

## A Review of Tennessee Code Annotated – Title 33



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Office of Crisis Services and Suicide Prevention

Content guided by Title 33, Chapter 6, Parts 1 & 4  
and TDMH Rule 0940-3-8

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## Crisis Response Service

A team designated by the Commissioner to provide crisis intervention, pre-screening, and diversion services in a defined service area.

MPS Rule Chapter 0940-3-8-.03(3)

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## Goals of the Crisis System

- Promote the safety and emotional stability of individuals with mental illness or emotional crises
- Minimize further deterioration of individuals with mental illness or emotional crisis
- Assist individuals in developing and/or enhancing better coping skills and a natural support system
- Help individuals with mental illness or emotional crises obtain ongoing care and treatment
- Encourage services in the least restrictive setting that is clinically appropriate to meet the individual's needs

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## What is Mandatory Pre-screening?

A community-based screening process designed to:

- Provide alternatives to hospitalization
- Minimize length of confinement
- Promote speedy return to the community
- Maximize service recipient's ability to remain in a community setting

T.C.A. § 33-6-104

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## What is Community-Based Screening?

A process by which:

- need for treatment is determined,
- a person is evaluated to assess the availability of alternative services and supports, and
- services are provided in the most appropriate, least restrictive environment available.

MPS Rule Chapter 0940-3-8-.03(2)

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## What is Pre-screening?

A face-face evaluation, either by physical presence or televideo, of a service recipient to assess eligibility for emergency involuntary admission and to determine whether all available and appropriate less drastic alternative services and supports are unsuitable to meet his or her needs.

MPS Rule Chapter 0940-3-8-.03(7)

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## Who is Qualified to be a Mandatory Pre-screening Agent?

- Must be a qualified mental health professional (QMHP)
- Must be licensed to practice in TN
- All disciplines must satisfactorily complete TDMHSAS training on emergency commitment criteria and procedures

T.C.A. § 33-6-427

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## What is a QMHP?

- Psychiatrist
- Physician with expertise in psychiatry
- Psychologist with health service provider designation
- Licensed psychological examiner
- Licensed senior psychological examiner
- Licensed Physician's Assistant with a master's degree and expertise in psychiatry as determined by training, education or experience
- Licensed master's social worker with two years of mental health experience
- Licensed clinical social worker
- Licensed or certified marital and family therapist
- Licensed professional counselor
- Licensed nurse with a master's degree in nursing who functions as a psychiatric nurse

T.C.A. § 33-1-101 (20)

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## If Working with Children

The professional must have mental health experience with children if providing Mandatory Pre-screening services to service recipients who are children.



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## Who Designates MPAs?

### The Commissioner:



- Designates individuals to serve
- May set limits on an agent's authority
- May decline to designate a person who satisfies the requirements
- May remove designation without cause

T.C.A. § 33-6-104

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## Knowledge of Community Resources



Crisis responders must have access to current information about available community resources and referral procedures to access less restrictive alternatives to hospitalization. [This includes requirements imposed by third party payer sources.]

MPS Rule Chapter 0940-3-8.05(2)(7)

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## About the Process

A **Mandatory Pre-screening Agent (MPA)** must complete one of the two CONs for a person with mental illness or serious emotional disturbance to be admitted to a Regional Mental Health Institute (RMHI).

Private psychiatric hospitals/units may accept the authority of a MPA to complete CONs.

T.C.A. § 33-6-105

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### Detaining for a CON Examination

A person with mental illness, serious emotional disturbance or developmental disability has the *same rights as all other persons* except to the extent that the person's rights are curtailed in accordance with Title 33.

T.C.A. § 33-3-101(b)

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### Detaining for a CON Examination

**A person cannot be deprived of liberty on the grounds that the person is believed to have:**

- a mental illness,
- serious emotional disturbance,
- developmental disability, or
- is in need of service for such a condition

***except in accordance with Title 33.***

T.C.A. § 33-3-101

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### Detaining for a CON Examination

The person may be detained by an officer, physician, psychologist or a MPA to obtain examination for CON for care and treatment ***IF AND ONLY IF:***

T.C.A. § 33-6-402

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### Detaining for a CON Examination

- A person has mental illness or serious emotional disturbance **AND**
- The person poses an immediate substantial likelihood of serious harm under T.C.A. § 33-6-501 because of the mental illness or serious emotional disturbance **THEN**
- The person may be detained to obtain examination for CON for care and treatment

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### Mandatory Pre-screening Agent Not Available?

If a MPA is not available within two hours, then a licensed physician or a licensed psychologist with a health service provider designation may complete the CON.

The physician or psychologist must consult with a crisis team member regarding less restrictive alternatives.

T.C.A. § 33-6-105

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### Emergency Involuntary Admission

The person may be admitted and detained by a hospital or treatment resource for emergency diagnosis, evaluation, and treatment **IF AND ONLY IF:**

T.C.A. § 33-6-403

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### Criteria for Emergency Involuntary Admission

- Has mental illness or serious emotional disturbance,
- Poses an immediate substantial likelihood of serious harm because of the mental illness or serious emotional disturbance,
- Needs care, training, or treatment because of the mental illness or emotional disturbance, AND
- All available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person.

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### Substantial Likelihood of Serious Harm

- Threatened or attempted suicide or to inflict serious bodily harm on him/herself **OR**
- Threatened or attempted homicide or other violent behavior **OR**
- Has placed others in reasonable fear of violent behavior and serious physical harm to them **OR**
- Is unable to avoid severe impairment or injury from specific risks

T.C.A. § 33-6-501

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### Substantial Likelihood of Serious Harm Cont'd.

**AND**

- There is a substantial likelihood that such harm will occur unless the person is placed under involuntary treatment.

**THEN**

- The person poses a “substantial likelihood of serious harm.”

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## Definitions

### Mental illness:

A psychiatric disorder, alcohol dependence, or drug dependence, but does not include Intellectual Disability or other developmental disabilities.

T.C.A. § 33-1-101(18)

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## Definitions

“Drug dependence” means drug abuse that results in the development of tolerance or manifestations of drug abstinence syndrome upon cessation of use.

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## Definitions

### Serious Emotional Disturbance:

A condition in a child who currently or at any time during the past year has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet psychiatric diagnostic criteria, that results in functional impairment which substantially interferes with or limits the child’s role or functioning in family, school, or community activities and includes any mental disorder, regardless of whether it is of biological etiology.

T.C.A. § 33-1-101(22)

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### Requirement for CON by Disinterested Professional

- If a person is to be committed to a private facility, at least 1 of the CONs shall be from a professional who is not an employee of the private facility.
- Employment as a faculty member by a school of medicine at a university or college associated with a hospital is not considered employment by the hospital.

T.C.A. § 33-4-107

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### Is A Contracted Employee an Employee of the Facility?

An employee is someone who works full-time for his/her employer, is compensated on a time basis, and is subject to the supervision of the employer in the details of his work.

An employer has the right to control the manner and method in which an employee performs his/her job.

(cont...next slide)

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### Is A Contracted Employee an Employee of the Facility?

An independent contractor is someone who has a calling of his/her own, is hired to do a particular job, is paid a given amount for that job, and who follows his/her own discretion in carrying out the job.

Basically, if the certifying professionals referenced in 33-4-107 are paid on a time basis and subject to supervision and control by a boss at the private facility in question, they are employees of the facility.

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### Do CONs Expire?

- Title 33 is silent on the issue thus the TDMHSAS interpretation is that CONs DO NOT expire.
- As a matter of best practice, it is recommended that the person be reassessed to ensure this level of care is still required if more than 24 hours has passed since the initial CON was written.

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### Can A CON Be Rescinded?

- Title 33 is silent on the issue but it is the TDMHSAS interpretation that yes, CONs can be rescinded.
- The decision to rescind a CON shall always be based on a new face to face assessment.

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### Transportation of the Service Recipient

- May only begin transport after the CON is completed and a confirmation number is provided
- Sheriff or transportation agent will transport the service recipient to a hospital or treatment resource
- Sheriff may designate a secondary transportation agent(s) for the county

T.C.A. §33-6-406 T.C.A. §33-6-901

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### Transportation of the Service Recipient

- Comply with county protocol(s) for designated modes of transportation
- MPA must determine and document level of security required and mode of transportation needed

MPS Rule Chapter 0940-3-8.05(2)(7)

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### Transportation of the Service Recipient

If the MPA determines that the person does not require physical restraint or vehicle security, these people may transport at the transporter's expense:

- one or more friends
- neighbors
- mental health professionals familiar with the person
- relatives of the person
- member of the clergy



T.C.A. § 33-6-901

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### Confidentiality

**Except in compliance with Title 33**, all applications, reports, and legal documents that directly or indirectly identifies a service recipient or former service recipient shall be kept confidential.

T.C.A. § 33-3-103

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## Disclosure Without Consent

Information may be disclosed **without consent if:**

- Necessary to carry out duties under this title
- Necessary to assure service/care in least drastic means that are suitable to the service recipient's liberty and interests
- A service recipient moves from one service provider to another and exchange of information is necessary for continuity of service

T.C.A. § 33-3-105

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## Duty to Warn

**Two qualifications of a threat that require you to act under Duty to Warn:**

- Threat of bodily harm against a clearly identified victim
- Has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so

T.C.A. § 33-3-206

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## Duty to Warn

**Obligations may be discharged by a QMHP by:**

- Informing the identified victim of the threat **OR**
- Admitting the service recipient to a hospital on a voluntary basis **OR**
- Taking steps to seek involuntary commitment to a hospital **OR**
- Following your current professional standards to discharge the duty

T.C.A. § 33-3-207

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## DUTY TO WARN

Tenn. Code Ann. § 33-3-210 (2013)

**Reporting to local law enforcement by a qualified mental health professional or behavior analyst of an actual threat of serious bodily harm or death against an identifiable victim.**

(a) If a service recipient has communicated to a qualified mental health professional or behavior analyst an actual threat of serious bodily harm or death against a reasonably identifiable victim or victims, the qualified mental health professional or behavior analyst, using the reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's specialty under similar circumstances, who has determined or reasonably should have determined that the service recipient has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so, shall immediately report the service recipient to local law enforcement, who shall take appropriate action based upon the information reported.

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## Duty To Warn cont...

Tenn. Code Ann. § 33-3-210 (2013)

(b) If a mental health professional or behavior analyst is required to report pursuant to subsection (a), the professional or analyst shall report the following information:

- (1) Complete name and all aliases of the service recipient;
- (2) Name of the mental health professional or behavior analyst and name of private or state hospital or treatment resource from which the individual may be receiving services; and
- (3) Date of birth of the service recipient.

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## Duty To Warn cont...

Tenn. Code Ann. § 33-3-210 (2013)

(c) The information in subdivisions (b)(1)-(3), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

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### Assessment Prior to Bail Determination

Any officer who has reason to believe that a defendant under arrest may pose a substantial likelihood of serious harm to the defendant or to others may recommend an evaluation by a community mental health crisis response service to determine if the defendant meets criteria for emergency involuntary hospitalization.

T.C.A. §40-11-150(l)(1)(A)

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### Assessment Prior to Bail Determination

- This assessment shall be completed within 12 hours.
- Only MPAs affiliated with a community mental health crisis team can perform this assessment.
- This assessment does not determine eligibility for bail.

T.C.A. §40-11-150(l)(1)(A)(B)

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Questions?

Thank you for participating!

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