

COMMISSION ON MENTAL HEALTH LAW REFORM

OPERATION OF THE CIVIL COMMITMENT PROCESS IN FY 2011

NOVEMBER, 2011

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. 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 FY12.

In this report, the Commission estimates the numbers of ECOs, TDOs, commitment hearings and dispositions in FY 2011 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 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

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. However, paycode information was used to identify recommitment hearings versus initial hearings.

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

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 450-600 ECOs per month during FY11. (See Table 1).³

Table 1: Frequency of Adult ECOs During FY11 (eMagistrate)

Month	eMagistrate Data ECOs
July	616
August	574
September	550
1st Quarter Total	1,740
October	520
November	482
December	435
2nd Quarter Total	1,437
January	575
February	457
March	535
3rd Quarter Total	1,567
April	581
May	490
June	547
4th Quarter Total	1,618
FY11 Total	6,362

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. The number of these so-called “paperless ECOs” is unknown and must 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 being held under a written ECO. Overall, at the present time, data regarding ECOs are incomplete.

TDOs

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.

Between the two databases maintained by the Supreme Court, we have determined that the eMagistrate 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 this discrepancy relates to the timing of when cases are entered into the two systems - TDOs are entered into eMagistrate as soon as they are issued, whereas TDOs are only entered into the CMS by the district court clerks when they have received the orders from the magistrates, at which point the orders have already been issued and/or executed. The delay between the issuance of an order and the recording of an order in the CMS creates two opportunities for TDOs to go unrecorded: 1) the magistrates may not deliver the orders to the clerks; 2) clerks may receive the TDO and the commitment order simultaneously and record only one entry, that of the hearing, in the CMS. Whatever its source, the discrepancy between the TDO counts for the two systems is consistent and troubling.

The number of TDOs issued for fiscal year 2011 was 20,420, according to the eMagistrate data (See Table 2).

Table 2: Frequency of Adult TDOs Issued During FY11 (eMagistrate)

Month	eMagistrate
July	1,810
August	1,785
September	1,728
1st Quarter Total	5,323
October	1,660
November	1,543
December	1,630
2nd Quarter Total	4,833
January	1,792
February	1,579
March	1,752
3rd Quarter Total	5,123
April	1,764
May	1,716
June	1,661
4th Quarter Total	5,141
FY11 Total	20,420

The most important TDO number is how many TDOs were actually executed during FY11. 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 19,522 adult TDOs were executed during the fiscal year. (See Table 3).

Table 3: Estimated Number of Executed Adult TDOs, FY11 (eMagistrate) ⁴

Quarter	Estimate from eMagistrate
1 st Quarter	4,998
2 nd Quarter	4,606
3 rd Quarter	4,974
4 th Quarter	4,956
FY 2011	19,522*

A key policy question concerns whether the number of TDOs has increased since the 2008 reforms went into effect. As noted in previous reports, the Supreme Court’s eMagistrate database suggests that the numbers of TDOs in almost every month of FY09 were higher than during those same months in FY07 (by an average of 11.7%) and FY08 (by an average of 5.9%). In a continuation of the pattern, the numbers of TDOs in the first half of FY10 were higher than the same months in FY09 (an average increase of about 6.5% for those months). After December of FY10, however, the FY10 TDO numbers largely mimic those of FY09 (with an average increase of 3% for all months). In all but two months of FY11, we observe that TDO counts remained either between or below the numbers for the same months in FY09 (average increase 0.5%) and FY10 (average decrease 2.2%). Thus, while the numbers of TDOs issued have notably increased since FY07, they appear to have peaked during FY10 and then declined during FY11. (See Figure 1 and Figure 2).

*NB: Because a percentage was used to calculate the total FY2011 estimate value, it is not equal to the sum of the quarters.

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 (93.9% in 1st quarter, 95.3% in 2nd quarter, 97.1% in the 3rd quarter, 96.4% in 4th quarter, and 95.6% for FY11). The eMagistrate System does not show whether a TDO was executed or unexecuted.

Figure 1: Frequency of TDOs, FY06-FY11 (eMagistrate)⁵

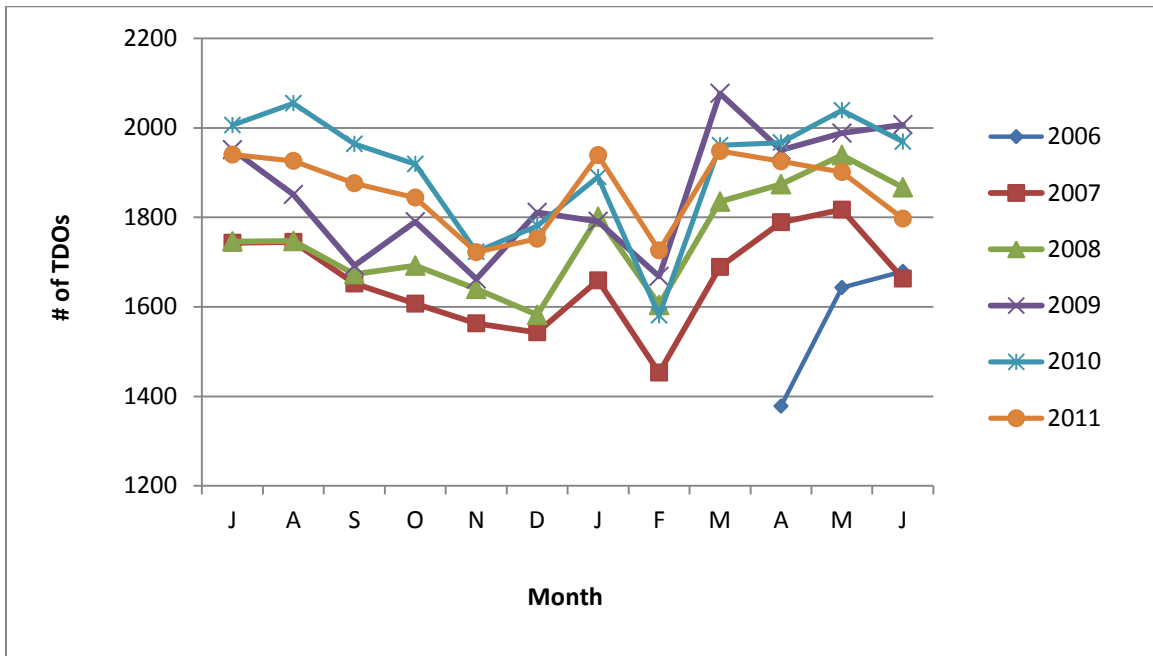
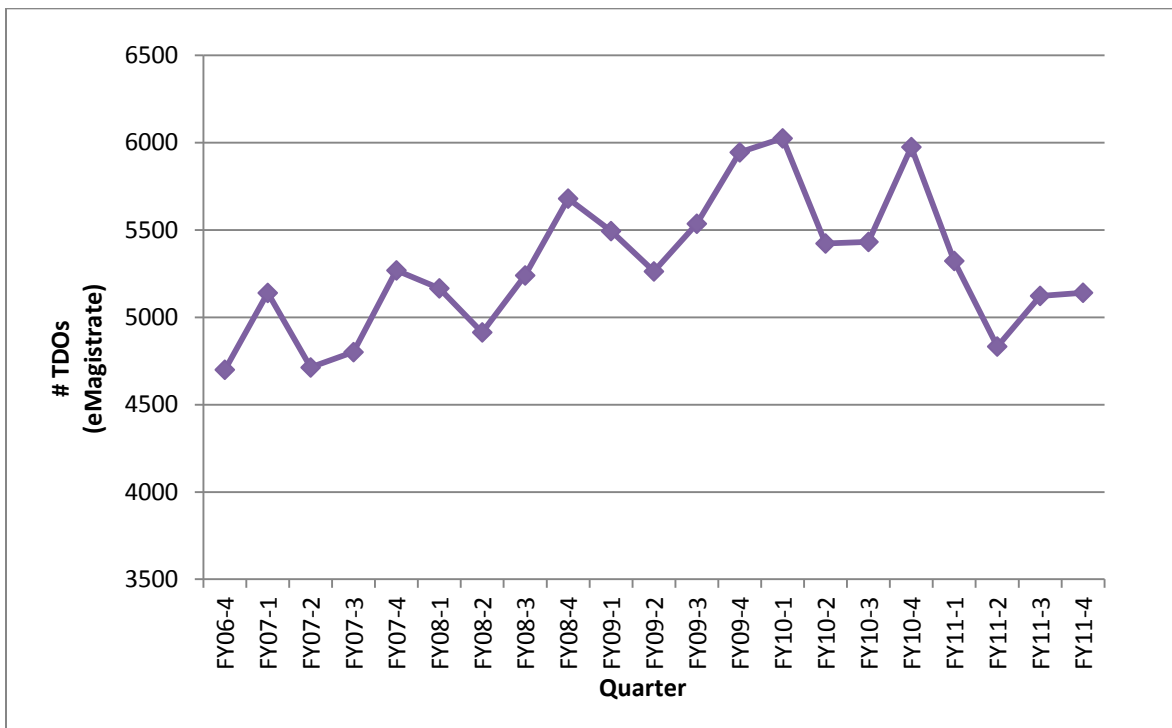


Figure 2: TDO Trends, FY06-FY11 (eMagistrate)



⁵ TDOs include adults, juveniles and Circuit Court. Data is missing for the period of first three quarters of FY2006

Fairfax-Falls Church CSB has maintained its own data on TDOs since 2005. As shown in Figure 3 and Table 4, the rate of TDOs in Fairfax-Falls Church increased from FY08 to FY09. With few exceptions, however, TDO rates in FY10 and FY11 were lower than in FY09. Even at their highest, TDO frequencies in the following years have never exceeded the upper extremes which characterized TDO frequencies in FY08 and FY09. Other than a possible increase in rate stability within the fiscal year for FY11, there does not appear to be a notable difference between Fairfax-Falls Church CSB's TDO rates from FY10 to FY11.

Figure 3: Frequency of Adult TDOs in Fairfax-Falls Church CSB, FY05-FY11

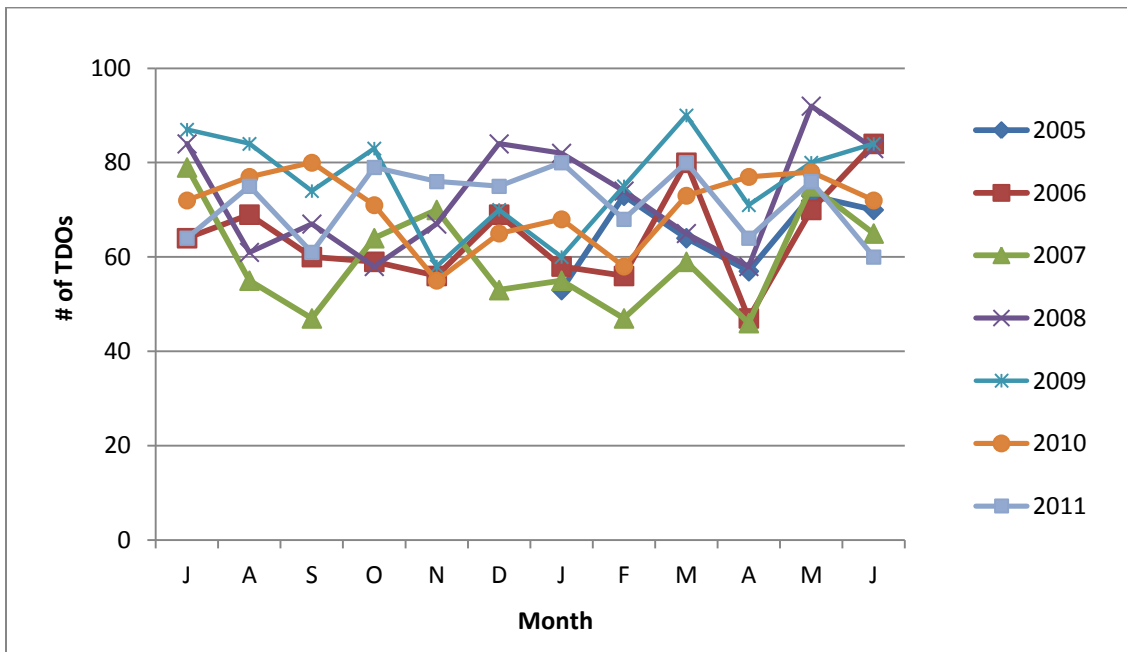


Table 4: Frequency of Adult TDOs in Fairfax-Falls Church CSB, 2005-2011

	Frequency of Adult TDOs in Fairfax-Falls Church CSB						
	2005	2006	2007	2008	2009	2010	2011
January	53	58	55	82	60	68	80
February	73	56	47	74	75	58	68
March	64	80	59	65	90	73	80
April	57	47	46	58	71	77	64
May	73	70	75	92	80	78	76
June	70	84	65	83	84	72	60
July	64	79	84	87	72	64	77
August	69	55	61	84	77	75	73
September	60	47	67	74	80	61	50
October	59	64	58	83	71	79	
November	56	70	67	58	55	76	
December	69	53	84	70	65	75	

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 adult commitment hearings for FY11 was 23,215. This includes 21,245 initial adult commitment hearings, and 1,970 recommitment hearings.⁶ (See Table 5). We have reasonable confidence in the completeness of the CMS data on commitment hearings because there is no indication of under-reporting of hearing data by the district court clerks.⁷

Table 5: Frequency of Adult Civil Commitment Hearings, FY11 (CMS)

	CMS: Frequency of Adult Hearings		
	Initial Hearing	Recommitment	Total
July	1,861	221	2,082
August	1,902	140	2,042
September	1,832	165	1,997
1st Quarter Total	5,595	535	6,130
October	1,688	178	1,866
November	1,602	162	1,764
December	1,693	166	1,859
2nd Quarter Total	4,983	506	5,489
January	1,943	152	2,095
February	1,630	148	1,778
March	1,860	169	2,029
3rd Quarter Total	5,433	469	5,902
April	1,760	164	1,924
May	1,813	160	1,973
June	1,661	136	1,797
4th Quarter Total	5,234	460	5,694
FY11 Total	21,245	1,970	23,215

Adult Initial Commitment Hearings⁸

In general, the number of initial commitment hearings in FY10 followed more or less the same pattern as FY09 (See Figure 3). From the available FY09 data, it appears that, on average, the number of adult initial commitment hearings decreased by 3.1% for

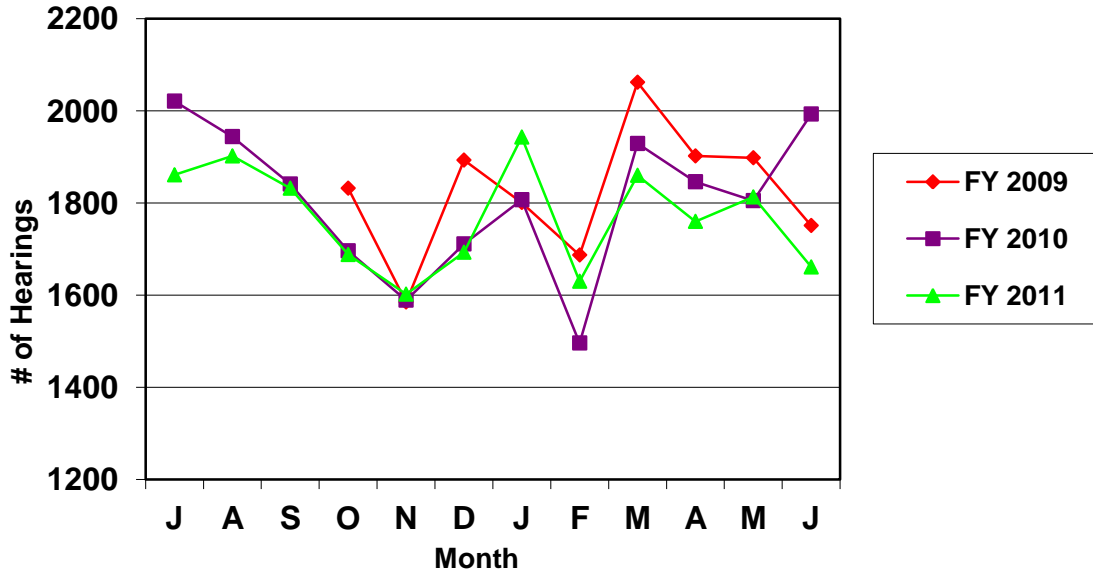
⁶ The number of recommitment hearings in FY11 was determined using a paycode that special justices designate for recommitment hearings. This may not be the most reliable way to determine a recommitment hearing, but it is the best method that was available to us given the data constraints. We are working 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.

⁷ The number of initial hearings conducted (that is, excluding recommitments) is somewhat higher (about 9%) than the estimated number of executed TDOs based on the values 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.

⁸ This analysis excludes commitment hearings involving recommitment hearings. These are analyzed separately.

the same months (October through June) in FY09 and FY10. This trend continued in FY11, with an average decrease in initial hearings of 1.6% from FY10. A closer look at the FY11 initial hearing data reveals a striking decline in the last four months of FY11, an average decrease of 6.1% from the same months in FY10.

Figure 4: Frequency of Initial Commitment Hearings, FY09-FY11 (CMS)

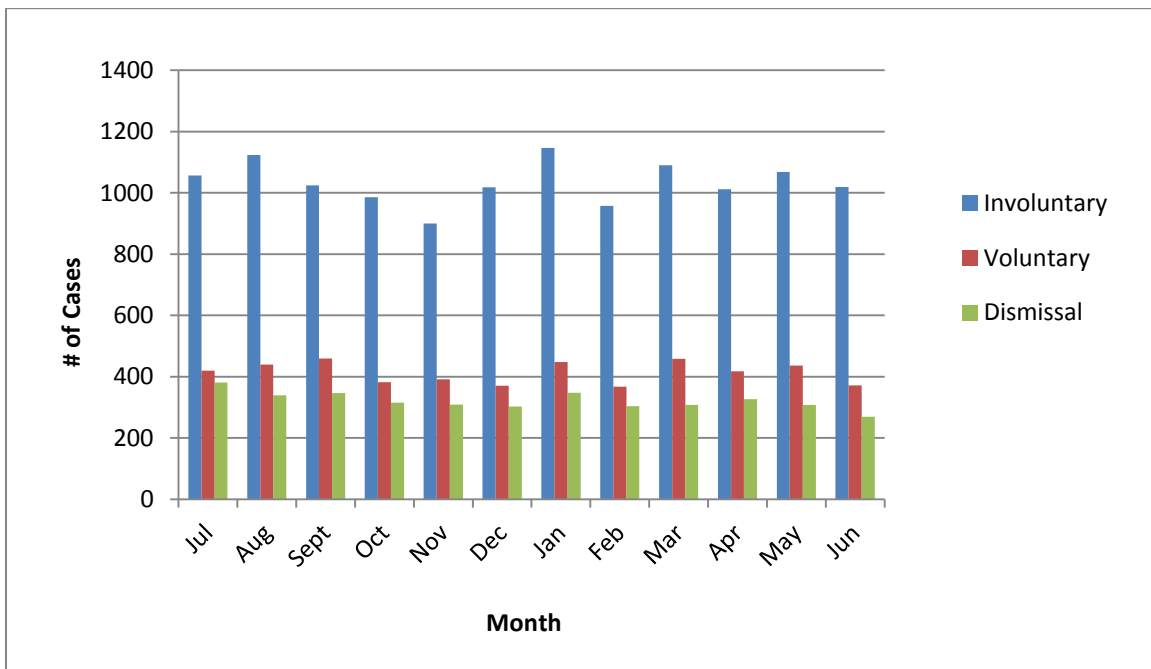


The CMS data system also provides information on the dispositions of initial hearings held in FY11. We have reasonable confidence in this data from the CMS system because of the stability of the data from month to month. As shown in Table 6, during FY11, about 58% of the hearings resulted in involuntary admission, about 23% resulted in voluntary admission and about 18.5% of the cases were dismissed. Only a handful of the total cases (about 0.1%) resulted in mandatory outpatient treatment (MOT) orders. (See Figure 4). Compared to the data from FY10, the rates of voluntary and involuntary hospitalizations were slightly higher, and the rates of MOTs and dismissals were slightly lower in FY11.

Table 6: Frequencies of Dispositions at Initial Civil Commitment Hearings in FY11 (CMS)

	Involuntary		Voluntary		MOT		Dismissals		Total
	N	%	N	%	N	%	N	%	
July	1,057	56.80	420	22.57	3	0.16	381	20.47	1,861
August	1,123	59.04	440	23.13	0	0.00	339	17.82	1,902
September	1,024	55.90	459	25.05	2	0.11	347	18.94	1,832
FQ Total	3,204	57.27	1,319	23.57	5	0.09	1,067	19.07	5,595
October	985	58.35	382	22.63	6	0.36	315	18.66	1,688
November	900	56.18	392	24.47	1	0.06	309	19.29	1,602
December	1,018	60.13	371	21.91	1	0.06	303	17.90	1,693
SQ Total	2,903	58.26	1,145	22.98	8	0.16	927	18.60	4,983
January	1,146	58.98	448	23.06	1	0.05	348	17.91	1,943
February	957	58.71	368	22.58	1	0.06	304	18.65	1,630
March	1,090	58.60	458	24.62	4	0.22	308	16.56	1,860
TQ Total	3,193	58.77	1,274	23.45	6	0.11	960	17.67	5,433
April	1,012	57.50	418	23.75	3	0.17	327	18.58	1,760
May	1,068	58.91	436	24.05	1	0.06	308	16.99	1,813
June	1,019	61.35	372	22.40	1	0.06	269	16.20	1,661
FQ Total	3,099	59.21	1,226	23.42	5	0.10	904	17.27	5,234
FY11 Total	12,399	58.36	4,964	23.37	24	0.11	3,858	18.16	21,245

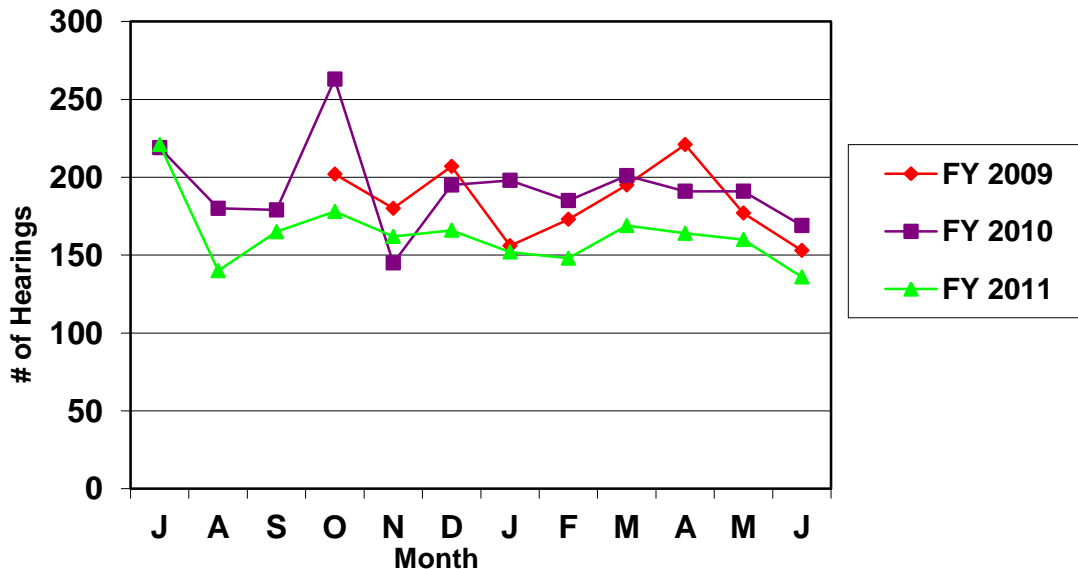
Figure 5: Frequencies of Dispositions at Initial Commitment Hearings in FY11 (CMS)



Recommitments

Figure 6 displays the numbers of recommitment hearings during FY11. The number of recommitment hearings appears to have declined significantly in FY11. Almost all recommitment hearings resulted in continued hospitalization (98.8%), and a very large majority of cases were involuntary hospitalizations (96.5%).

Figure 6: Frequency of Recommitment Hearings, FY09-FY11 (CMS)



Mandatory Outpatient Treatment

The total number of MOT cases decreased drastically (from 87 to 29) in FY11, and it is clear that both CSBs and judges continue to be hesitant to invoke the new MOT procedures. The rate of MOTs has now dropped to 0.1%, continuing a downward trend (See Figure 7). The Commission's Hearing Report on District Variations shows that only 5 districts had more than one MOT case in the entire fiscal year, with almost one third occurring in a single district.⁹

A new "step-down" MOT procedure went into effect in FY11 (See Table 7). Under these orders, the MOT procedures are used at the time of discharge. In FY11 there were 36 "step-down" MOT orders, 33 of which occurred in a single district (Staunton).

⁹ Possible explanations for the low rate of MOT orders are presented in the Commission report, "Use of Mandatory Outpatient Treatment in Virginia," posted at http://www.courts.state.va.us/programs/cmh/2011_01_mot_report.pdf.

Figure 7: MOT Trends (Initial and Recommitment), FY09-FY11 (CMS)

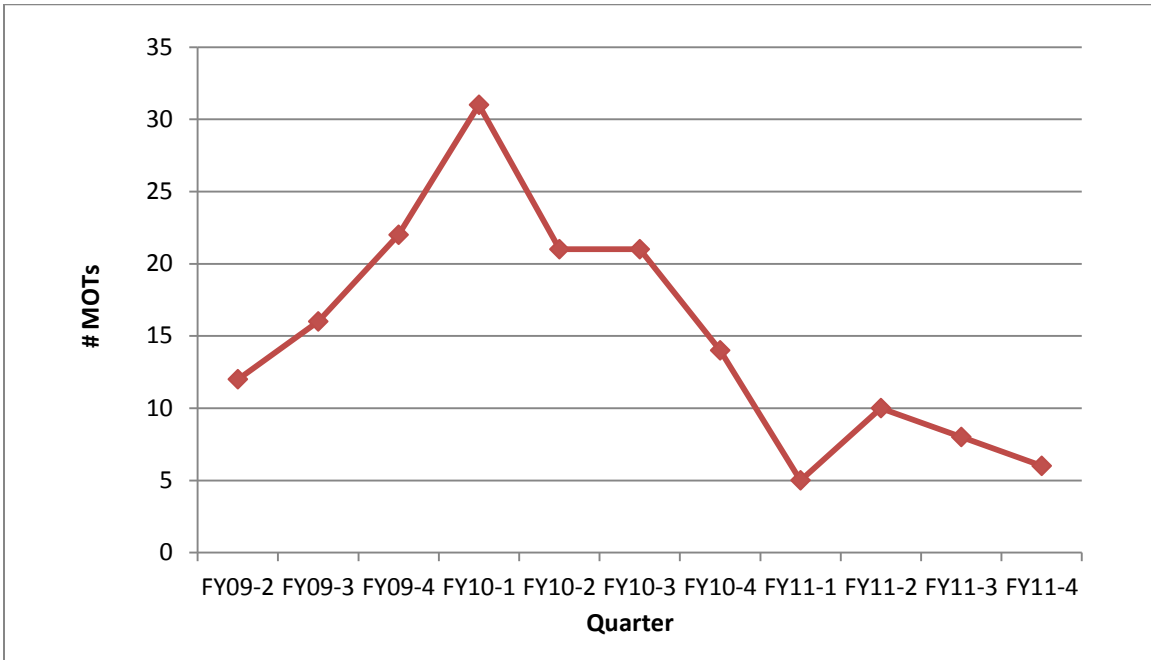


Table 7: District MOT Counts, Regular and Step-Down, FY11 (CMS)

District	Regular MOT		
	Initial	Recommitment	Total
Augusta	2	1	3
Fairfax County	4	0	4
Gloucester	1	0	1
Prince William	3	0	3
Roanoke County	1	0	1
Russell	1	0	1
Smyth	2	0	2
Charlottesville	1	0	1
Danville	0	1	1
Lynchburg	1	0	1
Salem	1	0	1
Staunton	6	3	9
Williamsburg	1	0	1
Total	24	5	29
District	Step-Down MOT		
	Initial	Recommitment	Total
Lynchburg	3	0	3
Staunton	3	30	33
Total	6	30	36

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 8). In fact, the two data systems continue to grow closer each 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 8: Frequency of Involuntary Commitment Orders (Inpatient or Outpatient): State Police and CMS (Initial and Recommittment)

	# of Involuntary Commitment Orders (Inpatient or Outpatient)	
	State Police	CMS
July	1,098	1,278
August	1,159	1,257
September	1,031	1,187
1st Quarter Total	3,288	3,722
October	1,065	1,164
November	943	1,058
December	1,037	1,183
2nd Quarter Total	3,045	3,405
January	1,124	1,292
February	978	1,099
March	1,110	1,260
3rd Quarter Total	3,212	3,651
April	1,055	1,172
May	1,127	1,224
June	1,075	1,147
4th Quarter Total	3,257	3,543
FY11 Total	12,802	14,321

Involuntary Commitment Orders

As illustrated in Figure 8 and Figure 9, the numbers of involuntary commitment orders at initial hearings have changed very little over the past three years. The average decrease in involuntary commitment orders at initial hearings between FY10 and FY11 is less than 0.5%.

Figure 8: Frequency of Involuntary Commitment Orders (Inpatient Only), FY09-FY11 (CMS) (Initial Only)

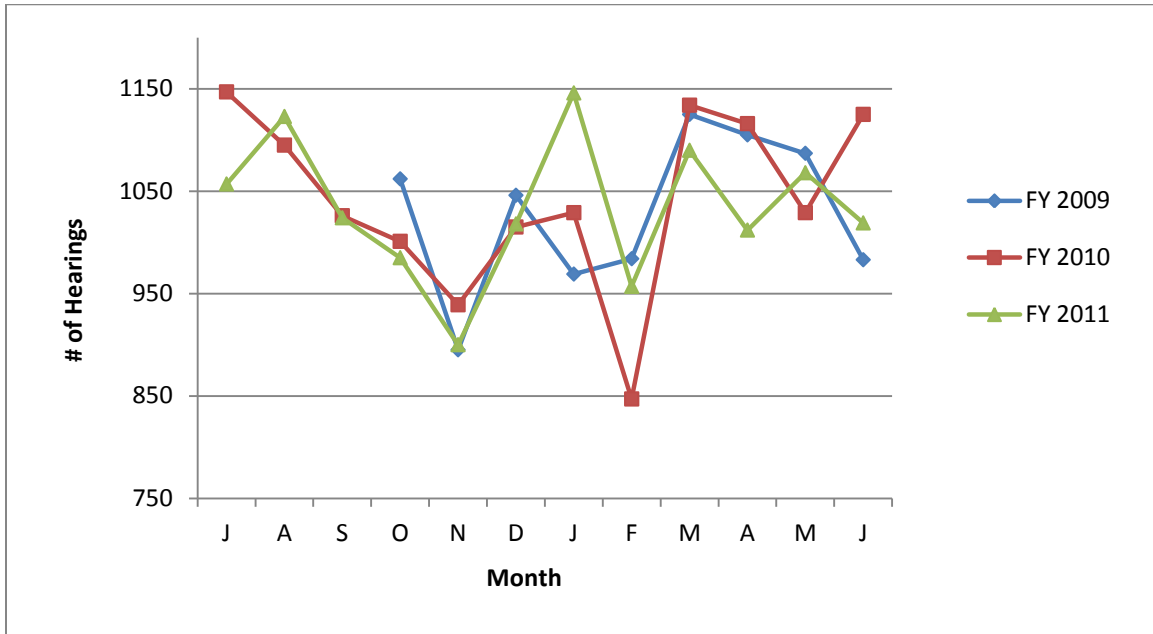


Figure 9: Involuntary Commitment Order Trends (Inpatient Only), FY09-FY11 (CMS) (Initial Only)

