

The New Emergency Petition

A Peace Officer's Briefing Sheet

The emergency petition law was revised and goes into effect 01 October 2003.

The revisions change three important features of the law:

- 1. The standard of dangerousness is now “the individual presents a danger to the life or safety of the individual or of others.”**
- 2. The peace officer must observe either the individual or the individual's behavior.**
- 3. The petition may be based on examination, observation, or “other information obtained that is pertinent to the factors giving rise to the petition.”**

Explanation of Changes.

1. The old standard of dangerousness (“clear and imminent danger of doing bodily harm” has been replaced by the standard used in civil commitment hearings (“presents a danger to the life or safety”). The danger no longer needs to be imminent. “Danger” may encompass passive dangerousness, brought about by lack of action or neglect, as well as overt acts like an assault. Examples: Endangering oneself by not eating or drinking fluids, neglect of serious or life-threatening medical conditions, or the inability to recognize actions with dangerous consequences (unable to cross street safely, inadequate protection from sub-freezing weather) that results from mental disorder.

2. The law changed the phrase “a peace officer who has personally observed the individual” to “a peace officer who has personally observed the individual or the individual's behavior”, to clarify that peace officers can file petitions in cases where they have seen the person but not the person's dangerous behavior or symptoms of mental disorder. A reliable report of the dangerous behavior or symptoms of a mental disorder (as from a parent) would suffice since the law now allows for “other information obtained ... pertinent to the factors”.

3. The new law's changed language allows for “other pertinent information” bearing on the individual's mental disorder or dangerous behavior. This gives the peace officer greater scope in filing a petition on individuals they have seen but whose mental symptoms and dangerous behavior are known only through the statements of witnesses (like parents) or by the physical aftermath of the individual's behavior. (Examples: physical damage to property, reports of threatening statements.)

Remember that in determining the presence of mental disorder, the peace officer is a lay person who must have “reason to believe” that the individual shows a “clear disturbance” in mental functioning—a reason that could be provided by direct observation or by reliable report. In determining both mental disorder and dangerousness, “reason to believe” is something less than probable cause.

Prepared by NAMI MD 11-6-03. Based in part on materials provided by Richard Ortega, PhD, Office of Forensic Services, Md. Mental Hygiene Administration.

Emergency Petitions by Peace Officers for Psychiatric Evaluation under the new law (went into effect October 1, 2003)

1. Basic Principles

- Know the Legal Standard
- Find out as much information as possible.
- Write petitions with complete supporting detail information.
- Safety, Common Sense, and Decency

2. The New Legal Standard FOR EP as of Oct. 1, 2003 (§10-622)-changes in bold:

A. The petitioner must have “reason to believe that the individual:

- (1) has a mental disorder;” and
- (2) **“presents a danger to the life or safety of the individual or of others”**

B. An EP may be made by “a peace officer who personally has observed the individual OR the individual’s behavior.”

C. A Peace officer may base the petition on:

- (1) The observation **OR**
- (2) **“Other information obtained that is pertinent to the factors giving rise to the petition.”**

(Note: Both 1 and 2 may be used)

3. Mental Disorder (Mental Illness) Defined (§ 10-620)

“Mental disorder” means the behavioral or other symptoms that indicate:

(1) To a lay petitioner [*a peace officer is a lay petitioner with respect to this part of the law*] who is submitting an emergency petition, a clear disturbance in the mental functioning of another individual.”

(2) “Mental Disorder” does not include mental retardation.

NOTE: The law excludes mental retardation as the SOLE basis for emergency evaluation. However, in retarded persons, a clear disturbance of mental functioning, such as bizarre, aggressive or self-injurious behavior, can result from co-occurring mental disorders (mental illness) which the person might also have. If there is a clear disturbance of mental functioning, EP and let the doctors in the ER sort it out.

NOTE: Mental disorder and substance abuse: [COMAR 10.21.01.02B(16)(c)] Many persons with a serious mental disorder also have a drug or alcohol abuse problem (50%). Such persons can be petitioned. They can be certified in the ER for involuntary hospitalization, if the ER physician determines mental disorder, not the substance abuse, is their “primary” diagnosis”.

4. The Meaning of “Danger”

- *“The individual presents a danger to the life or safety of the individual or of others”* means what it has meant at civil commitment hearings up to now and until Maryland case law develops, is subject to the interpretation of individual administrative law judges.

- It is no longer required that the danger be imminent.
- “Danger” may encompass passive dangerousness brought about by lack of action or neglect, as well as overt acts like assault.¹ The standard has been broadly interpreted by Administrative Law Judges. It includes, for example, threats of violence, inability to care for self or others in one’s care, or to maintain activities of daily living. An overt dangerous act (such as an assault) is not required to be observed or alleged.² Examples: Endangering oneself by not eating or drinking fluids, neglect of serious medical conditions, or an inability to recognize actions with dangerous consequences that results from mental disorder. (also see 5 below)

5. Poor Judgment Can Help to Establish Mental Disorder/Dangerousness

- Acts on delusions
- Acts in response to hallucinations
- Grossly overestimates and/or underestimates own abilities
- Has seriously deficient knowledge of own vital needs
- Does not show ability to anticipate harm or how to protect self from it e.g. unable to safely cross a street; female wandering in dangerous neighborhoods at night.
- Takes great risks without thinking e.g. driving at high speeds; walks down the middle of streets without watching for traffic.
- Does not anticipate serious adverse consequences of own actions or how own actions endanger others. (E.g. A parent not providing for essential needs or safety of children; throws dishes against wall.)
- Consistently rejects help from others while needing it
- Denies legal charges or the court's power to scrutinize and control his/her behavior.
- Refuses shelter in bad weather
- Publicly exposes genitals, masturbates, touches or fondles others

6. Prior Events can help establish mental disorder or potential for danger

- Relevant past:
 - Any dangerous behaviors especially: assaults, suicide attempts, very reckless behavior, inability to care for self or others in one’s care.
 - medication non-compliance
 - acting on delusions, responding to hallucinations in ways that bring about substantial harm: (e.g., fire hazard, bodily injury, dangerous self neglect)
 - substance abuse
- Reports of mental hospitalizations
- Previous 10-96 calls

7. Legal Standard: “Reason to Believe” = Less than Probable Cause

- Leading case is *SP v Takoma Park*, 134,F.3d260 (4th Cir. 1998)
- Depending upon the particular fact situation, involuntary seizure and transportation to an emergency room can be “objectively reasonable in light of **the totality of circumstances** confronting the officers” carrying out the seizure as well as in view of the limited intrusion the emergency petition procedure makes into constitutionally protected private interests (*SP* at 273). Note: Examination in the ER is required within 6 hours and the evaluatee is released unless they meet criteria for involuntary hospital admission.

- The concept of reasonableness is fluid and fact-specific. A particular fact situation must support the decision to detain to the degree that the facts would “**warrant the belief of a prudent person**” that the individual in question was mentally disordered and dangerous (*SP* at 272). This standard is something less than probable cause as defined in criminal law cases.
- You need “reason to believe” in order to do the EP, but certainty is not required.

8. Legal Standard: Observation of the Individual or the individual’s behavior.

This clarifies that peace officers can file petitions in cases where they have seen the person but not the behavior demonstrating a mental disorder or dangerousness. A reliable report of dangerous behavior or behavior indicating a mental disorder (from a parent for example) would suffice, since the law now allows for “Other information obtained that is pertinent to the factors giving rise to the petition”

9. Legal Standard: “Other information obtained that is pertinent to the factors giving rise to the petition”

This language allows for the petition to be based on pertinent information bearing on the individual’s mental disorder or dangerous behavior, other than the officer’s direct observation. This gives the peace officer the authority to file a petition on individuals they have seen but whose mental symptoms or dangerous behavior are known only through the statements of witnesses (like parents) or by the physical aftermath of the individual’s behavior (like wounds on the individual or others, or physical damage to property.)

10. Filling out the Petition (CC-DC-13)

- Your job is to draw a complete and vivid portrait of a person with a disturbance in mental functioning so serious that the individual should be evaluated at a hospital. Any one fact may be insufficient to reasonably consider that a person has a mental disorder or presents a danger, but all facts taken in total may be sufficient.
- Details can be crucial. Never be vague—it invites legal challenge. Extensive details are often vital to enable the ER physician to certify the individual for involuntary hospital admission or the judge to commit. (Ex: “Mother said subject raced to kitchen and attempted to take knife from drawer,” “Father said subject was discharged from Springfield Hospital one month ago, has not been taking psychiatric medications and has not eaten in 3 days.”)
- Little room is provided on the petition for Items 9 and 10 (mental disorder and dangerousness), so attach an additional sheet with as much detail as possible.
- EP Item 9: The behaviors which show the individual has a “clear disturbance” of mental functioning (you are a lay petitioner for this item). Include all unusual behavior, even if not extreme. It may be important to help the ER physician to certify for hospital admission. Include all pertinent information, both present and past.
- Item 10: Statements, behavior, or other information that indicate the person poses a danger to the life or safety of self/others. Again, include all pertinent information, present and past.
 - evidence of potential for assaulting others. Includes poor judgment (see 5 above)
 - makes clearly threatening statements
 - victims show injury, premises show recent signs of struggle or destruction

- serious self-neglect or self harm
- inability to safely care for self or maintain activities of daily living. (includes poor judgment that indicates potential for danger to self—see 5 above)

- Item 11: Access to firearms/weapons: include use of weapons, explosives, flammables, corrosive liquids. Include all pertinent information, present and past.

12. Errors In EP Can Directly Lead Discharge From Hearing

- Claim of “coerced” transport to ER—no petition, and no documentation of voluntary request for transport
- Did not observe person
- Did not document dangerous behavior (whether seen or not)
- Petition vaguely worded
- Petition not completely filled out. Example: Additional Certification By Peace Officer not signed (CC/DC 14)

13. Safety, Common Sense, and Respect

- Treat the evaluatee with as much consideration and respect as possible, while ensuring the safety of all. Remember:
 - Serious mental illnesses are biologically based brain disorders. They are not the result of bad parenting or personality. It is not a choice the victims of mental illness made, you just get it.
 - These brain disorders can produce dramatic changes in how the affected person thinks, feels, and talks, which are out of the willful control of the individual.
 - Mental Illnesses are Treatable. Most victims of mental illnesses achieve astonishing recovery.
 - The burden of living with a serious mental disorder is often painful and humiliating. Even when they are giving you trouble, try to remember the weight they are carrying.
 - Basically like us: Like us, they need respect, recognition, and hope. Help the person save face. Nobody likes feeling humiliated. Frame leaving for the hospital as a positive choice, as being strong and helping themselves or others.
- If at all possible, allow the evaluatee time to take needed items with them to the ER. Needed medications are especially important--they may be there for 30 hours. Also suggest that they take weather appropriate clothing, ID, and money for transportation home in case they are released from the ER.
- Check with the ER staff to see if they have any questions concerning the evaluatee or the petition from before leaving the ER. Also give the ER your contact information in case they have questions later. Your answers to their questions may be crucial in the physician’s ability to certify the evaluatee for involuntary hospitalization.

14. The Way Ahead

- The changes in the law will make it somewhat easier to EP in cases where you do not directly observe the person’s dangerous behavior or mental disorder symptoms, where the danger is not imminent, where there is serious neglect or where there is no overt act.
- Time spent on an EP is one of the most important duties of a peace officer’s mission in protecting individual citizens and the community.

- Thorough EP procedure should lead to an EP that will stand legal scrutiny, provide a real service to the individual needing medical help, and serve the community at large.

1. Ortega, Richard. "Maryland Emergency Petition Law Change". To be published in the The Maryland Psychologist, Sept/Oct 2003, Vol. 49, Issue 1, p 19.

2. Janofsky, Jeffrey. "Maryland's New Emergency Petition Law". Maryland Psychiatric Society News, Aug/Sept. 2003, Vol. 17, No. 4, p 7.

This document was prepared by NAMI MD. It is based in part on a presentation of Richard Ortega, PhD, Office of Forensic Services, Md. Mental Hygiene Administration, and on conversations with Richard Ortega, and Larry Fitch, Esq., Director, Office of Forensic Services, Md. Mental Hygiene Administration, and Jeffrey Janofsky, M.D., Director of the Psychiatry and Law Program of Johns Hopkins University, School of Medicine.

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Law Enforcement Training Guide

Senate Bill 273

Emergency Evaluations: Modified Standards



Roll Call Training Guide

Developed by the
Maryland Police and Correctional
Training Commissions

NOTICE

Due to the dynamic nature of law enforcement and the impact of court decisions and statutory changes on police and correctional operations, it is important that each department review this information to verify that it is consistent with current federal, state, and local law and regulations, and with departmental policy and procedure. This information is not intended to substitute for the advice of legal counsel. You should speak with your legal advisor about the sufficiency of your department's manual, policy, curriculum, and training program. This material should not be used as the sole basis for compliance with any law or regulation, and departments should not rely on this material as a legal defense in any civil or criminal action. The Police & Correctional Training Commissions have compiled and distributed this information as a guide for the individual departments, and are not responsible for the content and delivery of this material by other departments.

Introduction:

This Training Unit Guide was developed by the Maryland Police and Correctional Training Commissions as a law enforcement Roll Call Training resource for Maryland law enforcement officers.

The enclosed training materials are brief and straight-forward and it is anticipated that the information can be delivered within a normal 10-15 minute roll call training session.

Background:

Senate Bill 273 was introduced in the 2003 regular session of the Maryland General Assembly for the purpose of modifying certain standards for emergency evaluations of individuals with suspected mental disorders.

This training guide recommends a police procedural to comply with modifications of the Emergency Evaluation law (§10-620, *Health General Article, Annotated Code of Maryland*). It does not purport to supplant the established policies or procedures of any law enforcement agency.

Senate Bill 273:

Specifically, this legislation affects Sections 10-622, 10-623 and 10-626 of the statute. In general terms, the modified law gives police officers somewhat wider latitude to complete a Petition for Emergency Evaluation for an individual they suspect suffers a mental disorder and is a danger to self or others. There are three changes in the law:

1. The former wording in the law: *“there appears to be a clear and imminent danger of the emergency evaluatee’s doing bodily harm to the emergency evaluatee or another,”* has been replaced by the following wording: ***“The individual presents a danger to the life and safety of the individual or others.”***

While this verbiage modification appears insignificant, it does, however, give a police officer a greater degree of discretion by eliminating the *“clear and imminent danger”* determinant from an officer’s judgmental process.

2. Additionally, the revised statute requires that the police officer: ***“must personally observe either the individual in question or the individual’s behavior,”*** and:
3. The petition for the emergency evaluation may be based on examination, observation, ***“or other information that is pertinent to the factors giving rise to the petition.”***

Recommended Procedure:

As a police officer, you still have to be capable of intelligently and rationally articulating why you took a person into custody, delivered them to a designated emergency psychiatric facility, and then went through the trouble of completing the required Emergency Evaluation paper-work.

You still must explain the totality of circumstances that you personally observed, along with any other relevant information, concerning the individual you suspect suffers a mental disorder and is a danger to self or others. This includes, but is not necessarily limited to:

- Why you thought the individual was suffering from a mental disorder.
- What specific symptoms of mental disorder you actually observed.
- Any irrational statements the individual suspected of mental disorder made to you or was heard by a reliable person.
- Any information given to you by someone else who observed the individual in question, or someone who had direct personal knowledge of the background of the individual, such as a friend, relative, acquaintance or care-giver.
- All facts that made you believe the individual was dangerous to himself or another person.

In short, you must have some reliable degree of evidence, either direct or witness, that the individual in question has a mental disorder and **presents a danger to the life or safety of the individual or others.**

A reliable degree of evidence does not amount to Probable Cause, but you must be prepared to articulate tangible reasons why you suspected the individual in question was suffering from a mental disorder to the degree that he or she might harm themselves or other persons.

Legal Reference:

Health General Article, §§10-620 –10-629 of the Annotated Code of Maryland.
Senate Bill 273 took effect on 1 October 2003.

CORRECTION NOTICE

ROLL CALL TRAINING GUIDE

Senate Bill 273
Emergency Evaluations:
Modified Standards

Law enforcement officers should make the following corrections to the Roll Call Training Guide that was disseminated earlier on modified standards of SB 273:

1. On page 3, under **Senate Bill 273, (#1)**, the sentence “**The individual presents a danger to the life and safety of the individual or others,**” is incorrect. It should read: “**The individual presents a danger to the life or safety of the individual or others.**”
2. On page 4, add as a last paragraph under **Recommended Procedure**, the following instructive note:

Officers should understand that the new language to SB 273 which refers to “a danger to the life or safety,” can include not only overt, but also *passive* actions and behaviors, such as individuals failing to take minimally proper care of themselves and/or by responding in an inappropriate or non-compliant manner to their basic human needs, for example:

- Not eating or drinking properly, or improperly fasting.
- Neglect of personal medical needs or failure to take required medications.
- Inability to recognize and appropriately respond to the common dangers and hazards prevalent in everyday life.

Developed by the
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Training Commissions