

# **LEGAL ISSUES IN CIT TRAINING**

GETTING AHEAD OF THE CURVE

Virginia CIT Coalition  
2<sup>nd</sup> Annual Conference  
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# DISCUSSION LEADERS

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# DISCUSSION TOPICS

- ❖ **ECO Overview & Legal Requirements**
  - ❖ Legal Thresholds for Custody & Commitment
  - ❖ Time Limits
  - ❖ Transportation
  - ❖ Confidentiality
- ❖ **CIT Legislation**
- ❖ **Liability Issues in Emergency Custody Situations**
  - ❖ Use of Force – Seizure & Custody
  - ❖ Failure to Train
  - ❖ Failure to Protect
  - ❖ Disability Discrimination
- ❖ **Questions?**

# Emergency Custody Orders

Emergency custody order (ECO) – order issued by a magistrate that requires any person in the magistrate’s judicial district who is incapable of volunteering or unwilling to volunteer for treatment to be taken into custody and transported for an evaluation in order to assess the need for hospitalization or treatment.



# Emergency Custody Orders

- ❖ ECO can be issued on the sworn petition of any responsible person or on magistrate's own motion
- ❖ Issued when magistrate finds probable cause to believe that a person meets the civil commitment criteria, is in need of hospitalization or treatment, and is unwilling or unable to volunteer for treatment

# Emergency Custody - Criteria

## Commitment Criteria

- ❖ mental illness
- ❖ substantial likelihood that, as a result of the mental illness, the person will, in the near future
  - cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or
  - suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs

# Emergency Custody - Purpose

ECO authorizes law enforcement to take a person into custody and transport for an evaluation by a CSB employee or designee



# Emergency Custody Orders - Execution

How long do you have to serve an ECO once issued?

❖ 6 Hours (as of July 1, 2011)





# Emergency Custody without an ECO

Based on own observation or reliable reports of others, a law enforcement officer who has probable cause to believe that a person meets the emergency custody criteria may take that person into custody and transport for an evaluation without prior authorization.

May go beyond territorial limits of his jurisdiction to obtain the evaluation



# Emergency Custody

If person consented to transport for evaluation but revokes that consent when the officer is beyond his territorial jurisdiction, officer may take the person into custody and transport for an evaluation without prior authorization if, based on his observations, he has probable cause to believe that person meets emergency custody criteria.

# HOW LONG MAY A PERSON BE HELD IN EMERGENCY CUSTODY?

Person shall remain in custody until a TDO is issued, he is released, or the period of emergency custody expires.

Period of emergency custody not to exceed **4 hours**.  
But a magistrate may issue one **2-hour extension** of the ECO for good cause.

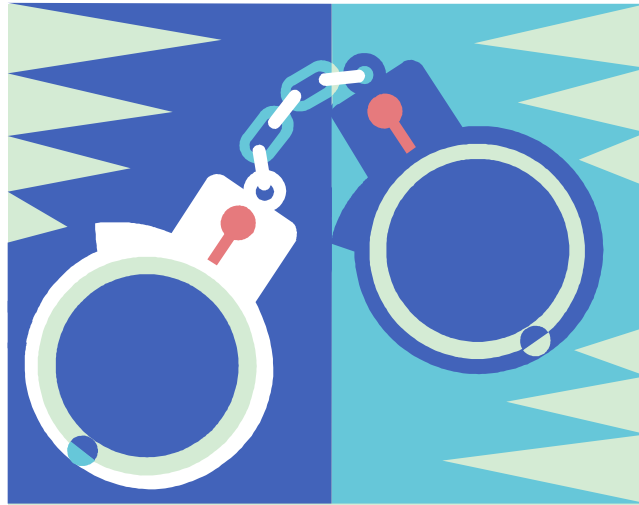
What kinds of things constitute “good cause”?



# WHAT ARE OUR OBLIGATIONS TO SOMEONE IN EMERGENCY CUSTODY?


**Keep them in custody and keep them safe.**

(essentially the same duties owed to arrestees.)




# MAY A LEO TRANSFER CUSTODY TO A FACILITY?


**Yes;** a law enforcement agency may transfer custody of the person to the facility to which the person has been transported for evaluation, provided the facility:

- (1) Is licensed to provide the necessary level of security to protect both the person and others from harm;
  - (2) Is actually capable of providing the necessary level of security;  
and
  - (3) Has entered into an MOU with the law enforcement agency setting the terms and conditions under which it will accept a transfer of custody.
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# ALTERNATIVE TRANSPORTATION

- ❖ Permits person or entity other than law enforcement to transport persons under ECO and TDO
  - ❖ Strengthens authority of judge/special justice to order alternative transportation after a commitment hearing
  - ❖ Follows leads of 27 other states
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# ALTERNATIVE TRANSPORTATION

- ❖ Alternative provider includes family member, friend, CSB, other transportation provider with trained staff
  - ❖ Magistrate must consider information provided by petitioner, CSB, law enforcement, if involved, treating physician, if any, and others available and with knowledge of the person
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# ALTERNATIVE TRANSPORTATION

- ❖ When he deems appropriate, magistrate may consult with proposed transportation provider to determine whether provider is available, willing and able to safely transport
- ❖ Consultation may occur in person or by two-way electronic video and audio or telephone




# ALTERNATIVE TRANSPORTATION

## Role of Law Enforcement if Alternative Transportation Ordered

- ❖ Magistrate orders primary law enforcement agency to:
  - ❖ Execute ECO/TDO
  - ❖ Take person into custody
  - ❖ Transfer custody to alternative provider


# ALTERNATIVE TRANSPORTATION

## ECO Limitation


- ❖ Alternative transportation only available under ECOs if person meets 2<sup>nd</sup> prong of criteria (person lacks capacity to protect himself from harm or provide for basic human needs)
  - ❖ Not available if person meets dangerous prong
  - ❖ Custody may be transferred to evaluation facility, as with law enforcement transportation
  - ❖ Law enforcement not required to transfer custody to alternative provider if safety problem perceived
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# CONFIDENTIALITY

## Virginia Code § 37.2-804.2


- ❖ Requires health care providers to disclose health information to one another, magistrates, the court, attorneys, guardians ad litem, and law enforcement involved in the commitment process
  - ❖ Health information provided to law enforcement limited to that information necessary to protect the officer, person, or public from physical injury or to address person's health care needs
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# CRISIS INTERVENTION TEAMS

- ❖ General Assembly endorsed CIT in 2009 by enacting SB 1294 (2009) (Edwards)
  - ❖ DCJS and DBHDS required to support the development and establishment of CIT programs throughout the Commonwealth
  - ❖ Law specifies that such teams shall assist law enforcement officers in responding to crisis situations involving persons with mental illness and/or substance abuse
  - ❖ DCJS, in consultation with DBHDS and other stakeholders, shall develop a training program for all persons involved in CIT programs
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# CRISIS INTERVENTION TEAMS

Goals of CIT programs shall be to:


- ❖ Provide immediate response by specially trained officers
  - ❖ Reduce time officers spend awaiting assessment
  - ❖ Provide a therapeutic location or protocol for assessment for officers to bring individuals in crisis
  - ❖ Afford a sense of dignity to individuals in crisis
  - ❖ Reduce likelihood of physical confrontation
  - ❖ Decrease arrest and use of force
  - ❖ Identify underserved populations and link to care
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# **CRISIS INTERVENTION TEAMS**

**Each crisis intervention team shall develop a protocol that permits law enforcement to release a person with mental illness and/or substance abuse when the CIT has determined that the person is sufficiently stable and to refer the person for emergency treatment services**



# LIABILITY ISSUES IN ECO SITUATIONS

- ❖ Use of Force – Seizure & Custody
  - ❖ Failure to Train
  - ❖ Failure to Protect
  - ❖ Disability Discrimination
- 

# USE OF FORCE

A suspect's apparent mental state is one of the facts and circumstances of a particular case that should be considered in weighing an excessive force claim.

Gaddis v. Redford Township,  
364 F.3d 763 (6<sup>th</sup> Cir. 2004).





# USE OF FORCE

Even when an emotionally disturbed person is acting out and inviting others to use force against him, the government's interest in using such force is diminished by the fact that the officers are confronted not with a person who has committed a serious crime, but with a mentally ill individual.

Deorle v. Rutherford,

272 F.3d 1272 (9<sup>th</sup> Cir. 2001)



# POTENTIAL LIABILITY

## DEPARTMENTAL / INDIVIDUAL

Federal Civil Liability      42 U.S.C. § 1983

Federal Criminal Liability   18 U.S.C. § 242

State Law Liability            E.g., Assault, Battery, False Imprisonment, etc.

### Discipline

Violations of Agency Policy

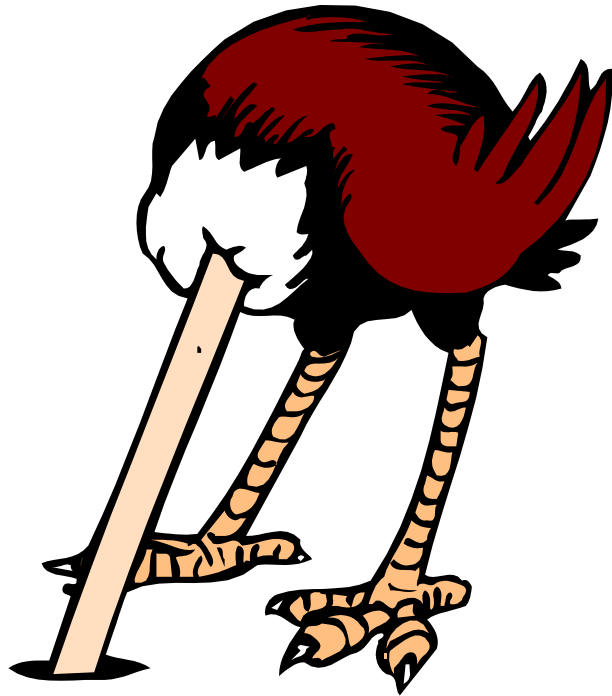


# BALANCING TEST

Importance of Governmental Interest v. Level of Intrusion



# CHANGING STANDARDS



What is “objectively reasonable”?

When is a right

“clearly established”?

# CHANGING STANDARDS

Expectation that officers will:

- ❖ Receive training opportunities;
- ❖ Participate in training; and
- ❖ Actually change practices in response to training.

**We are professionals!**



# IMMUNITY


Qualified immunity protects law enforcement officers from bad guesses in gray areas and ensures that they are liable only for transgressing bright lines.

Schultz v. Braga,  
455 F.3d 470 (4<sup>th</sup> Cir. 2006).



# IMMUNITY

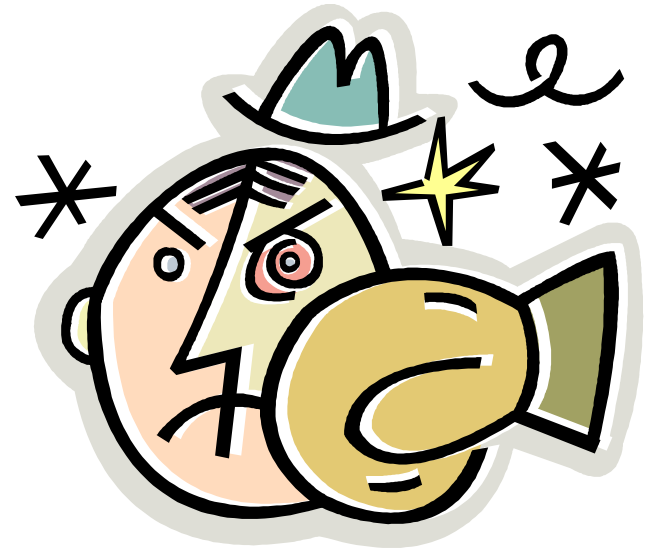
Immunity is available when:

- (1) An officer has not violated a person's right; or
  - (2) The right violated was not "clearly established" at the time.
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# IMMUNITY

Immunity is not available:

- (1) Gross Negligence; or
- (2) Intentional torts.





# IMMUNITY

In the context of seizures for mental health evaluation, the Fourth Circuit has stated:

“We have recognized that ‘the general right to be free from seizure unless probable cause exists [is] clearly established in the mental health seizure context.’”

S.P. v. City of Tacoma Park,  
134 F.3d 260 (4<sup>th</sup> Cir. 1998).



# IMMUNITY

Officers' alleged continued use of physical force after a man was subdued and restrained violated clearly established law.

And, if Plaintiff's description of officers' actions is true, the force used was excessive against a man who had committed no crime.

Bailey v. Kennedy,  
349 F.3d 731 (4<sup>th</sup> Cir. 2003).



# OTHER LIABILITY ISSUES

- ❖ Failure to Train
- ❖ Failure to Protect
- ❖ Disability Discrimination



# FAILURE TO TRAIN

CIT training provides a foundation for assisting those with mental illness:

- ❖ Helps officers be more effective;
- ❖ Decreases risk of injury to officers and others; and
- ❖ Reduces risk of complaints and litigation.

It also substantially undercuts potential liability based on an alleged “failure to train.”



# FAILURE TO TRAIN

Municipalities may be held liable for failing to properly train officers where those failures represent a “deliberate indifference” to known or obvious consequences.

“It could . . . be that the police, in exercising their discretion, so often violate constitutional rights that the need for further training must have been plainly obvious to the city policymakers who, nevertheless, are ‘deliberately indifferent’ to the need.”

City of Canton v. Harris, 489 U.S. 378 (1989).

# FAILURE TO TRAIN

Municipality and supervisors awarded summary judgment where they presented evidence that they provided specific training on the issues associated with the mentally ill and those with seizures and there was no evidence that the training program was inadequate so as to evidence a “deliberate indifference” to the rights of those served by the police and fire departments.

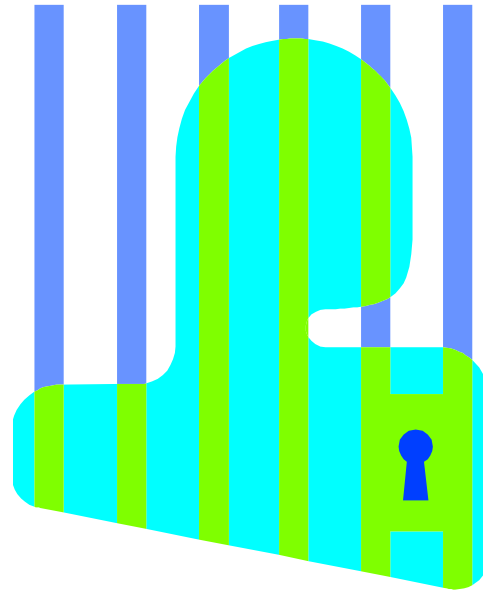
Lord v. Riley, 921 F.2d 272 (4<sup>th</sup> Cir. 1990).



# FAILURE TO TRAIN

County's failure to train deputies to recognize symptomatology that warranted full psychiatric assessment and treatment allegedly resulting in suicide of prisoner stated a §1983 claim.

Cortez v. Prince George's County,  
31 Fed. Appx. 123 (4<sup>th</sup> Cir. 2002).



# FAILURE TO PROTECT

- ❖ Do not create or increase the risk of harm.
- ❖ Special relationship doctrine – i.e., detainees.





# DISABILITY DISCRIMINATION

Parents of mentally ill man who died, allegedly from positional asphyxia, after being taken into custody stated a claim for disability discrimination under the Americans with Disabilities Act (ADA), based on the alleged failure to adequately train officers for encounters with mentally ill persons.

Arnold v. City of New York,  
340 F.Supp.2d 550 (M.D.Pa. 2004).



# QUESTIONS?

