

COMMISSION ON MENTAL HEALTH LAW REFORM

STATISTICAL REPORT ON MENTAL HEALTH PROCEEDINGS IN FY 2010

DECEMBER, 2010*

Informed oversight of the civil commitment process requires accurate data regarding the number, distribution and characteristics of ECOs, TDOs, commitment hearings and judicial dispositions. Adequate data were not available before 2008. Since the Commission was established in 2006, the courts and mental health agencies have collaborated to create the data systems needed for proper monitoring and informed policy-making. This process was accelerated at the General Assembly's direction after the reform legislation was enacted in 2008.

Significant progress in data collection and oversight has been made. The DBHDS, Supreme Court and CSBs have modified existing data collection protocols to ensure that all the necessary information is included. The Commission is continuing to monitor the data collection processes to resolve any issues that arise. In 2009, the Supreme Court made major improvements to its data collection systems to ensure that proper data were being collected. However, problems with local data entry in a handful of jurisdictions were identified and resolved in 2010. We will continue to monitor the accuracy of the data and undertake necessary quality improvement measures in FY11.

In this report, the Commission will estimate the numbers of ECOs, TDOs, commitment hearings and dispositions in FY 2010 and, to the extent possible, assess whether commitment practices have changed in the wake of the recent reforms.

Available Databases

Court clerks at General District Courts document civil commitment hearings using the Supreme Court's Case Management System ("CMS"). Although it is technically a database for each District Court to track and record its cases¹, the CMS database is maintained by the Office of the Executive Secretary at the Supreme Court. It is divided into four sections for tracking the corresponding types of cases: traffic, criminal, civil, and involuntary civil commitment. Civil commitment hearings and related ECOs and TDOs are entered in the involuntary civil commitment division of the CMS database. Terminals at court clerk offices transmit the data to the Office of the Executive Secretary, which allows the merging of data from all District Courts.

The eMagistrate System is used by magistrates in all thirty-two judicial districts to issue arrest processes, bail processes, and other orders which include ECOs and TDOs. Each time an ECO or TDO is issued, it is entered into the eMagistrate System, initiating the ECO or TDO process by issuing the appropriate documents. ECOs and TDOs are

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¹ The CMS database collects special justice pay codes from the DC-60; however, the Supreme Court Fiscal Department is the official collector of this type of information. For the purposes of this report, it was determined that case-based information from the CMS database was more useful than pay code information .

counted in the eMagistrate System regardless of whether an ECO or TDO is successfully executed.²

When data are requested by an outside party, upon approval by the Legislative and Public Relations Director, the Judicial Planning Office accesses the eMagistrate or CMS databases and assembles the needed data elements, which are then put in a format for submission to the party requesting the data.

Certain Community Services Boards collect and maintain their own permanent databases on civil commitment cases for their CSB. In this report, we also included data from Fairfax-Falls Church CSB as a comparison to the statewide data systems.

ECOs

The best available source of data regarding written ECOs is the Supreme Court’s eMagistrate Data System. According to the eMagistrate database, there were about 500-600 ECOs per month during FY10. (See Table 1).³

Table 1. Frequency of Adult ECOs During FY10 (eMagistrate)

Month	eMagistrate Data ECOs
July	582
August	591
September	571
1st Quarter Total	1,744
October	525
November	488
December	500
2nd Quarter Total	1,513
January	501
February	422
March	584
3rd Quarter Total	1,507
April	528
May	556
June	566
4th Quarter Total	1,650
Total	6,414

When people are taken directly into custody by law enforcement officers and brought to a mental health facility based on the officer’s own observations, no formal ECO is executed. (These are called “paperless ECOs.”) The number of paperless ECOs is unknown and will have to be ascertained directly from facilities conducting mental health evaluations. For example, in the Commission’s June 2007 study of emergency evaluations conducted by CSBs, 24.3% of the individuals evaluated that month were in police custody at the time of the evaluation, but only 46.6% of those individuals were

² An ECO or TDO is issued by a magistrate but is only deemed successfully executed if the person is detained.

³ The Commission believes that the magistrate database is more reliable than the CMS database for the purpose of counting ECOs. It appears that the number of ECOs in the CMS database is too low to represent all ECOs issued and executed during the fiscal year. Although General District Court Clerks are instructed to record all orders, it appears that all ECO paperwork may not be making it to the court clerks for entry.

being held under a written ECO. Overall, at the present time, data regarding ECOs are incomplete.

TDOs

Between the two databases maintained by the Supreme Court, we have determined that the e-Magistrate system provides the most accurate data regarding the number of TDOs issued and executed during FY10. The eMagistrate typically records more TDOs in each quarter than the CMS database. One possible explanation for the eMagistrate picking up more cases is that TDOs are entered in the eMagistrate system as soon as they are issued, whereas the district court clerks enter the data in the CMS only when they receive the orders from the magistrates after the orders have already been issued or executed. As a result, it appears that some TDOs are not recorded in the CMS, either because the magistrates are not delivering the orders to the clerks or because the clerks are recording only one entry in the CMS (for the hearing) when they receive the TDO and the commitment order simultaneously. The number of TDOs issued for the fiscal year was 20,927 according to eMagistrate data. (See Table 2).

Table 2. Frequencies of Adult TDOs Issued During FY10 (eMagistrate)

Month	eMagistrate
July	1,882
August	1,927
September	1,811
1st Quarter Total	5,620
October	1,721
November	1,559
December	1,647
2nd Quarter Total	4,927
January	1,750
February	1,438
March	1,746
3rd Quarter Total	4,934
April	1,774
May	1,846
June	1,826
4th Quarter Total	5,446
Total	20,927

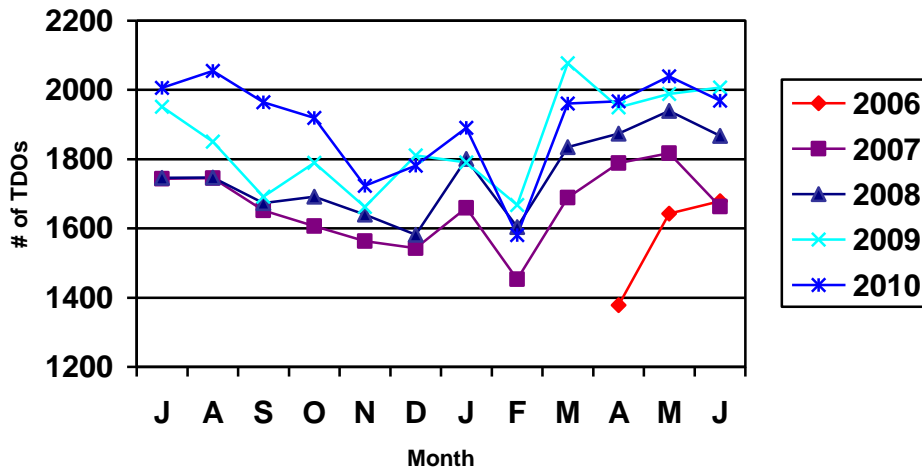
The most important TDO number is how many TDOs were actually executed during FY10. While the eMagistrate system more accurately documents the number of TDOs issued, the CMS system is the only database that records whether or not the TDO was executed. Based on the rate of execution in the CMS data, we estimate that 19,732 adult TDOs were executed during the fiscal year. (See Table 3).

Table 3. Estimated Number of Executed Adult TDOs During FY10 (eMagistrate)⁴

Quarter	eMagistrate*
1 st Quarter	5,367
2 nd Quarter	4,690
3 rd Quarter	4,632
4 th Quarter	5,043
Total	19,732

A key policy question is whether the number of TDOs has increased since the 2008 reforms went into effect. In last year's report, we noted that the Supreme Court's eMagistrate database suggests that the numbers of TDOs in almost every month of FY09 were somewhat higher (an increase of about 5%) than during those same months in FY07 and FY08. However, the data in FY10 suggest that the number of TDOs has stabilized during the last six months. The TDO rate continued to increase in the latter half of calendar year 2009, but in the first half of calendar year 2010, the TDO rate began to level off. Figure 1 shows that the TDO rate in December 2009, and February, March, and June of 2010 were lower than the same months in FY09.

Figure 1. Frequencies of TDOs in eMagistrate System, FY2006 - FY2010



Fairfax-Falls Church CSB has maintained its own data on TDOs since 2005. As shown in Figure 2 and Table 4, the rate of TDOs in Fairfax-Falls Church increased from FY08 to FY09. In general, however, the TDO rates in FY10 have so far been lower than those of FY09, with few exceptions. These data lend further support to the hypotheses that the increase in TDOs during the past year has stabilized since FY09.

⁴ Numbers of executed TDOs in the eMagistrate and CSB data are estimated numbers based on the percentage of TDOs in the CMS database that were unexecuted (4.50% in the first quarter, 4.81% in the second quarter, 6.12% in the third quarter, and 7.40% in the fourth quarter). The eMagistrate System does not show whether a TDO was executed or unexecuted.

Figure 2. Frequencies of TDOs in Fairfax-Falls Church CSB, 2005-2010

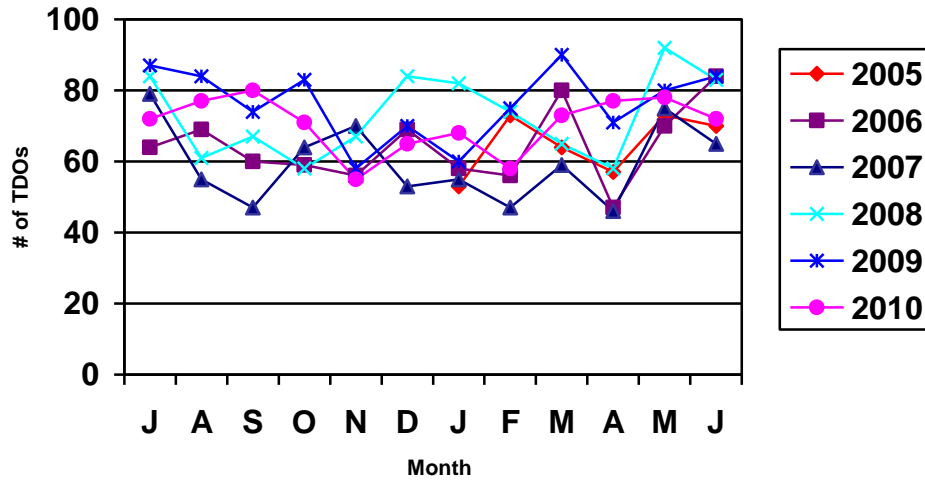


Table 4. Frequency of Adult TDOs in Fairfax-Falls Church CSB, 2005-2010

	Frequency of Adult TDOs in Fairfax-Falls Church CSB					
	2005	2006	2007	2008	2009	2010
January	53	58	55	82	60	68
February	73	56	47	74	75	58
March	64	80	59	65	90	73
April	57	47	46	58	71	77
May	73	70	75	92	80	78
June	70	84	65	83	84	72
July	64	79	84	87	72	
August	69	55	61	84	77	
September	60	47	67	74	80	
October	59	64	58	83	71	
November	56	70	67	58	55	
December	69	53	84	70	65	

All Adult Commitment Hearings

At this time, the best source of data on the number of commitment hearings and the dispositions of these hearings is the Supreme Court’s CMS data system. The number of commitment hearings for FY10 was 23,865. This includes 21,549 initial adult commitment hearings, and 2,316 recommitment hearings.⁵ (See Table 5). We have reasonable confidence in the completeness of the CMS data on commitment hearings

⁵ The number of recommitment hearings in FY10 was determined using a paycode that special justices designate for recommitment hearings. This may not be the most reliable way to determine a recommitment hearing, but it is the best method that was available to us given the data constraints. We are working with the Supreme Court to get a code added into the CMS database so that we will be able to distinguish recommitment hearings in the future.

because there is no indication of under-reporting of hearing data by the district court clerks.⁶

Table 5. Frequency of Adult Civil Commitment Hearings During FY10 (CMS)

	CMS: Frequency of Adult Hearings		
	Initial Hearing	Recommitment	Total
July	2,009	219	2,228
August	1,933	180	2,113
September	1,831	179	2,010
1st Quarter Total	5,773	578	6,351
October	1,676	263	1,939
November	1,586	145	1,731
December	1,702	195	1,897
2nd Quarter Total	4,964	603	5,567
January	1,791	198	1,989
February	1,490	185	1,675
March	1,910	201	2,111
3rd Quarter Total	5,191	584	5,775
April	1,839	191	2,030
May	1,789	191	1,980
June	1,993	169	2,162
4th Quarter Total	5,621	551	6,172
Total	21,549	2,316	23,865

Adult Initial Commitment Hearings⁷

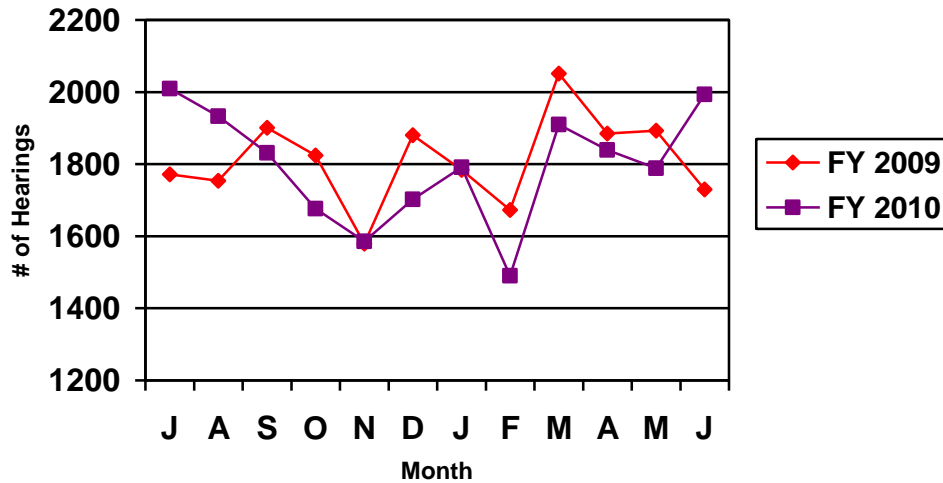
In general, the number of initial commitment hearings in FY10 followed more or less the same pattern as FY09. (See Figure 3). There were only slightly fewer total adult initial commitment hearings in FY10 than in FY09. Based on data from the CMS database from FY09, there were 21,821 initial commitment hearings, compared to 21,549 in FY10. We are also advised that payments to special justices by the Supreme Court under the IMC fund increased only 3.1% from FY09 to FY10, as compared to an 18.5% increase from FY08 to FY09, adding support that the pattern of commitment hearings remained relatively stable.⁸

⁷ The number of initial hearings conducted (that is, excluding recommitments) is somewhat higher (about 10%) than the estimated number of executed TDOs recorded in the eMagistrate database. One possible explanation is that some patients originally admitted as voluntary patients may later be held over objection. Another reason that the number of commitment hearings may be higher than the number of TDOs is that prisoners are not issued TDOs before a civil commitment hearing. (Jail hearings are included in the FY10 numbers. We are working with the Supreme Court to get a code added into the CMS database so that we will be able to distinguish jail hearings in the future.) Finally, when hearings are transferred to a different jurisdiction, they are sometimes entered twice – once in the district where the TDO occurred and once in the district to where the hearing is transferred.

⁷ This analysis excludes commitment hearings involving recommitment hearings. These are analyzed separately.

⁸ Payments increased from \$2,305,391 in FY09 to \$2,377,872 in FY10 (3.1%). Payments are made to special justices when the paperwork is submitted to the Supreme Court, not necessarily when the hearing occurs, and payments include juvenile hearings as well.

Figure 3. Frequencies of Initial Commitment Hearings, FY09 to Present (CMS)

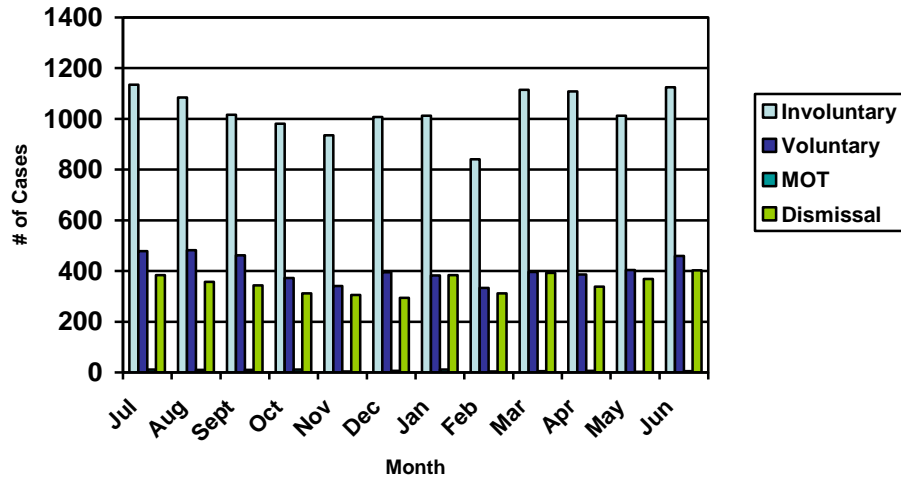


The CMS data system also provides information on the dispositions of initial hearings held in FY10. We have reasonable confidence in this data from the CMS system because of the stability of the data from month to month. As shown in Table 6, during FY10, about 57% of the hearings resulted in involuntary admission, about 23% resulted in voluntary admission and about 19% of the cases were dismissed. Only a handful of the total cases (about 0.4%) resulted in mandatory outpatient treatment (MOT) orders. (See Figure 4). Compared to the data from FY09, the rates of MOT orders, dismissals and involuntary hospitalizations were slightly higher, and the rates for voluntary hospitalizations were correspondingly lower in FY10.

Table 6. Frequencies of Dispositions at Civil Commitment Hearings for FY10 (CMS)

	Involuntary		Voluntary		MOT		Dismissals		Total
	N	%	N	%	N	%	N	%	
July	1,135	56.50	479	23.84	11	0.55	384	19.11	2,009
August	1,084	56.08	482	24.93	10	0.52	357	18.47	1,933
September	1,016	55.49	462	25.23	10	0.55	343	18.73	1,831
FQ Total	3,235	56.03	1,423	24.65	31	0.54	1,084	18.78	5,773
October	981	58.53	372	22.20	11	0.65	312	18.62	1,676
November	936	59.02	341	21.50	4	0.25	305	19.23	1,586
December	1,007	59.17	395	23.21	6	0.35	294	17.27	1,702
SQ Total	2,924	58.90	1,108	22.32	21	0.42	911	18.35	4,964
January	1,013	56.56	383	21.38	11	0.61	384	21.44	1,791
February	841	56.44	333	22.35	4	0.27	312	20.94	1,490
March	1,115	58.38	397	20.78	5	0.26	393	20.58	1,910
TQ Total	2,969	57.20	1,113	21.44	20	0.38	1,089	20.98	5,191
April	1,109	60.30	386	20.99	6	0.33	338	18.38	1,839
May	1,013	56.62	404	22.58	3	0.17	369	20.63	1,789
June	1,125	56.45	460	23.08	5	0.25	403	20.22	1,993
FQ Total	3,247	57.76	1,250	22.24	14	0.25	1,110	19.75	5,621
FY10 Total	12,375	57.43	4,894	22.71	86	0.40	4,194	19.46	21,549

Figure 4. Frequencies of Dispositions at Civil Commitment Hearings: CMS FY10



Recommitments

Figures 5 and 6 display the numbers and dispositions of recommitment hearings during FY10. Similar to the initial commitment data, the data on recommitment hearings from FY10 exhibits a similar pattern to the data in FY09. Almost all recommitment hearings resulted in continued hospitalization, and a very large majority of cases were involuntary hospitalizations.

Figure 5. Frequencies of Recommitment Hearings, FY09 to Present (CMS)

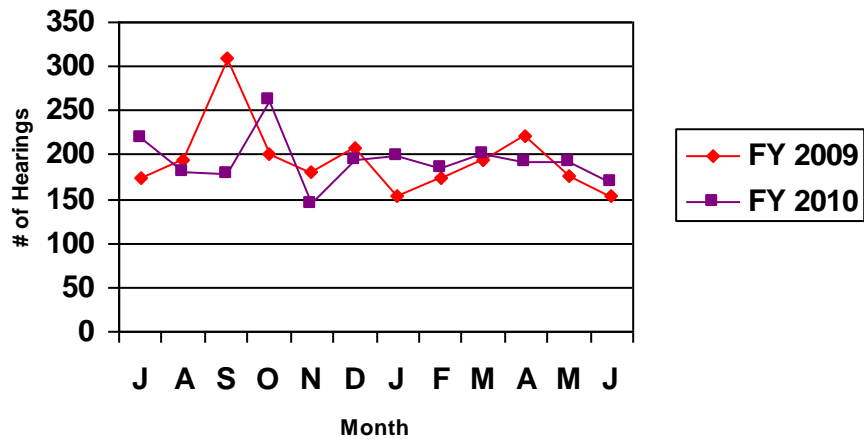
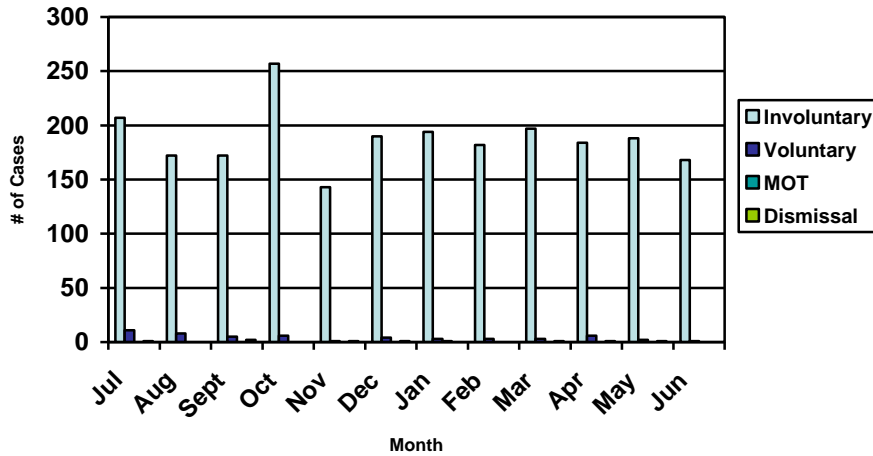


Figure 6. Frequencies of Dispositions at Recommitment Hearings: CMS FY10



Mandatory Outpatient Treatment

Although the total number of MOT cases increased slightly (from 62 to 86), it is clear that both CSBs and judges continue to be hesitant to invoke the new MOT procedures. The rate of MOT continues to remain below 0.5% of all initial commitment hearings. The Commission’s Hearing Report on District Variations shows that almost all of the MOT cases occurred among only 14 district courts, and a large majority of those cases took place in two jurisdictions. The Commission will continue to monitor MOT cases and investigate the reasons why it is so rarely used.

Virginia State Police Data on Hearing Dispositions

A second potential source of data on hearing dispositions is the Virginia State Police (“VSP”). The clerks of the District Courts are required to send VSP the names of individuals (1) committed to inpatient or outpatient treatment and (2) who consent to voluntary admission after detention under a TDO. In theory, the numbers should match the numbers in the CMS database for these same dispositions at commitment hearings. (See Table 7). In fact, the two data systems are closer to matching each other than they were last fiscal year, indicating that the process has become more streamlined. However, the Commission decided not to rely on the VSP data because there are still discrepancies in the data.

Table 7. FY10 Involuntary Commitment Orders (Inpatient or Outpatient),
State Police and CMS⁹

	# of Involuntary Commitment Orders (Inpatient or Outpatient)	
	State Police	CMS
July	1,184	1,157
August	1,134	1,266
September	1,102	1,198
1st Quarter Total	3,420	3,817
October	1,060	1,249
November	994	1,083
December	1,077	1,203
2nd Quarter Total	3,131	3,535
January	1,116	1,219
February	922	1,027
March	1,167	1,317
3rd Quarter Total	3,205	3,563
April	1,160	1,299
May	1,080	1,204
June	1,177	1,298
4th Quarter Total	3,417	3,801
Total	13,173	14,716

⁹ For comparison to VSP data, which records *any* involuntary admission or MOT orders, CMS data for FY09 were tabulated to include not only initial involuntary inpatient admissions and MOT, but also involuntary admissions and MOT orders from recommitment hearings.