the criteria for a voluntary admission of a consenting minor; and
  - iii) require that facility staff notify a parent immediately if their child 14 or older objects to further inpatient treatment while providing the parent with an explanation of the procedures for requesting continued treatment.

19

Outpatient Mental Health and Substance Abuse Treatment for Minors

- ***Code of Virginia* § 54.1-2969E**
  - A minor shall be deemed an adult for the purpose of consenting to:
    - Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse.
    - Outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

20

Code of Virginia Examples of Ages Where Minors Are Asked for Consent or Involvement

- Minor deemed as an adult in consenting for (§ 54.1-2969E):
  - Receipt of birth control, pregnancy or family planning services.
  - Treatment of venereal, infectious or contagious disease.
  - Authorization of disclosure of medical records (related to the items above).
- Emergency Services (§ 54.1-2969E):
  - A minor 14 year of age or older who is physically capable of giving consent must provide consent prior to receiving medical treatment in cases of a medical emergency, … and no other authorized person is available to provide consent.
- Donating Blood (§ 54.1-2969H):
  - A minor 16 years of age or older may donate blood with the consent of a parent.
  - A minor 17 years of age may donate blood to a nonprofit, voluntary organization without parental consent.
- Foster Care Plan (§ 16.1-281): Age a child shall be involved in a plan changed from 14 to 12 in 2021.
- Age of majority (§ 1-204): 18 years of age.

21

Other States' Laws on Treatment Consent Authority

Type of Authority	Voluntary Inpatient Mental Health Treatment	Voluntary Inpatient Substance Abuse Treatment
Parent Consent Only	19 states & D.C.	9 states
Minor Consent Sufficient	13 states	23 states
Either Parent or Minor Consent	15 states	15 states
Both Parent and Minor Consent	4 states *Virginia	2 states *Virginia

Note: "Minor Consent Sufficient" refers to states that give the minor authority to admit themselves without parental consent.
Note: "Either Parent or Minor Consent" refers to states that have a specific clause in their statute stating parents can always admit their child.
Note: No specific law regarding voluntary inpatient substance abuse treatment was identified for Wyoming and Washington D.C.

22

Other States' Laws Cont'd

States' minor age of consent categorized by age (Includes Minor Consent Sufficient, Either Parent or Minor Consent, and Both Parent and Minor Consent)

Age of Minor Consent	Inpatient Mental Health Treatment	Inpatient Substance Abuse Treatment
12 years of age	0 states	4 states
13 years of age	1 state	1 state
14 years of age	12 states *Virginia	6 states *Virginia
15 years of age	1 state	0 states
16 years of age	11 states	6 states
No specified age	7 States	23 States

23

Other States' Laws Cont'd

States' minor age of consent categorized by age and type of authority regarding inpatient mental health treatment

Type of Authority	12 Years of Age	13 Years of Age	14 Years of Age	15 Years of Age	16 Years of Age
Minor Consent Sufficient	0 states	1 state	6 states	0 states	6 states
Either Parent or Minor Consent	0 states	0 states	4 states	1 state	5 states
Both Parent and Minor Consent	0 states	0 states	2 states * Virginia	0 states	0 states

24

Other States' Laws Cont'd

States' minor age of consent categorized by age and type of authority regarding inpatient substance abuse treatment

Type of Authority	12 Years of Age	13 Years of Age	14 Years of Age	15 Years of Age	16 Years of Age
Minor Consent Sufficient	4 states	1 state	2 states	0 states	2 states
Either Parent or Minor Consent	0 states	0 states	2 states	0 states	4 states
Both Parent and Minor Consent	0 states	0 states	2 states * Virginia	0 states	0 states

25

State Laws Vary on Other Issues for Inpatient Treatment

- Whether a judicial hearing is required in cases when there is an objecting minor.
  - Some states only require a determination by an independent examiner.
  - Virginia requires a judicial hearing.
- Whether there is a waiting or holding period before a hearing.
  - Some states have no waiting or holding period until the hearing.
  - For states with waiting or holding periods, they vary from 3 to 21 days.
  - Virginia's holding period is 5 days.
- Whether the standard for admission after a minor's objection is the same as a voluntary or an involuntary commitment.
  - The standard for admission in Virginia is the same as voluntary commitment.

26

Mental Commitment Filings: Juvenile & Domestic Relations District Courts - Virginia

Court disposition data for all civil cases filed in all Juvenile & Domestic Relations courts under § 16.1-339 during CY2022

Age	Juvenile released to parent	Involuntarily committed	Continued Hospitalization	Withdrawn	Dismissed	Total
14	0	10	2	2	1	15
15	2	8	2	5	1	18
16	1	17	4	7	1	30
17	2	23	4	2	3	34

Total of 97 petitions
Source: Office of the Executive Secretary, Supreme Court of Virginia, Juvenile and Domestic Relations District Court case management system. Provided as entered by the clerks of court.

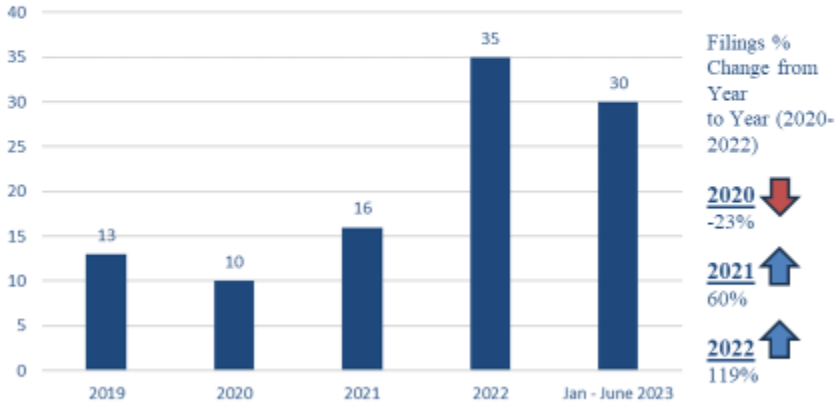
- Recent year numbers on TDO's executed for minors: FY21: 1895, FY22: 1902, FY23: 1915.

Source: DBHDS email correspondence.

27

Mental Commitment Filings: Juvenile & Domestic Relations District Courts of Virginia Richmond

§16.1-339 Court Petition Filings from January 2019 through June 2023 in Richmond JDR Court



Source: Juvenile and Domestic Relations District Court case management system. Provided as entered by the clerks of court.

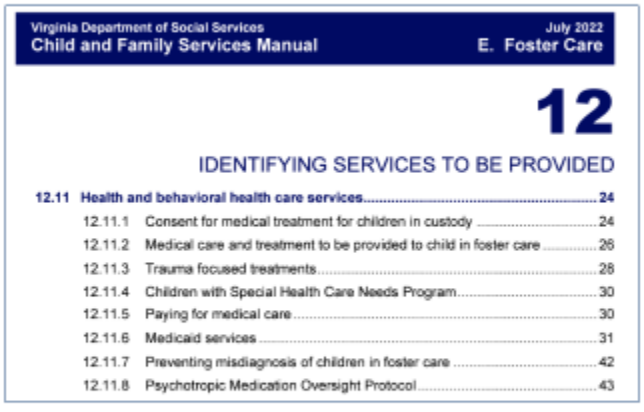
28

Accessibility of the Admission Process for an Objecting Minor 14 Years of Age or Older

- The admission process for an objecting minor 14 years of age or older is not easily accessible through a Google search.
- **"Can I make my 15 year old child get psychiatric treatment in Virginia?"** Google results:
  - A pamphlet put together and administered by Fairfax County.
  - The Psychiatric Treatment of Minors Act.
  - No link or direction to your local Community Services Board.
- **"Can my parents make me get psychiatric treatment at 15 in Virginia?"** Google Results:
  - Psychiatric Treatment of Minors Act.
- The Department of Behavioral Health and Developmental Services does not have public facing information on this topic on its website.

29

Department of Social Services Guidance



Virginia Department of Social Services
Child and Family Services Manual

July 2022
E. Foster Care

12

IDENTIFYING SERVICES TO BE PROVIDED

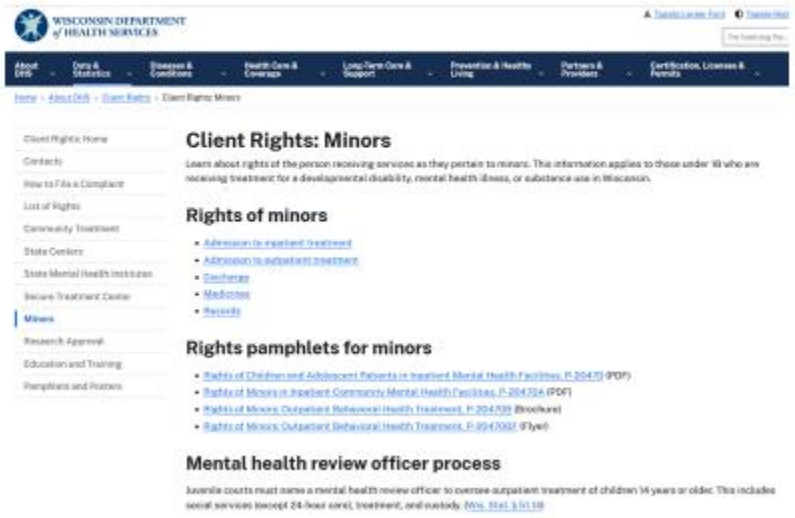
12.11 Health and behavioral health care services 24
12.11.1 Consent for medical treatment for children in custody 24
12.11.2 Medical care and treatment to be provided to child in foster care 26
12.11.3 Trauma focused treatments 28
12.11.4 Children with Special Health Care Needs Program 30
12.11.5 Paying for medical care 30
12.11.6 Medicaid services 31
12.11.7 Preventing misdiagnosis of children in foster care 42
12.11.8 Psychotropic Medication Oversight Protocol 43

- Issue: Department of Social Services does not issue guidance on this topic for its LDSS foster care workers.
- Local departments work closely with their local CSBs, but improved guidance could prove useful when the state is acting in the role as parent.

Source: https://www.dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/fc/07_2022/section_12_identifying_services_to_be_provided.pdf.

30

Accessibility of Admission Process in Wisconsin



Source: https://www.dhs.wisconsin.gov/clientrights/minors.htm

Accessibility of Admission Wisconsin Cont'd.

- Includes direct links to statues broken down by category (developmental disability, mental health, substance abuse, detoxification).
- Answers to questions including:
  - What if the parent or guardian is unavailable or refuses to agree?
  - What authority and limitations do parents or guardians have over children in treatment settings?
  - May a child refuse treatment? (under 14? Over 14?)
  - What should happen during admission? And On what is admission based?
  - What is a petition for admission?
- Pamphlets on the admission process in three languages.

Source: https://www.dhs.wisconsin.gov/clientrights/minors.htm

Draft Recommendations

33

Draft Recommendations

Recommendation 1: Amend the *Code of Virginia* § 16.1-338 and § 16.1-339 to raise the age of minor objection from 14 to 16.

Recommendation 2: Amend the *Code of Virginia* §16.1-338 and § 16.1-339 to state the age of parent and minor consent for entering inpatient substance use treatment. The current law (14 for minor objection) is not explicitly stated but rather implied.

(and)

Amend the *Code of Virginia* to add clarifying language to §16.1-339 to state that if a minor is being granted admission to a willing facility under the application of a parent, then a temporary detention order (TDO) shall not be required under this section.

34

Draft Recommendations

Recommendation 3: Request the Department of Behavioral Health and Developmental Services put together a work group with Virginia Association of Chiefs of Police, Virginia Sheriffs' Association, the Virginia Association of Community Services Boards (VACSB), the Virginia Magistrates Association, Office of the Executive Secretary of the Supreme Court of Virginia, and any other relevant stakeholders to consider options for the transportation of minors that can be admitted under §16.1-339, as is currently done for emergency custody orders and temporary detention orders as described in § 16.1-340.1. DBHDS shall make any recommendations to the Commission on Youth by November 1, 2024.

35

Draft Recommendations

Recommendation 4: Request (or) Introduce a section one bill to require the Department of Behavioral Health and Developmental Services to provide a page on its website geared towards the public that describes the laws, options, and frequently asked questions as it relates to the Psychiatric Treatment of Minors Act. The information posted shall be done so with the assistance of mental health, substance abuse, and disability experts and advocates.

Recommendation 5: Request the Department of Social Services update guidance and have the Department of Social Services Director send a letter to local departments of social services describing the admission of minors to inpatient treatment process, including §16.1-339.

36

Draft Recommendations

Recommendation 6: Request the Department of Behavioral Health and Developmental Services provide educational materials to the Psychiatric Society of Virginia, the Virginia Academy of Clinical Psychologists, and community services boards for further dissemination to their members on the voluntary and involuntary admission's process for minors to a mental health facility for inpatient treatment. DBHDS should consult the *Juvenile Law and Practice in Virginia* manual, Office of the Executive Secretary of the Supreme Court of Virginia training materials, and information provided by Virginia's medical schools.

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Draft Recommendations

Recommendation 7: Request the Department of Behavioral Health and Developmental Services work with CSBs to target American Rescue Plan Act (ARPA) and other available one time federal funds towards higher intensity substance use services for minors. These are services ASAM level 2.5 and higher.

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Public Comment

Written public comment must be received
by 5:00 p.m.
on November 13, 2023.

Submission instructions are available
online (http://vcoy.virginia.gov)

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