

# **A Study of Civil Commitment Hearings Held in the Commonwealth of Virginia During May 2007**

*A Report to the  
Commission on Mental Health Law Reform*

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Retardation and Substance Abuse Services and the Supreme  
Court of Virginia

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The Commonwealth of Virginia Commission on Mental Health Law Reform (“Commission”) was appointed by the Chief Justice of the Supreme Court of Virginia, Leroy Rountree Hassell, Sr., in October 2006. Commission members include officials from all three branches of state government as well as representatives of many private stakeholder groups, including consumers of mental health services and their families, service providers, and the bar. The Commission was directed by the Chief Justice to conduct a comprehensive examination of Virginia’s mental health laws and services and to study ways to use the law more effectively to serve the needs of people with mental illness, while respecting the interests of their families and communities.

Goals of reform include reducing the need for commitment by improving access to mental health, mental retardation and substance abuse services, avoiding the criminalization of people with mental illness, making the process of involuntary treatment more fair and effective, enabling consumers of mental health services to have more choice over the services they receive, and helping young people with mental health problems and their families before these problems spiral out of control.

The Commission has been assisted by five Task Forces charged, respectively, with addressing gaps in access to services, involuntary civil commitment, empowerment and self-determination, special needs of children and adolescents, and intersections between the mental health and criminal justice systems. In addition, the Commission established a Working Group on Health Privacy and the Commitment Process (“Working Group”). Information regarding the Commission is available at <http://www.courts.state.va.us/cmh/home.html>.

The Commission also conducted three major empirical studies during 2007 under the supervision of its Research Advisory Group. The first was an interview study of 210 stakeholders and participants in the commitment process in Virginia. The report of that study, entitled *Civil Commitment Practices in Virginia: Perceptions, Attitudes and Recommendations*, was issued in April 2007. The study is available at [http://www.courts.state.va.us/cmh/civil\\_commitment\\_practices\\_focus\\_groups.pdf](http://www.courts.state.va.us/cmh/civil_commitment_practices_focus_groups.pdf).

The second major research project was a study of commitment hearings and dispositions. In response to a request by the Chief Justice, the presiding judge filled out a 2-page instrument on every commitment hearing held in May 2007. (There were 1,526 such hearings.) Findings from the Hearing Study were presented to the Commission in 2007 and served an important role in shaping the Commission's understanding of current commitment practice. Finally, the Commission's third project was a study of every face-to-face crisis contact evaluation conducted by Community Service Board emergency services staff during June 2007. (There were 3,808 such evaluations.)

Based on its research and the reports of its Task Forces and Working Groups, the Commission issued a preliminary report in December 2007. The Preliminary Report is available at [http://www.courts.state.va.us/cmh/2007\\_0221\\_preliminary\\_report.pdf](http://www.courts.state.va.us/cmh/2007_0221_preliminary_report.pdf). The Preliminary Report outlined a comprehensive blueprint for reform ("Blueprint") and identified specific recommendations for the 2008 session of the General Assembly.

This document is the report of the Hearing Study mentioned above. It is entitled "A Study of Civil Commitment Hearings Held in the Commonwealth of Virginia During May 2007." Professor Elizabeth McGarvey, the Commission's Research Director, was the Principal Investigator for this study. This report is the work of the Research Study Team and has not been reviewed or approved by either the Commission or the Supreme Court. It was prepared as a resource for the Commission and for the public.

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April, 2008

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County of Albemarle  
City of Alexandria  
County of Arlington  
City of Bristol  
County of Buchanan  
County of Carroll  
City of Charlottesville  
City of Chesapeake  
City of Danville  
County of Dinwiddie  
City of Fairfax  
County of Fairfax  
County of Fauquier  
County of Floyd  
City of Fredericksburg  
City of Hampton  
County of Hanover  
County of Henrico  
County of Henry/City of Martinsville  
County of Lancaster  
County of Loudoun  
City of Lynchburg  
County of Mecklenburg  
County of Montgomery  
City of Norfolk  
City of Norton  
County of Nottoway  
City of Petersburg  
City of Portsmouth  
County of Powhatan  
County of Prince William  
County of Pulaski  
City of Radford  
City of Richmond  
City of Roanoke  
County of Roanoke  
County of Rockingham  
County of Russell  
City of Salem  
County of Smyth  
County of Stafford  
City of Staunton  
City of Suffolk  
City of Virginia Beach  
City of Williamsburg  
City of Winchester  
County of Wise

*\*See Appendix D for list of Judicial Districts.*

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# SUMMARY OF FINDINGS

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The following is a summary of the key findings of the Commission on Mental Health Law Reform’s Study of Civil Commitment Hearings Held in the Commonwealth of Virginia During May 2007 (the “Commission’s Hearing Study”).

The Commission’s Hearing Study was designed to examine the pre-hearing, hearing, and disposition phases of civil commitment proceedings in Virginia for both adults and children. Civil commitment proceedings, which can result in the involuntary inpatient hospitalization of individuals with severe mental illness, operate under a detailed statutory framework and engage law enforcement, health professionals and courts. The study was designed to provide a window into how the civil commitment process functions in Virginia. A complete description of the findings is contained in the full report.

## **SECTION I: STATEWIDE SUMMARY OF CIVIL COMMITMENT HEARINGS**

### *All Hearings Held in May 2007*

► All district court judges and special justices who preside at civil commitment proceedings across Virginia were requested by the Chief Justice to complete a 2-page questionnaire on each hearing conducted in May 2007 (the “survey month”). Completed hard-copy questionnaires containing descriptive information on 1,526 individual hearings were returned to University of Virginia researchers. Data from eleven Circuit Court appeals were also recorded.

► Information was provided from 48 district courts representing nearly all jurisdictions. As expected, based on the distribution of the population in Virginia, there was wide variation in the numbers of hearings held in the respective courts. Ten district courts held fewer than 10 hearings during the survey month, while eleven courts held 50 or more hearings. The district courts with fewer hearings tended to be more rural, and those with the higher numbers were located in more highly populated cities or urban areas.

▶ In 97% of the hearings, the respondent was an adult over the age of 18. In 11% of these cases, the hearing was for recommitment to inpatient treatment, which typically resulted in continued involuntary inpatient hospitalization. Recommitment hearings were twice as likely to result in involuntary inpatient hospitalization as were initial commitment hearings.

▶ According to information obtained from the Juvenile and Domestic Relation Courts, 41 juvenile hearings were held during the survey month. (Seven additional hearings involved individuals who were in the penal system.)

▶ Hearings were held in a variety of locations including district courthouses, hospitals or some other location, such as a crisis stabilization unit or other mental health facility. In 94% of cases, the hearing was not conducted in a courthouse. More than 89% of hearings were held in hospitals.

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## **SECTION II: ADULT CIVIL COMMITMENT HEARINGS**

▶ During the survey month, 30% of the hearings occurred less than 24 hours after the execution of a Temporary Detention Order (TDO).

▶ In 8% of cases, the respondent was held for more than 48 hours after the TDO was issued before the hearing occurred, even though the statutory 48-hour TDO period did not fall over a weekend or holiday, in which case the statute provides an extension to the next business day.

▶ Hearings tended to be brief. The hearing lasted 15 minutes or less in 57% of cases.

▶ The presiding judge in 91% of the adult civil commitment hearings was a special justice.

▶ In all but two hearings (99.8%), a court-appointed attorney represented the respondent.

▶ The petitioner in over 70% of hearings was either a Community Service Board (CSB) clinician or hospital personnel. The number of people who testified during the hearings ranged from none to seven. In about 70% of adult cases, the respondent testified at the hearing.

►The petitioner did not appear at the hearing in nearly three-quarters of the time (72%). However, if the petitioner appeared, he or she usually testified (in over 80% of cases). In about 74% of cases, the judge or special justice questioned witnesses during the hearing, including CSB representatives, other clinicians, family members or other witnesses.

►A CSB clinician appeared at the hearing in about half of the cases. Of CSB clinicians who appeared, about 70% of them testified. Overall, a representative from the CSB testified in 38% of all hearings held in the survey month. Typically, the CSB prescreening report was submitted to the court only in written form.

►There were a number of differences in dispositions related to who testified at the hearing. There were more involuntary inpatient commitments when the hospital physician testified than when he or she did not (66% vs. 49%), with no difference in rates of dismissals.

►Most independent examiners (77%) were physicians (M.D.) or psychologists (Ph.D.). The independent examiner appeared at the hearing about two-thirds of the time (64%). In 52% of hearings, the independent examiner submitted only a written report to the court, in 33% of hearings, gave both a written and oral report, and in 15% of cases, gave only oral testimony. Overall, 84% of the commitment certifications were positive for a probable cause to involuntarily commit the respondent.

►The independent examiner plays a key role in civil commitments. His or her finding predicts the disposition of the hearing in many cases. Among cases in which the independent examiner certification was “positive to commit”, about 30% resulted in a voluntary inpatient admission, 58% resulted in an involuntary inpatient commitment, 5% resulted in an involuntary outpatient commitment, 6% of cases were dismissed and less than one percent resulted in a voluntary outpatient commitment. When the independent examiner certified an insufficient finding, the case was more likely to be dismissed and the respondent released.

►Occasionally, there was a need for foreign language or hear/speech-impaired interpreters at the hearings, but it was uncommon, occurring in about 1% of cases.

▶ Almost half of all adult hearings (49.2%) resulted in an involuntary inpatient commitment, followed by almost a third (29%) resulting in the respondent agreeing to a voluntary inpatient admission for treatment. Rarely was a respondent ordered into mandatory outpatient treatment (5.7%) or permitted to go into outpatient treatment voluntarily (1.5%). Overall, 14.6% of respondents who went before a judge or special justice in the survey month had the petition dismissed and were released, typically because of lack of sufficient evidence that the statutory commitment criteria were met.

▶ About half of the involuntary *inpatient* commitments were based solely on the respondent's inability to care for him or herself.

▶ About half of involuntary *outpatient* commitments were based on the respondent being a danger to self. The treatment provider was rarely specified in the outpatient commitment order.

▶ Rarely, at 5% of the time, was the criteria of danger to others cited as the sole basis of an involuntary inpatient hospitalization.

### **SECTION III: DISTRICT COURT VARIATIONS**

▶ Overall, there were significant variations among district courts across the state in the hearings phase of civil commitment proceedings.

▶ Few courts ( $n=4$ ) held hearings only in courthouses. About a third of the courts held hearings in hospitals more than half of the time but occasionally conducted hearings in courthouses or other locations. All other districts held hearings only in hospitals.

▶ Overall, about half of the districts reported that at least *some* hearings occurred more than 48 hours after the execution of the TDO in cases where the statutory 48-hour TDO period did not fall over a weekend or holiday, in which case the statute provides an extension to the next business day.

▶ In some districts, all the petitioners were CSB staff while in other districts, all petitioners were hospital personnel.

▶ In almost one-third of the districts, no CSB clinicians appeared or testified in any hearings over the survey month.

► In almost one-third of the districts, the independent examiner’s certification was never presented in person and in about a quarter of other districts, it was presented in person 100% of the time.

► There were significant differences in hearings’ dispositions across districts. For example, among district courts with at least 30 cases, dismissal rates ranged from 0% to 60%. The rate of involuntary inpatient treatment orders also varied widely, ranging from 25% to 75%.

► Although involuntary outpatient commitment was rare across the state, one district court reported that 27% of its cases were resolved in this fashion.

#### **SECTION IV: VARIATIONS AMONG FOUR HIGH-VOLUME DISTRICT COURTS**

► In an attempt to minimize variations that might be due to urban/rural differences throughout the state or variations due to respondent characteristics, special analyses were run for the four district courts with more than 90 hearings during the survey month (“high-volume courts”). The high-volume courts also evidenced significant variations in many areas including the criteria cited for issuing commitment orders. For example, Court A had no cases (0%) in which the respondent was considered solely to be a “danger to others” while in Court D, 15% of respondents were considered solely to be a “danger to others.”

► There was considerable variation in the hearing characteristics across the high-volume courts on a number of other characteristics (e.g., length of time elapsed between execution of the Temporary Detention Order and the hearing, length of hearing, presentation of the independent examiner certification).

#### **SECTION V: CHARACTERISTICS OF RECOMMITMENT HEARINGS**

► There were 168 recommitment hearings in Virginia during the survey month. Recommitment hearings tended to share characteristics with typical adult hearings. Most recommitment hearings were held in hospitals.

► Recommitment hearings differed from initial hearings in that the counsel was less likely to meet with the respondent prior to the hearing (78% vs. 94%). In addition, CSB representatives were far less likely to attend recommitment hearings (27% present) than

initial commitment hearings (52% present). Furthermore, recommitment hearings were nearly twice as likely to result in an involuntary inpatient hospitalization compared to an initial hearing.

## **SECTION VI: CHARACTERISTICS OF JUVENILE HEARINGS**

► During the survey month, 41 hearings were held in the Juvenile and Domestic Relations Courts.

► Many differences, including the hearing location, petitioner type, audio recording and independent examiner credentials, were evident comparing juvenile and adult hearings. Although adult hearings typically occurred in hospitals (91%), juvenile hearings took place in courtrooms 70% of the time. In addition, the petitioner was a hospital in 80% of juvenile hearings compared to 21% as hospital petitioners in adult hearings.

► Juvenile hearings resulted in a lower percentage of voluntary inpatient admissions than adult hearings (17% of juvenile cases compared to 29% of adult cases), and a higher percentage of involuntary inpatient orders. Involuntary inpatient orders were the disposition 61% of the time in juvenile courts compared to about 50% of adult cases.

# Overview of the Study on Civil Commitment Hearings in Virginia

## INTRODUCTION

To better understand the findings of the Commission’s Hearing Study, it is important to have a basic understanding of the civil commitment process, the parties with defined statutory roles, and some terminology. Conceptually, the civil commitment process can be divided into three phases:

- Pre-Hearing
- The Hearing
- The Disposition

The Commission’s Hearing Study collected data on all three phases. In addition, data were collected on both juveniles and adults, on initial commitment and recommitment proceedings<sup>1</sup> and appeals.<sup>2</sup> The following provides an overview of the three phases of the civil commitment process.

### *Pre-Hearing*

The civil commitment process usually begins with an Emergency Custody Order (ECO), which permits the detention of an individual with mental illness for a brief period for a mental health assessment.<sup>3</sup> Often the individual is in crisis and is brought to a hospital emergency department or a mental health facility operated by one of Virginia’s 40

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<sup>1</sup> If a person with severe mental illness is involuntarily committed to an inpatient facility and is believed to need continued treatment after the 180-day statutory limit of a commitment order, upon petition, a recommitment hearing may be held to determine anew whether the civil commitment criteria are met.

<sup>2</sup> Because so few appeals were found, those data were not included.

<sup>3</sup> During the Commission’s Hearing Study, the ECO period was four hours. In 2008, the General Assembly modified the statute to allow a two-hour extension, for a total of 6 hours, for good cause.

Community Service Boards (CSBs) where the assessment occurs.<sup>4</sup> A professional employed by one of the CSBs, which have the statutory obligation to provide emergency mental health services, conducts this prescreening assessment.<sup>5</sup>

If the CSB professional suspects that the person meets the civil commitment criteria *and* is able to locate an available mental health bed, a petition for a civil commitment hearing is filed with a magistrate and a Temporary Detention Order (TDO) is issued to provide time for a more extensive clinical evaluation. The entity filing a petition with the court for a TDO (the “petitioner”) varies and may be a CSB professional, the hospital, family member or other concerned party. Once a TDO is filed, the person subject to that petition is called the respondent.

Under the statute in effect during the Commission’s Hearing Study, a person could be detained under a TDO for 48 hours, unless the TDO period fell over a weekend or holiday and it then was extended to the next business day.

During the TDO period, an independent examiner<sup>6</sup> conducts a more extensive clinical evaluation of the individual to determine whether he or she meets the statutory criteria for involuntary inpatient admission or mandatory outpatient treatment (MOT). The criteria for involuntary admission to an inpatient psychiatric facility were modified in 2008 by the General Assembly and will go into effect July 1, 2008. The criteria in effect for the Commission’s Hearing Study provided in Virginia Code §37.2-817 were as follows:

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<sup>4</sup> CSBs are local government agencies that operate under a contract with the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide mental health and substance abuse services to their communities. One or more local governments can be represented by a single CSB, and these governments oversee and fund the CSBs. Thirty-nine CSBs (and one Behavioral Health Authority) exist in Virginia and all localities are members of one of these CSBs. In the Commission’s Hearing Study report, the term CSB shall also include the Behavioral Health Authority.

<sup>5</sup> Virginia Code § 37.2-500 establishes CSBs as the single point of entry for the publicly funded Mental Health, Mental Retardation and Substance Abuse Services System.

<sup>6</sup> An independent examiner must clinically evaluate any individual for whom a TDO has been issued. Under the statute, the independent examiner must certify to the court whether the statutory criteria for involuntary civil commitment or mandatory outpatient treatment are met (Virginia Code §37.2-815). The Virginia statute requires the independent examiner to be a psychiatrist or psychologist who is qualified in the diagnosis of mental illness, but if such a psychiatrist or psychologist is not available, the examination may be performed by any mental health professional who is licensed through the Department of Health Professions, is qualified in the diagnosis of mental illness and meets all of the other requirements in the Code.

- The person presents an imminent danger to self or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for self and
- Alternatives to involuntary inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to involuntary inpatient treatment.

The criteria for MOT are as follows:

- The person presents an imminent danger to self or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for self and
- Less restrictive alternatives to involuntary inpatient treatment have been investigated and deemed suitable.

In addition, the judge must find that the person:

- Has the degree of competency necessary to understand the stipulations of his or her treatment,
- Expresses an interest in living in the community and agrees to abide by his or her treatment plan and
- Is deemed to have the capacity to comply with the treatment plan.

During the TDO period, if the independent examiner finds the statutory commitment criteria are met, he or she certifies this to the court, usually, but not always, in writing.<sup>7</sup>

### *The Hearing*

Virginia is divided into Judicial Districts that contain one or more district courts. Both Juvenile and Domestic Relations district courts (those for respondents age 17 and younger) and general district courts (those for hearings involving adults age 18 or older) operate in all districts. Which court holds a civil commitment hearing depends on the age of the respondent. Appeals of the decisions of either court are heard in the Circuit Court.<sup>8</sup>

Civil commitment hearings<sup>9</sup> may be conducted in 125 district courts throughout the state and must take place within the 48-hour TDO period. The hearings are conducted by district court judges or by special

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<sup>7</sup> Va. Code Ann. §§37.2-815 and 37.2-817

<sup>8</sup> Appendix A provides further details about the Virginia court system.

<sup>9</sup> In this report, “hearing” refers to civil commitment hearings.

justices appointed by the circuit courts.<sup>10</sup> Individuals have the right to be represented by an attorney and to call witnesses. During the hearing other witnesses may provide testimony, including the petitioner, the CSB representative, the independent examiner, family members and close associates. The respondent may also testify.

### *The Disposition*

A hearing<sup>11</sup> may result in a dismissal, a voluntary admission to a hospital for treatment, an agreement to voluntary outpatient treatment, a mandatory outpatient treatment order or an involuntary inpatient commitment order.

1. Dismissal: If the court determines the criteria for involuntary inpatient treatment are not met, the court will dismiss the case.
2. Voluntary inpatient treatment: Rather than having an order for involuntary inpatient treatment, some individuals opt to voluntarily enter an inpatient facility.
3. Voluntary outpatient treatment: When the court agrees to allow the respondent to enter into voluntary outpatient treatment but there is no order, monitoring or follow-up.
4. Mandatory outpatient treatment in Virginia is governed by Virginia Code §37.2-817(C). The statute was modified by the General Assembly in 2008 to provide substantially more oversight. During the time of the Commission's Hearing Study, this disposition was rare.
5. Involuntary inpatient treatment: Also often called civil commitment, this is one of the possible dispositions to a hearing. Under the Virginia Code, the court may, upon a finding that the statutory commitment criteria are met, order the respondent into an inpatient treatment facility for up to the statutory limit of 180

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<sup>10</sup> Pursuant to Virginia Code §37.2-803, special justices are appointed by the chief judge of each judicial circuit for six-year terms to perform the duties required of a judge under Chapters 8 and 11 of Title 37.2. They are licensed to practice law in Virginia and have all powers and jurisdiction conferred upon a judge. Special justices often preside in commitment hearings.

<sup>11</sup> If a respondent agrees to voluntary inpatient treatment, the court may not formally convene a hearing. However, for the purposes of this report, these voluntary agreements for treatment resulting in the context of a TDO are classified within the term "hearings."

days.<sup>12</sup> After that time, a new hearing must be held to assess anew whether the individual’s mental health status meets the statutory commitment criteria.

As part of the Commission’s task in reviewing policies and procedures related to the current civil commitment practices in Virginia, a number of studies were conducted to gather information from all agencies involved in the process. This study was undertaken to examine the characteristics of commitment hearings and their dispositions. The primary goal of the Commission’s Hearing Study was to accurately document the current practices of civil commitment hearings and provide information that could be used to improve the system.

The specific aims of the Commission’s Hearing Study were:

- To describe the characteristics of civil commitment proceedings—including the pre-hearing, hearing, and disposition phases—throughout Virginia.<sup>13</sup>
- To describe the relationship of a range of hearing characteristics to hearing dispositions.
- To describe and analyze any regional differences in civil commitment proceedings in Virginia.

## **METHODS**

### *Instrument*

The Commission’s Research Advisory Group participated in the development of two instruments used to collect information on civil commitment proceedings.

- One instrument, the *District Court Civil Commitment Hearing Questionnaire*, was developed for use at the district court level for both adult and juvenile hearings or recommitment hearings.
- The second instrument, the *Circuit Court Civil Commitment Questionnaire*, was developed for use at the Circuit Court level to record information on appeals of district court decisions.

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<sup>12</sup> The 2008 General Assembly modified the involuntary commitment period somewhat, providing for an initial 30-day hospitalization with a possible subsequent order for up to 180 days.

<sup>13</sup> Note that this report uses the term “commitment proceedings” broadly to refer to the activities preceding the actual hearing including the TDO, length of time between the TDO and the hearing, reports developed by CSB personnel or independent examiners, etc. Hearing refers to the actual judicial proceeding and such variables as who testified, time of the hearing, etc.

Each two-page questionnaire was designed for completion by the judge or special justice following the commitment hearing.

The *District Court Civil Commitment Hearing Questionnaire* included 44-items about the civil commitment process including the pre-hearing period, the hearing and the disposition. Specific information included who initiated the proceeding (the petitioner), who presided at the hearing, the type of hearing, the location of the hearing, appearance and testimony of witnesses, attorney actions, hearing dispositions and other information about the procedures. The *Circuit Court Civil Commitment Questionnaire* included 46 similar items as well as those specific to appeals (see Appendix B for copies of each measure). Response options for both instruments included those that were dichotomous (e.g., yes or no), multi-optional (e.g., checklist of all people who appeared at the hearing), and open-ended (e.g., In addition to those listed, who else testified at the hearing?).

### *Procedures*

A paper-and-pencil, mail survey was selected as the most reliable method to obtain data for the Commission's Hearing Study. A targeted one-month survey of 100% of the judges and special justices presiding over civil commitment hearings in the Commonwealth of Virginia was planned and executed. In April 2007, the questionnaires with cover letters explaining the purpose of the survey were mailed to all judges and special justices under the signature of the Chief Justice of the Supreme Court. A follow-up email from Supreme Court staff was sent to the judges and special justices to alert them to the mailed information that they were about to receive. Additional telephone calls were made between members of the research staff or staff of the Supreme Court in response to clarification questions from various judges and special justices upon their receipt of the questionnaires. No refusals to participate were noted by any judge or special justice. In May 2007, data collection began with each judge or special justice in the state completing the appropriate questionnaire on each hearing over which he or she presided during that month. All completed questionnaires were returned to the Supreme Court. The completed questionnaires, which were de-identified, were provided to faculty at the University of Virginia for analysis. Following careful documentation of each questionnaire with a unique identifier, data entry and error checking followed. Data were analyzed using Statistical Package for the Social Science—Version 15 (SPSS15) software. Details of the methods and statistical techniques used in each section of the report are provided in Appendix C. This report contains the final analysis of the survey data.

## *Organization of the Report*

The results of the analyses are reported in the sections that follow:

- ▶ Section I provides statewide summary statistics on all district court hearings (whether juvenile or adult hearings) conducted in the Commonwealth of Virginia over the survey month<sup>14</sup>.
- ▶ Section II includes information on hearings involving adults age 18 or older. These hearings represent 85% of the hearings held during the survey month. In addition, this section also identifies factors related to the hearings' dispositions (e.g. involuntary inpatient commitment, involuntary outpatient commitment, voluntary hospitalization, dismissal of the petition).
- ▶ Section III illustrates the differences in commitment proceedings across all district courts in the state including districts with at least 10 hearings.
- ▶ Section IV provides information on four district courts with the highest numbers of hearings (more than 90) occurring in the survey month.
- ▶ Section V provides summary statistics on recommitment hearings, which tend to involve patients who have had more treatment-refractory illness, often necessitating transfer to the state hospital for longer-term treatment, who continue to be ill enough to meet commitment criteria (unable to care for self or danger to self or others, and for whom there is no less restrictive treatment alternative).<sup>15</sup>
- ▶ Section VI provides a summary of hearings involving individuals who were age 17 or younger that took place at one of the state's Juvenile and Domestic Relations Courts ( $n=41$ ).

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<sup>14</sup> Cases involving respondents who were in the penal system ( $n=7$ ) were excluded from the analyses. Also, only 11 Circuit Court hearings were reported, and information on these hearings is not included in this report.

<sup>15</sup> Bruce Cohen, M.D., *personal correspondence*, January 6, 2008.

### **DISTRICT HEARING SURVEY RESULTS**

#### *Summary of All Civil Commitment Hearings/Proceedings in Virginia in One Month*

Summary statistics provided by the Supreme Court of Virginia indicated that 1,817 Temporary Detention Orders (TDO) were issued during the survey month. The Commission's Hearing Study obtained information on 1,526 proceedings before special justice/judges involving respondents who were being held pursuant to a TDO, or who were currently hospitalized for treatment of mental illness.

Since the issuance of a TDO is the trigger for a hearing, a threshold question that emerged in the initial review of the data is why there was a discrepancy between the Supreme Court's TDO figure and that of the Commission's Hearing Study. The Supreme Court's data revealed that there were 291 TDOs that did not result in a hearing.

Based on inquiries by the research team, it is likely that the discrepancy is attributable to three factors. First, and most important, judges differ in whether they convene a hearing in cases in which the independent examiner has not certified that there is probable cause to believe that the respondent meets the commitment criteria—i.e., has not given a “positive” certification. As the data presented below will show, many judges hold hearings even if the independent examiner (IE) certification is “negative” but it appears that others do not. Thus the Commission's Hearing Study does not include information on an undetermined number of cases in which the IE certification was negative and no hearing was convened. The Commission's legal experts estimate that this factor accounts for most of the cases in which TDOs were issued but no hearing was held.

The second factor contributing to the discrepancy in the number of TDOs issued and the number of hearings documented in the Commission's Hearing Study may be that some judges and special justices failed to

complete a hearing form when the respondent agreed to remain in the hospital *voluntarily* resulting in no hearing being technically convened. However, whether these cases were documented on the survey questionnaires varied. It appears that many judges and special justices *did* complete the hearing form in such cases because the Commission's Hearing Study data documented a high percentage of respondents (26%) agreeing to voluntary hospitalization. In other words, variability in whether hearings conducted in those cases where a respondent had already agreed to voluntary inpatient treatment may have led to confusion about whether to fill out the Hearing Study questionnaire.

A third explanation for the discrepancy in the Supreme Court's TDO numbers and the Commission's Hearing Study data is that in some cases in which hearings had been held, special justices simply failed to fill out the form<sup>16</sup>

In any case, the Commission's Research Advisory Group is confident that the 1,526 questionnaires that were returned are representative of the cases in which commitment proceedings were actually convened except in relation to the factors mentioned above. The section below provides a snapshot of one month of the civil commitment proceedings held in Virginia. The term "hearing" refers both to actual evidentiary hearings and to proceedings in which the respondent voluntarily was admitted to inpatient treatment before a formal hearing was held.

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Of the 1,526 hearings convened in the survey month, 4 cases were excluded from the analysis due to significant missing data, resulting in usable data on 1,522 proceedings. Of these, 41 were juvenile hearings and 168 were recommitment hearings.

► In 97% of the cases, the respondent was an adult over the age of 18. In 11% of cases, the hearing was for recommitment to inpatient treatment, which typically resulted in a recommitment. Recommitment hearings were almost twice as likely to result in an involuntary inpatient hospitalization (91%) compared to a hearing that was not for recommitment (49%).

► In 94% of cases, the hearing was not conducted in a courthouse. More than 89% of hearings were held in a hospital. Other venues for hearings

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<sup>16</sup> Some special justices/judges also did not begin completing forms on the first day of May, but began a day or two later. Also, recommitments in psychiatric hospitals in which the patient agreed to voluntarily remain in the hospital were also not always documented on questionnaires.

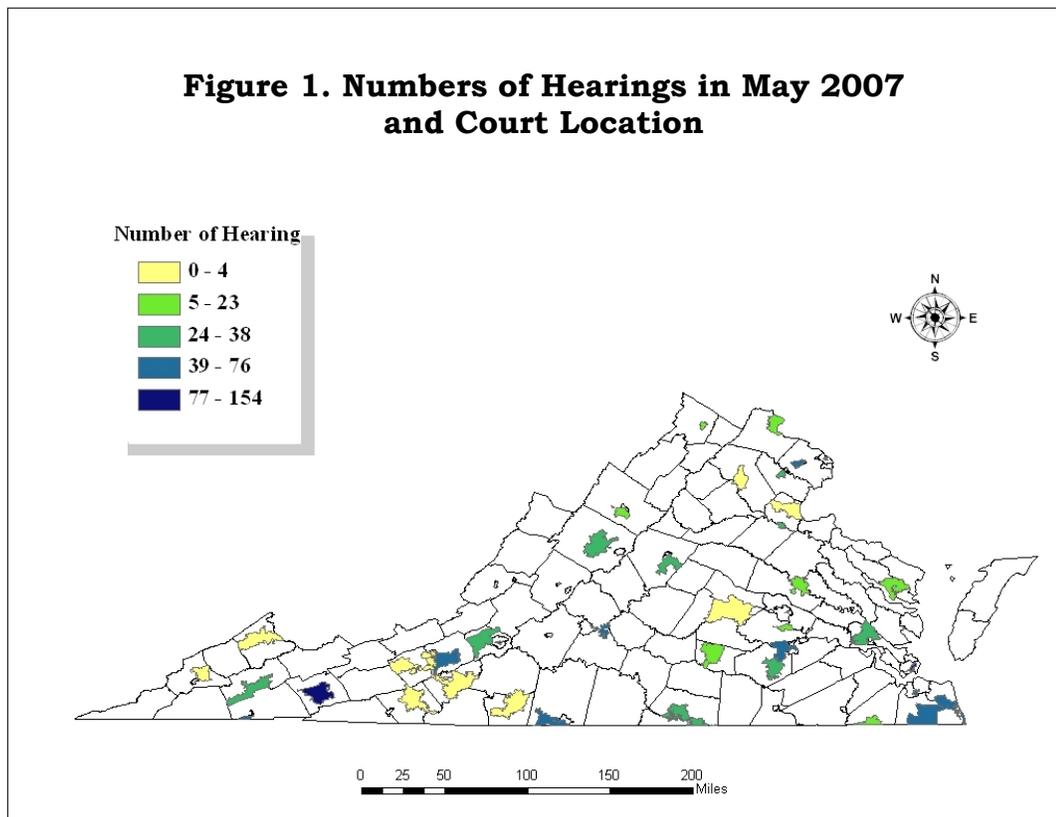
included correctional facilities, crisis stabilization units, community mental health centers, drug treatment facilities, the CSB and county locations. Four district courts held hearings in the courthouse only; three of which included both juvenile and adult hearings. Of 14 district courts that held hearings in a hospital between 50% and 98% of the time, the other hearings were conducted in the courthouse or other locations as well. The remaining courts held hearings only in a hospital.

► Statewide, information was provided from 48 district courts representing all jurisdictions. As expected based on the distribution of population in Virginia, there was wide variation in the numbers of hearings held in the respective courts. Some district courts held fewer than 10 hearings during May, while other courts held 50 or more hearings. District courts with fewer hearings tended to be more rural and those with higher numbers of hearings were more highly populated city/urban areas.

► Statewide, 79 judges or special justices completed questionnaires. The number of hearings heard by each presiding judge or special justice ranged from only 1 to 99. Twenty judges or special justices heard only one or two cases, while eight judges or special justices heard over 50 cases during the survey month.

Figure 1 displays the location of hearings using zip codes and the number of cases heard. Case density is shown by color. For example, in areas indicated by yellow, 0 to 4 cases were heard during the survey month while areas noted in dark blue-purple note courts in which 77 to 154 cases were heard.

**Figure 1. Numbers of Hearings in May 2007 and Court Location**



Hearings are often the result of respondents who are in need of treatment and are therefore taken to a hospital emergency room. As a consequence, hearings often occur in hospitals. Recommitment hearings sometimes take place in state psychiatric hospitals where a respondent is already being treated. Figure 2 shows the locations of state psychiatric hospitals (represented by an orange triangle) and hospitals with emergency rooms (represented by a red dot).

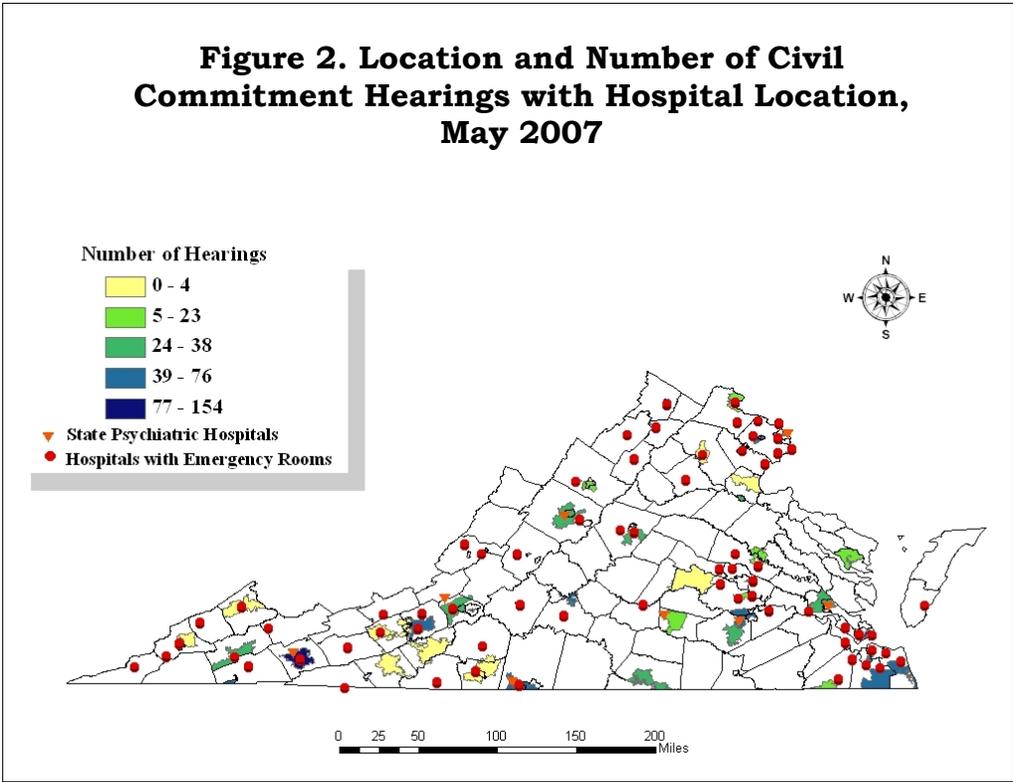
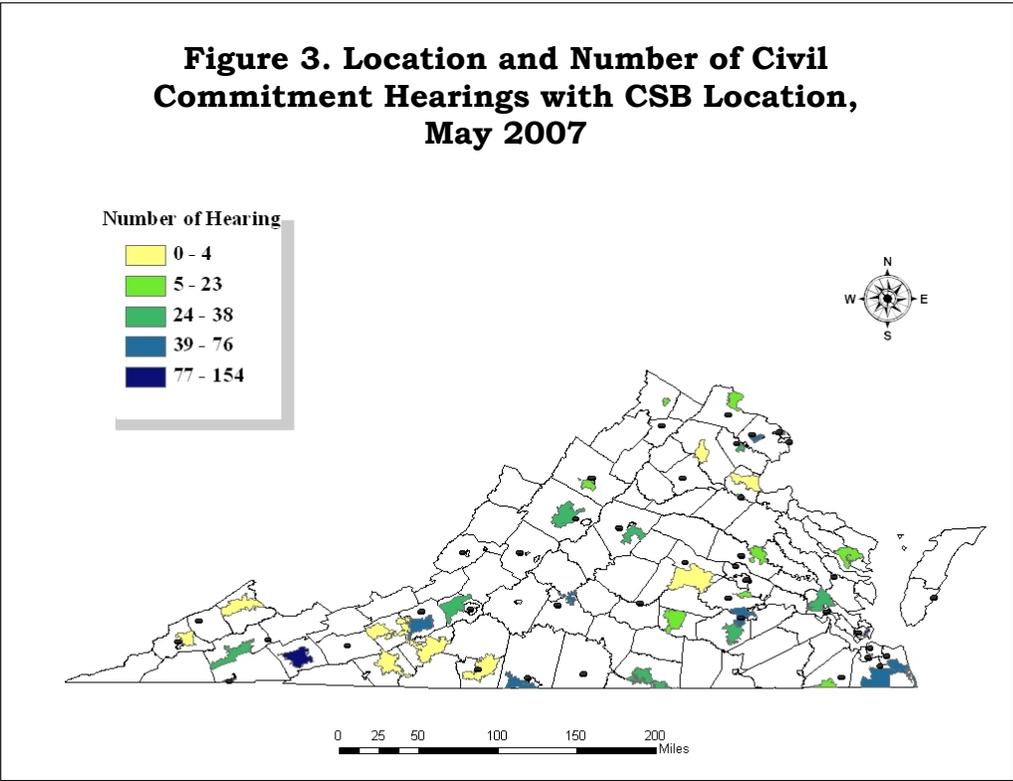
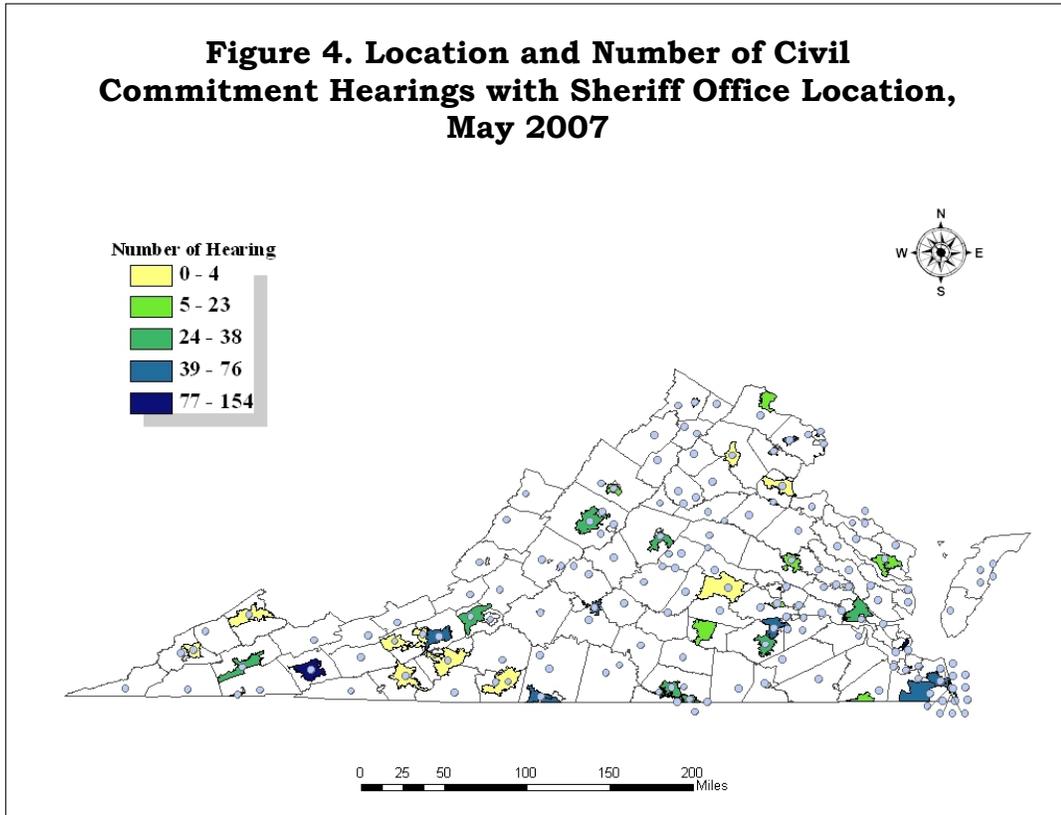


Figure 3 displays the locations of the CSBs across Virginia as well as the locations of hearings with number of cases heard.



When respondents need to be transferred to a location for treatment, a location for a hearing, or need to be brought in under order of a Temporary Detention Order, sheriff offices are statutorily required to provide that transportation. Figure 4 shows the locations of sheriffs' offices across Virginia as well as the location and distribution of the number of hearings. Sheriffs' offices are represented by a gray dot.



### NUMBER OF ADULT HEARINGS

In May 2007, judges or special justices completed forms documenting 1,296 civil commitment proceedings involving adults in custody under TDOs. This section *excludes* recommitment hearings of people already under involuntary commitment orders and people who were incarcerated in jails or prisons at the time of the hearing.

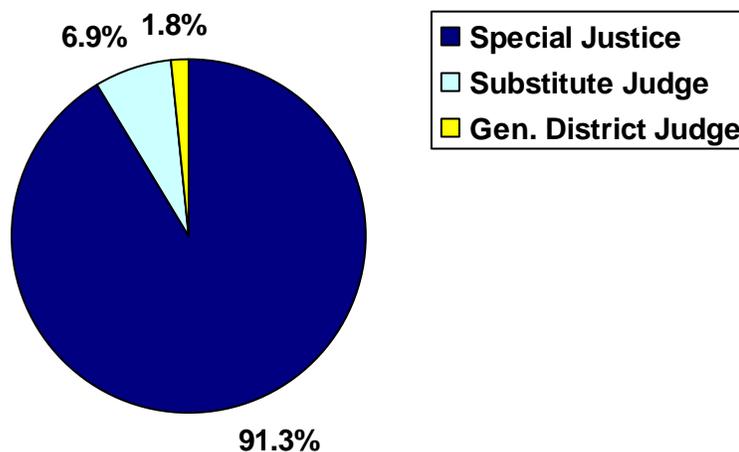
### HEARING CHARACTERISTICS

#### *Presiding at the Hearing*

► **The presiding judge at an adult hearing was usually a special justice.**

In Virginia, special justices (who are appointed by the Circuit Court Judge), retired judges or district court judges may hear civil commitment cases. In about 91% of cases, the presiding judge in the hearings was a special justice (Figure 5). Substitute judges presided in about 7% of cases with 2% heard by General District judges.

**Figure 5. Presiding Judge in Hearings**

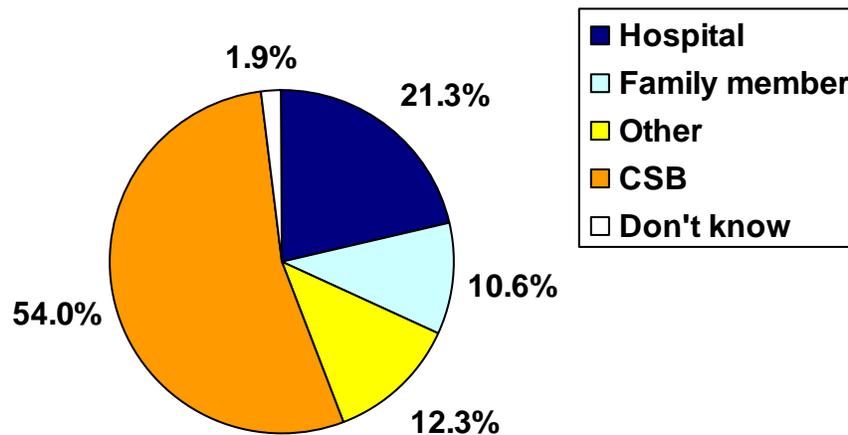


*Identification of the Petitioner*<sup>17</sup>

► **CSB or hospital clinicians were usually the petitioners in the hearing.**

A variety of individuals can petition the court for a hearing on behalf of a respondent who is believed to meet the statutory commitment criteria. In just over half the hearings, the petitioner was employed by the CSB (54%). In approximately a fifth (21%) of hearings, the petitioner was recorded as “the hospital” while family members made up about 11% of the total (Figure 6). Petitioners in the “Other” category included an array of individuals including adult living center administrators, nursing home staff, care providers or caregivers who were not family members, staff at homeless shelters, friends, romantic partners, jail counselors and administrators, deputies and Sheriff Department personnel, probation officers, drug rehabilitation staff, ministers and a Rabbi, plus unidentified others.

**Figure 6. Petitioners in Hearings During the Survey Month**



*Hearing Location*

► **The hearing location was almost always a hospital.**

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<sup>17</sup>The petitioner is the person who formally initiates the commitment process by filing a petition requesting that the respondent be involuntarily admitted to a hospital for treatment. The petition is typically accompanied by a request to a magistrate to issue a Temporary Detention Order authorizing the hospital to hold the respondent against his or her will prior to the hearing.

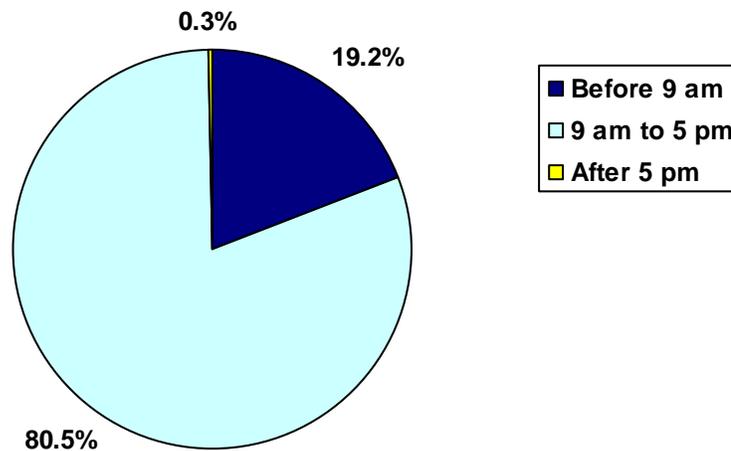
Hearings were almost always held in a hospital or a courthouse. The hearing occurred in the hospital in 91% of cases. In about 4% of cases, the hearing was held in a courthouse. An additional 5% of hearings occurred in other locations. Other locations included community mental health centers, crisis stabilization units, drug rehabilitation facilities, CSBs, county locations, outpatient medical centers and city locations.

### *Scheduled Hearing Times*

► **Hearings were typically held during the “normal” 9 a.m. to 5 p.m. workday.**

The hearing occurred during typical working hours—between 9 a.m. and 5 p.m.—in 81% of cases (Figure 7).

**Figure 7. Time of Day that the Hearing Occurred**

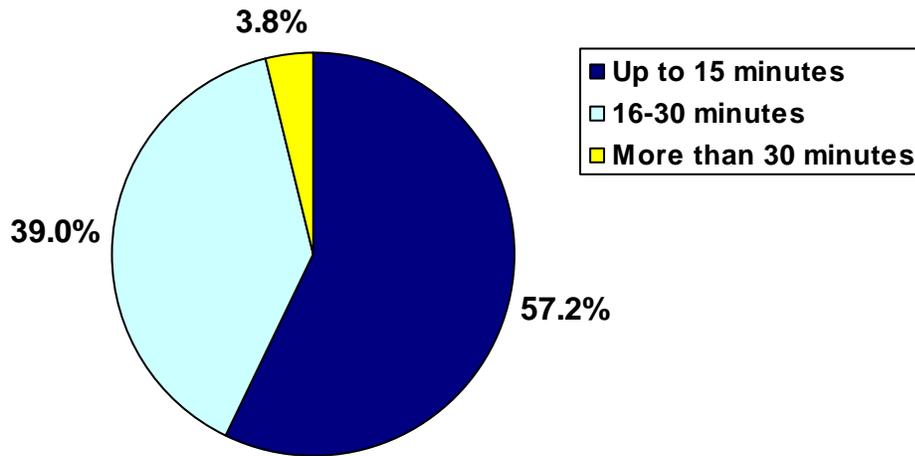


### *Duration of Hearing*

► **More than half of all hearings were completed within 15 minutes.**

Hearings are usually very brief. In 57% of cases, the hearing lasted 15 minutes or less, while 39% of cases took between 16 and 30 minutes. About 4% of hearings took more than 30 minutes to reach a disposition (Figure 8).

**Figure 8. Duration of the Hearing**



*Recording the Hearing*

► **Audio recordings were made of almost all hearings.**

For about 92% of cases, an audio recording of the hearing occurred, with “no recording” noted in 4% of cases and in 3%, “other” type of recording was noted. Upon further investigation of the data, it appears that the “other” category included reports of the telephone as a source of recording. In those cases where “other” was noted, the independent examiner was usually a physician who was testifying by phone.

*Time after the Execution of the TDO that the Hearing was Held*

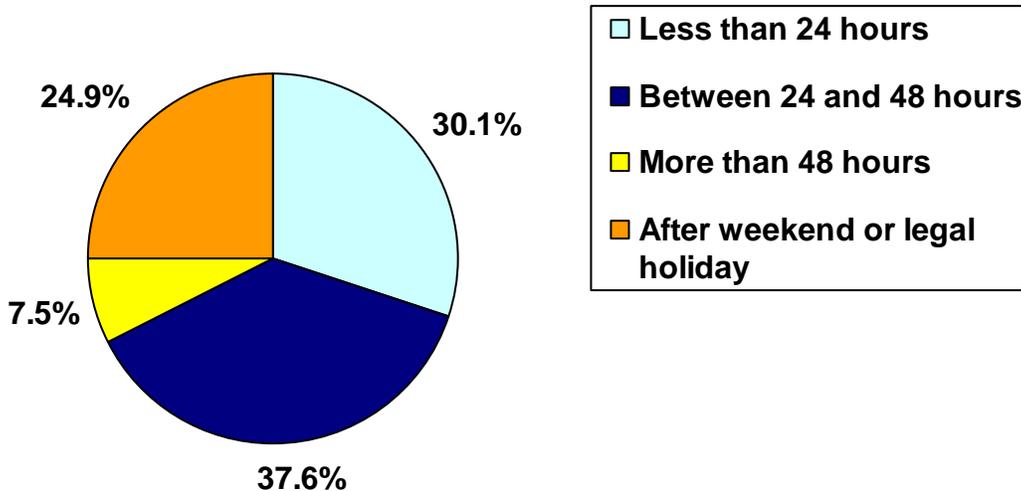
► **The hearing was held in less than 24 hours in 30% of the cases.**

The Virginia civil commitment statute requires that a hearing be held within 48 hours of the issuance of a TDO (except on weekends or holidays, in which case it may be held within 72 hours).<sup>18</sup> In the survey month, 30% of hearings were held within 24 hours. However, in about 8% of hearings, respondents were held more than 48 hours after the TDO was issued before the hearing even though the TDO period did not fall over a weekend or holiday. In 25% of the cases, the respondent was

<sup>18</sup> Sections §§37.167.1 and 37.167.3 of the Code of Virginia require that a commitment hearing be held within 48 hours of an execution of a TDO, except as extended by weekends or holidays. A judge may delay a hearing beyond the required 48-hour time frame when a continuance serves other rights awarded to a temporarily detained subject. A brief continuance may allow the detained person to “employ an attorney, seek independent evaluation, or call expert or other witnesses.” From “Mental Health Generally: Admissions and Dispositions in General.” *An Opinion by Fifth Judicial District Judges, the Honorable G. Blair Harry and Robert E. Gillette. July 3, 1996.*

held longer than 48 hours due to the fact that it was on a weekend or holiday (Figure 9).

**Figure 9. Length of Time between Execution of TDO and Hearing**



#### *Legal Representation of Respondents*

► **The attorney for the respondent was court-appointed in over 99% of hearings.**

The respondent was represented by court-appointed counsel in almost all cases (99.8%). The respondent met with his or her counsel in private before the hearing in 94% of all cases. Of the cases where counsel did not meet in private with the respondent, over 50% of them occurred in one district court.

#### *People Appearing at the Hearing*

► **The number of people appearing at the hearing ranged from none to as many as eight.**

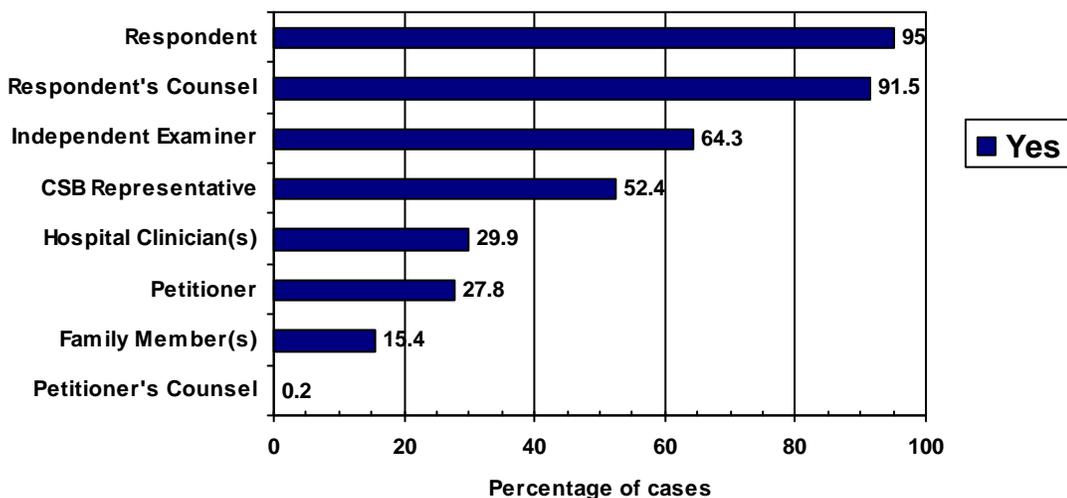
The number of persons appearing at the hearing aside from the judge ranged from zero to eight persons, with a median number of four people present. In 95% of cases, the respondent was present at the hearing; whereas in only 28% of cases did the petitioner appear at the hearing. In those few cases where the respondent did not appear, less than half of the time (43%) he or she was advised of the time that the hearing would take place, that a finding would be made and commitment could be ordered in his absence.

### Categories of People Who Appear at the Hearing

► **A CSB clinician appeared at about half of the hearings and the independent examiner appeared at about two-thirds of the hearings.**

Although responsible for conducting the initial prescreening assessment of the respondent, in only about half of the hearings (52%), did a representative from the CSB appear. The independent examiner, responsible for certifying to the court whether the statutory civil commitment criteria were met, was present almost two-thirds (64.3%) of the time. Family members (15%) and hospital clinicians (30%) rarely attended the hearing. Respondent’s counsel was present in 92% of cases, whereas the petitioners rarely were represented by counsel (0.2%, Figure 10).

**Figure 10. Who Appeared at the Hearing?**



### Independent Examiner’s Certification

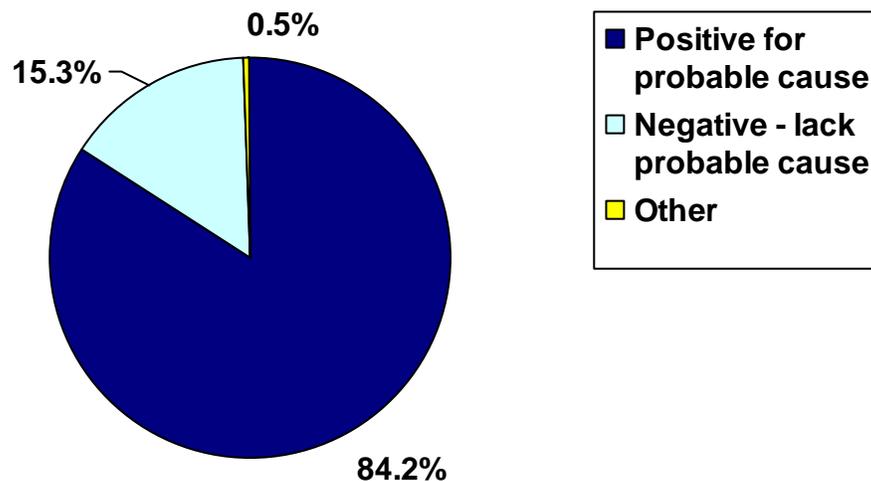
► **Among hearings held during the survey month, the independent examiner concluded that probable cause to commit the respondent was lacking in 15% of the cases.**

As noted above, some judges and special justices do not convene hearings unless the IE’s certification is positive for probable cause to commit. However, many judges and special justices follow a different practice: they do not regard a positive certification as a “jurisdictional” requirement, and consider all of the evidence in such cases. In the survey month, for example, the IE had failed to find probable cause to commit in 15% of cases in which hearings were held (Figure 11).

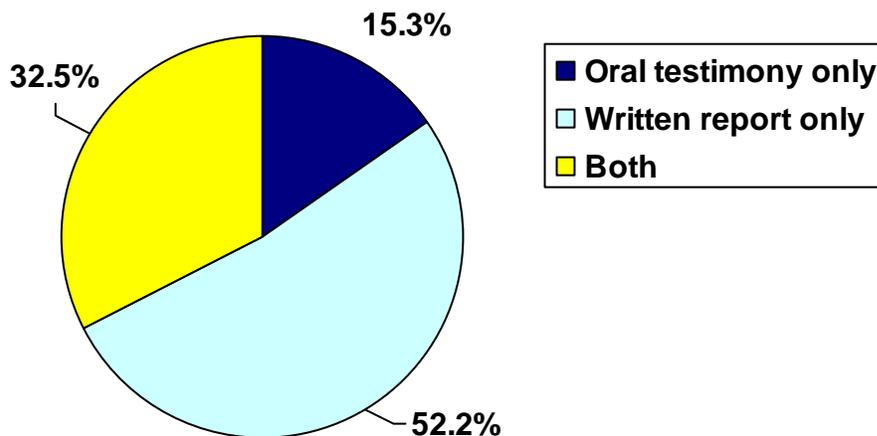
► **The independent examiner’s certification was presented only by written report in about half of the hearings (52%).**

Although statutorily required to examine the respondent and certify whether the statutory civil commitment criteria are met, how the IE communicates that certification to the court varies. The independent examiner’s certification was presented exclusively in a written report in 52% of cases, by oral testimony only in 15% of cases, and by both means in 33% of cases (Figure 12).

**Figure 11. Independent Examiner's Certification or Finding<sup>19</sup>**



**Figure 12. Manner in Which the Independent Examiner's Certification Was Presented**



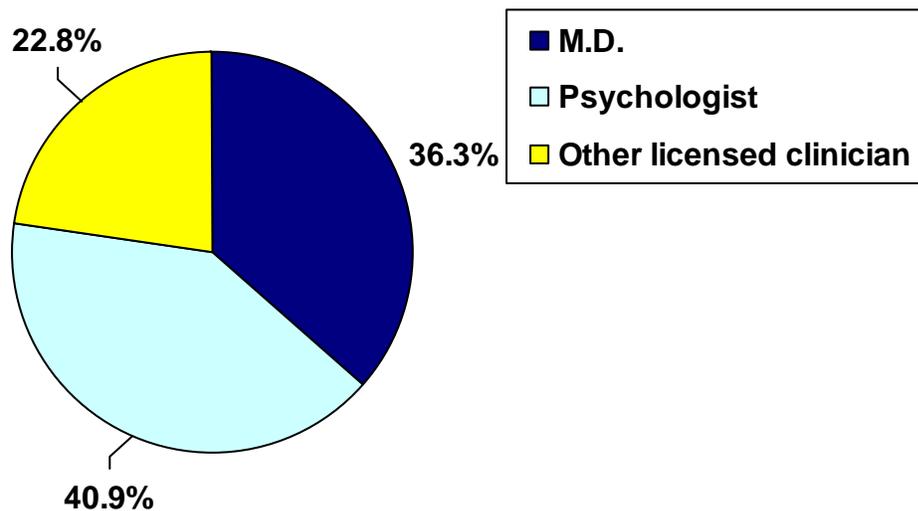
<sup>19</sup> “Other” represents several cases, less than one percent, that did not indicate whether an IE certification was positive or negative.

### *Independent Examiner Credentials*

► **The independent examiner is equally likely to be a physician (M.D.) or a psychologist (Ph.D.) and much less likely to be another type of licensed health professional.**

The Virginia statute requires the independent examiner to be a physician, a psychologist or other appropriate licensed health professional.<sup>20</sup> In over three-quarters of cases (77.2%), the IE was either a doctor with a medical degree or a clinical psychologist (Figure 13). In about one out of five cases, the IE was another type of licensed clinician. Reliance on other licensed clinicians for the commitment certification was more likely in the more rural areas of the state. Overall, the IE was typically not on the CSB’s staff (90.9%).

**Figure 13. Independent Examiner's Credentials**



### *CSB Prescreening Reports*

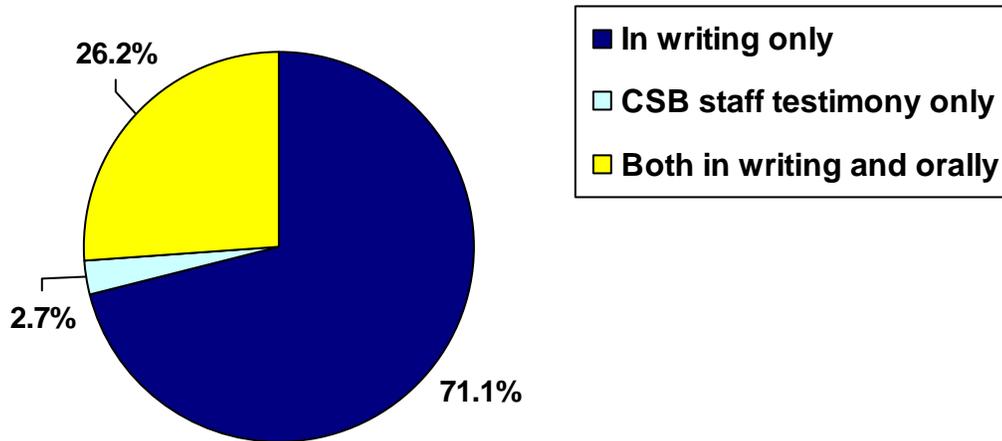
► **Typically, the CSB prescreening evaluation report was submitted to the court as a written document only.**

During the TDO period, a CSB clinician is required to conduct a prescreening evaluation and make a report. This evaluation is part of the

<sup>20</sup> Virginia Code §37.2-815 states “an individual detained under a Temporary Detention Order must be evaluated and certified by an independent examiner as meeting the civil commitment criteria...[and]...that the independent examiner shall be a psychiatrist or psychologist who is qualified in the diagnosis of mental illness, but if such a psychiatrist or psychologist is not available, the examination may be conducted by any mental health professional that is licensed through the Department of Health Professions...”

information reviewed by the independent examiner and the court. In 71% of cases, the court received the prescreening report from the CSB clinician in writing only; in 26% of cases, the court received the report through oral testimony in addition to a written report (Figure 14). In the majority of cases (80%), the CSB clinician who prepared the report came from the same region as the CSB represented at the hearing.

**Figure 14. Manner in Which the CSB Prescreening Report was Submitted to the Court**



#### *Use of Foreign Language Interpreters at Hearing*

► **There was a need for foreign language or hearing/speech-impaired interpreters at some hearings, but it was uncommon.**

Foreign language interpreters were used in 10 cases, or less than one percent (0.8%) of hearings. Languages reported included Spanish, Vietnamese, and Punjabi. In 11 cases, or one percent of the total, an interpreter for the hearing- or speech-impaired person was used at the hearing.

#### *Testimony of People at the Hearing*

► **In about 70% of cases, the respondent testified at the hearing.**

In addition to the documentary evidence from the CSB and the independent examiner, the hearings may also have testimony from a range of individuals. Overall, the number of people who testified at a hearing ranged from zero to seven, with the median number being two. The respondent testified in 72% of cases. Testimony from the petitioner was far less common (29% of cases). However, if the petitioner appeared at the hearing, he or she testified over 80% of the time.

The IE testified in about half of the hearings (45.9%). A representative from the CSB testified in 38% of cases. However, among the CSB clinicians who did appear at hearings, about 70% testified. Hospital personnel (e.g., physicians, nurses, social workers) testified in less than a third of cases, representing the same percentage of cases in which they appeared at the hearing. Similarly, family members testified in 13% of cases while appearing at 15%.

### *Attorney Actions at Hearing*

**► Other than examining the respondent during the hearing, the court-appointed attorney typically played a limited role.**

How respondent's counsel participated in the pre-hearing and the hearing phases of the civil commitment proceedings varied. Across all hearings, the respondents' counsel:

- Examined the respondent in 43% of cases;
- Made a final argument in 18% of cases;
- Made a motion to strike the evidence and dismiss the petition in 10% of cases;
- Made evidentiary objections in 5% of cases; and
- Moved to sequester witnesses in 18 cases (1.5%).

The rare instances in which counsel made evidentiary objections or motions to sequester witnesses tended to occur in a few district courts.

### *Court Questions Witnesses*

**► Judges or special justices tended to take an active role in the hearing; about three-fourths of them questioned witnesses at the hearing.**

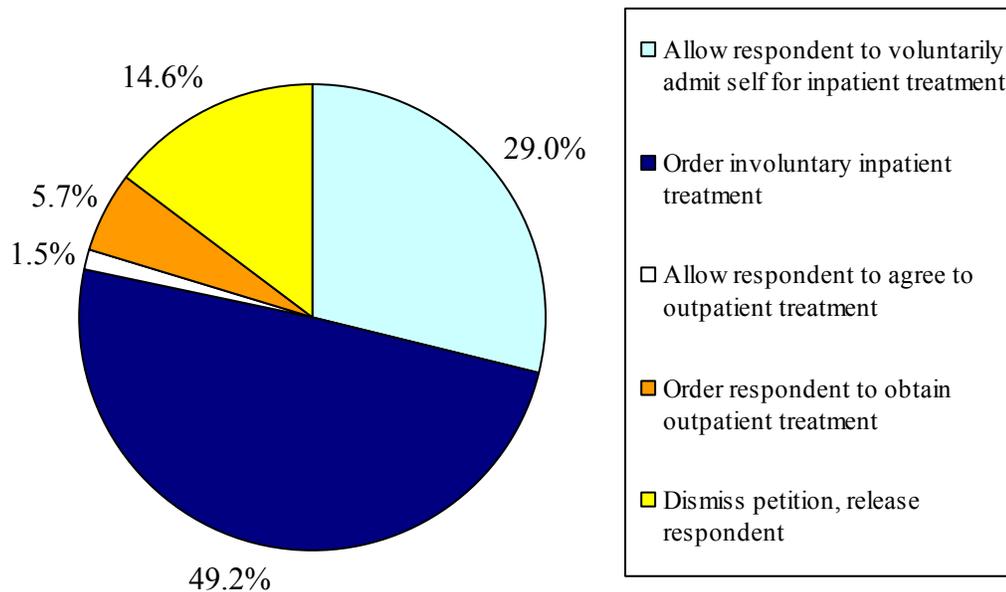
In about 74% of cases, the judge or special justice questioned witnesses during the hearing. Persons questioned included the petitioner, CSB representatives, other clinicians, family members and some or all witnesses present.

## **ADULT HEARING DISPOSITIONS**

**► About half of hearings (49.2%) resulted in an involuntary inpatient hospitalization and another 29% resulted in a voluntary inpatient treatment.**

Hearing dispositions were recorded in all but 12 cases. Of cases for which a disposition was recorded, almost half, 49.2%, of hearings resulted in a court order for the respondent to involuntarily receive *inpatient* treatment. An additional 5.7% resulted in a court order to have the respondent obtain involuntary *outpatient* treatment. Almost 30% (29.0%) resulted in the respondent voluntarily agreeing to admit him- or herself for inpatient treatment. Very few cases, 1.5%, resulted in the court permitting the respondent's voluntary agreement to obtain outpatient treatment (Figure 15). In 14.6% of hearings the petition was dismissed and the respondent was released. Of the cases where the commitment petition was dismissed by the court, almost all cases—97.3%--were due to insufficient evidence to support the commitment criteria.

**Figure 15. Disposition of Hearings**



*Commitment Criteria for Respondents Involuntarily Committed to Inpatient Treatment*

**► About half of the involuntary inpatient commitments were based solely on the criterion of the respondent's inability to care for him or herself and for no other reason.**

As discussed more fully in the Introduction, the statutory criteria that form the basis of an order to involuntarily commit an individual must be at least one of the following three:

- Danger to others,
- Danger to self and/or
- Inability to care for self.

Among the cases where the respondent was ordered to obtain inpatient treatment, almost half (48%) were based solely on the respondent's inability to care for self (Figure 16).

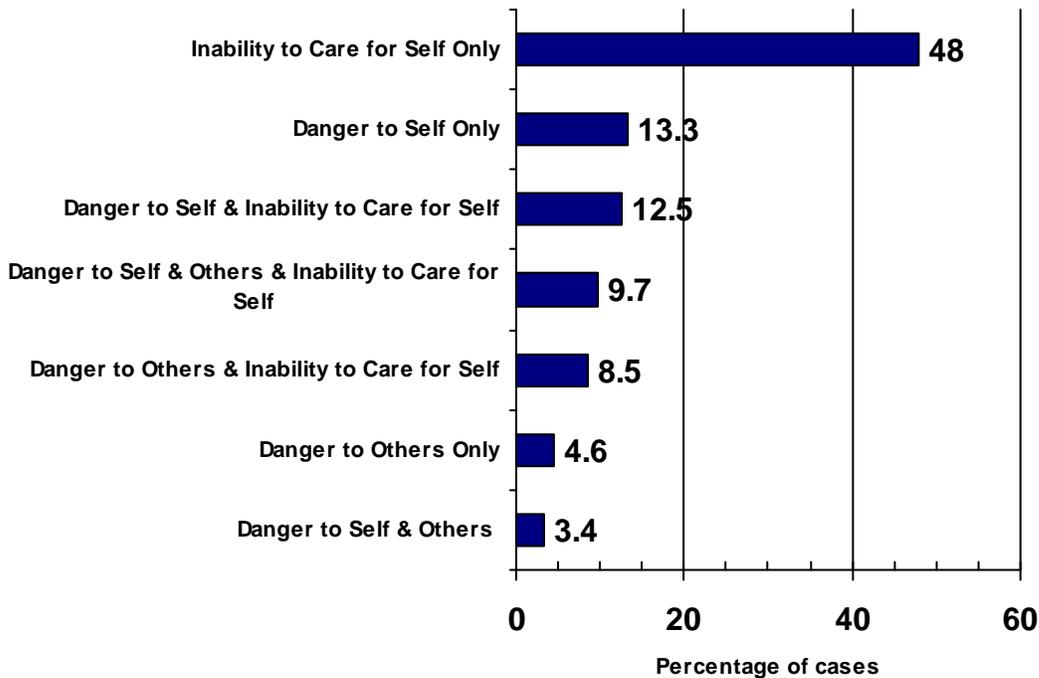
Figure 17 shows commitment criteria that have been collapsed and recoded to display three mutually exclusive categories:

(1) Any respondent who was found to be a danger to others was so classified even if one or both of the other criteria were also found to be met. As such, respondents who were only a *danger to others*, or were a *danger to others* and a *danger to themselves*, or were a *danger to others* and a *danger to themselves* and were *unable to care* for themselves are all included in the danger to others category.

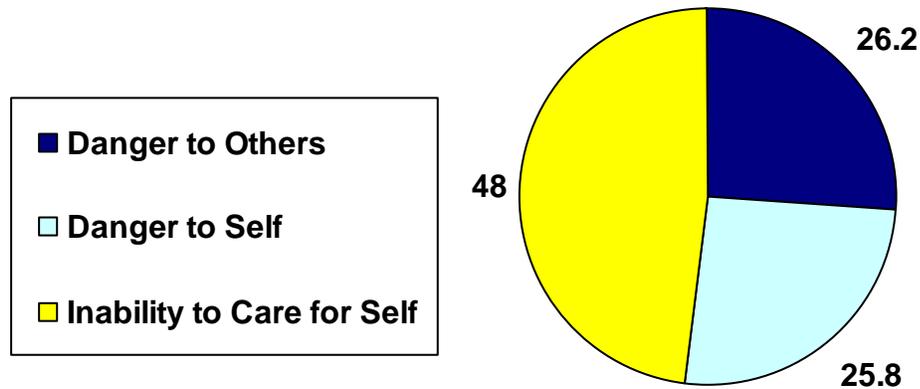
(2) After the danger to others cases had been removed, any respondent who was found to be a danger to self was so classified even if they were also found to be unable to care for themselves.

(3) The remaining respondents were those who were not a danger to others or a danger to themselves and for whom the only basis for commitment was inability to care for oneself (Figure 17).

**Figure 16. Criteria for Involuntary Admission to Inpatient Treatment**



**Figure 17. Criteria for Involuntary Admission to Inpatient Treatment Recorded**



*Commitment Criteria for Respondents Ordered to Involuntary Outpatient Treatment*

Of the 69 cases where the respondent was ordered to obtain outpatient treatment, most ordered treatment was due to the respondent's danger to self which included those with self-care inability (50.8%), followed by 29% who were found to have had only self-care inability, and 20.2% who posed any danger to others including all combinations noted above.

*Treatment for Outpatient Commitments*

► **There was no treatment provider recorded in about two-thirds of cases resulting in involuntary outpatient commitments.**

When involuntary outpatient orders were made, it was rare that a treatment provider was identified on the order. The treatment provider was reported in 28 cases of the 73 total cases involving an outpatient commitment order: in 18 of the 28 cases, or over 60%, the CSB was noted as the outpatient treatment provider, and in the remaining cases, another source was reported.

In at least 22 cases, a petition was filed requesting judicial authorization of treatment. In 20 of these cases (90.9%), the order was to authorize medical treatment or medication; in one case, the order was to authorize electroconvulsive treatment, or ECT; and the other case resulted in a dismissal of the petition.

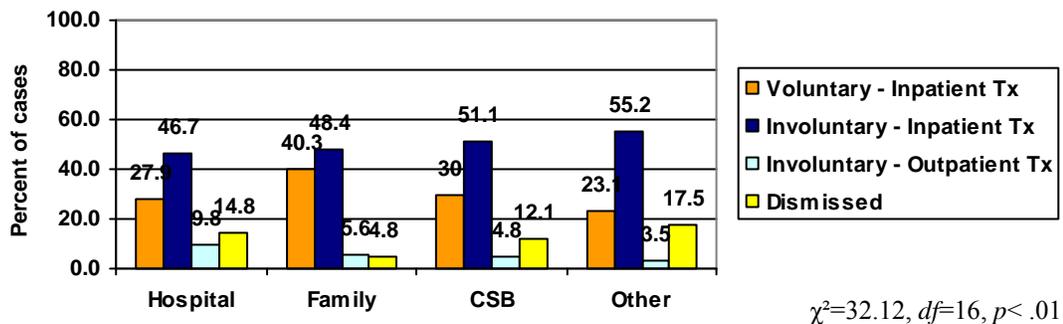
## HEARING DISPOSITION BY HEARING CHARACTERISTICS

### *Petitioners and Dispositions*

► **Fewer cases were dismissed if the petitioner was a family member.**

During the survey month, over 50% of petitioners were from CSBs, 21% were hospital personnel, 11% were family members and 12% were classified as “other” (e.g., nursing home administrators, jail counselors). When family members were the petitioners, the likelihood of hospitalization (whether voluntary or involuntary) was highest and the likelihood of dismissal was lowest (Figure 18).

**Figure 18. Hearing Disposition by Petitioner Type**



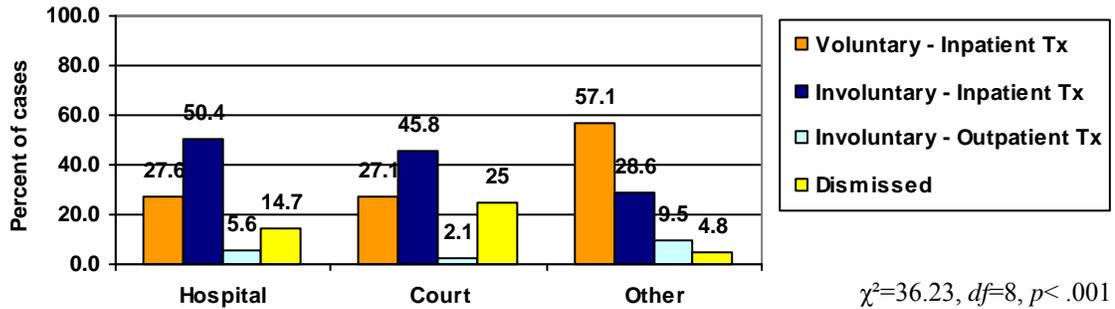
### *Hearing Locations, Duration and Dispositions*

► **In the few cases (9%) when hearings were held in locations other than hospitals, involuntary hospitalization was less likely.**

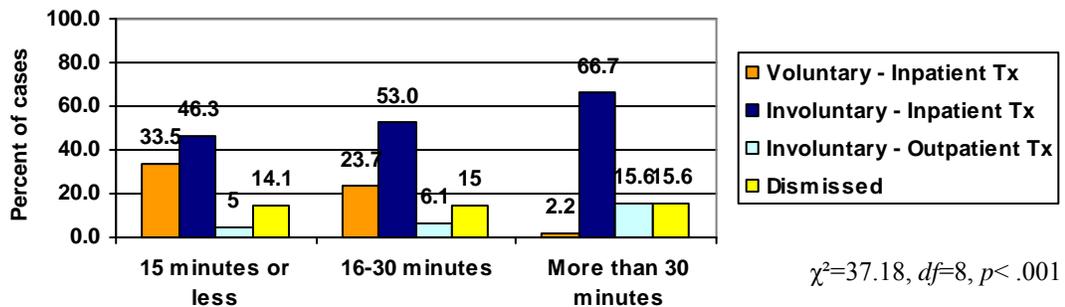
When the hearing was held at a location other than the hospital, involuntary commitments for inpatient treatment tended to occur less often (Figure 19).

Involuntary commitments occurred more frequently during longer hearings, especially if the hearing lasted for more than 30 minutes (Figure 20). Presumably, agreements to remain in the hospital voluntarily tend to be reached more quickly than other dispositions. The disposition was not related to the time of day when the hearing occurred.

**Figure 19. Hearing Disposition by Location of Hearing**



**Figure 20. Hearing Disposition by Duration of Hearing**



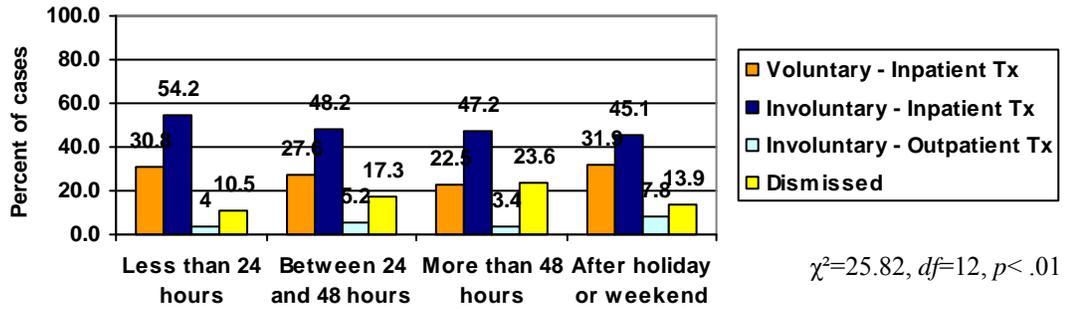
Not surprisingly, the length of time of the hearing was associated with the number of people who testified and the actions taken by the respondent’s attorney.

*Time between TDO and the Hearing in Relation to the Disposition*

**► The hospitalization rate was somewhat higher in cases where the hearing was held within 24 hours after the issuance of the TDO.**

The disposition varied somewhat in relation to the length of time between the TDO and the hearing. Hospitalization, whether voluntary or involuntary, was more likely in cases in which the hearing was held within 24 hours. On the other hand, dismissal was more likely in cases in which the hearing occurred after 48 hours (Figure 21).

**Figure 21. Hearing Disposition by Length of Time after TDO issued**

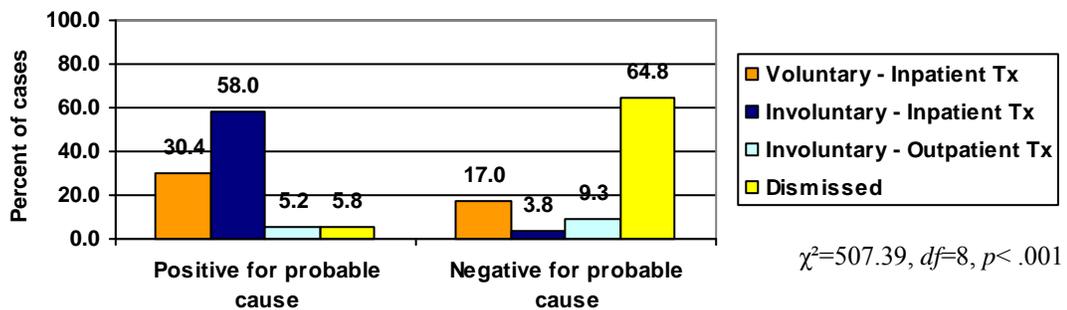


*Independent Examiner Finding*

► **The independent examiner plays a key role in civil commitments. His or her finding predicts the disposition of the hearing in many cases.**

Among cases in which IE certification was “positive to commit”, about 30% resulted in a voluntary inpatient admission, 58% resulted in an involuntary inpatient commitment, 5% resulted in an involuntary outpatient commitment, 6% of cases were dismissed and less than one percent resulted in a voluntary outpatient commitment. When the IE certified an insufficient finding, the case was more likely to be dismissed and the respondent released (Figure 22). The dismissal rate associated with a negative certification is somewhat misleading. It should be re-emphasized that some judges or special justices do not convene a hearing at all if the IE certification is negative. These cases are not included in the study sample. If they were, the dismissal rate would be even higher.

**Figure 22. Hearing Disposition by Independent Examiner Finding**



*Independent Examiner’s Finding by Presentation Type*

When the independent examiner’s certification was presented in writing only, the presentation was somewhat more likely to be a negative

certification (63% of negative certifications were in written testimony only compared to 13% of negative certifications as oral testimony and 24% as both oral and written testimony).

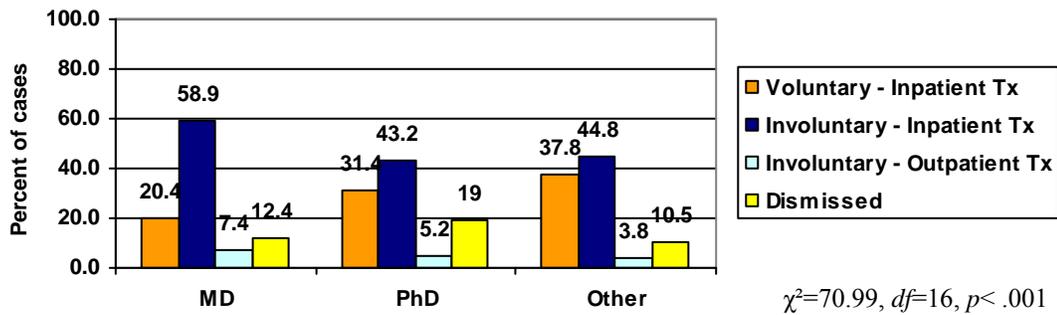
*Independent Examiner’s Credentials*

**► When the independent examiner was a medical doctor, almost two-thirds of respondents were involuntarily committed for inpatient treatment; however, if the IE was a psychologist or other type of clinician (e.g., L.C.S.W.) the respondent was more likely to agree to voluntary inpatient hospitalization.**

When the IE was a medical doctor, there were more involuntary commitments than if the IE was a clinical psychologist (Ph.D.) or other clinician (L.C.S.W., L.P.C., Figure 23).

Whether the independent examiner was also on the staff of a CSB also was associated with more involuntary commitments. Of independent examiners, 9% were employed by the CSB. While this is a small percentage, there were somewhat more involuntary commitments if the IE was a staff member of the CSB than if not (62% vs. 48%).

**Figure 23. Hearing Disposition by Independent Examiner’s Credentials**

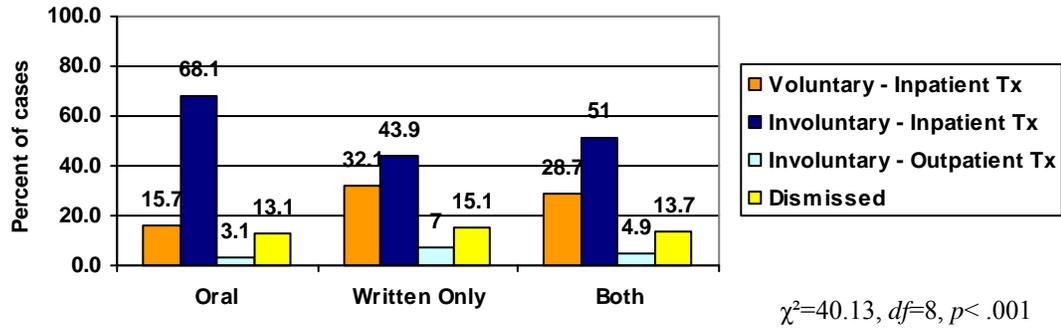


*Independent Examiner’s Presentation of Finding*

When the independent examiner presented his or her certification orally during the hearing, which occurred in 15% of all cases, more involuntary commitments were rendered; however, both an oral and written report was associated with different dispositions (Figure 24). Upon further investigation, it was found that about 94% of the IEs who made only an oral presentation to the court were either M.D.s or Ph.D.s, while those who presented both written and oral certification were less likely to be M.D.s or Ph.D.s (62%) and were more likely to be licensed professional

counselors or social workers (38%). All of these findings are also strongly connected with variations in local practice, as will be seen below.

**Figure 24. Hearing Disposition by Type of Presentation of Independent Examiner Certification**

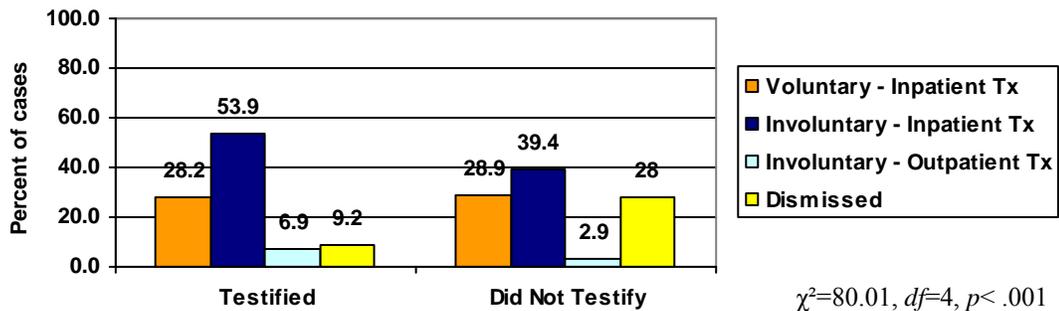


*Who Testified at the Hearing and the Disposition*

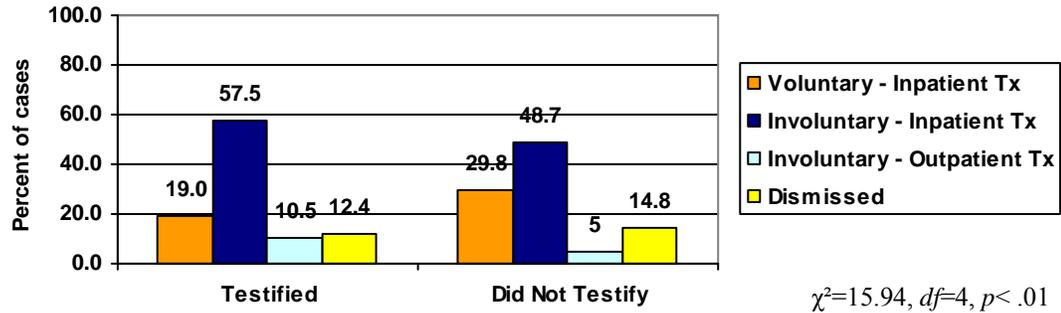
► **There were a number of differences in dispositions related to who testified at the hearing. For example, if the respondent testified, the disposition was more likely to be an involuntary commitment.**

There were more involuntary inpatient commitments when the hospital physician testified than when he or she did not (66% vs. 41%), with no difference in rates of dismissals. When the respondent testified, there were more involuntary commitments (54% vs. 39%) and fewer dismissals of the case (Figure 25). Testimony by family members (as well as CSB representatives, not shown in figure) resulted in fewer voluntary admissions for inpatient treatment and more involuntary commitments (Figure 26).

**Figure 25. Hearing Disposition by Whether or Not Respondent Testified at Hearing**



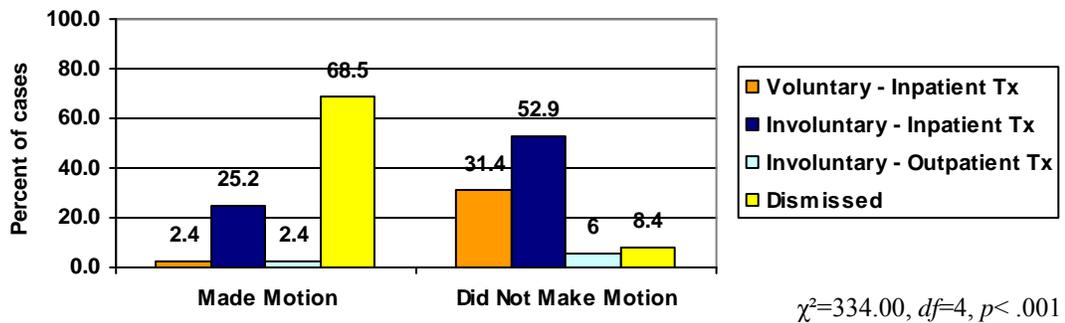
**Figure 26. Hearing Disposition by Whether or Not Family Members Testified at Hearing**



*Attorney Actions at Hearings*

When the counsel made a motion to strike certain evidence or testimony during the hearings (as occurred in about 9% of the cases), there were more dismissals of the case compared to when the counsel made no motions to strike (69% vs. 8%, Figure 27).<sup>21</sup>

**Figure 27. Hearing Disposition by Whether or Not Respondent’s Counsel Made Motion to Strike**



<sup>21</sup> There were so few cases (< 15) where the respondent’s counsel sequestered witnesses that the analysis of disposition by this variable was not performed.

### DISTRICT COURT COMPARISONS BY CHARACTERISTICS OF HEARINGS

#### *Variations among Hearings in All Courts*

Overall, there were significant variations among district courts in numerous areas. In the figures that follow, variations in court proceeding across the district courts are descriptively illustrated. Courts with fewer than 10 hearings during the survey month were excluded from the analysis since the numbers are too small for meaningful statistical significance. The number of hearings on which complete data were available is presented in each figure.

The state average for each characteristic is represented by a **red bar** located at the top of each figure.<sup>22</sup> As will be shown, there are substantial “practice” variations in commitment proceedings from court to court. In addition, there appear to be significant disposition variations related to differences in the interpretation of the commitment criteria.

#### *Petitioner Type*

**► There is considerable variation among the courts with regard to who was the petitioner. In some districts, all the petitioners were CSB staff, whereas in other districts all petitioners were hospital staff. Twenty-two districts included petitioners in addition to the CSB or hospital.**

Figure 28 illustrates the frequencies in which the petitioner was a CSB clinician across district courts. There were differences found across district courts throughout Virginia. The percentage of petitioners from CSBs ranged from as low as zero to as high as 100%. For example, five district courts had zero petitioners from CSBs during the survey month (court codes 6, 7, 17, 19 and 20), while five district courts had over 95% of petitioners from CSBs (court codes 1, 5, 10, 11 and 16). Remaining courts had percentages ranging from about 10% CSB petitioners to about 90% CSB petitioners.

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<sup>22</sup> All Section III figures have chi-squares significant at less than 0.01.

**Figure 28. Petitioner Type by District Court, CSB as Petitioner**

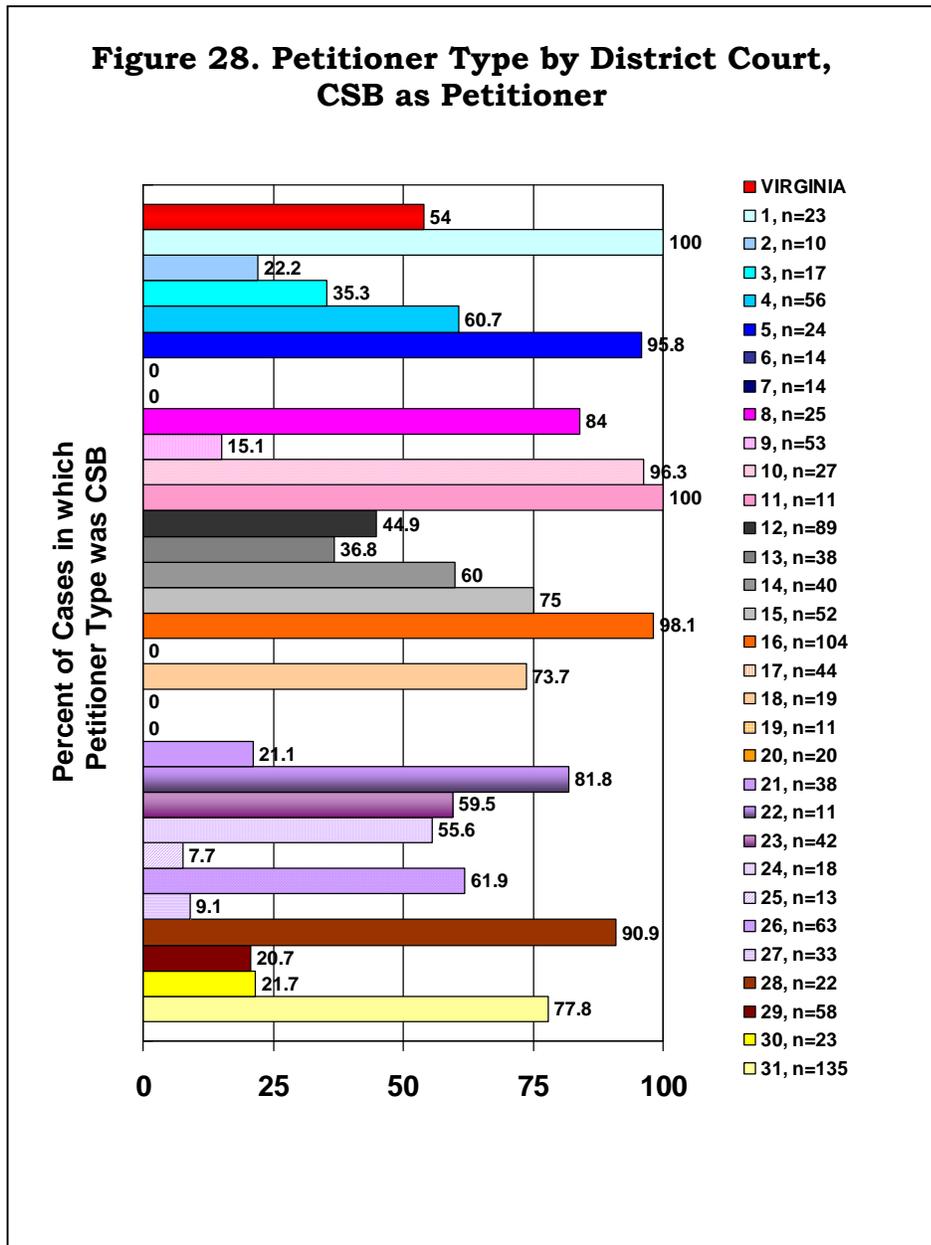
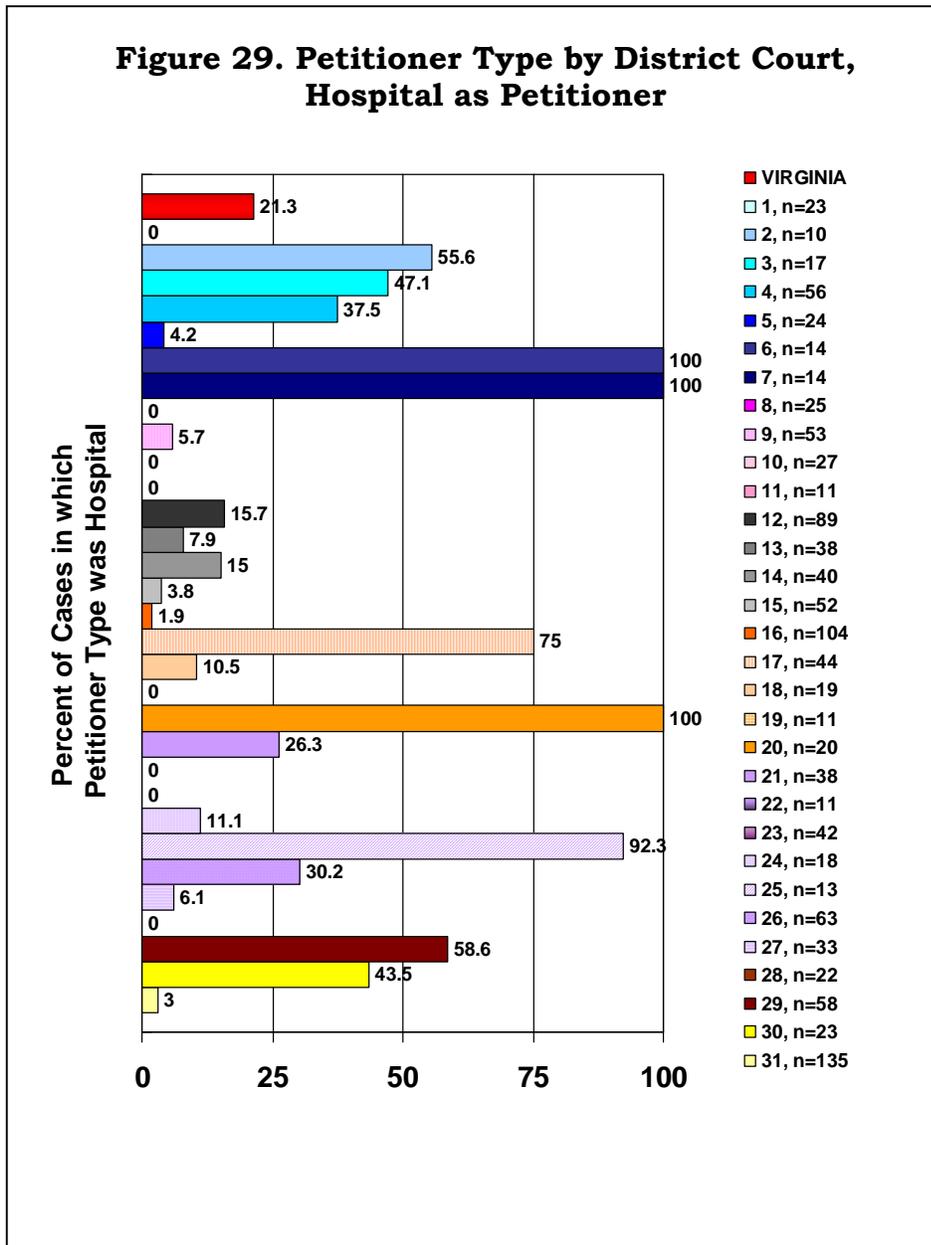


Figure 29 shows the percent of cases in which the petitioner was a hospital employee. There were three district courts (court codes 6, 7 and 20) in which all (100%) of the petitioners were hospital personnel. There were two additional courts with high percentages (75% and 92%) of petitioners also from the hospital (court codes 17 and 25). Conversely, there were some courts with either no petitioners from hospitals or very low percentages. Eight district courts had no petitioners from hospitals (court codes 1, 8, 10, 11, 19, 22, 23 and 28), whereas nine courts had a hospital as a petitioner in less than 15% of cases (court codes 5, 9, 13, 15, 16, 18, 24 and 27).

**Figure 29. Petitioner Type by District Court, Hospital as Petitioner**

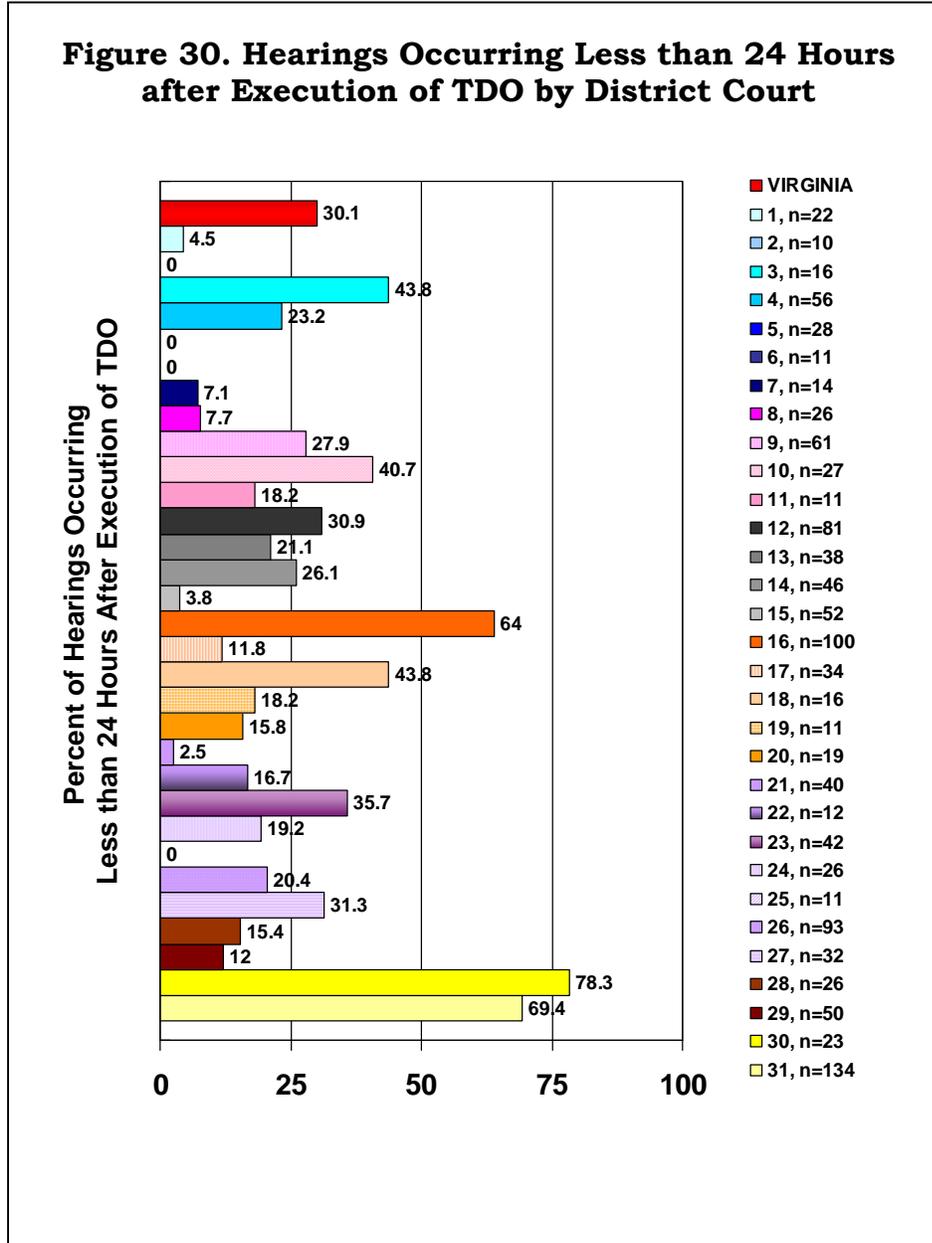


*Length of Time between TDO and Hearing by District Court*

► **Overall, 27 of 31 reporting district courts held hearings less than 24 hours after the execution of the TDO. On average, 68% of hearings in Virginia during the survey month occurred within the 48 hour required limit, not counting those hearings that occurred after a weekend or legal holiday.**

Figure 30 shows the percentage of hearings that took place less than 24 hours after the execution of a TDO. Thirty percent of hearings occurred less than 24 hours after the TDO on average in Virginia. Four district courts had no hearings occurring less than 24 hours after the detention. Three of the remaining courts had very few occurrences of hearings less

than 24 hours later (court codes 1, 15 and 21 had between 3 and 5%). Some courts had the majority of hearings taking place within 24 hours after the TDO. Court 16 had 64% of hearings occurring in less than 24 hours; while court codes 30 and 31 had 78 and 69% of hearings within 24 hours, respectively.

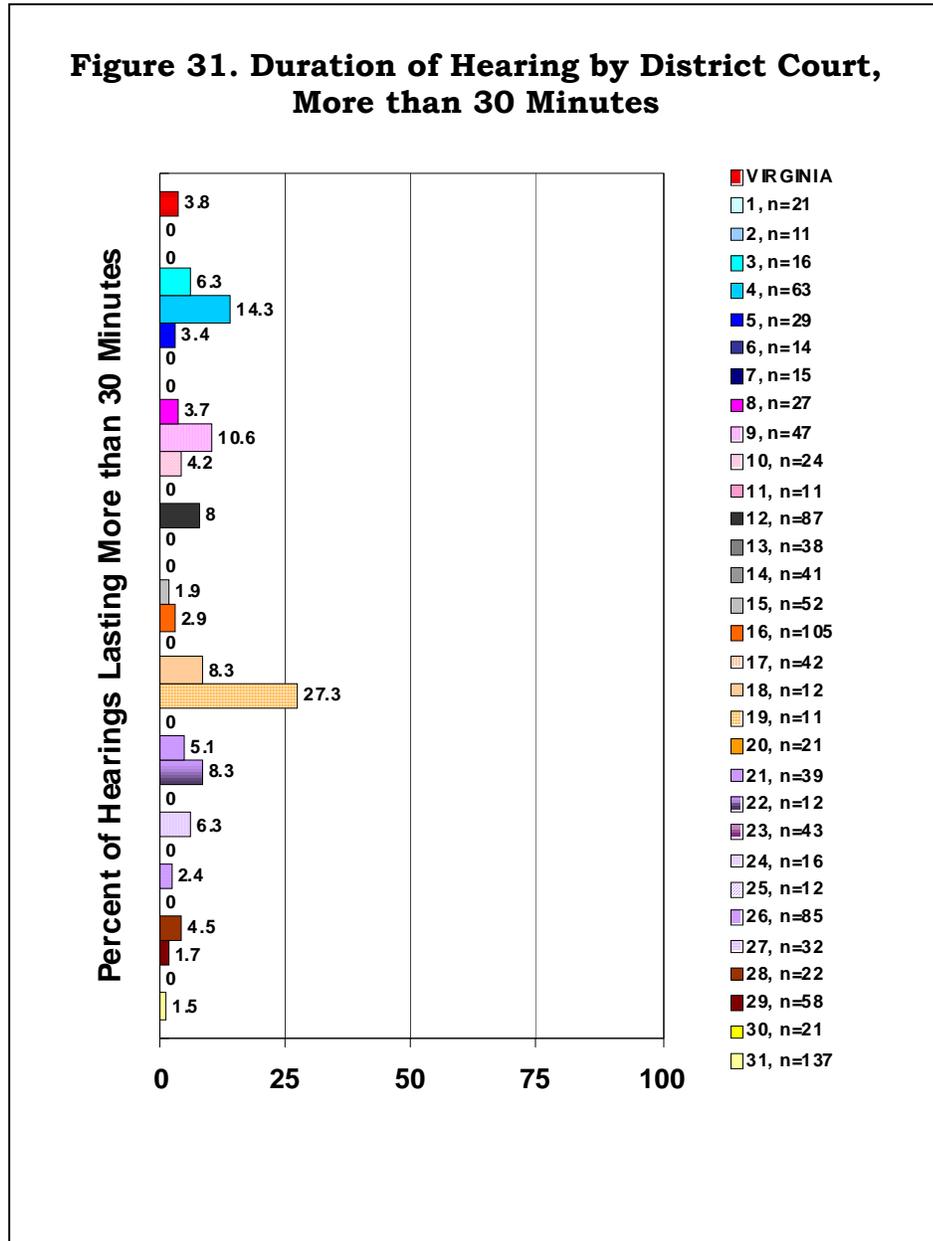


*Duration of Hearing by District Court*

► **Hearings that took longer than 30 minutes were conducted in 58% of district courts.**

Approximate hearing durations are typically less than 15 minutes or between 15 and 30 minutes, although a relatively small percentage of

hearings lasted more than 30 minutes (4%). There were significant differences in the length of hearings across district courts ( $\chi^2=92.6$ ,  $df=41$ ,  $p<.001$ ). Thirteen district courts had no hearings lasting more than 30 minutes (Figure 31). The majority of district courts had a maximum range of about 10% of hearings with durations over 30 minutes. One court (code 19) had roughly a quarter of hearings (27.3%) with durations over 30 minutes, particularly high compared to other courts in Virginia.

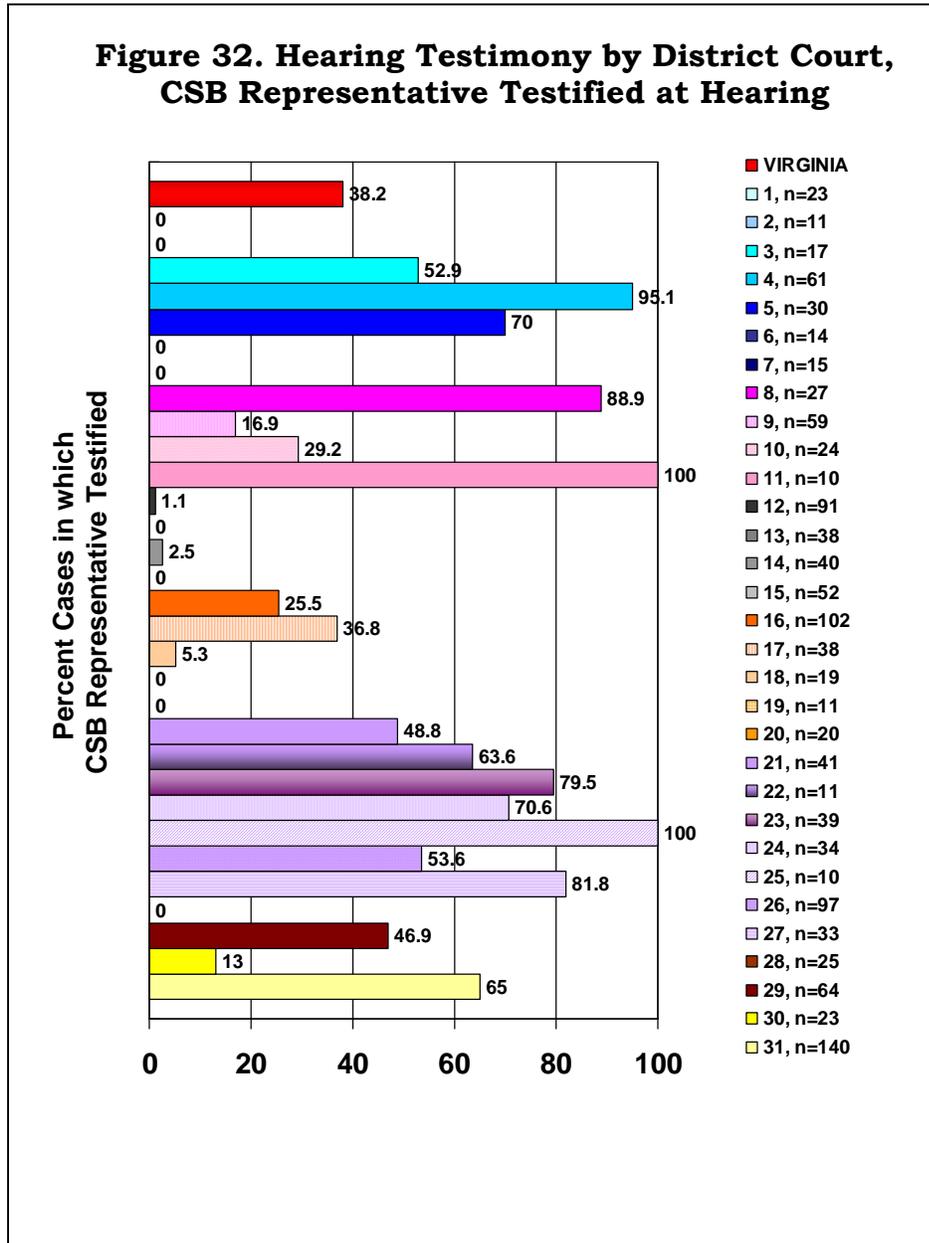


*CSB Appearance and Testimony at the Hearing by District Court*

► In 6 districts, a CSB representative was present at and testified at at least 80% of hearings held during the survey month. However, in

**9 districts, no CSB representative appeared or testified in any hearings.**

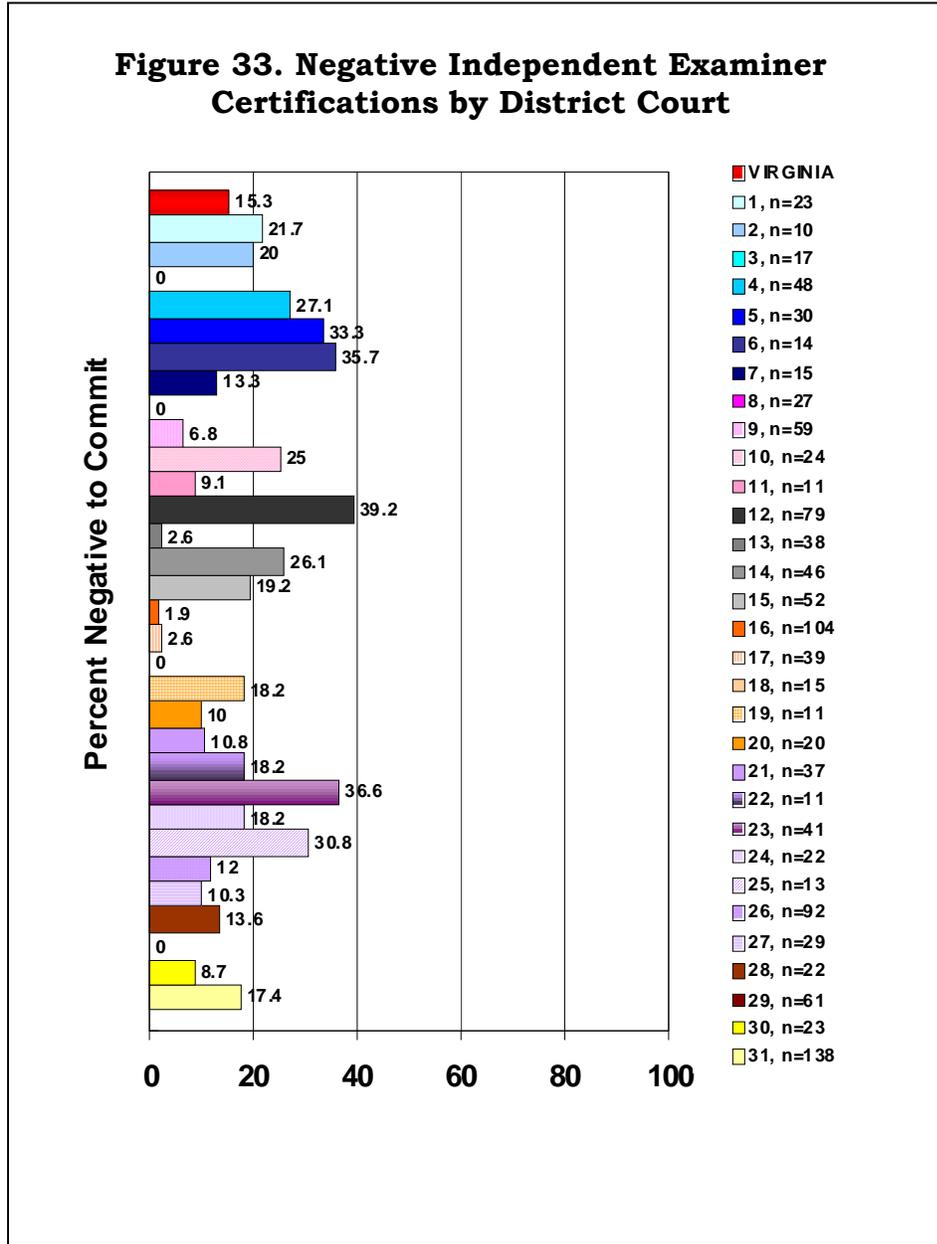
The CSB representative is responsible for completing a prescreening report regarding the respondent’s present condition, but was not required to appear or testify at the hearing in 2007.



There were some district courts with a high percentage of CSB testimony (Figure 32): court code 4 (95%), code 8 (89%), code 11 (100%), and code 25 (100%). There are also nine district courts with no cases having CSB testimony (codes 1, 2, 6, 7, 13, 15, 19, 20 and 28). Percentages among other courts ranged from about 15% to 80%.

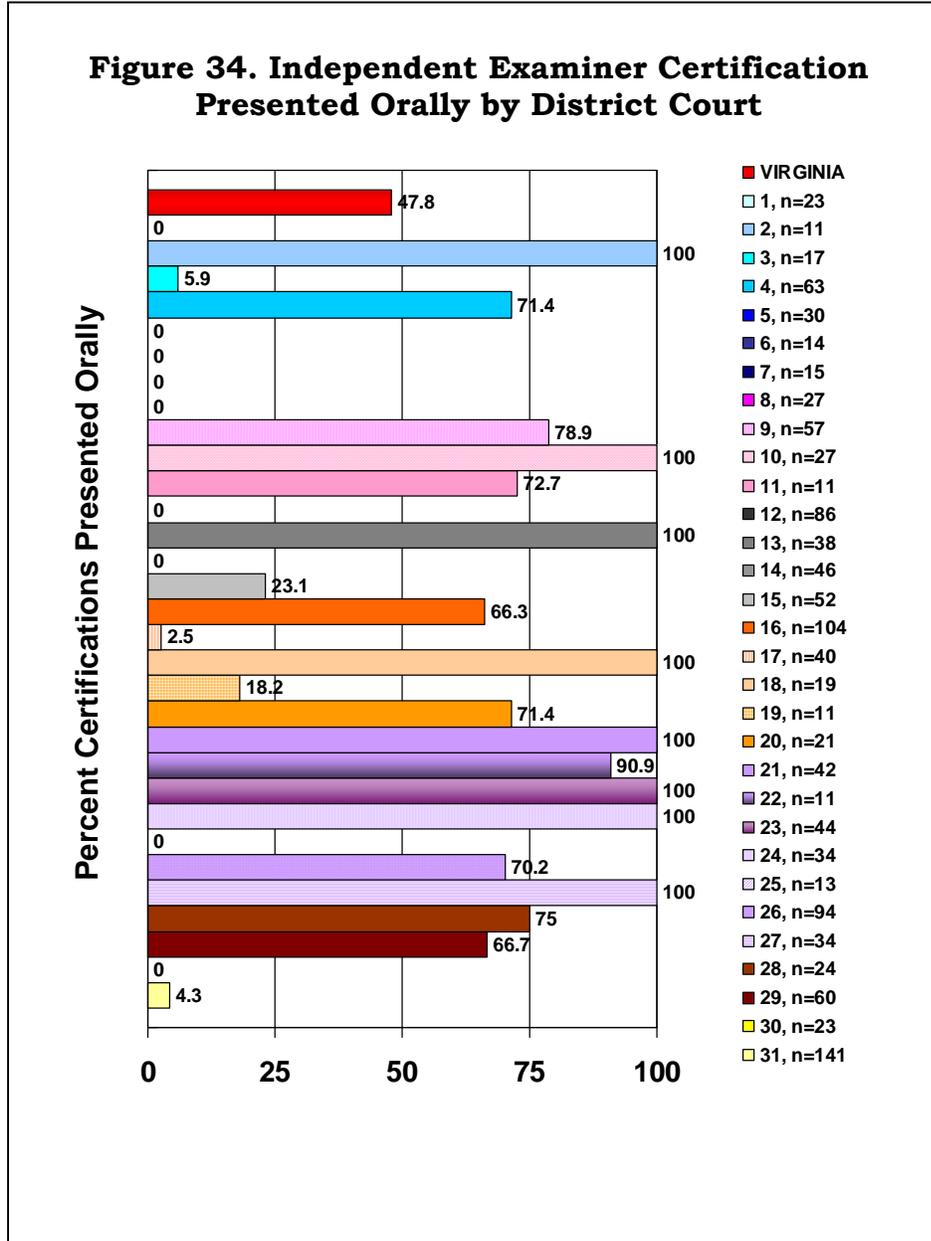
*Independent Examiner Certification*

► **In most district courts, there are at least some judges or special justices who convene hearings in the absence of a positive certification by the independent examiner. However, the rate of a negative certification varies substantially from court to court.**



As discussed earlier, an undetermined number of judges and special justices do not convene hearings unless the IE certification is positive for probable cause to commit. As Figure 33 shows, there were four districts (codes 3, 8, 18 and 29) in which all of the judges or special justices who preside at hearings appear to regard a positive certification as “jurisdictional.” That is, they will not convene a hearing without a

positive certification from the independent examiner. On the other hand, at least some judges and special justices in all of the other districts appear to convene hearings regardless of whether the IE certification is positive. As Figure 33 shows, however, the proportion of hearings in which the IE certification was negative varies widely.

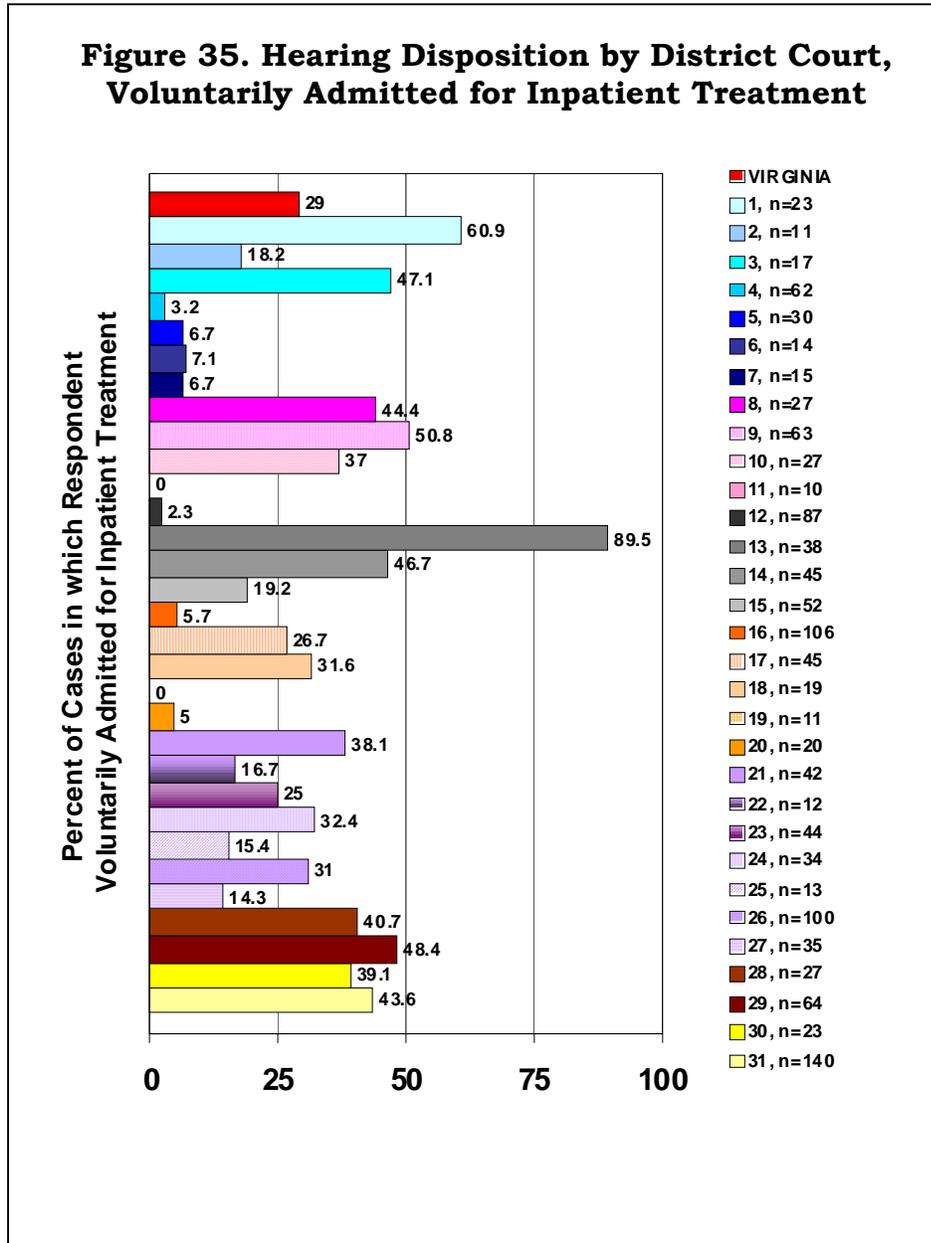


► In 9 district courts, the IE certification was never presented orally by the IE and in 2 other districts, the IE certification was presented orally in less than 6% of cases. In contrast, eight districts report that the IE certification is presented orally 100% of the time.

The independent examiner’s certification can be presented at a hearing through oral testimony, a written report, or a combination of oral

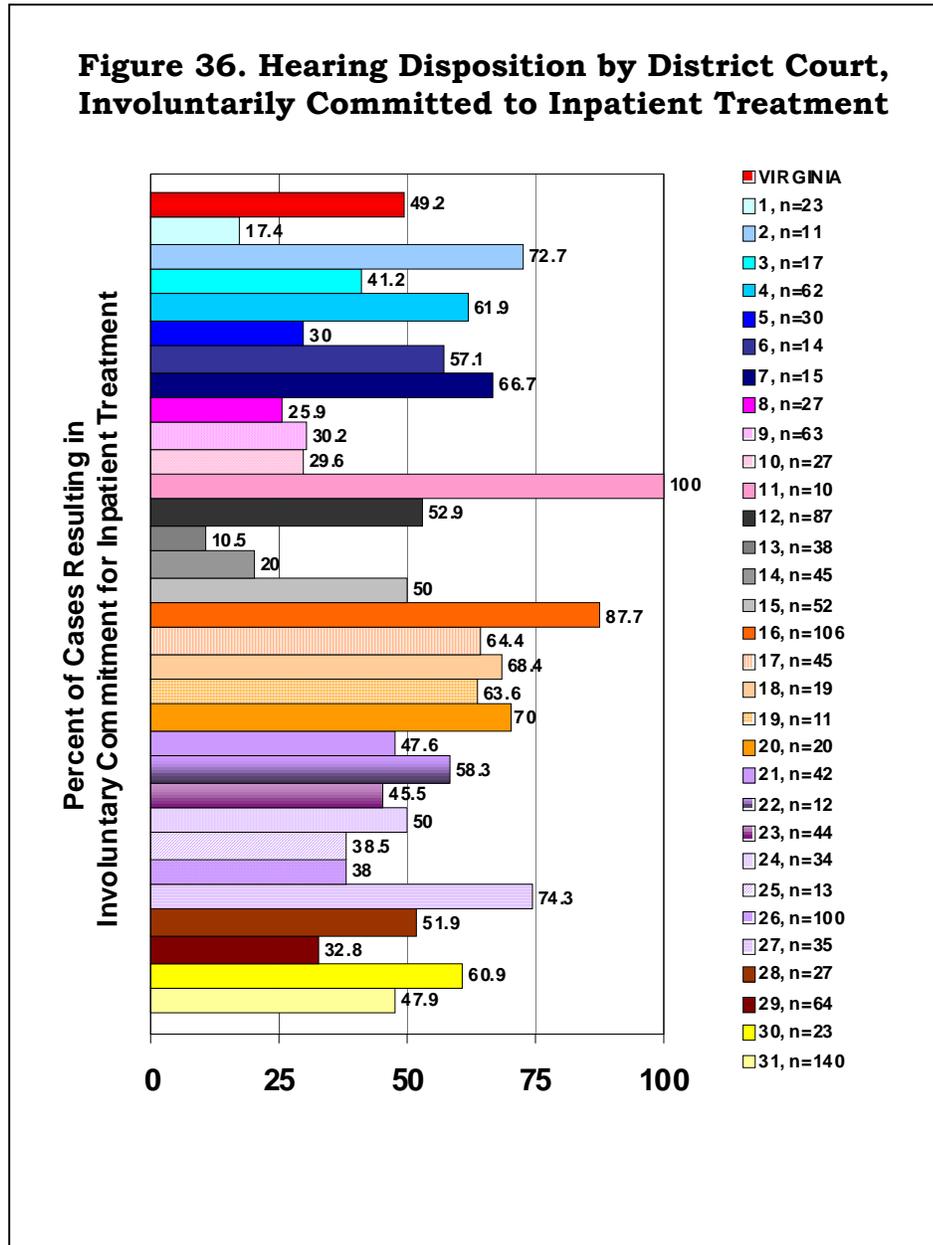
testimony and a written report. Figure 34 shows the percentage of cases in which the IE testimony was presented orally, including those who both submitted a written report and presented orally. Eight of the district courts across Virginia show 100% of cases having orally presented certifications in contrast to nine district courts that had no oral testimony of certifications.

*Dispositions of Hearings –What Happens to Respondents*



Figures 35 through 38, respectively, show the percentages of cases that resulted in an order for voluntary inpatient treatment, order for

involuntary inpatient treatment, order for involuntary outpatient treatment or an order for dismissal.<sup>23</sup>

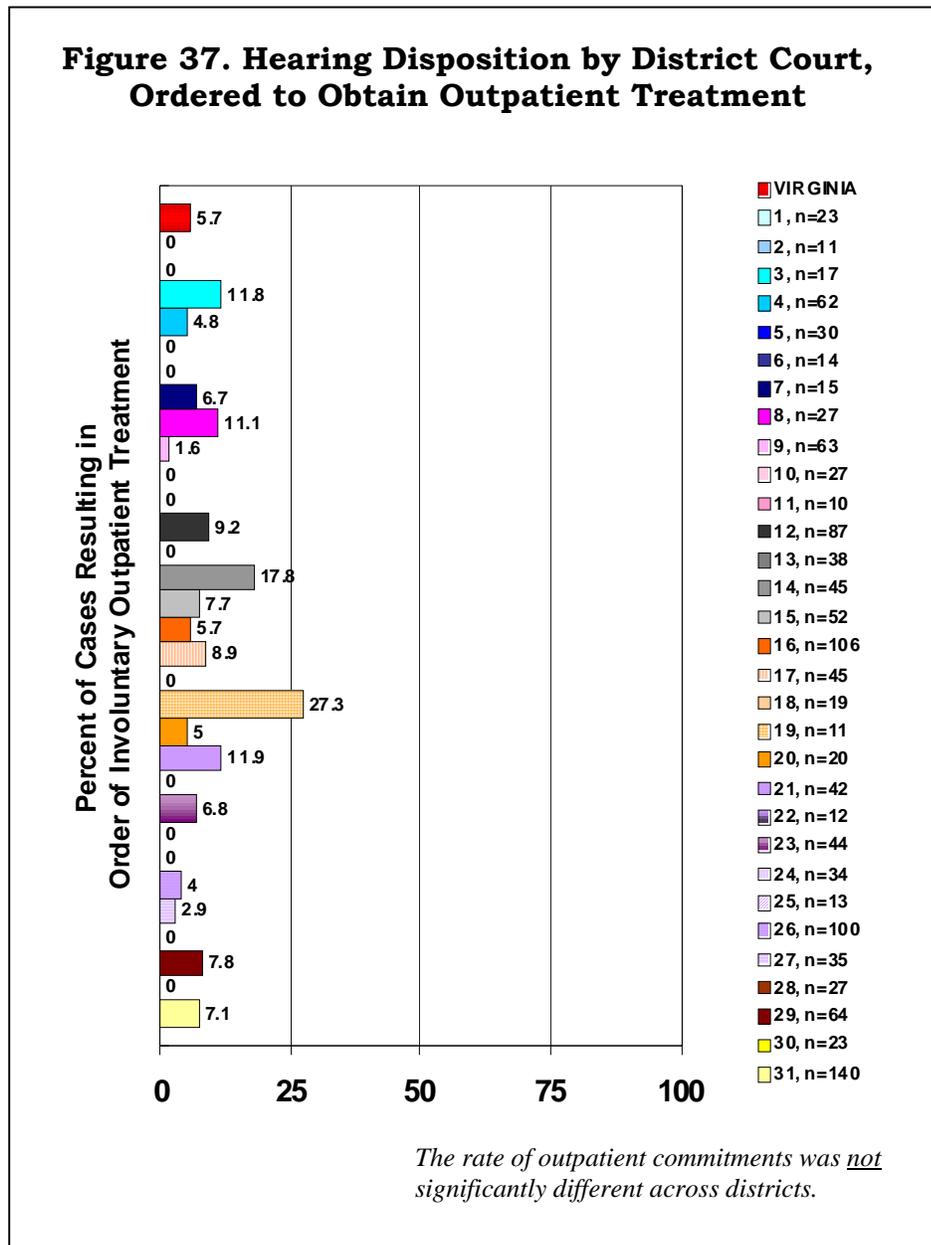


► **There is significant variation among courts in the occurrence of respondents voluntarily agreeing to inpatient treatment (Figure 35).**

In four courts, respondents seldom agreed to voluntary inpatient treatment; these courts reported a disposition of voluntary inpatient

<sup>23</sup> A hearing concludes in an order for treatment or dismissal, based on evidence presented at the hearing. Two options for treatment, in- or outpatient treatment, can be further classified as voluntary or involuntary, depending on whether the client agrees or is ordered into treatment.

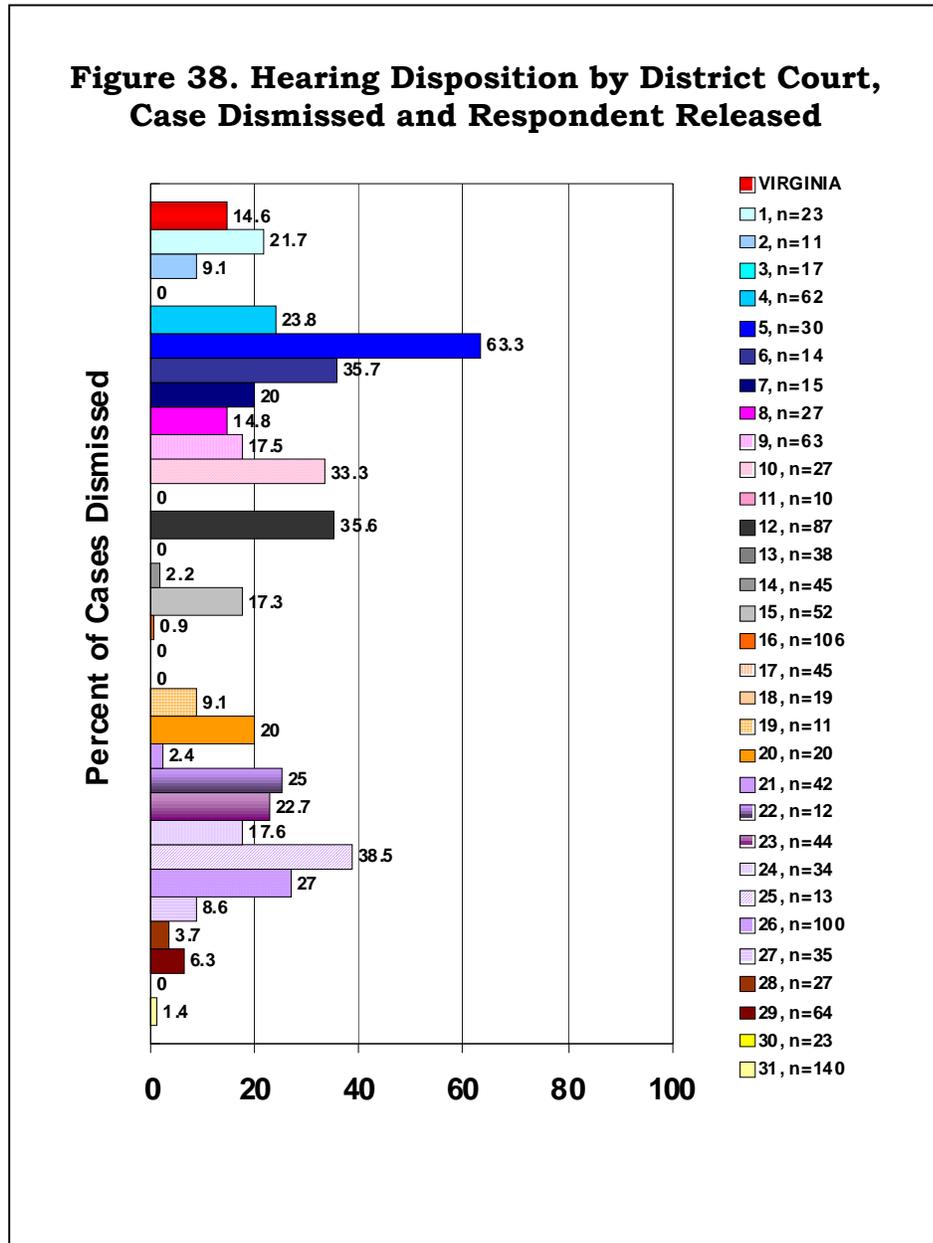
treatment between zero and 3% of the cases (court codes 4, 11, 12 and 19). In contrast, voluntary inpatient treatment is common in other courts, occurring between 51% to 90% of the time (court codes 1, 9 and 13). The data do not provide insight into the reasons for these substantial variations.



► There is also significant variation in the proportion of hearings, ranging from one-quarter to three-quarters, which result in involuntary inpatient treatment (Figure 36).

The courts with the lowest percentages of involuntary inpatient hospitalizations ranged from 11% to 20% (court codes 1, 13 and 14).

Among courts with the highest percentage of involuntary commitments in Virginia, court code 11 had 100% of its dispositions resulting in involuntary inpatient hospitalization and another (court code 16) had 88% involuntary inpatient hospitalization. However, only the latter court had a high volume of hearings (106 hearings compared to only 10).

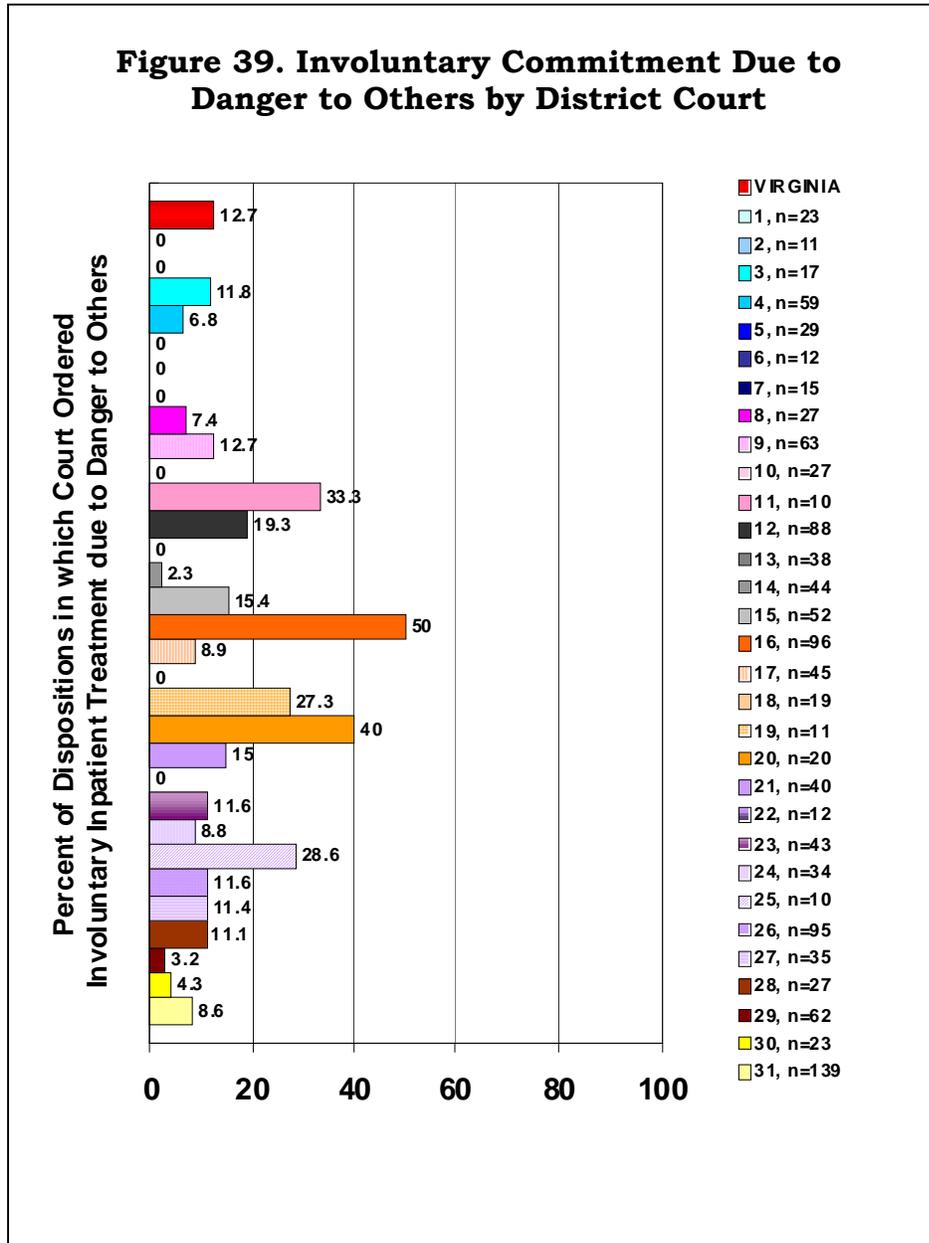


► **Involuntary outpatient treatment is ordered far less often than involuntary inpatient hospitalization, ranging from no outpatient orders in 13 courts to as many as 27% of cases reported in one court (Figure 37).**

Thirteen district courts entered no orders for involuntary outpatient treatment. Only two courts had more than 12% of dispositions reported as ordering involuntary outpatient treatment (court codes 19 and 14).

► **There were significant differences in the frequency of dismissals across courts. Five courts had more than a third of cases dismissed, one of which (code 5) had almost two-thirds of cases dismissed, while six courts had no cases dismissed (Figure 38).<sup>24</sup>**

*Involuntary Commitments Due to Danger to Others*



<sup>24</sup> A case can be dismissed based on insufficiency of evidence, failure of the petitioner to appear, insufficiency of the pleadings, or sometimes other grounds.

**► Nine of Virginia’s district courts reported no involuntary inpatient commitments based upon the respondent being a danger to others (Figure 39). Of all civil commitment hearings, only 13% of cases resulted in an involuntary inpatient commitment due at least in part to the danger to others criterion.**

Figure 39 shows that the majority of district courts reported less than 20% of dispositions resulting in involuntary inpatient commitments due to the danger to others criterion. The percentages shown include not only cases where a “danger to others” was cited as the sole criterion for commitment but also, those cases in which additional commitment criteria were met (see Figure 17). However, in one court (code 16), 50% of the respondents were involuntarily committed based at least in part on the danger to others criterion.

*Attorney Meets with Respondent before Hearing by District Court*

**► One district court (court code 14) was responsible for over 50% of cases in which the counsel did not meet with the attorney in private before the hearing.**

In general, respondents met, at least briefly, with an attorney privately prior to the hearing as the commitment statute requires. However, this was not always the case. There were significant variations among the courts with regard to whether or not the counsel met privately with the respondent before the hearings. In the district responsible for most cases where the counsel did not meet privately with the respondent before the hearing, it was reported to be the local practice for counsel to meet with all respondents at once to explain their basic rights and the procedures. The respondents were then asked if they wanted to have a private meeting with counsel. Only a few ask to do so. Three other districts were responsible for 35% of the remaining cases where respondents did not meet with attorneys privately prior to the hearing. Two districts (court codes 1 and 2) were responsible for about 16% and 10% of cases respectively, followed by 9% of cases in court code 29. All other courts reporting a failure of a pre-hearing meeting with an attorney reported only one such case. In 24 courts, the survey data showed that the counsel always met with the respondent before the hearing.

*Location of Hearing by District Court*

**► Overall, over 90% of hearings were held in hospitals around the state. In 48 of all adult civil commitments, the hearing was held in a courthouse. In addition, 63 hearings were heard elsewhere.**

Overall, 91% of hearings were held in a hospital. Over half of district courts (58%) held hearings only in the hospital, and one court held hearings only in a courthouse<sup>25</sup>. Another 19% of courts had hearings either in the hospital or some other location that was not a courthouse, while 16% had hearings that were predominantly held in the hospital but were also sometimes held at the courthouse.

There were significant differences among district courts in whether or not a recording was made of the entire hearing. Some courts report no recording made in one to seven hearings; however, one court reported no recording in 80% of hearings (court code 4).

#### *CSB Representatives at Hearings with Involuntary Outpatient Dispositions*

**► In 4 districts, a CSB representative always or mostly appeared at the hearing in which the disposition was involuntary outpatient commitment, and in 14 additional districts, the CSB never appeared or inconsistently appeared.**

Among the 31 district courts with 10 or more cases, there was a wide variation of attendance of CSB representatives at hearings that ended in mandatory outpatient treatment. The 18 district courts that had dispositions resulting in an order for outpatient treatment were split between three categories: five courts never or rarely had a CSB clinician present (0% or less than 3% of cases); four courts always or mostly had a CSB clinician present (95% to 100% of cases); and nine courts sometimes had a CSB clinician present (between 20% to 94% of cases). District courts with 100% consistent or nearly 100% CSB representation were court codes 4, 8, 21 and 27. In contrast, eight courts had the highest concentrations of either no representation or occasional representation (court codes 7, 9, 12, 14, 15, 17, 19 and 20).

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<sup>25</sup> Section III of the report refers to district courts with 10 or more cases. Among all district courts, including those with less than 10 cases, there are 4 courts that had 100% of hearings occurring in a courthouse.

## SECTION IV Variations Among Four High-Volume District Courts

### VARIATIONS IN PRACTICE AMONG FOUR DISTRICT COURTS WITH GREATEST NUMBER OF HEARINGS IN MAY 2007

Virginia is a diverse state that has both large urban centers and more remote rural areas. The distribution of mental health beds and mental health professionals as well as the practices of local CSBs and law enforcement also vary. To some degree, these underlying differences may contribute to the substantial variations in hearing practices and dispositions we found in assessing the hearings in all 48 district courts. Unfortunately, more data would be needed to determine fully the sources of the variation. However, we undertook an analysis of the four district courts with the largest volume of cases, assuming that some of the background variation would be minimized. As the results show, substantial variation in all measures remained.

Four district courts had high volumes of commitment hearings with more than 90 cases each (“high-volume courts”).<sup>26</sup> These high-volume courts are coded as Court A ( $n=100$  cases), Court B ( $n=106$ ), Court C ( $n=141$ ), and Court D ( $n=91$ ). Variations among these districts in terms of hearing disposition and hearing processes and other characteristics are reported below.

#### *Hearing Disposition*

**► Court B had significantly more involuntary inpatient commitments (88%), whereas Court A had the fewest (38%).**

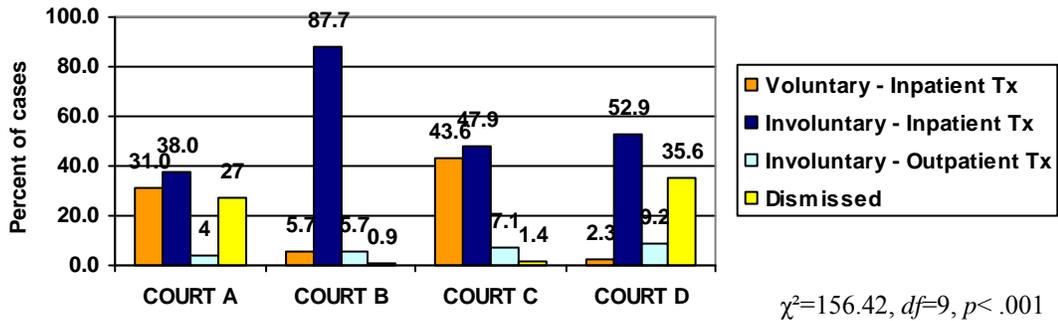
As with the analysis of district courts, there was considerable variation in the frequency of involuntary inpatient commitments in these four high-volume courts as well. Court B ordered more respondents into inpatient

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<sup>26</sup> We examined only cases that had any of the following dispositions recorded: voluntary admission for inpatient treatment, involuntary commitment for inpatient treatment, involuntary order to obtain outpatient treatment, and case dismissal. For similar reasons as the previous analyses, there were few cases involving voluntary agreement to receive outpatient treatment and therefore these cases were dropped from any subsequent analyses.

treatment, whereas Court D dismissed significantly more cases. The range, 38% to 88%, is shown in Figure 40. The difference between the highest and lowest rate of inpatient orders among these high-volume courts was almost two and a half times (2.3 times).

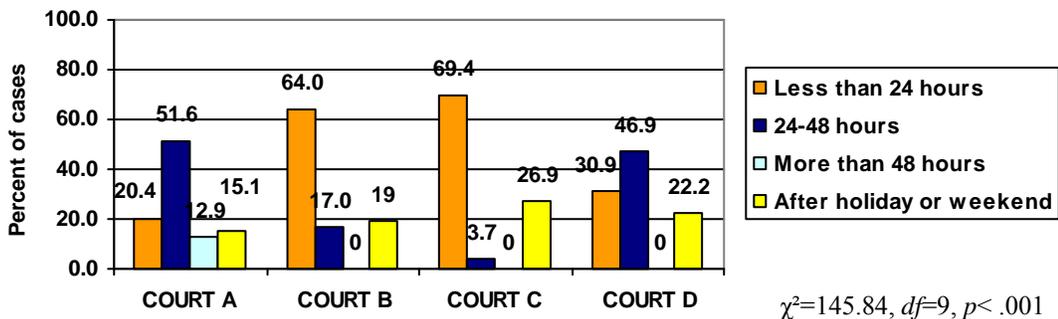
**Figure 40. Hearing Disposition by High-Volume Courts**



*Length of Time between TDO and Hearing*

The time between the issuance of a TDO and judicial action also varies substantially. The length of time elapsed between the TDO being executed and the hearing by the district court was typically less than 24 hours in two of the districts (Court B and Court C), whereas in the other two district courts (Court A and D) it was more likely to be 24-48 hours (Figure 41). It is notable that all of the high-volume courts reported that between 15% to 27% of respondents had weekend stays in hospitals or elsewhere before a hearing was held.

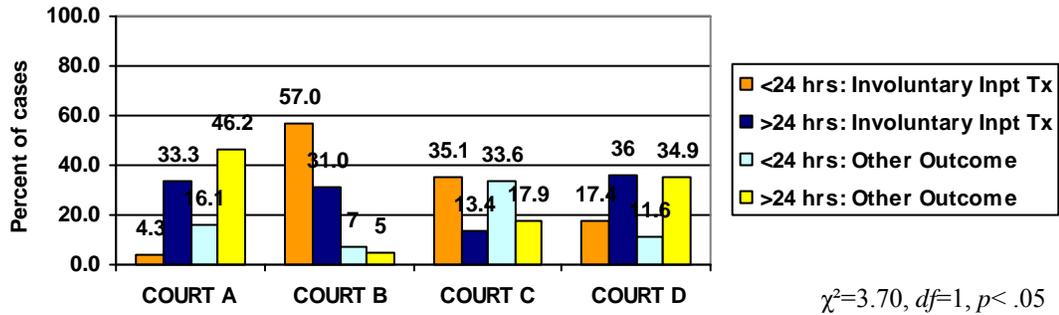
**Figure 41. Length of Time between TDO and Hearing by High-Volume Courts**



As shown in Figure 42, when the time between the TDO and the hearing was less than 24 hours, in Court B, this was particularly likely to lead to

a disposition of involuntary inpatient treatment. This pattern was not replicated in the three other district courts.

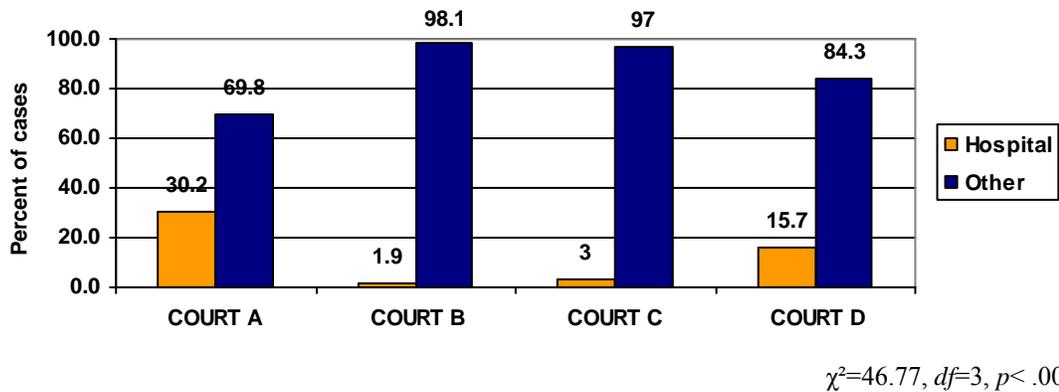
**Figure 42. Involuntary Inpatient Disposition Analyzed by Time Elapsed Between Hearing and TDO in High-Volume Courts**



*Petitioner Type*

In most of the cases across the district courts, the petitioner was generally someone from the hospital where the respondent was detained under the TDO. In contrast, both Court B and Court C had significantly more cases where the petitioner was someone **other than** hospital personnel (Figure 43). Petitioners referred to as “other” include all petitioners other than hospital employees (e.g. family members, CSB representatives, friends, and others).

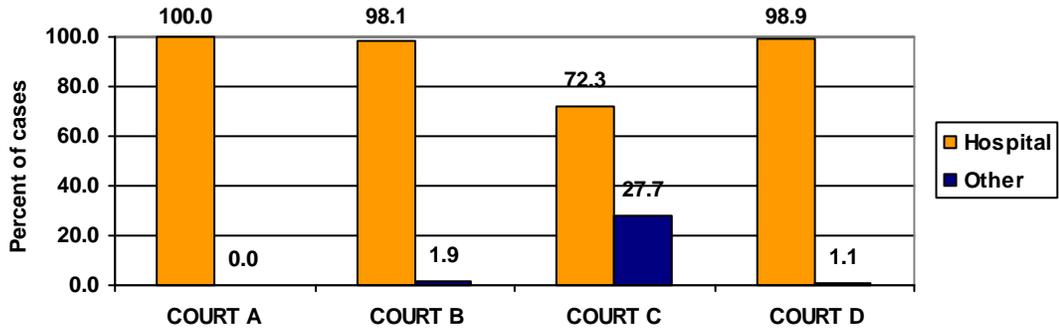
**Figure 43. Petitioner Type by High-Volume Courts**



*Hearing Location*

The hospital was usually the hearing location in all four high-volume courts. Court C had more cases than the other districts in which the hearing location was somewhere other than the hospital (Figure 44). Non-hospital hearings designated as “other” include hearings held in a courthouse, mental health facility or nursing home.

**Figure 44. Hearing Location Type by High-Volume Courts**

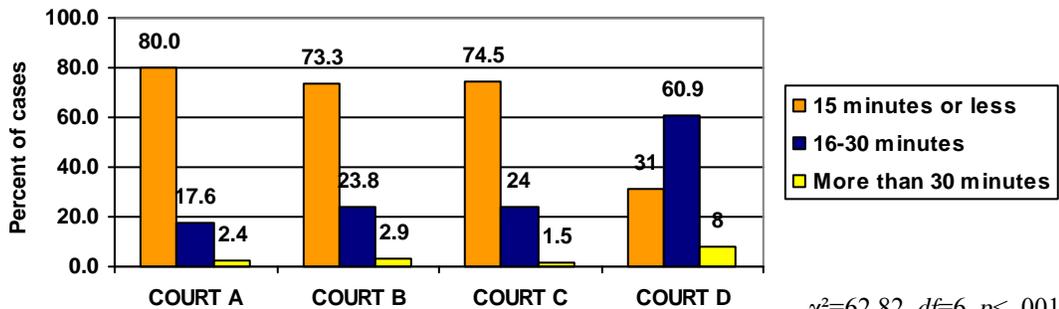


$\chi^2=77.44, df=3, p< .001$

*Duration of Hearing*

As was the case across the state, hearings among the high-volume courts were generally brief. Court D had significantly more cases where the hearing lasted for more than 15 minutes (Figure 45). As for the other high-volume courts, generally three out of four hearings lasted for no more than 15 minutes.

**Figure 45. Duration of Hearing by High-Volume Courts**

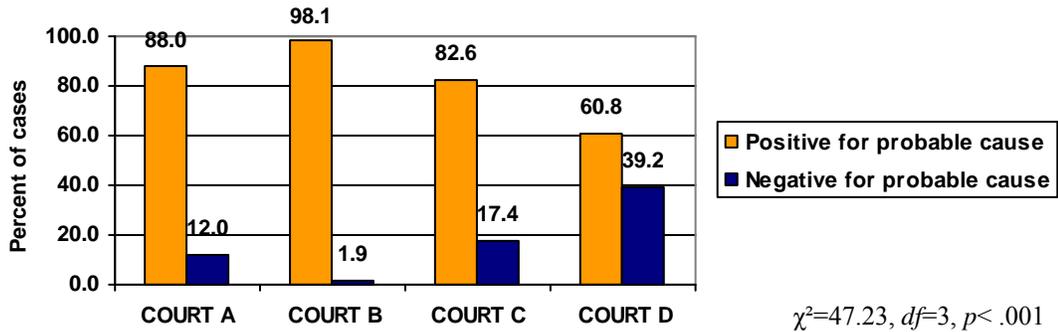


$\chi^2=62.82, df=6, p< .001$

*Independent Examiner Certification Finding*

In all four high-volume courts, the independent examiner’s certification was generally positive for probable cause to commit the patient for treatment. However, the proportion of cases in which the IE certification had been negative varied substantially, as Figure 46 shows.

**Figure 46. Independent Examiner’s Certification Finding by High-Volume Courts**



To involuntarily commit an individual, a court must receive an evaluation from the independent examiner who certifies whether or not the respondent meets the statutory commitment criteria. However, as shown below, a positive certification does not always lead to an order to commit and a negative certification may not lead to a dismissal. Table 1 shows the number of cases in which the disposition was to dismiss the case and release the respondent and whether the IE certification was positive or negative for commitment. Overall, Court D had more dismissals than the other three courts; however, all of Court D’s dismissals were certified as negative to commit. Roughly half of Court A’s 23 dismissals had a positive certification and half a negative certification.

**Table 1. Independent Examiner’s Certification and Dismissal Rates in High-Volume Courts**

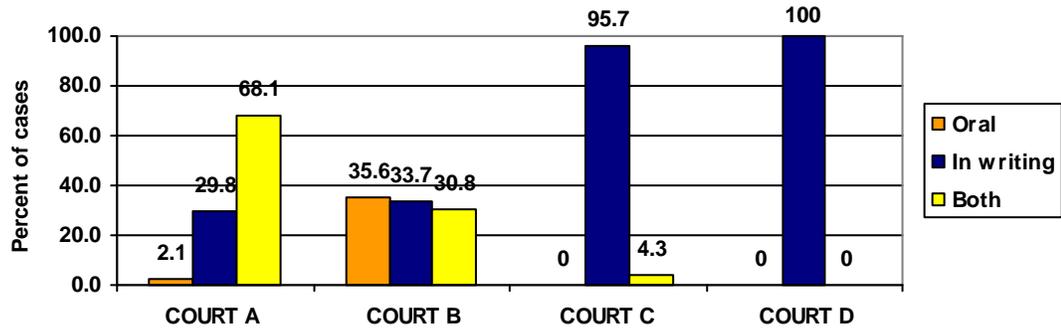
Court	Number of Cases Dismissed that IE Certification was Positive to Commit	Number of Cases Dismissed that IE Certification was Negative to Commit	Total Cases Dismissed
Court A	12	11	23
Court B	1	0	1
Court C	1	1	2
Court D	0	30	30

*Independent Examiner Certification Presented*

Although whether a respondent meets the statutory commitment criteria must be certified by the independent examiner, the statute does not specify the manner in which this certification must be entered into evidence. As a result, practices vary. Court B received the IE’s certification in an oral presentation only in about two-thirds of all cases (sometimes in addition to a written presentation), compared to Court A

where the certification was usually combined with an oral presentation or Courts C or D where the certification was presented solely or almost always in writing (Figure 47).

**Figure 47. Manner in Which Independent Examiner Certification Was Presented by High-Volume Courts**



$\chi^2=294.80, df=6, p< .001$

### *Appeared at Hearing*

Table 2 shows the percentage of cases when parties and witnesses—for example, the respondent, petitioner, independent examiner, etc.—appeared at the hearing. The percentages are presented for each of the four high-volume courts. Below are a summary of findings:

- Courts A, B and D heard cases where the respondent did not appear.
- The petitioner was absent in the majority of cases heard in Courts B, C and D. On the other hand, Court A had the petitioner present in the majority of cases.
- The CSB representative was present at least 50% of the time in Courts A, B and C. Court D had the CSB representative present in one out of four cases.
- Family members appeared more often in cases heard in Court A than in Courts B, C or D, which only occasionally had family members appear.
- Hospital clinicians appeared at hearings virtually all of the time when heard in Court D, whereas they appeared virtually none of the time when the cases were in Court B.
- The IE appeared at the hearing less often when the cases were in Courts B or C than if the cases were in Courts A or D.
- The respondent’s counsel appeared in most of the cases seen across all four high-volume courts, whereas the petitioner’s counsel never appeared.

**Table 2. Who Appeared at the Hearing in High-Volume Courts**

<b>Appearing at Hearing</b>	<b>COURT A (%)</b>	<b>COURT B (%)</b>	<b>COURT C (%)</b>	<b>COURT D (%)</b>
Respondent	96.0	99.0	100.0	97.8
Petitioner*	83.0	5.7	12.1	3.3
CSB representative*	59.0	73.3	66.7	24.2
Family member(s)*	23.0	7.6	8.5	8.9
Hospital clinician(s)*	50.0	2.9	16.3	98.9
Independent examiner*	91.9	62.9	76.6	82.2
Respondent’s counsel	98.0	94.3	97.2	92.2
Petitioner’s counsel	0	0	0	0

\* Significant difference at the  $p < .05$  level.

### *Testified at Hearing*

Table 3 shows the percentage of cases when parties and witnesses—for example, the respondent<sup>27</sup>, petitioner, IE, etc.—testified at the hearing. Below is a summary of findings for the high-volume courts:

- The petitioner testified in most of the cases heard in Court A, compared to less than a quarter of the cases heard elsewhere.
- Hospital physicians testified in about 13% of cases heard in Court D, but in very few cases heard elsewhere.
- Hospital social workers testified in most of the cases heard in Court A, but in few of the cases heard in the other three district courts.
- Hospital clinicians with R.N., L.P.N., or M.H.C. degrees seldom testified in any of the four high-volume courts.
- Family members rarely testified at Court D.
- IEs testified in most cases heard in Courts A and B, but they testified infrequently in both Courts C and D.
- The CSB representative testified at least half of the time when the cases were in A and C, but only in one-fourth of all cases in B, and very few cases held in D.

**Table 3. Identity of Persons Who Testified at the Hearing in High-Volume Courts**

Testifying at Hearing	COURT A (%)	COURT B (%)	COURT C (%)	COURT D (%)
Petitioner*	82.5	6.9	21.4	1.1
Respondent*	40.2	96.1	90.7	51.6
Hospital physician*	1.0	4.9	0.7	13.2
Hospital R.N.	0	1.0	1.4	0
Hospital social worker*	84.5	1.0	2.1	0
Hospital LPN or MHC*	6.2	0	1.4	0
Family member(s)*	17.5	11.8	11.5	3.3
Independent examiner*	90.6	63.7	17.9	9.9
CSB representative*	53.6	25.5	65.0	1.1

\* Significant difference at the  $p < .05$  level.

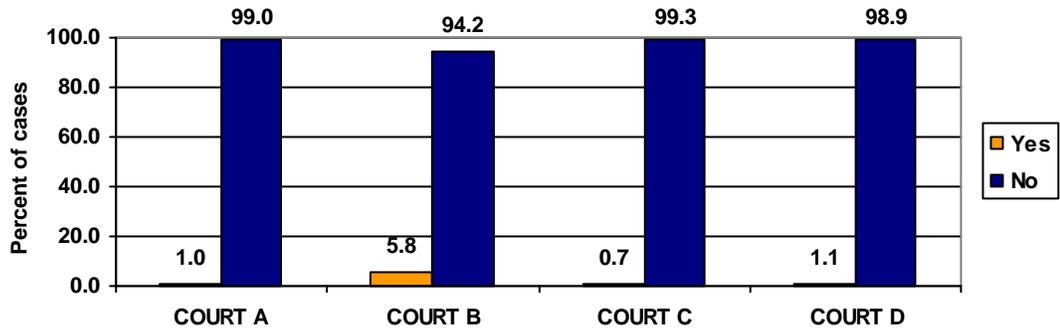
<sup>27</sup> Respondent testifying at hearing can indicate that either the respondent’s counsel or the judge questioned the respondent.

### Counsel Actions at Hearing

Overall, judging from the actions of counsel for the respondent, the proceedings in Court B were more formal than those in the other three courts, and those in Court C were least so.

A motion to sequester witnesses was rarely made by the respondent's counsel; it occurred more often when the case was heard in Court B (Figure 48).

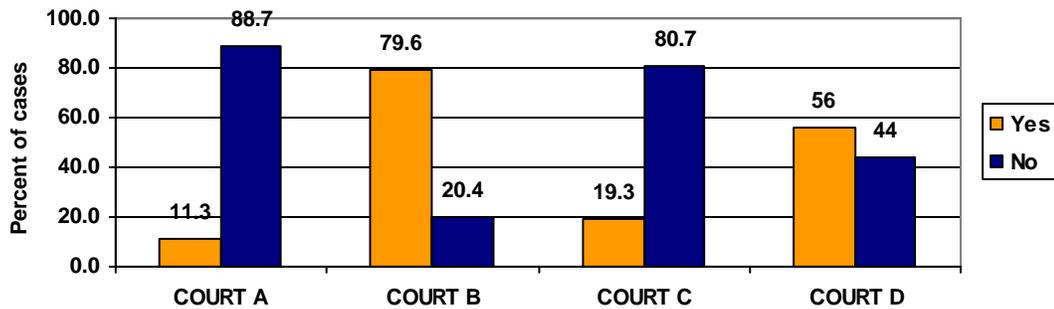
**Figure 48. Motion to Sequester Witnesses by High-Volume Courts**



$\chi^2=9.29$   $df=3$ ,  $p<.03$

Respondents were examined by their own counsel in eight out of ten cases heard in Court B. However, that rate was much lower in other high-volume courts, particularly Courts A and C (Figure 49).

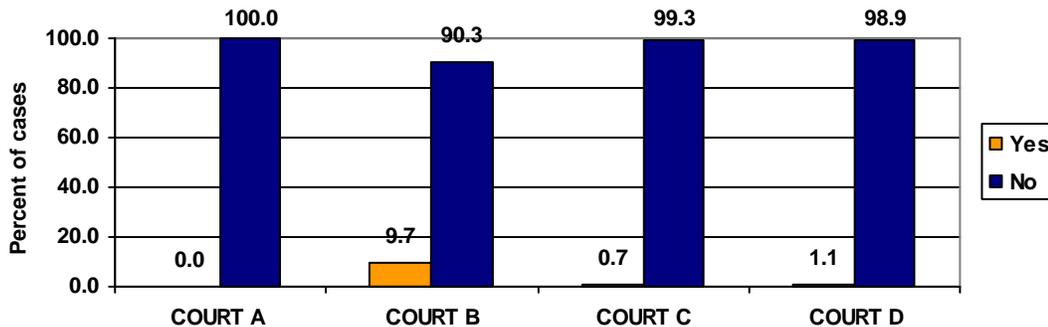
**Figure 49. Respondent's Counsel Examined the Respondent by High-Volume Courts**



$\chi^2=135.68$   $df=3$ ,  $p<.001$

Evidentiary objections were made by the respondent's counsel in about one out of ten cases heard in Court B, but very rarely if at all elsewhere (Figure 50).

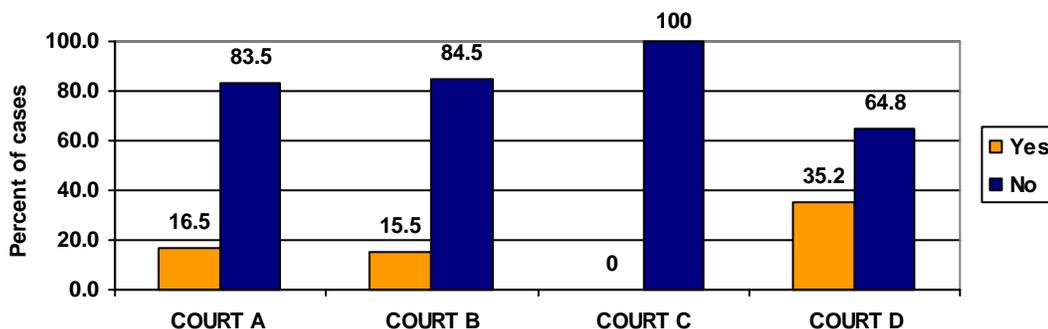
**Figure 50. Evidentiary Objections Made by High-Volume Courts**



$\chi^2=24.11$   $df=3$ ,  $p<.001$

Motions to strike evidence were made in a third of cases heard in Court D, but it occurred less frequently elsewhere (Figure 51).

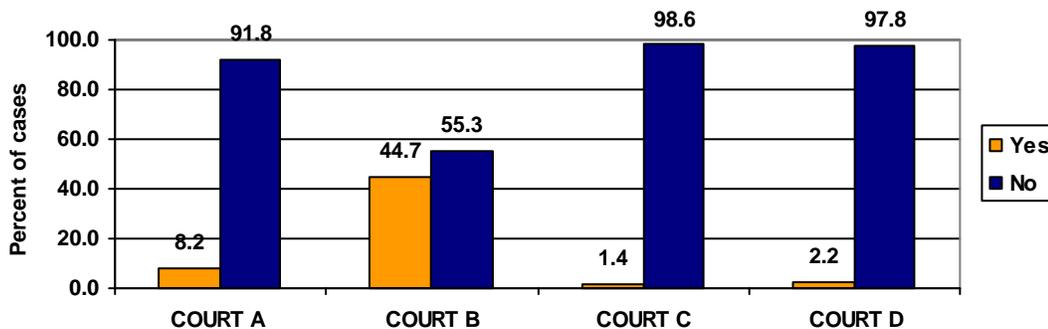
**Figure 51. Motion to Strike Evidence Made by High-Volume Courts**



$\chi^2=54.36$   $df=3$ ,  $p<.001$

The respondent’s counsel made a final argument in about 45% of the cases held in Court B, which is significantly more often than other high-volume courts (Figure 52).

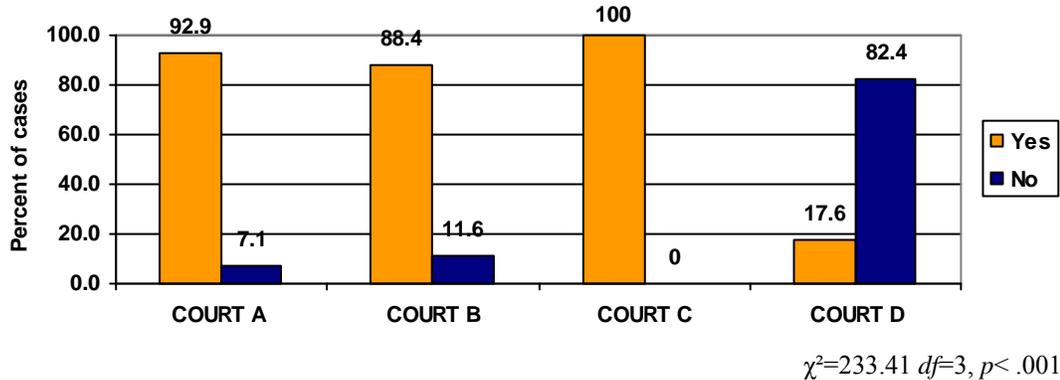
**Figure 52. Final Argument Made by High-Volume Courts**



$\chi^2=115.67$   $df=3$ ,  $p<.001$

In Courts A, B and C, the court questioned witnesses in most if not all of the hearings, whereas in Court D, witnesses were infrequently questioned by the court (Figure 53).

**Figure 53. Court Questioning Witnesses by High-Volume Courts**



*Summary*

► **There was substantial variation in all dispositions among the four district courts.**

The inpatient commitment rate in Court B was 88%, significantly greater than in the other three high-volume courts. Voluntary inpatient treatment was a frequent disposition in Courts A and C, whereas cases were often dismissed in Court D.

► **There was considerable variation in the hearing characteristics across the four district courts, although there were some characteristics in common.**

In two of the high-volume courts, the typical length of time between the TDO being executed and the hearing was less than 24 hours, whereas in the other two district courts, it was more likely to be 24-48 hours. Court A was the only one of the four which had hearings occurring more than 48 hours after the TDO was executed.

Generally, hospital personnel were the petitioners at these district courts, and the hospital was generally the hearing location. The hearings were usually held between 9 a.m. to 5 p.m., and in three of the district courts, the hearings lasted only 15 minutes or less. However, the length of the hearing was somewhat longer at one of the district courts, where hearings generally lasted 16 to 30 minutes. The hearing was generally audio recorded, although at one of the district courts, it was recorded by other means about a quarter of the time.

► **The independent examiner’s certification was presented solely in writing at two of the high-volume courts, whereas in the other two district courts it was often combined with an oral presentation as well.**

► **The independent examiner’s certification was generally positive for probable cause, although at three of the high-volume courts, it was negative for probable cause in 12 to 39% of the cases.**

► **Although the respondent usually appeared at the hearing, three of the high-volume courts often heard cases in which the respondent did not appear.**

Although the petitioner initiated the civil commitment proceedings, the petitioner was generally absent for the hearing in three of the high-volume courts. In contrast, the petitioner was generally present in the other district court. There was considerable variation in whether the following individuals appeared at the hearing: CSB representative, family members, hospital clinicians, or independent examiner. Although the respondent’s counsel usually appeared across all four district courts, a petitioner’s counsel never appeared at any of the district courts.

At only one of the high-volume courts did the petitioner generally testify, whereas the respondent generally testified at the hearing at three of the four district courts. In fact, there were significant variations by district court in whether the following types of persons testified at the hearing: hospital physician, hospital social worker, hospital LPN or MHC, family members, independent examiner, and CSB representative. Hospital RNs rarely testified in any of the high-volume court hearings.

► **Hearings in one of the four high-volume courts were generally characterized by greater procedural formality than in the other three courts.**

In one of the high-volume courts, the respondents’ counsel was more likely to examine the respondent than in the others, more likely to make evidentiary objections and more likely to make a final argument.

Another area that differed significantly by district court was whether the judge questioned witnesses. In three of the high-volume courts, the judge questioned witnesses in most of the hearings, whereas in the other courts, this generally did not occur.

## SECTION V

# Characteristics of Recommitment Hearings

### SUMMARY

During the survey month, there were 168 recommitment hearings in the Commonwealth of Virginia. Of these, 7 involved respondents who were minors, and 10 involved respondents who had previously agreed to accept voluntary admission. A summary of these hearings is presented below.

#### *Location of Hearing*

All recommitment hearings except for 18 were held in hospitals.

#### *Duration of Hearing*

Recommitment hearings take even less time than initial commitment hearings. Three-fourths (75.2%) of recommitment hearings are concluded in 15 minutes or less, compared to about 57% of the initial commitment hearings.

#### *Attorney Meetings with Respondent*

Counsel is somewhat less likely to meet with respondents prior to a recommitment hearing than in an initial hearing (78% vs. 94% respectively).

#### *Appearing at the Hearing*

All but seven respondents in recommitment hearings (96% of the total) appeared at the hearing. This percentage of respondents is about the same for initial commitment hearings. As with initial commitment hearings, recommitment hearings were rarely attended by petitioners (26% vs. 28% of initial hearings), family members (13% vs. 15%), or hospital clinicians (33% vs. 30%).

In addition, CSB staff was significantly *less likely* to be present at recommitment hearings (27% present) compared to initial commitment

hearings (52% present). However, more independent examiners were present at recommitment hearings (79%) compared to initial commitment hearings (64%).

#### *Independent Examiner Testimony*

The certification by the IE was more likely to be presented orally (39%) at a recommitment hearing than in initial commitment hearings (15%).

#### *Independent Examiner Credentials*

About two-third of the IEs in recommitment hearings were physicians (M.D.s) while medical doctors and psychologists were equally likely to present certification in an initial commitment hearing. Rarely was the IE on the CSB staff (5% of cases).

#### *CSB Prescreening Report*

A greater percentage of CSB prescreening reports were submitted in written form in recommitments (87%) than in initial commitment hearings (71%). In about 14% of cases, the CSB prescreening report was prepared by a CSB from a different region than the CSB represented at the hearing.

#### *Need for Interpreters*

As with hearings generally, the need for either foreign language or hearing interpreters was infrequent. In three recommitment hearings a foreign language interpreter or interpreter for the hearing or speech impaired was needed.

#### *Recommitment Hearing Dispositions*

Recommitment hearings were twice as likely to result in an involuntary inpatient commitment order as were initial commitment hearings. Over 90% of recommitment hearings resulted in an involuntary inpatient commitment order. One person was ordered outpatient treatment, 10 individuals voluntarily agreed to inpatient treatment, and two cases were dismissed.

## SECTION VI Characteristics of Juvenile Hearings

### SUMMARY

There were 41 juvenile hearings during the survey month. Juvenile hearings have somewhat different characteristics from adult hearings. First, juvenile civil commitment hearings are held in the Juvenile and Domestic Relations Courts; each Judicial District of Virginia has at least one Juvenile and Domestic Relations Court. A summary of juvenile hearings is presented below.

#### *Location, Time and Duration of Hearing*

Although adult civil commitment hearings typically occurred in hospitals (91%), juvenile hearings, usually were conducted in the Juvenile and Domestic Relations Court. Only 25% of juvenile hearings were held in hospitals whereas 70% were held in courtrooms. Adult hearings took place in a court just 4% of the time. Both juvenile and adult hearings occurred in another location 5% of the time.

Like adult hearings, juvenile hearings were typically held during business hours, 9 a.m. to 5 p.m. Also similar to adult hearings was the length of time the hearing lasted, with over than half lasting 15 minutes or less.

#### *Petitioner Type*

The usual petitioner differed in juvenile cases compared to that in adult cases. The petitioner was the hospital in 80% of juvenile hearings compared to 21% of adult hearings. The percentage of family member petitioners was similar to adult hearings (15% in juvenile cases vs. 11% in adult cases). However, a CSB was infrequently a petitioner in juvenile cases. The CSB was the petitioner in 54% of adult hearings, while in juvenile cases this occurred only 3% of the time.

### *Audio Recording*

Unlike adult hearings, audio recordings of juvenile hearings were very infrequent. In adult hearings, audio recordings are required by statute, and only 4% of hearings had no recording. In juvenile hearings, 93% of hearings were not recorded.

### *Appearing at the Hearing*

Family members were much more likely to appear at a juvenile hearing than at adult hearings (54% of juvenile hearings vs. 15% of adult hearings). Also more likely to appear was the petitioner (85% of juvenile hearings vs. 28% of adult hearings) and the independent examiner (71% of juvenile hearings vs. 64% of adult). CSB representatives were roughly 20% less likely to appear at juvenile hearings than at adult hearings, while hospital clinicians, respondent's counsel, petitioner's counsel and respondents appeared at about the same frequency as they did at adult hearings.

### *Independent Examiner Testimony*

Independent examiners were more likely to testify in juvenile hearings than in adult hearings. There were fewer juvenile cases in which the IE certification was presented only in written form (34%) than in adult hearings (52%).

### *Independent Examiner Credentials*

The Virginia Code provides that physicians and clinical psychologists may serve as independent examiners and, if not available, other clinical professionals may do so. Overall, either physicians or psychologists serve as medical examiners in 77% of adult hearings but only in 33% of juvenile hearings. Adult hearings have about an equal percentage of independent examiners who are medical doctors (36%) or psychologists (41%). In juvenile cases, however, independent examiners designated as "other" are the majority of IEs (68%). "Other" includes licensed clinicians such as licensed professional counselors (L.P.C.) and licensed clinical social workers (L.C.S.W.). Medical doctors are the IE in about 13% of juvenile hearings, while psychologists comprise 20% of juvenile IEs.

### *Need for Interpreters*

A foreign language interpreter or interpreter for the hearing or speech impaired was needed in 4 juvenile cases (11%).

### *Persons Testifying at Hearing*

Petitioners and family members testified more often at juvenile hearings than at adult hearings. Petitioners testified at 56% of juvenile hearings, whereas petitioners testified at only 29% of adult hearings. In addition, family members had a significantly higher rate of testimony at juvenile hearings with 54% having family testimony compared to only 13% of adult hearings. IE testimony was fairly similar between both juvenile and adult hearings (56% and 46% respectively). However, respondents testified less often in juvenile cases (56% of hearings), compared to testifying in 72% of adult hearings.

### *Actions of Respondents' Counsel*

We also examined the actions of respondent's counsel during the hearings. Juvenile and adult cases had similar results if comparing the percentage of times that counsel made a motion to strike, made evidentiary objections or sequestered witnesses. The two courts differed in the counsel actions of examining the respondent and making a final argument. Respondents' counsel in juvenile courts examined the respondent in 23% of cases in comparison to adult cases in which respondents were examined 43% of the time. Juvenile attorneys were significantly more likely to make a final argument (49% vs. 18% of adult cases).

### *Hearing Disposition*

Voluntary inpatient treatment was the disposition less frequently in juvenile hearings than in adult hearings (17% of juvenile cases compared to 29% of adult cases). Juvenile hearings also resulted in a higher percentage of involuntary inpatient orders. Involuntary inpatient orders occurred in 61% of cases in juvenile courts compared to about 50% of adult cases. There were no agreements for voluntary outpatient treatment in juvenile cases during the survey month. Dismissals of juvenile cases occurred at a lower rate than adult cases (5% and 15% respectively).

The main finding of the Commission's Hearing Study is that there are striking variations across districts in the way civil commitment proceedings are conducted and in their dispositions. These variations were evident at the pre-hearing stage, at the hearing itself and in the dispositions ordered by the courts. Some of the procedural variations (such as whether CSB staff and independent examiners are present at the hearings) were addressed by statutory changes in 2008. However, ascertaining whether the variations in dispositions have acceptable explanations requires further study. Reducing these variations may be one of the major challenges of commitment reform.

This one-month survey was necessary because Virginia does not have a data system that permits ongoing monitoring and oversight of the commitment process. To further investigate the causes of the substantial variations across the state and to provide important feedback to the courts and all others involved in the civil commitment process, ongoing data collection systems should be a high priority.

### VIRGINIA COURT SYSTEM DESCRIPTION

The purpose of the Virginia judicial system is to ensure that disputes are resolved justly, promptly, and economically through a unified court system. The Virginia Court System consists of the Supreme Court, the Court of Appeals, Circuit Courts in thirty-one judicial circuits, General District Courts and Juvenile and Domestic Relations District Courts in thirty-two districts, and magistrates in thirty-two districts.

#### *Magistrate*

A citizen's first contact in the judicial system is often through a magistrate's office. The magistrate's function is to provide unbiased review of complaints brought by police officers, sheriffs, deputies, and citizens. Magistrates issue arrest warrants, summonses, bonds, search warrants, subpoenas, and civil warrants. They hold hearings to set bail and accept payments for traffic infractions and minor misdemeanors.

#### *General and Juvenile and Domestic Relations District Courts*

At the next level of the Court System are the General District Courts and the Juvenile and Domestic Relations District Courts. The General District Court decides all criminal offenses involving ordinance laws, its respective county or city laws, misdemeanors, civil cases in which the amount involved does not exceed \$15,000, and traffic infractions. The district courts do not conduct jury trials. All cases are heard by a judge. The district courts also hold preliminary hearings in felony cases, to determine whether there is sufficient evidence for a grand jury hearing in the Circuit Court.

The Juvenile and Domestic Relations District Courts differ from other courts in their predominant aim to protect the confidentiality of juveniles and in their commitment to rehabilitate and treat, rather than punish.

The Juvenile and Domestic Relations Courts address issues of juvenile delinquency and status offenses, juvenile traffic violations, children in need of services or supervision, children subjected to abuse or neglect, offenses against a juvenile's family or household members, adults involved in dispute concerning visitation, support, or custody of a child, spousal support, abandonment of children, and foster care. The court also handles court-ordered rehabilitation services and court consent for certain medical treatments.

### *Circuit Courts*

Circuit Courts are the only trial courts of general jurisdiction in Virginia. Circuit Courts hold jurisdiction over civil actions including concurrent jurisdiction with district courts in monetary claims between \$4,500 and \$15,000, monetary claims exceeding \$15,000, and the validity of county or municipal ordinances and corporate bylaws. In criminal cases, the Circuit Court holds jurisdiction over all felony cases, misdemeanor charges originating from a grand jury indictment or transfer, and felony offenses committed by juveniles. The Circuit Court handles appeals from the General District Courts, the Juvenile and Domestic Relations Courts, or from Commonwealth of Virginia administrative agencies.

### *Court of Appeals*

The Court of Appeals was established to increase the appellate capacity of the Court System and to expedite the appellate process. Ten judges, elected for eight-year terms by a majority vote of members of each house of the General Assembly, and a Chief Judge, elected by majority vote by Court of Appeals judges, make up the total number of eleven judges in the Court of Appeals. The Court of Appeals handles all appeals of final orders of conviction in criminal or traffic matters, except where a death penalty is imposed, which is instead appealed to Virginia's Supreme Court. The Court of Appeals also provides review of decisions of the Circuit Courts involving domestic relations matters and appeals from administrative agencies, as well as hearing appeals from decisions of the Virginia Worker's Compensation Commission.

### *Supreme Court*

The Supreme Court's primary function is to review decisions of the lower Courts; however, Virginia does not allow appeals to the Supreme Court unless cases involve the State Corporation Commission, disbarment of an attorney, or review of the death penalty. It holds original jurisdiction over habeas corpus (determining whether the holding of someone in custody is valid), mandamus (ordering a holder of an office to perform duty), prohibition (ordering an action stopped in a lower court), writs of

actual innocence, and the judicial censure, retirement, and removal of judges. It is comprised of seven justices who are elected by a majority vote of both houses of the General Assembly for a twelve-year term. The Chief Justice is chosen by majority vote of the seven justices.<sup>28</sup>

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<sup>28</sup> All information pertaining to the structure and functions of the Commonwealth of Virginia's Court system is from the Virginia Judicial System website, <http://www.courts.state.va.us>.

## APPENDIX B

### Copy of Data Collection Instruments

The following pages contain the two questionnaires used to collect information on civil commitment proceedings developed by the Commission's Research Advisory Group.

- The first instrument, the *District Court Civil Commitment Hearing Questionnaire*, was developed for use at the district court level for both adult and juvenile hearings or recommitment hearings.
- The second instrument, the *Circuit Court Civil Commitment Questionnaire*, was developed for use at the Circuit Court level to record information on appeals of district court decisions.

Each two-page questionnaire was designed for completion by the judge or special justice following the commitment hearing.

The *District Court Civil Commitment Hearing Questionnaire* included 44-items about the civil commitment process including the pre-hearing period, the hearing and the disposition. Specific information included who initiated the proceeding (the petitioner), who presided at the hearing, the type of hearing, the location of the hearing, appearance and testimony of witnesses, attorney actions, hearing dispositions and other information about the procedures. The *Circuit Court Civil Commitment Questionnaire* included 46 similar items as well as those specific to appeals. Response options for both instruments included those that were dichotomous (e.g., yes or no), multi-optional (e.g., checklist of all people who appeared at the hearing), and open-ended (e.g., In addition to those listed, who else testified at the hearing?).

**DISTRICT COURT CIVIL COMMITMENT HEARING SURVEY**

Record # \_\_\_\_\_

\*\*PLEASE CHECK ALL BOXES THAT APPLY

**Presiding Judge/Special Justice**

1. \_\_\_\_\_  
 2.  1 Sp. Justice  2 Substitute Judge  3 Gen. Dist. Ct. Judge

**General Dist. Ct. of :** 3. \_\_\_\_\_ **Co/City**

**Hearing Date:** 4. \_\_\_\_\_

**TDO No:** 5. \_\_\_\_\_ 6. **No TDO issued**

**Petitioner is:** 7.  1 Hospital  4 CSB  
 2 Family Member  5 Don't know  3 Other 8.

**Petitioner is from:** 9. \_\_\_\_\_ **Co/City**

**Respondent is from:** 10. \_\_\_\_\_ **Co/City**

**Actual Hearing Location:** 11. \_\_\_\_\_ 12.

1 Hospital  2 Courthouse  3 Other

**Was this hearing subsequent to a hearing where the Respondent had accepted voluntary admission?** 13.

1 Yes  2 No

**Was this a recommitment hearing?** 14

1 Yes  2 No

**Time of day of hearing:** 15.

1 before 9 a.m.  2 between 9 and 5  3 after 5 p.m.

**Approximate duration of the hearing:** 16.

1 15 minutes or less  3 16-30 minutes

2 more than 30 minutes

**Was any recording made of the entire hearing?** 167

1 audio tape  4 video tape

2 other 17. \_\_\_\_\_

3 No recording was made

**Hearing was held within what length of time after the execution of the TDO?** 18.  5 N/A

1 less than 24 hrs.  2 between 24 and 48 hrs.  3 less than 48 hours.  4 after a weekend or legal holiday

**THE HEARING**

**Respondent was represented by:** 19.

1 Court-appointed counsel

2 Privately retained counsel

3 Counsel was waived by respondent

**Did counsel meet with the Respondent in private before the hearing?** 20.  1 Yes  2 No  3 Don't know

**Appearing at the hearing were:** 21.

1 Respondent  7 Respondent's counsel

2 Petitioner  8 Petitioner's counsel

3 CSB representative  9 Other 22. \_\_\_\_\_

4 One or more family member(s)

5 One or more hospital clinicians

6 Independent examiner

**If Respondent was not present, did counsel certify that Respondent had been advised that Court could hold hearing, make findings, and commit the Respondent in his absence?** 23.  1 Yes  2 No

**Was any evidence received by:** 24.

1 audio  2 video  3 phone  4 other

**The Independent Examiner's certification was presented by:** 25.

1 oral testimony of the I.E.

2 written report of the I.E.

3 both oral & written report and oral testimony

**The Independent Examiner's certification was:** 26.

1 positive for probable cause to commit

2 negative for lack of probable cause to commit

3 Other

**The Independent Examiner was:** 27.

1 M.D.  2 Psychologist

3 Other licensed clinician (LPC, LCSW, etc.)

27. \_\_\_\_\_

**Was I.E. on CSB staff?** 28.  1 Yes  2 No

**The Court received the CSB pre-screening**

**report :** 29.  1 in writing

2 by testimony of CSB staff

3 both in writing and orally

4 N/A

**\*\*PLEASE COMPLETE BOTH SIDES**

THE HEARING (continued) Record # \_\_\_\_\_

**Was the initial CSB pre-screening report prepared by a CSB from a different region than the CSB represented at the hearing?**<sup>30.</sup>

1 Yes 2 No 3 N/A

**Was a foreign language interpreter used in the hearing?**<sup>31.</sup> 1 Yes 2 No

**What language?**<sup>32.</sup> \_\_\_\_\_

**Was an interpreter for the hearing or speech-impaired used in the hearing?**<sup>33.</sup> 1 Yes 2 No

**The following persons testified at the hearing:**<sup>34.</sup>

1 Petitioner 6 Respondent

2 Hospital M.D. 7 Hospital R.N.

3 Hospital Soc. Wrkr. 8 CSB representative

4 Family Member(s) 9 Other <sup>38.</sup> \_\_\_\_\_

5 Independent Examiner 10 Hospital LPN or MHC

**At the hearing, Respondent's counsel:**<sup>35</sup>

1 moved to sequester witnesses

2 examined the Respondent

3 made evidentiary objections

4 made a motion to strike

5 made a final argument

6 waived argument

<sup>7</sup> other:<sup>36.</sup> \_\_\_\_\_

**Did the Court question any witnesses?** <sup>37.</sup>

1 Yes 2 No

**If yes, please specify:**<sup>38.</sup> \_\_\_\_\_

\_\_\_\_\_

**OUTCOME**

**THE COURT ENTERED AN ORDER:**<sup>39.</sup>

**A.)** 1 allowing the Respondent to *voluntarily* admit himself for *in-patient* treatment

**B.)** 2 involuntarily admitting the Respondent for *in-patient* treatment.

<sup>40.</sup> 1 based on danger to self

2 danger to others

3 inability to care for self

**C.)** 3 allowing the Respondent to *voluntarily* agree to *out-patient* treatment

**D.)** 4 ordering the Respondent to obtain *out-patient* treatment

<sup>41.</sup> 1 based on danger to self

2 based on danger to others

3 based on inability to care for self

<sup>42</sup> **With treatment to be received** 1 from CSB 2 from another provider

<sup>43.</sup> **Did Petitioner or hospital object to entry of the out-pt. order?** 1 Yes/Petitioner 2 Yes/Hospital 3 No

**E.)** 5 dismissing the commitment petition and ordering the *release* of the patient

<sup>44.</sup> 1 based on insufficiency of the evidence

2 based on failure of Petitioner to appear

3 based on insufficiency of the pleadings

4 based on other grounds, which were: <sup>45.</sup> \_\_\_\_\_

**F) If a petition was filed requesting judicial authorization of medical treatment (§Sect. 37.2-1101):**<sup>46.</sup>

1 the Court entered an order authorizing medical treatment/medication

2 the Court entered an order authorizing electroconvulsive treatment

3 the Court dismissed the petition

**CIRCUIT COURT CIVIL COMMITMENT HEARING SURVEY**

Record # \_\_\_\_\_

— Please check all boxes that apply —

<p><b>Presiding Judge:</b> 1. _____</p> <p><b>Circuit Ct. of :</b> 3. _____ <b>Co/City</b></p> <p><b>Hearing Date:</b> 4. _____</p> <p><b>District Ct. Case No.:</b> 5. _____</p> <p><b>Circuit Ct. Case No.:</b> 5. _____</p> <p><b>Petitioner is:</b> 7.  <input type="checkbox"/> 1 Hospital   <input type="checkbox"/> 4 CSB  <input type="checkbox"/> 2 Family Member   <input type="checkbox"/> 5 Don't know  <input type="checkbox"/> 3 Other 8. _____</p> <p><b>Petitioner is from:</b> 9. _____ <b>Co/City</b></p> <p><b>Respondent is from:</b> 10. _____ <b>Co/City</b></p> <p><b>Actual Hearing Location:</b> 11. _____</p> <p>12. <input type="checkbox"/> 1 Hospital   <input type="checkbox"/> 2 Courthouse   <input type="checkbox"/> 3 Other</p>	<p><b>If the District proceeding took place outside your Circuit, in what jurisdiction was it held?</b> 15. _____</p> <p><b>Hearing was held within what length of time after the District Court order committing respondent?</b> 16. _____ days</p> <p><b>Time of day of hearing:</b> 14. <input type="checkbox"/> 1 before 9 a.m.  <input type="checkbox"/> 2 between 9 and 5   <input type="checkbox"/> 3 after 5 p.m.</p> <p><b>Approximate duration of the hearing:</b> 15.  <input type="checkbox"/> 1 15 minutes or less   <input type="checkbox"/> 3 16-30 minutes  <input type="checkbox"/> 3 31-60 minutes   <input type="checkbox"/> 2 more than 60 minutes</p> <p><b>Was any evidence brought to the hearing?</b> 16.  <input type="checkbox"/> 1 audio tape   <input type="checkbox"/> 4 video tape  <input type="checkbox"/> 2 other 17. _____</p>
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**THE HEARING**

<p><b>Was hearing held before a jury?</b> 19. <input type="checkbox"/> 1 Yes   <input type="checkbox"/> 2 No</p> <p><b>Respondent was represented by:</b> 18.  <input type="checkbox"/> 1 Court-appointed counsel  <input type="checkbox"/> 2 Privately retained counsel  <input type="checkbox"/> 3 Counsel was waived by respondent</p> <p><b>Petitioner was represented by:</b> 21.  <input type="checkbox"/> 1 Commonwealth's attorney  <input type="checkbox"/> 2 Privately retained counsel</p> <p><b>Appearing at the hearing were:</b> 20.  <input type="checkbox"/> 1 Respondent   <input type="checkbox"/> 7 Respondent's counsel  <input type="checkbox"/> 2 Petitioner   <input type="checkbox"/> 8 Petitioner's counsel  <input type="checkbox"/> 3 CSB representative   <input type="checkbox"/> 9 Other 21. _____  <input type="checkbox"/> 4 One or more family member(s)  <input type="checkbox"/> 5 One or more hospital clinicians  <input type="checkbox"/> 6 Independent examiner</p> <p><b>If Respondent was not present, did counsel certify that Respondent had been advised that Court could hold hearing, make findings, and commit the Respondent in his absence?</b> 22.  <input type="checkbox"/> 1 Yes   <input type="checkbox"/> 2 No</p> <p><b>Was any evidence received by:</b> 23.  <input type="checkbox"/> 1 audio   <input type="checkbox"/> 2 video   <input type="checkbox"/> 3 phone   <input type="checkbox"/> 4 other   <input type="checkbox"/> 5 none rec'd</p>	<p><b>The Independent Examiner's certification was presented by:</b> 24.  <input type="checkbox"/> 1 oral testimony of the I.E.  <input type="checkbox"/> 2 written report of the I.E.  <input type="checkbox"/> 3 both oral &amp; written report and oral testimony</p> <p><b>The Independent Examiner's certification was:</b> 25.  <input type="checkbox"/> 1 positive for probable cause to commit  <input type="checkbox"/> 2 negative for lack of probable cause to commit  <input type="checkbox"/> 3 Other</p> <p><b>The Independent Examiner was:</b> 26.  <input type="checkbox"/> 1 M.D.   <input type="checkbox"/> 2 Psychologist  <input type="checkbox"/> 3 Other licensed clinician (LPC, LCSW, etc.)</p> <p><b>If other, please specify:</b> 27. _____</p> <p><b>Was I.E. on CSB staff?</b> 28. <input type="checkbox"/> 1 Yes   <input type="checkbox"/> 2 No</p> <p><b>The Court received the CSB pre-screening report:</b> 29.  <input type="checkbox"/> 1 in writing  <input type="checkbox"/> 2 by testimony of CSB staff  <input type="checkbox"/> 3 both in writing and orally  <input type="checkbox"/> 4 N/A</p> <p><b>Was the initial CSB pre-screening report prepared by a CSB from a different region than the CSB represented at the hearing?</b> 30. <input type="checkbox"/> 1 Yes   <input type="checkbox"/> 2 No   <input type="checkbox"/> 3 N/A</p>
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\*\*PLEASE COMPLETE BOTH SIDES

**THE HEARING (continued)**

**Was a foreign language interpreter used in the hearing?**<sup>31</sup>. 1 Yes 2 No

**What language?**<sup>32</sup>. \_\_\_\_\_

**Was an interpreter for the hearing or speech-impaired used in the hearing?**<sup>33</sup>. 1 Yes 2 No

**The following persons testified at the hearing:**<sup>34</sup>.

- 1 Petitioner 6 Respondent
- 2 Hospital M.D. 7 Hospital R.N.
- 3 Hospital Soc. Wrkr. 8 CSB representative
- 4 Family Member(s) 9 Other <sup>38</sup>. \_\_\_\_\_
- 5 Independent Examiner 10 Hospital LPN or MHC

**At the hearing, Respondent's counsel:**<sup>35</sup>

- 1 moved to sequester witnesses
- 2 examined the Respondent
- 3 made evidentiary objections
- 4 made a motion to strike
- 5 made a final argument
- 6 waived argument
- 7 other:<sup>36</sup>. \_\_\_\_\_

**Did the Court question any witnesses?** <sup>37</sup>.

1 Yes 2 No

**If yes, please specify:**<sup>38</sup>. \_\_\_\_\_  
Record # \_\_\_\_\_

**OUTCOME**

**THE COURT ENTERED AN ORDER:**

**39. A.)** 1 allowing the Respondent to *voluntarily* admit himself for *in-patient* treatment

**B.)** 2 involuntarily admitting the Respondent for *in-patient* treatment.

- 40. 1 based on danger to self
- 2 danger to others
- 3 inability to care for self

**C.)** 3 allowing the Respondent to *voluntarily* agree to *out-patient* treatment

**D.)** 4 ordering the Respondent to obtain *out-patient* treatment

- 41. 1 based on danger to self
- 2 based on danger to others
- 3 based on inability to care for self

42 **With treatment to be received** 1 from CSB 2 from another provider

43. **Did Petitioner or hospital object to entry of the out-pt. order?** 1 Yes/Petitioner 2 Yes/Hospital 3 No

**E.)** 5 dismissing the commitment petition and ordering the *release* of the patient

- 44. 1 based on insufficiency of the evidence
- 2 based on failure of Petitioner to appear 3 based on insufficiency of the pleadings
- 4 based on other grounds, which were: <sup>45</sup>. \_\_\_\_\_

**F.) If a petition was filed requesting judicial authorization of medical treatment (§Sect. 37.2-1102):** <sup>46</sup>

- 1 the Court entered an order authorizing medical treatment/medication
- 2 the Court entered an order authorizing electroconvulsive treatment
- 3 the Court dismissed the petition

#### SECTION I STATEWIDE SUMMARY OF HEARINGS

##### *The Survey*

A survey format was used to conduct a study of all the civil commitment hearings held during the month of May 2007. The observation units for the study were the judges or special justices over the civil commitment process who were determined by the research team to be most likely to be able to reliably provide accurate information on the process and dispositions. As such, the “sampling frame” for the survey was the Supreme Court list of judges and special justices who were currently employed to conduct civil commitment hearings in the Commonwealth of Virginia.

The element of interest was the civil commitment hearing; as such, the unit of analysis was intended to be the civil commitment hearing. Upon completion of the descriptive statistics following data collection, error checking and analysis, we learned that many questionnaires were completed by judges and special justices on proceedings that did not result in hearings. As such, the study technically is a study of the proceedings and/or resultant hearing.

Based on the total number of TDOs issued during the survey month, 1,817 proceedings/hearings were held during May 2007. The survey produced data on 1,526 proceedings and/or hearings. As such, the study captured information on 85% of the proceedings/hearings held over the survey month or otherwise stated, only 16% of cases were not included in the study. As stated in Section I, page 1, most cases that were missing were most likely due to the fact that no hearing was convened following a proceeding in which the independent examiner did not certify that there was probable cause that the respondent met the commitment criteria, and hence, no hearing was convened. It may be the case that the percentage of cases resulting in dismissal is under-reported. However, in a random-sample survey, an 84% response rate would otherwise indicate that the margin of error for a 99% confidence interval, which is a measurement of the accuracy of a survey, would be plus or minus 1.3

percentage points of the sample response if a new sample were selected 100 times.

## **SECTION II ADULT CIVIL COMMITMENT HEARINGS**

### *Hearing Outcome by Hearing Characteristics*

Hearing characteristics were examined to determine if they were related to hearing outcomes. Cross tabs were computed, and tests of statistical significance (chi-square tests) were performed using SPSS 15 software to determine whether characteristics were systematically related to one another.

A correlation matrix was run on hearing characteristics. Statistically significant correlations ( $p < .01$ ) were found for duration of hearing\*, district court\*, whether or not the respondent's attorney examined the respondent\*, and the number of people who testified<sup>29</sup>.

## **SECTION III DISTRICT COURT VARIATIONS**

### *Statistical Considerations*

Prior to comparing hearing characteristics across district courts, a cluster analysis was conducted on the statewide data from all hearings to examine similarities and differences among courts. Cluster analysis is a statistical technique enabling the identification of cases (i.e., hearings) that are similar to each other on a set of variables (i.e., characteristics of hearings). The analysis assigns each case to a group, statistically minimizing within-group variation and maximizing between-group variation. This process simply discovers the structures within the dataset, and does not explain why they exist. So, while we can identify district courts that have similarities and differences in the civil commitment process, we are not able to conduct statistical analyses to explain these differences. The differences could be a result of variations in the application of laws and guidelines, the actions of any number of people involved in the hearing process, or other variations. Clearly, the variations exist.

The goal of the cluster analysis was to determine the characteristics that would most clearly differentiate among the hearings. For instance, it was thought that perhaps hearings with particular outcomes would be the most different, or that hearings held at different types of locations would be most different. The cluster analysis for the hearing data was useful because the characteristics (e.g., IE type) that were identified as key determinants of group assignment are theoretically defensible (that is,

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<sup>29</sup> Pearson Correlation.

had been previously identified as a factor or characteristic that might differentiate cases), and are fairly robust (that is, similar groupings of cases are key variables even when doing the analysis in different ways).

After the cluster procedure identified the statistically appropriate group membership of each case, analyses were performed to identify the variables on which the clusters were significantly different from each other. Specifically, for all variables, the mean value of each cluster was obtained and statistically compared with the mean across all cases. Cluster means that were significantly higher or lower than the overall mean were flagged for ease of identification. From this, it was possible to identify the main distinguishing characteristics of each cluster (Kermer & Guterbock, 2008). The most predictive characteristics of hearings included the type of independent examiner (i.e., psychologist, medical doctor, or L.P.C.), the actions of the independent examiner (i.e., whether the report was presented orally or written), and the number and type of people who appeared and/or testified at the hearing. The cluster profiles describe the key characteristics of each of the groups. Other characteristics include duration of the hearing, whether or not the attorney met with the respondent before the hearing, the IE certification and whether or not the IE testified at the hearing. As such, these characteristics and the variations of outcomes of civil commitment hearings are compared across all district courts having at least 10 hearings during the survey month and are reported in this section.

#### **SECTION IV VARIATIONS AMONG FOUR HIGH-VOLUME DISTRICT COURTS**

Four courts with the highest volume of hearings over the survey month were selected for further analyses. Court A (n=100 cases), Court B (n=106 cases), Court C (n=141 cases) and Court D (n=91 cases).

##### *Characteristics Associated with Hearing Outcome*

Based on a logistic regression analysis, a number of characteristics that differed among the four large district courts were found to be significantly related to the hearing outcome of involuntary inpatient treatment. This analysis included three blocks of characteristics as potential predictors (using a stepwise forward LR procedure to identify the significant predictive characteristics): 1) time elapsing between the TDO and the hearing greater than 24 hours, the appearance at court of the hearing of the petitioner, the CSB representative, family members, hospital clinicians, and the independent examiner; 2) whether the following persons testified at the hearing: the petitioner, the hospital physician, the hospital social worker, the hospital L.P.N. or M.H.C.,

family members, the independent examiner, and the CSB representative; and 3) whether the counsel took any of the following actions at the hearing; made a motion to sequester witnesses, examined the respondent, made evidentiary objections, made a motion to strike evidence, made a final argument, and whether the Court questioned witnesses.

This analysis produced an overall model that accounted for over a third (33%) of the variance in the decision to require involuntary inpatient treatment in these four district courts ( $p < .05$ ). The following characteristics were associated with a greater likelihood of this outcome: the counsel examined the respondent, made evidentiary objections, or made the final argument. Furthermore, the following characteristics were associated with less likelihood that the outcome would be involuntary inpatient treatment: the counsel made a motion to strike evidence, the independent examiner appeared at the hearing, and the CSB representative testified at the hearing. It is important in interpreting these findings to recognize that these relationships are not necessarily causal, but demonstrate systematic associations between the hearing characteristics and the outcome of involuntary inpatient treatment.

## APPENDIX D

### Participating District Court Names by Judicial District

County of Albemarle.....	16 <sup>th</sup> Judicial District
City of Alexandria.....	18 <sup>th</sup> Judicial District
County of Arlington.....	17 <sup>th</sup> Judicial District
City of Bristol.....	28 <sup>th</sup> Judicial District
County of Buchanan.....	29 <sup>th</sup> Judicial District
County of Carroll .....	27 <sup>th</sup> Judicial District
City of Charlottesville.....	16 <sup>th</sup> Judicial District
City of Chesapeake.....	1 <sup>st</sup> Judicial District
City of Danville.....	22 <sup>nd</sup> Judicial District
County of Dinwiddie.....	11 <sup>th</sup> Judicial District
City of Fairfax.....	19 <sup>th</sup> Judicial District
County of Fairfax .....	19 <sup>th</sup> Judicial District
County of Fauquier.....	20 <sup>th</sup> Judicial District
County of Floyd.....	27 <sup>th</sup> Judicial District
City of Fredericksburg.....	15 <sup>th</sup> Judicial District
City of Hampton.....	8 <sup>th</sup> Judicial District
County of Hanover.....	15 <sup>th</sup> Judicial District
County of Henrico.....	14 <sup>th</sup> Judicial District
County of Henry/City of Martinsville.....	21 <sup>st</sup> Judicial District
County of Lancaster.....	15 <sup>th</sup> Judicial District
County of Loudoun.....	20 <sup>th</sup> Judicial District
City of Lynchburg.....	24 <sup>th</sup> Judicial District
County of Mecklenburg.....	10 <sup>th</sup> Judicial District
County of Montgomery.....	27 <sup>th</sup> Judicial District
City of Norfolk.....	4 <sup>th</sup> Judicial District
City of Norton.....	30 <sup>th</sup> Judicial District
County of Nottoway.....	11 <sup>th</sup> Judicial District
City of Petersburg.....	11 <sup>th</sup> Judicial District
City of Portsmouth.....	3 <sup>rd</sup> Judicial District
County of Powhatan.....	11 <sup>th</sup> Judicial District
County of Prince William.....	31 <sup>st</sup> Judicial District
County of Pulaski.....	27 <sup>th</sup> Judicial District
City of Radford.....	27 <sup>th</sup> Judicial District
City of Richmond.....	13 <sup>th</sup> Judicial District
City of Roanoke.....	23 <sup>rd</sup> Judicial District
County of Roanoke.....	23 <sup>rd</sup> Judicial District
County of Rockingham.....	26 <sup>th</sup> Judicial District
County of Russell.....	29 <sup>th</sup> Judicial District
City of Salem.....	23 <sup>rd</sup> Judicial District
County of Smyth.....	28 <sup>th</sup> Judicial District

County of Stafford.....	15 <sup>th</sup> Judicial District
City of Staunton.....	25 <sup>th</sup> Judicial District
City of Suffolk.....	5 <sup>th</sup> Judicial District
City of Virginia Beach.....	2 <sup>nd</sup> Judicial District
City of Williamsburg.....	9 <sup>th</sup> Judicial District
City of Winchester.....	26 <sup>th</sup> Judicial District
County of Wise.....	30 <sup>th</sup> Judicial District

## APPENDIX E

### District Courts Holding Civil Commitment Hearings

\*Entries in bold indicate that no hearings were reported.

Judicial District	District Courts in which Hearings were Held	District Courts in which Hearings were <b>NOT</b> Held
1 <sup>st</sup> J.D.	Chesapeake	
2 <sup>nd</sup> J.D.	Virginia Beach	
<b>J.D. 2A</b>		<b>Accomack Northampton</b>
3 <sup>rd</sup> J.D.	Portsmouth	
4 <sup>th</sup> J.D.	Norfolk	
5 <sup>th</sup> J.D.	Suffolk	<b>Franklin City Isle of Wright Southampton</b>
<b>6<sup>th</sup> J.D.</b>		<b>Brunswick Emporia Greensville Hopewell Prince George Surry Sussex</b>
<b>7<sup>th</sup> J.D.</b>		<b>Newport News</b>
8 <sup>th</sup> J.D.	Hampton	
9 <sup>th</sup> J.D.	Williamsburg/James City County	<b>Charles City Gloucester King William King and Queen Mathews Middlesex New Kent York</b>
10 <sup>th</sup> J.D.	Mecklenburg	<b>Appomattox Buckingham Charlotte Cumberland Halifax Lunenburg Prince Edward</b>

Judicial District	District Courts in which Hearings were Held	District Courts in which Hearings were <b>NOT</b> Held
11 <sup>th</sup> J.D.	Dinwiddie Nottoway Petersburg Powhatan	<b>Amelia</b>
<b>12<sup>th</sup> J.D.</b>		<b>Chesterfield Colonial Heights</b>
13 <sup>th</sup> J.D.	Richmond	
14 <sup>th</sup> J.D.	Henrico	
15 <sup>th</sup> J.D.	Fredericksburg Hanover Lancaster Stafford	<b>Caroline Essex King George Northumberland Richmond County Spotsylvania Westmoreland</b>
16 <sup>th</sup> J.D.	Albemarle Charlottesville	<b>Culpeper Fluvanna Goochland Greene Louisa Madison Orange</b>
17 <sup>th</sup> J.D.	Arlington Falls Church	
18 <sup>th</sup> J.D.	Alexandria	
19 <sup>th</sup> J.D.	Fairfax City Fairfax County	
20 <sup>th</sup> J.D.	Fauquier Loudoun	<b>Rappahannock</b>
21 <sup>st</sup> J.D.	Henry	<b>Martinsville Patrick</b>
22 <sup>nd</sup> J.D.	Danville	<b>Franklin County Pittsylvania</b>
23 <sup>rd</sup> J.D.	Roanoke City Roanoke County Salem	
24 <sup>th</sup> J.D.	Lynchburg	<b>Amherst Bedford Campbell Nelson</b>

Judicial District	District Courts in which Hearings were Held	District Courts in which Hearings were <b>NOT</b> Held
25 <sup>th</sup> J.D.	Staunton	<b>Alleghany Augusta Bath Botetourt Buena Vista Craig Highland Lexington/Rockbridge Waynesboro</b>
26 <sup>th</sup> J.D.	Harrisonburg/Rockingham Winchester/Frederick	<b>Clarke Frederick/Winchester Page Shenandoah Warren</b>
27 <sup>th</sup> J.D.	Carroll Floyd Montgomery Pulaski Radford	<b>Bland Galax Giles Grayson Wythe</b>
28 <sup>th</sup> J.D.	Bristol Smyth	<b>Washington</b>
29 <sup>th</sup> J.D.	Buchanan Russell	<b>Dickenson Tazewell</b>
30 <sup>th</sup> J.D.	Wise/Norton	<b>Lee Scott</b>
31 <sup>st</sup> J.D.	Prince William	

District Courts and Juvenile and Domestic Relations Courts are organized by Judicial Districts. Circuit Courts are divided into Judicial Circuits. In Virginia, there are 32 Judicial Districts and 31 Judicial Circuits (Judicial District 2A is the 32<sup>nd</sup> Judicial District. There are only 31 Judicial Circuits because Judicial Districts 2 and 2A are combined for one Judicial Circuit). Civil commitment hearings are under the jurisdiction of district courts. Each Judicial District contains at least one and up to 11 different district courts.

Of 125 total district courts, 47 district courts (38%) reported holding hearings during the survey month.

Of 32 total Judicial Districts, 28 Judicial Districts (88%) reported holding hearings during the survey month.

## APPENDIX F Percent of Total for Participating District Courts

District Court*	Percent of Total Adult Cases
City of Roanoke	11%
Hampton	8%
City of Richmond	8%
Smyth County	7%
Danville	5%
Fairfax County	5%
Lynchburg	5%
Bristol	4%
Montgomery County	4%
Chesapeake	3%
Norfolk	3%
Petersburg	3%
Portsmouth	3%
Russell County	3%
Virginia Beach	3%
Arlington County	2%
Dinwiddie County	2%
Fredericksburg	2%
Mecklenburg County	2%
Prince William County	2%
Salem	2%
Winchester	2%
Albemarle County	1%
Charlottesville	1%
Henrico County	1%
Lancaster County	1%
Rockingham County	1%
Alexandria	<1%
Hanover County	<1%
Staunton	<1%
Suffolk	<1%

\*Courts with 10 cases or more (adults only, no juveniles, jail locations or recommitments).