

W15 – Health, science and environmental writing

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Daily Press

**2019 body of work**

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**When patients with dementia become combative, there's often nowhere to go but a state psych ward**

<https://www.dailypress.com/virginia/dp-nws-tdo-dementia-0818-story.html>

Cindy Piccirilli was out of options.

The Chesapeake assisted living facility where her spouse, 57-year-old Catherine Wright, had been living for nearly three months could no longer handle her violent outbursts and aggressive demeanor.

Wright, whose cognition had been steadily declining since she was diagnosed with early-onset Alzheimer's disease five years earlier, periodically had what Piccirilli called violent, random episodes — she would hit other residents and staff, and push and throw furniture around.

The former Virginia Beach public school teacher was younger than most residents in the memory care unit, and more able-bodied. It often took four staff members to bathe her.

When Wright became aggressive, staff at the assisted living facility, Commonwealth Senior Living at Georgian Manor, said Wright needed to go to a psychiatric facility, where her medications would be adjusted to deal with her dementia symptoms.

So one day in March 2018 after Wright had a particularly difficult weekend, Piccirilli finally agreed, hoping someone at a psych facility would figure out what was triggering the aggressive behavior and find a way to calm Wright down.

Piccirilli didn't realize it would end with her wife — who she described as usually calm and mild mannered — strapped to a gurney with her wrists chained to her ankles, screaming and crying, "You're hurting me!" as law-enforcement officers wheeled her out of a hospital emergency room and into a medical transport vehicle that would take her to a state psychiatric hospital 70 miles away, where she would develop a bowel infection and never walk again.

Health officials and experts agree this never should've happened. They acknowledge a state psychiatric hospital like Eastern State in Williamsburg wasn't the appropriate place for people like Wright, who become combative as a result of their dementia.

But a state law allows Wright and countless others living with dementia to be placed into involuntary hospitalization if they are in a psychiatric crisis and are deemed a threat to themselves or others.

Called a temporary detention order, or TDO, it's normally reserved for mentally ill individuals, but it's being used on people like Wright because there simply isn't anywhere else for them to go in Virginia for treatment.

### **How it happens**

There are a few factors that contribute to people like Wright ending up in state psychiatric hospitals, said John Oliver, who worked in the Chesapeake city attorney's office for 31 years and now represents people held under involuntary commitments.

First, there's an increasing number of people with behavioral and mental health issues who need medical attention, and a growing number of people with dementia.

According to the Alzheimer's Association, by 2025, more than 190,000 Virginians who are at least 65 years old will have some form of Alzheimer's.

And an estimated 200,000 people already have early-onset Alzheimer's, which can often affect people who are younger than 65.

Second, there's a limited number of facilities that are set up to manage the challenges of dementia, including the aggressive behavior, which can happen when a patient has a medical issue — like a urinary tract infection — but can't articulate it.

There aren't a lot of options for private inpatient hospitalization or crisis stabilization services close to home.

Third, there's a staffing shortfall. It's hard to retain people to work in those environments for low pay, and hard to find people properly trained to handle aggressive patients, Oliver said.

"When you reach that kind of situation, the state psychiatric hospitals are the backstop and they end up with these patients, ready or not," he said.

Ready or not, because state psychiatric hospitals aren't equipped to treat complex physical illnesses — they often lack oxygen tanks or supplies for ulcers — and don't have enough beds to treat everyone coming through the doors.

Virginia's "bed of last resort" law — passed in 2014 following the suicide of State Sen. Creigh Deeds' son after a psychiatric bed wasn't available for him — says the state psychiatric hospitals have to admit patients in a mental health crisis if no private facility will take them.

Since that law was implemented, state hospital TDO admissions have risen by 294%, and many of the hospitals are at or near capacity.

Private hospitals aren't required to admit those patients, and many of their beds are taken by an increasing number of people voluntarily committing themselves for psychiatric treatment.

State hospitals were traditionally designed for mentally ill patients who were having trouble getting their illness under control and were typically admitted for longer. But now, many of the TDO patients stay less than a week, according to the Department of Behavioral Health and Developmental Services.

Dr. Daniel Herr, the department's deputy commissioner for facility services, estimates 38% to 40% of people admitted to state psychiatric hospitals under a TDO require specialized care beyond mental health treatment.

### **Finding a place**

Rick Jackson, a member of the state's Alzheimer's Disease and Related Disorder Commission, said there's been a debate happening for years in Virginia around the best place for someone with dementia whose behavior puts themselves or others at risk.

"We as a society have been struggling with this for decades," said Jackson, who's the executive director of the Riverside Center for Excellence in Aging and Lifelong Health.

Some, he said, argue the state should be responsible for their care. Others say that task should be handled by community-based for-profit and nonprofit facilities like nursing homes and assisted living facilities with memory care units.

But assisted living facilities have to balance caring for those with behavioral issues with protecting their other clients, Jackson said.

Often, like in Wright's case, the combative patients are sent to the emergency room, where doctors can try to treat the short-term issue causing the behavior — if they can identify it.

If they can't, and the assisted living facility is reluctant to take them back, the only other option is usually a state psychiatric hospital, Jackson said.

Wright moved into the memory care unit at Georgian Manor on Jan. 9, 2018, and over the next 10 weeks, staff struggled to bathe and feed her.

"Very combative when we changed her. It took four staffs to change her," read one entry in Wright's medical chart, a copy of which Piccirilli provided to the Daily Press. "She really fights. All four staff helped together to changed (sic) her," another entry states.

In the 10 weeks she lived at Georgian Manor, staff recorded at least 11 instances in which Wright was labeled as "combative" or attacking staff members who tried to change her. Piccirilli said she noticed bruises on Wright's arms from where she suspected staff members gripped her to bathe her.

She also didn't eat much, Piccirilli said. Even though she was paying for three meals a day, she mostly ate chocolate nutritional drinks. By the end of her stay, Piccirilli said Wright had lost 30 pounds.

On that March day, she was originally sent to Chesapeake Regional Medical Center for medical clearance before being voluntarily admitted — through Piccirilli's medical power of attorney — to The Pavilion at Williamsburg Place, a private inpatient psychiatric facility.

Nearly 18 hours into their stay at Chesapeake Regional, with the medical evaluation done, the Pavilion said it could no longer accept Wright as a patient.

Mike Post, Pavilion's CEO, would not discuss Wright's case but said there are several reasons why the facility would turn someone away. It could be full; it could lack the resources to treat a medically complex patient, like someone who has cancer or needs dialysis; or the patient doesn't fit the population the Pavilion serves — for example, it doesn't admit children under 18.

In Wright's case, her medical records show she wasn't admitted because there appeared to be something wrong with her EKG.

So, like so many others in her situation, her next stop was Eastern State Hospital on a TDO.

### **About TDOs**

TDOs, signed by a magistrate, involuntarily commit people experiencing a mental health crisis who might harm themselves or others to a hospital for up to 72 hours. After that, a judge can order further treatment if it's still needed.

More than 25,500 TDOs were issued in fiscal 2018 according to the state behavioral health department. The region that includes Hampton Roads had the second-highest number after Southwest Virginia.

That day in the ER was the first time Piccirilli — herself a retired Navy neurosurgeon — had ever heard the term temporary detention order.

She didn't know it involved a social worker calling around to different hospitals to see if they could admit her wife. She didn't understand why, after the eight-hour limit to find a bed mandated by state law, the only option was Eastern State Hospital, a place she'd been told by Chesapeake Regional staff to avoid if possible.

Piccirilli wasn't told a TDO meant armed officers would show up and take her wife to Eastern State in handcuffs, even though she said Wright was medicated and calm at that point.

And she didn't understand why her medical power of attorney — which she and Wright had obtained before Wright's cognitive decline — was powerless to stop it.

Patients under a TDO are usually taken to the psych facility in a police car, though a new state alternative transportation program is trying to make that less common. Wright couldn't get out of bed, so a medical transport vehicle was called, and Piccirilli followed it and a police car up Interstate 64 to Williamsburg in the middle of the night.

"Catherine was a frightened child, being arrested and chained," Piccirilli said.

## **Rethinking the rules**

Similar ordeals are happening more frequently in Virginia, Herr said in a phone interview.

In fiscal 2013, 16 people with a primary diagnosis of dementia were admitted to the state's psychiatric hospitals under a TDO, according to the state behavioral health department. By this year, that number had risen to 115.

The state code section around TDOs doesn't have any exceptions for people with dementia who are experiencing behavioral changes because of underlying medical issues.

In Wright's case, that issue was extreme constipation. At Chesapeake Regional, a test showed no medicine in her system, despite what had been prescribed to her at Georgian Manor.

And a week into her stay at Eastern State, she developed bed sores and a fever and was taken to Sentara Williamsburg Regional Medical Center, where doctors discovered a bowel infection.

But the state code is clear — if a person is in a crisis and is deemed a threat to themselves or others, the only place for them is at a psychiatric hospital. And often that means handcuffs and a police car.

Someone with a chronic condition like dementia needs different treatment than a person in the midst of a psychiatric crisis. But in the eyes of the law, Herr said, they both meet the definition of someone who should be temporarily detained.

Larry Fitch, a professor of mental health law at the University of Maryland law school, studies involuntary commitment proceedings and said situations like Wright's happen all over the country.

He said some states have found ways to prevent people with dementia from being involuntarily committed.

In Wisconsin, the state Supreme Court ruled in 2012 that someone suffering exclusively from Alzheimer's disease couldn't be subject to Wisconsin's version of a TDO. Instead, they are appointed a guardian ad litem, who can place them somewhere other than a psychiatric facility.

In Kansas, the state Department of Aging and Disability Services and the Alzheimer's Association partnered to create the Kansas Dementia Bridge Project, which provides crisis support to dementia patients and tries to avoid hospitalization at all costs. Coordinators work with families to provide direct support, counseling, and advocacy in crisis situations at home, the hospital, at the doctor's office or during transitions to facilities.

Researchers found the Bridge Project significantly reduced patient anxiety, depression, resistance to care, impulsive behavior, verbal outbursts and wandering. Patients also were hospitalized less frequently, and people living at home were able to hold off on being placed in nursing homes.

In Virginia, a state-mandated work group consisting of mental health advocates, the private hospital system, law enforcement and state health officials wants to tackle one part of the temporary detention

order cycle: reducing the number of people admitted involuntarily to the state's psychiatric hospitals, as Wright was.

Members are considering extending the eight-hour window Community Services Board workers have to evaluate the patient and find them a bed in a psychiatric facility. That could be key, because finding a facility that's also equipped to address the patient's physical issues often takes longer.

And if the time window is extended, a follow-up assessment could lead to a CSB worker deciding a TDO isn't necessary and placing them in a more appropriate setting, like a geropsychiatric facility.

The problem remains, however, that more appropriate settings are pretty slim, Herr said.

"Virginia doesn't have that in any consistent kind of way," he said.

### **Working for change**

Piccirilli still can't believe Wright's experience under a TDO was legal.

"The state treated her worse than a dog, and like a common criminal, because she has dementia," she said. "It was immoral, it was medically inappropriate — they hurt her — and it was so inhumane."

After safely returning Wright home — she didn't want to bring her back to Georgian Manor — and hiring 24-hour help, Piccirilli finally had some time to think.

She wrote a letter to Commonwealth Senior Living, and the state department that regulates assisted living facilities. The department sent an inspector to investigate the claims, and found instances where medications weren't being administered according to physician's instructions, according to the Department of Social Services inspection report.

The inspector also found the facility "failed to ensure" that it not admit or retain clients "presenting an imminent physical threat or danger to self or others."

Bernie Cavis, who oversees residence programs at five Commonwealth Senior Living facilities in Hampton Roads including Georgian Manor, said the facility thoroughly assesses each potential new resident to determine their needs and appropriate level of care.

But sometimes, especially if the resident becomes violent, her staff doesn't have the capacity to restrain them and aren't able to safely calm them down, so hospitalization is inevitable.

"It's a process we avoid at all costs," she said.

Piccirilli drafted a letter to Gov. Ralph Northam — a pediatric neurologist — but never sent it. She read it over it once, and realized it was filled with raw emotion.

She spoke with a former Virginian-Pilot reporter who wrote about a case similar to Wright's four years ago.

She commiserated with another caregiver who wrote about her experience losing her husband to early-onset Alzheimer's.

More than a year later, she's still grappling with who to hold accountable, and what to tell her elected representatives. She wants to write to members of Virginia's congressional delegation and Deeds, the state senator whose son died.

"I don't know why the legislature keeps lumping dementia with psychiatric illness," she said.

She wants to see staffing standards put in place at assisted living facilities. She wants to see a facility that can give individualized care to people living with dementia, with physicians available to detect and treat underlying symptoms that cause aggressive behavior.

Six years into being officially diagnosed, Wright needs less intensive care as her condition has worsened. She sleeps more, and when the aides aren't there, Piccirilli sits with her, occasionally listening to the Carpenters.

Piccirilli often thinks about what Wright would've wanted if she'd hadn't gotten sick. She regrets taking Wright out of their home in Great Bridge, but the one positive outcome of the TDO ordeal was that Wright got to come home.

Now, Piccirilli's goal is to ensure her spouse has a dignified, peaceful death at home.

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### **Jail, ER, psych ward: How one Virginia inmate got caught in the criminal justice cycle**

<https://www.dailypress.com/news/crime/vp-nw-justin-evans-jail-eastern-state-20190904-t4xm4zfdqbgbnkhchyseoba7u-story.html>

An \$850 check.

That's what's been holding Justin Marshall Evans, 37, in jail for 10 months without a trial.

In that time, he's been to the emergency room at least six times.

He's had multiple surgeries to remove inanimate objects he's swallowed and two more operations to stitch cuts he's had when he's tried to kill himself.

He's cycled between an isolated cell at Hampton Roads Regional Jail, emergency rooms and the state psychiatric hospital so many times that it's been hard for his grandmother, Marianne Sherman — or me, as the reporter looking into his case — to keep track of where he is.

Since May, the longest he's stayed in any of those places is about 20 days — not long enough, in his grandmother and experts' opinions, to get meaningful treatment.

His medical expenses — which are expected to be ultimately paid for by state taxpayers — far exceed the \$850 forged check he's since paid his aunt back for. Just in the past year, Sherman has received nearly \$100,000 in medical bills in Evans' name, though she hasn't paid them.

And that's just the latest case.

Evans has spent most of his adult life incarcerated, either in jail or at a state psychiatric hospital. He's usually awaiting trial while physicians, prosecutors and Evans himself debate his competency, or he's recovering from surgery after attempting to commit suicide.

He's been diagnosed with bipolar disorder, post-traumatic stress disorder, borderline personality disorder and ADHD. He says he suffers from flashbacks and terrors, and has suicidal thoughts, prompting him to cut himself or ingest things, especially when he's stressed or uncomfortable.

The Daily Press first wrote about Evans in 2015, in the middle of a York County court case that had dragged on for more than five years.

At the time, doctors and prosecutors struggled to determine Evans' place in society, marking him either as a con man playing the system, or a mentally ill individual.

Four years later, Evans is still stuck in the cycle, shuffling between jail and hospital, healthy and sick, competent and incompetent, on doctors' and judges' orders.

While extreme, his case highlights a broader problem. More than 700 local and regional jail inmates were committed to state psychiatric hospitals for emergency services in fiscal 2018, a state report found. And another study found almost 20 percent of inmates were mentally ill or suspected to be so. Nearly three-quarters were in jail on non-violent charges.

The total cost of treating those people: around \$23 million.

Evans' experience has led him to harbor a deep distrust of the criminal justice and behavioral health systems. He's convinced that anyone who works for the state of Virginia is working against him, so he's chosen to represent himself on the latest charges keeping him in jail — a move not recommended by most practicing lawyers and judges.

That distrust has made him defiant, his unwillingness to accept help and his inconsistencies accessing treatment keeping him trapped.

One doctor, a clinical forensic psychologist named Jeffrey Aaron, put it in these terms when he evaluated Evans in January: "In brief, no evaluator has opined that Mr. Evans had deficits in his capacity to understand — or his actual understanding — of the nature of the charges he faced or the legal process itself," he wrote.

"Rather, there has been a difference of opinion about whether his actions, often disruptive to the legal process, are best understood as volitional or the product of a mental illness that is beyond his control."



## **'Perfect storm'**

Evans was kicked out of nursery school for "impulsivity," said his grandmother, who is 65.

He never finished the seventh grade. By his early teenage years, he'd been in two juvenile detention centers.

A product of alcohol and drug abuse from his biological parents, Evans went to live with Sherman and her late husband Leon when he was 18 months old.

Evans was the "perfect storm," Sherman said, following in his parents' footsteps and becoming an addict.

At 18, he was charged with robbery and cocaine possession. When he got out of prison seven years later, he went to live with Sherman in York County.

Three months later, worried about his safety after finding a gun in her home, Sherman called the community services board, who offered to send sheriff's deputies by to check on Evans. Deputies from the York-Poquoson Sheriff's Office found Evans outside Sherman's home with a .38-caliber revolver, eight bullets and 5.2 grams of cocaine.

Thus began his six-year stint in the criminal justice system.

At the heart of the delay was whether Evans was competent to stand trial. Court records show at least a dozen psychological evaluations between 2010 and 2016, with results zig-zagging between competent and incompetent. In turn, prosecutors and Evans' court-appointed attorneys took turns disputing psychologists' conclusions.

Several doctors said Evans was competent but unwilling to stand trial and would do anything — punch walls, swallow the pins used to help his fractured hand heal, ingest objects and cut himself — to delay prosecution. He was labeled "uncommunicative" and "agitated" by evaluators.

Prosecutors accused him of malingering, delaying the case by any means necessary and faking a mental illness to stall sentencing.

Public defenders cycled in and out of Evans' case, staying on long enough to ask for a continuance or two — sometimes without Evans present — before withdrawing, either at Evans' request or on their own accord.

During his time awaiting trial at the Virginia Peninsula Regional Jail, Evans was often placed in restraints. Then-superintendent John Kuplinksi said it was to prevent Evans from harming himself, but Evans called it torture and abuse, filing a lawsuit against Kuplinksi and other jail officials in May 2015 that's still pending.

Since then, he's filed another lawsuit against the jail and a slew of new staff members, including Kuplinksi's successor Tony Pham. Pham did not respond to multiple requests for comment.

## **Inconsistent treatment**

When someone with a mental health issue commits a crime, it's often hard to know if the two are related, said Rhonda Thissen, the executive director of the National Alliance of Mental Illness Virginia.

"If someone has multiple mental illnesses and is committing crimes that are potentially caused by their symptoms, but they don't get consistent treatment because they go in and out of facilities that don't give him the treatment he needs, how do we hold him accountable?" she said in a phone interview.

During Evans' stays at Eastern State, he said he's been given medication for both his mental illness and his self-sustained injuries, although not consistently. But when he's transferred back to jail, those medications don't necessarily follow him.

"In a perfect world, the medical records would follow that person," said Jerry Fitz, the corrections operations administrator for the state Department of Corrections, which isn't involved in Evans' current care.

In reality, that varies from jail to jail, Fitz said. Facility medical directors have the final say in which medications are prescribed to inmates, and their opinion might not match an outside doctor's. Some jails simply don't provide certain medications.

At HRRJ, which houses the region's sickest inmates, each inmate who returns from a hospital stay goes through the jail's medical department, according to Assistant Superintendent Christopher Walz.

Lawsuits filed by inmates' families and an investigation by the U.S. Justice Department show inmates missed doctor's appointments and the jail failed to provide adequate medical and mental healthcare.

At least 22 people have died while in the jail's custody since 2015.

Thissen said being in jail can be extremely triggering for someone like Evans, and solitary confinement — which he's often placed in to keep from hurting himself — exacerbates the symptoms of mental illness.

But if he's not cooperating with doctors and doesn't want to be helped, there's not much the system can do, she said.

"At some point, unless he's willing to do the work necessary to definitely say, yes, he has a mental illness that causes him to do the things he's been doing, it's kind of like he hasn't availed himself of the protections the system has put in place for people in his situation," Thissen said.

## **Where is Justin Evans?**

It's been nearly impossible to track Evans down over the past three months.

He's moved so frequently, and with little warning, that there were days Sherman and I had no idea where he was.

The jail could only confirm if he was in their “custody” — but that’s a legal term and told me nothing about where he was physically. The hospitals couldn’t tell me anything, not even whether he’d been admitted. And Eastern State sent me to the state behavioral health spokeswoman.

Periodically, I would check in with Sherman.

“Any word from him?” I’d text.

“Not a word from anyone...” she wrote one day in August. “I just don’t know what else to do but wait???” The responses were usually similar.

I’d schedule an interview at the jail, only to find out he’d been taken to the hospital the day we were supposed to meet.

I’d show up at Eastern State during visitation hours, and get a call from Sherman, who said sheriff’s deputies had tried to take him back to HRRJ, so he “swallowed a bunch of stuff” — various objects he got from the nurse’s station.

When Sherman’s texts started with “So Justin is back at HRRJ...” we knew it wouldn’t be long before he’d be back in the hospital, or worse.

She could do little but think positive: “...hopefully he will not harm himself again,” she texted one day in late July.

Occasionally, Sherman aired her frustrations in texts.

“He is in a horrible state of despair...he feels hated and tortured...” she said in early August. At that time, Evans had just returned to Eastern State after once again swallowing something at the jail and needing emergency surgery.

“They could have just committed him to a REAL program and tried to address and help his mental illness but they have chosen to deny and neglect and punish him instead...for hurting himself???? I swear, I just don’t get it...” Sherman continued.

No one at the state — in the Department of Behavioral Health and Developmental Services, Eastern State Hospital or the Department of Corrections — would comment specifically on Evans’ case.

The behavioral health department said that would be a violation of the federal health-privacy law, and the corrections department cited a state law barring it from releasing records about — or commenting on — inmates who are on active probation or parole.

The behavioral health department also denied The Virginian-Pilot’s request to photograph Evans at Eastern State, saying it had “serious concerns about this individual’s capacity to make an informed decision,” although Evans had been found competent to stand trial a few days earlier.

The department also said allowing a photo could pose a safety risk or set back Evans’ care.

The Hampton-Newport News Community Services Board also declined to comment specifically on his case, as did the Hampton sheriff, who cared for Evans briefly at the city jail.

Maj. Angelanette Moore, security director at the Virginia Peninsula Regional Jail — where Evans was incarcerated on and off between 2009 and May — also declined to comment.

### **'It's like I'm in a nightmare'**

In the months Evans has spent drifting between hospitals and jails, he said he's lost weight, and he's not exercising.

He's barely had time to recover from one surgery before he's discharged back to jail, where he's put in solitary confinement and finds another way to hurt himself.

"The last three months have been hard on my body," Evans said during an Aug. 9 phone call from Eastern State.

Over the years, he's ingested paper clips, combs, batteries, pens, and pieces of metal, according to court records and Daily Press archives.

During the interview, he calmly explained he's suicidal.

"It's like I'm in a nightmare," he said.

One day in May, after a court date, he called his grandmother from the Hampton jail and told her, "I want you to know I still love you," she recalled. He also said he didn't know when he would speak with her again.

Then he swallowed a razor.

Now, on days Evans goes to court, Sherman gets so nervous she has stomach pains.

Before one late May court hearing, while Evans was still recovering from surgery to remove the razor, he called his grandmother to make sure she'd be there.

After 3½ hours of waiting, and with the courtroom cleared of other defendants, Evans shuffled in wearing orange flip-flops and handcuffs, a folder in one hand. He wore blue sweatpants and a grey sweater, a white shirttail poking out.

He immediately looked around for Sherman — whom he calls "mom" — his face brightening when he spotted her.

"I love you," he mouthed with a smile.

Judge Christopher Hutton denied his request for his case to be dismissed (Evans argued his right to a speedy trial has been violated) and denied him bond, siding with Assistant Commonwealth's Attorney

Lexy Fenlason, who reviewed his extensive record — robbery, abduction, drug possession, having a firearm, larceny — and called him a danger to himself and others and a flight risk.

The judge also dismissed Evans' plan of seeking outpatient treatment and a place to sleep at his grandmother's if he were released on bond.

But he also scrutinized Evans. He was impressed by the inmate's large vocabulary and surprised by his knowledge of the law.

"You're much more intelligent than the average defendant that stands over there," Hutton remarked.

Evans calmly explained that he suffered from three mental illnesses that are exacerbated the longer he spends behind bars.

"I don't do well in the jail," he said

### **Alternatives to jail**

Virginia began offering jail diversion programs for people with mental illnesses in 2007 — while Evans was serving time on robbery charges from Hampton.

Dr. Michael Schaefer, assistant commissioner of forensic services for the behavioral health department, said the state modeled its programs after the widely-used "Sequential Intercept Model," which looks for the right time to treat people before they end up in prison, but still hold them accountable for their crimes.

Police officers became trained in crisis intervention. Community services boards, which provide behavioral and mental health services to the poor and uninsured, received funding so they could give psychiatric care to inmates in jail — and help make plans for getting treatment after their release.

Magistrates, the court officials who set bond for people who've just been arrested, were given the power to send people for treatment at a hospital or outpatient facility instead of to jail.

And special "behavioral health dockets" popped up in courts around the state, aiming to address the underlying causes of defendants' crimes instead of merely punish them. People who stay in treatment and complete the program can have their charges dismissed. There are now 16 such dockets, Schaefer said, including in Chesapeake, Virginia Beach, Norfolk and Newport News.

The goal of these jail diversion tactics is to get people treatment and keep them out of jail — or at least reduce the amount of time they spend there.

In Hampton and Newport News, 224 people have been helped over the past five years, said Dean Barker, manager of forensic services at the community services board that serves the two cities. He said that has saved the cities around \$4 million based on what it would have cost to manage those people in jail.

There are limits: Anyone with a record of violence is typically ineligible.

“All of this is done with an eye on public safety,” Barker said in a phone interview.

In discussing Evans’ York County charges in 2015, Barker told the Daily Press that if Evans had been arrested in Newport News or Hampton, the community services board would have intervened through one of the jail diversion tactics.

When I brought that up to him in early September, Barker wouldn’t comment on Evans’ current Hampton charges. He said there are a lot of “exclusionary criteria” that must be considered for jail diversion, and it would depend on the defendant’s criminal history and the nature of the charges.

With robbery and gun charges on his record, Evans likely wouldn’t have qualified for a behavioral health docket when he landed back in jail for forgery in 2018.

And behavioral health dockets aren’t currently available in any of the places he’s been arrested over the years. Barker said Hampton is waiting for approval from the Supreme Court of Virginia to launch one there, hopefully before the end of the year.

Thissen, from NAMI Virginia, said Evans would be the ideal candidate for a behavioral health docket.

The state is aiming to do more to help mentally ill inmates. The General Assembly voted this year to develop standards for behavioral health services in local and regional jails. The state Board of Corrections also will have the power to do a yearly unannounced inspection of any jail.

Sparked by the 2015 death of Jamycheal Mitchell at the Hampton Roads Regional Jail — where Evans is currently held — House Bill 1942 also makes it easier for jails to obtain medical records for inmates too sick to give consent and requires them to plan how inmates with severe mental illness will get services upon release.

The standards won’t be finalized until July 2020, and more public comment will be taken first. But an advisory group’s recommendations include training jail guards on mental health issues, more review of inmates’ prescribed medications and requiring incoming inmates to be screened for mental health or substance abuse disorders.

Evans could be a candidate for a rarely used “mandatory outpatient treatment order,” said Anne Metz, an assistant professor of counselor education at the University of Lynchburg.

A 2008 state law allows a judge to release someone on bond and send them home with an order for up to 90 days of treatment, which includes regular check-ins with a CSB worker. Metz said that requires a patient to be willing to comply. And it’s not clear Evans would be.

But that idea — like any proposed reforms — must face a stark reality: There aren’t enough mental health services in Virginia, including psychiatrists and crisis stabilization centers. So even people who have a treatment plan when they get out of jail or a hospital often gets put on a waiting list for services, Barker said.

The General Assembly provided \$60 million to improve services to people with behavioral and mental health issues. Local community services boards are doing a better job of same-day health assessments, a recent state report found. But they're struggling to provide follow-up services within the goal of 10 days.

And, as Metz points out, the resources vary by locality.

"There isn't one criminal justice system, nor is there one public mental health system," she said in an email. "Depending upon what side of a county line you live, you can have radically different outcomes."

### **Competent but uncooperative**

Bruce Cruser, executive director of Mental Health America of Virginia, said Evans has been straddling the line between two state systems, much to his detriment, for years.

"He's in the criminal justice system; he's in the behavioral health system, but neither one is really prepared to fully meet this guy's needs," he said.

In an ideal world, whenever Evans is released, a judge would require him to attend some sort of specialized, intensive, inpatient mental health treatment and receive strict behavioral supervision, Cruser said.

And to stay out of jail, he'd have to comply with the judge's orders.

That, combined with any doctor-prescribed medication or therapy, means Evans could gradually transition back into a supportive community, Cruser said.

But Cruser doesn't know that such a facility — one that would meet all of Evans' needs — actually exists.

Sherman said if Evans is released, she wants him to go into a three or six-month inpatient treatment program "to help ground him again, to help with psychotherapy even, to help work out what that man has lived through," she said.

"They can't just open the jail doors and say, 'You're free to go,'" she added.

For her part, Sherman has reached out to the Virginia Beach chapter of NAMI and plans to go to their support group meetings for family members of people suffering from mental illness.

She also wants to go to Richmond in January to advocate on behalf of mentally ill inmates in front of the General Assembly.

Evans said when released, he wants to return to live with his grandmother in York County, get a job at Smithfield Packing Co. and get his certification to become a peer support specialist to work with recovering drug addicts. He wants to be able to exercise regularly and eat healthy.

"I have an addictive personality, but I have learned what to do to keep a rein on that," he said.

His jury trial for his forgery charges is scheduled for Oct. 23.

Before this article posted online, Evans had been moved again — unbeknownst to me or Sherman. On Friday, Evans called her to say he'd been admitted to Maryview hospital, then sent to a state mental hospital in Northern Virginia. It was unclear when he'd be moved again — or how long after that his grandmother would find out.

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**A mentally ill inmate spent nearly a year in jail and the psych ward over a bad check. Now he could serve more time.**

<https://www.dailypress.com/news/crime/dp-nw-justin-evans-guilty-20191025-hi33aor42fgj3hjfbrxbkkdka-story.html>

Justin Evans had been asking for a jury to hear his case for 11 months.

But when that time finally came on Wednesday, the 37-year-old raised objections. He'd been bouncing between an isolation cell at Hampton Roads Regional Jail and a bed at Eastern State Hospital since he was arrested on forgery charges in October 2018. How was he supposed to prepare a defense under those circumstances?

Evans, who has spent the past few years cycling between a state psychiatric hospital and jail awaiting trial, had insisted on representing himself after being accused of writing and cashing a check in his aunt's name without her permission.

The Daily Press chronicled Evans' latest odyssey in a September article and also wrote about him in 2015, when he had spent five years in jail on other charges.

Now, with the option of a resolution finally presented to him in the form of a jury trial in Hampton Circuit Court, he couldn't just ask for another continuance, even though he said he didn't feel prepared.

Having changed out of his red jumpsuit and into a suit jacket and light pink shirt, Evans stood up and told Judge William Shaw he wanted the jury to know how long he'd been locked up on these charges, with no chance to prepare.

Shaw said no.

After a half hour of deliberation, a 12-person jury found Evans guilty of forgery and obtaining money under false pretenses for cashing an \$805 check in his aunt's name. Jurors recommended a two-year prison sentence for each charge.

**Competency limbo**



Evans has spent most of his adult life incarcerated, either in jail or at a state psychiatric hospital. He's usually awaiting trial while physicians, prosecutors and Evans himself debate his competency, or he's recovering from surgery after attempting to commit suicide.

He's been diagnosed with bipolar disorder, post-traumatic stress disorder, borderline personality disorder and ADHD. He says he suffers from flashbacks and terrors and has suicidal thoughts, prompting him to cut himself or ingest things, especially when he's stressed or uncomfortable.

Prosecutors accused him of malingering, delaying the case by any means necessary and faking a mental illness to stall.

Since the September article, Evans has had a few more stints at Eastern State, where he's placed on treatment and then discharged back to Hampton Roads Regional Jail and placed in isolation, according to his grandmother, Marianne Sherman.

Evans' experience in the criminal justice system has led him to harbor a deep distrust of anyone who works for the state of Virginia. He's refused help from appointed lawyers and argued his own case on Wednesday — a move not recommended by most practicing lawyers and judges.

"I think he really hurt himself by not having a lawyer," Sherman said Wednesday night.

Evans told the jury he got his aunt, Billie Epperly, to sign the \$805 check when she was drunk, but later paid her back. Epperly repeatedly asked the Hampton commonwealth's attorney to drop the charges, according to Sherman and Evans.

"He's my nephew. I love him and he's family," Epperly said on the stand.

Evans was able to get another bad check charge dismissed halfway through the trial. There was no documentation of a second check for \$1,050 Evans was accused of trying and failing to cash.

"I'm not trying to stand here before you and say I did nothing wrong," Evans told the jury. "I stole from my aunt."

Sherman, who has raised and supported Evans like a son for most of his life, said Assistant Commonwealth's Attorney Lexy Fenlason misrepresented him to the jury, painting him as a violent criminal as she reviewed his record.

In 2001, Evans was charged with robbery and cocaine possession. After serving a seven-year prison sentence, he was arrested in 2009 in the midst of a psychiatric crisis when police found him with a .38-caliber revolver, eight bullets and 5.2 grams of cocaine.

He spent six years awaiting trial on those charges and, once released, picked up a handful of misdemeanors and felonies, including the forged check charges.

Fenlason told the jury Evans was manipulating his aunt and taking advantage of her.

“He’s trying to make her feel like she did something wrong,” Fenlason said. She could not be reached for comment Thursday.

Evans will be formally sentenced Dec. 18.

“I think the outcome was fair” considering Evans represented himself, Sherman said. “Justin wanted to represent himself, and he wanted to have a jury. And he got to do both of those things.”