



# Commission meeting



December 5, 2023

Briefing

## In this presentation

### **Limited-scope study of Expedited Diversion to Court-Ordered Treatment (EDCOT)**

Review of BHC draft legislative and budgetary actions

Potential 2024 staff priorities

Update on CSB data collection efforts for STEP-VA

Peer perspectives input group

# Expedited Diversion to Court-Ordered Treatment (EDCOT)

Sarah Stanton, Chief Policy Analyst

## Study request

BHC staff directed to conduct a limited-scope study to identify factors that may impact the effectiveness of expedited diversion to court-ordered treatment (EDCOT) in meeting the goals of diversion.

## Primary research activities

- Analysis of Virginia statutes, legislation, and budget
- Structured interviews with stakeholders including members of the General Assembly; Office of the Executive Secretary of the Supreme Court; Virginia Indigent Defense Commission; the Department of Behavioral Health and Developmental Services; Virginia Association of Community Services Boards; the Institute of Law, Psychiatry, and Public Policy; and individuals with lived experience
- Review of reports, articles, and other materials regarding EDCOT, Virginia diversion programs, civil commitment practices, and other topics related to the implementation of diversion programming

## In this presentation

- Overview of EDCOT

- Implementation challenges

## **EDCOT concept would use new civil commitment process to divert individuals from criminal justice system to mental health treatment**

- Diversion strategies connect criminal justice-involved individuals to services that address the underlying causes of criminal behavior
- EDCOT would create a new civil commitment process to divert individuals with serious mental illness from the criminal justice system to court-supervised treatment
- Court-ordered treatment would generally consist of outpatient services, but short periods of involuntary inpatient treatment could be ordered for nonadherence
- Duration of court-ordered treatment dependent on therapeutic needs and severity of underlying offense, not to exceed the maximum sentence for the offense charged

## EDCOT would shift proceedings from criminal to civil court early in criminal justice process

- May occur at any time after the individual is charged but ideally before initiation of adjudication of underlying criminal charge
  - Allows for diversion prior to initiation of competency restoration services
- Is a civil process but the criminal court retains jurisdiction until treatment starts
- Results in dismissal of criminal charges with prejudice upon entry of an EDCOT order, immediately terminating criminal proceedings



## EDCOT criteria would adopt substantial deterioration standard for civil commitment

- Available to individuals with serious mental illness who are charged with a broad array of misdemeanor and felony offenses
- May be ordered if the court finds:
  - The individual has a serious mental illness
  - The individual engaged in the criminal conduct
  - The conduct was related to the individual's serious mental illness
  - There exists a significant likelihood that the individual will reoffend in the future absent treatment interventions
  - There is a reasonable likelihood that mental health treatment and related interventions will reduce the risk of reoffending

## EDCOT civil commitment process would differ from Virginia's existing civil commitment process

- Current Virginia civil commitment based on dangerousness criteria that contemplates immediate risk of harm to self or others based on current condition
- EDCOT civil commitment uses “substantial deterioration” criteria that contemplates potential future risk of harm resulting from deterioration of current condition
- EDCOT civil commitment criteria would be substantially broader than existing civil commitment criteria, although the population eligible for EDCOT would be smaller

## EDCOT civil commitment would include monitoring and oversight to ensure adherence to treatment plan

- EDCOT order would include court-approved individualized mental health treatment plan specifying services to be provided
- Regular, ongoing monitoring intended to ensure adherence to the treatment plan and to identify cases of nonadherence and potential risks to public safety
- Court oversight, including status hearings and hearings to review and enforce EDCOT orders, expected to provide additional incentives to adhere

## Proponents expect EDCOT to benefit individuals with mental illness, the public, and the state

- Reduced involvement of individuals with mental illness in the criminal justice system and fewer negative consequences of criminal justice involvement for individuals
- Increased access to and participation in mental health treatment for individuals with mental illness involved in the criminal justice system
- Lower demand for state hospital beds as eligible individuals diverted to court-ordered mental health treatment in lieu of inpatient competency restoration
- Reduced risk of re-offending and recidivism among individuals with mental illness, better protecting public safety

## Proponents expect EDCOT to offer benefits not provided by existing diversion options

- Available to some individuals who would not otherwise be eligible for diversion
  - \_ Type of offense charged
  - \_ Mental health diagnosis
  - \_ Lack of competence
- Available statewide with uniform and consistent program requirements
- Provides complete diversion because charges dismissed, and criminal proceedings terminated immediately upon entry of an order for mental health treatment

## Legislation introduced during 2023 General Assembly Session would have codified EDCOT in Virginia

- Set out requirements for EDCOT process that incorporated many elements of the EDCOT concept
- Was not adopted due to concerns about certain aspects of the EDCOT concept, specific elements of the introduced legislation, and implementation considerations

# Introduced legislation differed from the EDCOT concept in several ways

	EDCOT concept	Introduced legislation
Eligible crimes	Any offense except serious violent felony	Limited subset of misdemeanors
Eligible diagnoses	Serious mental illness	Any mental illness
Request for assessment	Requested by prosecutor or the court	LEO, jail officer, magistrate, pretrial services staff, defense counsel, prosecutor, or court
Process	Hearing upon receipt of petition filed by prosecutor	Hearing upon receipt of evaluation report recommending EDCOT civil commitment
Type of treatment	Inpatient or outpatient	Outpatient only
Duration of treatment	No more than 1 year for misdemeanors; 3 years for most felonies; and 5 years or the maximum available sentence for serious felonies.	No more than 180 days unless “extenuating circumstances” exist, in which case may not exceed 1 year or maximum sentence for offense charged.
Status hearings	At least once every six months	Every 60 days

## In this presentation

Overview of EDCOT

■ **Implementation challenges**



## Multiple concerns would have to be resolved before Virginia could consider implementing EDCOT

- Impact on the mental health service system and the courts
- Proper balance of incentives to utilize EDCOT
- Protection of interests of individuals with mental illness
- Costs and benefits of EDCOT compared to other diversion options

## EDCOT treatment plans would require new and additional mental health services

- Existing outpatient mental health services would have to be expanded to accommodate individuals diverted from the criminal justice system
- New services would be required to meet the mental health and criminogenic needs of individuals diverted from the criminal justice system
- Expanding existing and creating new services would require financial and human resources
  - \_ Workforce shortages impact availability of human resources
  - \_ Magnitude of impact and investment required would depend on size of eligible population and utilization of EDCOT process
  - \_ Upfront funding required to realize savings in longer term

## EDCOT monitoring requirements would increase burden on CSBs

- CSBs would need additional financial and human resources to satisfy EDCOT requirements to:
  - \_ conduct initial evaluations
  - \_ develop and monitor adherence to treatment plans
  - \_ attempt to resolve instances of nonadherence
  - \_ report material nonadherence to the court
  - \_ participate in status and other hearings
- Workforce shortages will impact availability of human resources necessary to meet CSB obligations

## EDCOT oversight and enforcement requirements would increase burden on courts

- Courts would need additional financial and human resources to satisfy EDCOT requirements to:
  - \_ Hold regular status hearings at least once every 60 days
  - \_ Hold other hearings to revise, enforce, or rescind EDCOT orders and treatment plans
  - \_ Schedule expedited hearings within 7 days of receipt of a petition, provide notice to relevant parties, appoint counsel, and conduct hearings

## EDCOT would increase demand for qualified court-appointed counsel

- EDCOT requires the court to appoint counsel for the individual during the initial civil commitment proceeding and in subsequent reviews and other hearings
- Public defenders are not available to participate in civil proceedings like EDCOT commitment proceedings, resulting in limited pool of available qualified counsel
- Counsel appointed to represent individual in the EDCOT process would be compensated out of the Criminal Fund
  - Additional financial resources would be required to offset increased expenditures

## EDCOT would have to provide sufficient incentives to encourage prosecutors to agree to diversion

- Limited options to enforce adherence to EDCOT treatment plans may be disincentive for prosecutors tasked with protecting public safety
- Enforcement options are limited
  - EDCOT concept allows limited inpatient treatment for assessment and stabilization if the person materially fails to adhere to treatment plan and requires inpatient hospitalization
  - EDCOT legislation provides for sanctions including reflective exercises, increased frequency of reporting, and additional status hearings for material nonadherence
- Individual who meets EDCOT criteria may not meet Virginia's other civil commitment criteria, eliminating option of involuntary inpatient commitment for nonadherence

## EDCOT would have to provide sufficient incentives to encourage competent defendants to agree to court-ordered treatment

- Duration of court-ordered mental health treatment compared to duration of possible incarceration may be disincentive for competent defendants
  - \_ EDCOT may not be ordered over objection of a competent defendant
  - \_ Competent defendants must decide between potentially lengthy period of involuntary treatment and possibility of shorter criminal sentence
- Introduced legislation limited types of crimes eligible for EDCOT to small group of misdemeanors punishable by no more than 12 months in jail
  - \_ Limited array of eligible crimes may further exacerbate the imbalance of incentives for competent defendants

## Some stakeholders question whether EDCOT consistently serves the best interests of individuals in need of mental health treatment

- Intensity of EDCOT monitoring and oversight may not be appropriate for defendants' mental health and criminogenic needs
  - Best practices call for tailoring intensity of interventions to individual risk of reoffending and criminogenic needs
  - Highly structured, intense system of EDCOT monitoring and oversight may be contrary to best practices, reducing effectiveness of treatment
- Involuntary nature of EDCOT treatment limits individual autonomy and may be contrary to the wishes of the individual
- Goals of criminal proceeding and civil EDCOT proceeding may conflict, forcing defendants to pursue legal strategies contrary to their best interests



## Cost-benefit of EDCOT model needs to be weighed against existing diversion options to ensure efficient utilization of scarce resources

- Numerous diversion models currently exist in Virginia, but lack of resources reportedly limits capacity and effectiveness of some programs
  - Existing options may offer similar benefits as EDCOT
- EDCOT would require investment of new resources to create and expand services, support CSB monitoring, and support court and CSB oversight
- Some stakeholders believe benefits of EDCOT justify investment of scarce resources
  - Other stakeholders believe additional investment in existing options offers greater reward
- Additional study of existing diversion options, weighing of cost-benefit of EDCOT model against cost and benefits of other models would provide additional insight

## Option 1

General Assembly may wish to consider adopting a study resolution directing OES to collaborate with DBHDS to (1) determine the availability, scope, and effectiveness of existing statewide diversion programs and initiatives; (2) assess in what ways and to what extent EDCOT could divert individuals not currently served by existing programs; (3) examine the operational, legal, and funding changes identified by stakeholders that would be required to address the EDCOT implementation challenges; and (4) determine the feasibility of implementing EDCOT or a similar diversion program to allow for diversion of individuals not currently served by existing programs in Virginia. OES should work with the National Center for State Courts to evaluate whether other states use diversion best practices that may be more effective and efficient than EDCOT. OES and DBHDS shall provide ample opportunities for meaningful collaboration and cooperation with stakeholders impacted by the potential implementation of an EDCOT model and changes to diversion programs. OES should report on its findings to the BHC by November 1, 2025.

## Option 2

General Assembly may wish to consider adopting a joint resolution directing the JLARC to study how to maximize the availability and effectiveness of diversion opportunities for individuals with mental illness. JLARC should (1) determine the availability, scope, and effectiveness of major diversion programs and initiatives in Virginia; (2) assess in what ways and to what extent EDCOT could benefit the state and eligible individuals compared to the benefits of existing diversion programs; (3) examine the operational, legal, and funding changes that would be required to effectively implement EDCOT and address concerns raised by stakeholders; (4) evaluate the costs and benefits of implementing EDCOT compared to those of maximizing the availability of existing diversion programs; and (5) make recommendations about the diversion programs that Virginia should offer to optimize individual outcomes, public safety, and the use state resources. In conducting their work, JLARC staff should consider diversion best practices used in other states. JLARC should report on its findings by November 1, 2025.

## Key takeaways

- EDCOT could provide an additional mechanism to divert individuals with mental illness from the criminal justice system to court-ordered mental health treatment
- Stakeholders identified multiple barriers that must be addressed before Virginia can consider implementing EDCOT
- Cost-benefit of EDCOT must be weighed against other diversion options to ensure efficient utilization of scarce resources

## Staff for this report

Sarah Stanton, Chief Policy Analyst

Nathalie Molliet-Ribet, Executive Director

## In this presentation

Limited-scope study of Expedited Diversion to Court-Ordered Treatment (EDCOT)

### ■ Review of BHC draft legislative and budgetary actions

Potential 2024 staff priorities

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# BHC legislative agenda

## **In this presentation**

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## **Potential 2024 staff priorities**

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# Major roles played by the Behavioral Health Commission and staff

## Roles

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### Map new initiatives and track progress

- Identify current initiatives across all government entities to understand interactions and implications for the behavioral health system; identify need for legislative action and areas for further examination
- 

### Monitor implementation of funded initiatives

- Monitor ongoing implementation of past state-funded initiatives to identify implementation challenges and to ensure expected results are achieved; examine any topic or issue on behalf of the legislature
- 

### Conduct research to improve understanding of the behavioral health system

- Address cross-system issues and gaps in existing knowledge through staff-led studies and corresponding options / recommendations
- 

### Build and maintain knowledge

- Educate new legislators about the behavioral health system; maintain institutional knowledge about past efforts
- 

### Facilitate legislative and budgetary action to implement recommendations

- Use information from research and monitoring activities to develop an impactful, actionable legislative agenda for the BHC
-

## Potential 2024 staff priorities aligned with BHC roles, highly dependent upon staff recruitment

- Map new initiatives and track progress
  - \_ Develop complete picture of efforts to enhance Virginia's crisis system and to address the shortage of behavioral health workers
- Monitor implementation of funded initiatives
  - \_ Undertake evaluation of Permanent Supportive Housing initiatives, and expand upon evaluation of Project BRAVO and STEP-VA
- Build and maintain knowledge
  - \_ Develop materials to provide new BHC members with “Behavioral Health 101” in partnership with subject matter experts
- Conduct research to improve understanding of the behavioral health system
  - \_ TBD based on available staffing

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**Update on CSB data collection efforts for STEP-VA**

Peer perspectives input group

# **Update on CSB data collection efforts for STEP-VA**

**Jennifer Faison, Executive Director  
Virginia Association of Community Service Boards (VACSB)**

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**Peer perspectives input group**

Behavioral Health Commission  
Peer Input Group

Jennifer Spangler, MS  
Disability Policy Advocate

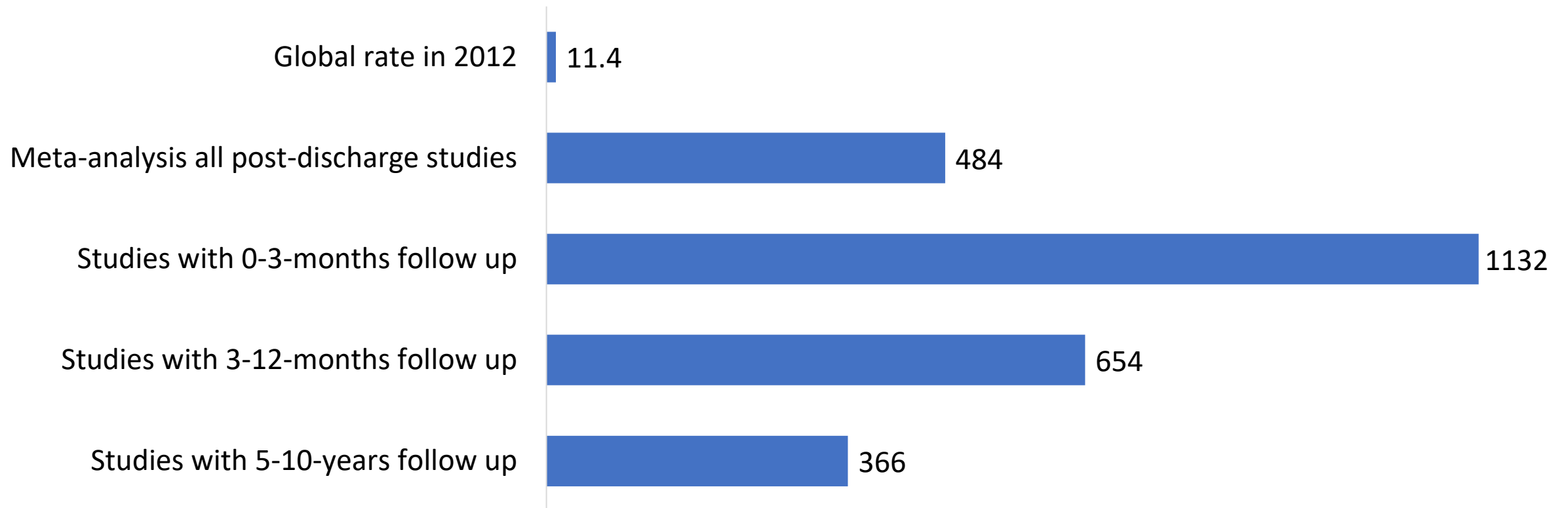
## Expedited Diversion Court Ordered Treatment

- Could be abused
- Opt-in versus Opt-out
- Order over objection
- Healthcare info not private or protected
- Can CSBs successfully implement
- No clear end to court order



# Suicide Rates Post-Discharge from Psychiatric Facilities

Suicide Rate per 100,000 Person-Years

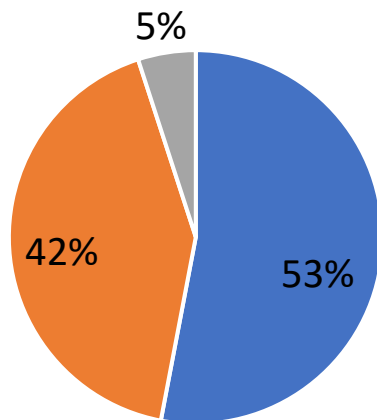




# Post-Traumatic Symptoms and Disorder in Youth and Young Adults

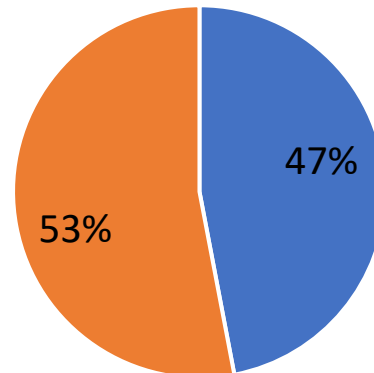
- 38 youth and young adults with recent onset of psychosis

Type of event most upsetting



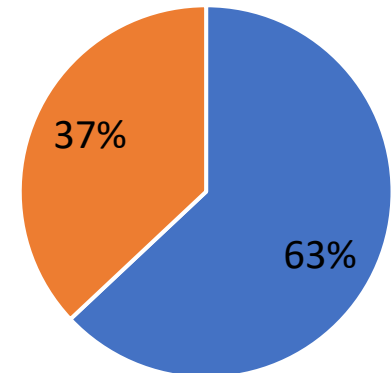
■ Symptom-related ■ Treatment-related  
■ Related to both

Most distressing treatment event reported met PTSD criteria of perceived threat



■ Met ■ Did not meet

Most distressing treatment event reported met PTSD criteria of perceived threat

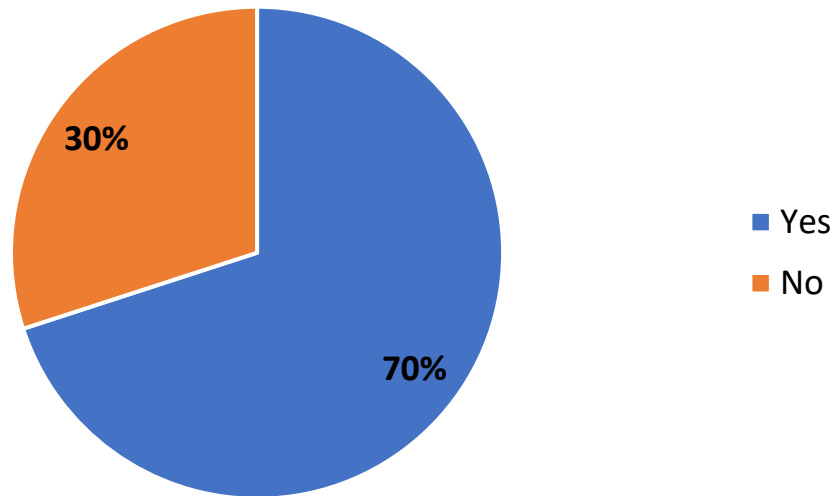


■ Met ■ Did not meet

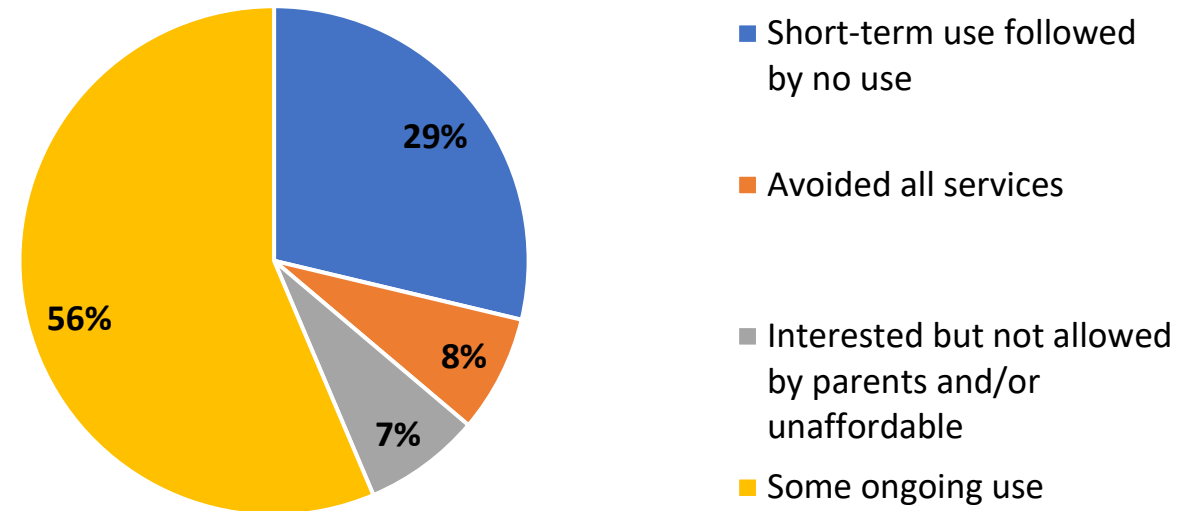
# Distrust and Lack of Engagement Among Young People with Experience of Involuntary Hospitalization

- 40 youth and young adults who had experienced at least one involuntary hospitalization

Negative impacts on ability, willingness to trust others



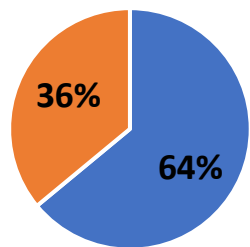
Service engagement among those in distrust group



# Impact of Experiences of Treatment Mandates and Perceived Coercion on Voluntary Help-Seeking

- 104 adults with schizophrenia spectrum diagnosis
- “mandated-treatment-related barriers to care” = delayed getting help in past 6 months due to worry that going for treatment might:
  - Lead person to be in trouble with the law,
  - Cause the person to be forced to take unwanted medications or treatments
  - Lead to involuntary hospitalization

Number of mandated-treatment-related barriers to care



■ None ■ At least one

Participants more likely to report mandated-treatment-related barriers included people who experienced...	
Involuntary hospitalization	4.0 times more likely
Legal pressures	2.7 times more likely
Reminders or warnings about consequences of - medication nonadherence - appointment nonadherence	3.4 times more likely 4.1 times more likely
Higher levels of coercion in outpatient treatment	1.2 times more likely

## What is wellness: peers

- The ability to act independently
- Purpose in life
- Getting through the day
- Experiencing feelings of contentment

## Thrive



Maslow's hierarchy of needs

## Expedited Diversion Court Ordered Treatment

- Could be abused
- Opt-in versus Opt-out
- Order over objection
- Healthcare info not private or protected
- Can CSBs successfully implement
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# Potential Unintended Consequences

- Financial cost to the individual
- Lack of reliable transportation
- Diminished self-directed engagement after coercive treatment



# **The following behaviors might impact a judge's decision about mental health treatment without any input from a psychiatric evaluation**

Perceived Disruptive, Dangerous, or Violent

Perceived Aggression or Desperation

Expressing Anger, frustration, annoyance or perceived dysregulated

Virginia Peer Recovery Specialists provide evidence-based, person-centered services that lead to lives of meaning and purpose.

Questions?



Maslow's hierarchy of needs

Peers encourage individuals to not just survive but THRIVE!



# Conclusions of a 2022 UVA Study Assessing Virginia's Forensic Mental Health System

- Findings reveal that defendants facing misdemeanor charges are more likely than those facing felony charges (44.0% vs. 31.2%) to be pronounced incompetent and referred for inpatient competence restoration.
- This makes it disproportionately more costly to adjudicate misdemeanor charges in Virginia where the defendant is found incompetent in the long-term.
- Dropping misdemeanor charges upon a finding of incompetence is cost effective in the short term but does not always ensure adequate treatment for those who need it.



Next meeting  
will be virtual on  
December 13, 2023 at 9:00

Visit [bhc.virginia.gov](https://bhc.virginia.gov) for meeting materials