

Section 6:

Non-Compliance with Conditional Release

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Assessing Non-Compliance



The Nature and Causes of Non-Compliance

There is careful planning and scrutiny before the acquittee is placed on conditional release. As a result, the vast majority of acquittees do extremely well when discharged on conditional release and placed in the community.

There are exceptions, however, and some acquittees will struggle to follow their Conditional Release Plan. Anticipate there will be “ups” and “downs” with compliance. Some will do quite well initially, then become frustrated when their conditions are not modified in the timeframe they expected. Others will immediately experience difficulties upon release, with the new sense of freedom and return to the places, people, and habits that once got them into trouble.

The first year on conditional release may be the most critical in the conditional release process. In anticipation of potential unrealistic expectations on the acquittee's part, it may be helpful to tell them the average amount of time other acquittees spend on conditional release, the factors that the CSB will use in considering modifications/reductions to the conditions, and be honest with them about the areas that you are not likely to budge.

The NGRI Coordinator needs to keep a close eye on newly released acquittees as well as those on conditional release for an extended period of time. The newly released may want to "test the waters" or may experience stressors and decompensate with the lack of structure previously provided in the hospital. The other group who have been on conditional release longer may also become frustrated or complacent about their treatment.

In other cases, non-compliance will result from the nature of the illness, not due to intentional behavior from the acquittee.

In each case the CSB will need to carefully examine the root cause of the non-compliance to determine appropriate steps to get the acquittee back on track.

Assessing Non-Compliance

First, assess the seriousness of the non-compliance. Is there a potential for harm to the acquittee or others? Is there a potential for re-incarceration? Is the individual receptive to the CSB's interventions? Is the non-compliance related to the symptoms of their mental illness? Or is the non-compliance a result of general non-compliance, including substance use?

By virtue of their mental illness, the acquittee may need inpatient hospitalization or crisis stabilization from time to time. This may be handled very differently than with an acquittee who willfully violates their conditions.

Based upon the CSB's experience with the acquittee and the results of the CSB's risk assessment, there are several options for dealing with the non-compliance.

Always consider the least restrictive alternative . . . Could they benefit from short term crisis stabilization, detox, or temporarily increasing support services and office/home visits? Could they benefit from PACT team services? Are medication adjustments necessary?

Hospitalization is another option – an acquittee can be admitted voluntarily to a community hospital and return to conditional release without formal revocation, and in fact an acquittee can be TDO'd to a community hospital and remain in the community on conditional release, if they are able to benefit from their time in the hospital and are still appropriate for conditional release. The court must always be notified of the hospitalization, but it does not mean they will be revoked to the state hospital starting from square one again.

If the non-compliance is more willful and deliberate, not from mental illness, should the CSB seek penal sanctions or reprimands from the court? The CSB will have to decide the best course of action based on clinical judgment and the likelihood of improvement from one course of action over another.

Legal Interventions for Non-Compliance



Addressing Non-Compliance

In order to determine what to do, the CSB must first assess the type of non-compliance. Is the acquittee experiencing psychiatric difficulty or is the acquittee failing to comply with psychotropic medications? Is it an issue of substance abuse where the acquittee has submitted a positive drug screen? Is it other issues of non-compliance such as missed appointments, termination from specialized housing, or not signing releases? Identifying the type of non-compliance will assist the CSB in selecting the appropriate response.

The CSB must work with the acquittee and all of the treatment providers closely to try to address the issue sooner rather than later. The CSB should always attempt to resolve the issue using the least restrictive alternative, but should be aware of legal intervention if they become necessary.

Non-Legal Interventions

Voluntary hospitalization or civil TDO to a local (non-state) hospital:

Based on a risk assessment by the CSB, an acquittee can be admitted to a local psychiatric hospital as a voluntary admission, or even on a temporary detention order. Hospitalization does not automatically mean that the person will be formally revoked by the court. In some cases, the individual may get treated and return to the community quickly without the need for admission to the state hospital and formal revocation.

The CSB should notify the court of any signs of decompensation or non-compliance and should notify the court of any hospitalizations, even voluntary. In its letter to the court, the CSB should advise the court if they feel revocation is unnecessary and should update the court upon the individual's discharge to the community.

However, if the acquittee requires involuntary hospitalization and needs to be committed, the acquittee should be admitted to a state hospital and to the custody of the Commissioner and it should be considered a revocation, with the appropriate steps to seek formal revocation from the court.

Legal Interventions for Non-Compliance - Code Sections § 19.2-182.11 Modification of Conditional Release Orders/Plans

§§ 19.2-182.8, 19.2-182.9 Revocation of Conditional Release

§ 19.2-182.7 Contempt of Court

Modification of the Conditional Release Plan § 19.2-182.11

Modification of the CRP has been reviewed to some extent earlier in the manual in the context of when the acquittee has improved and the CSB recommends to the court that certain conditions be reduced or removed thereby giving the acquittee more freedom and more responsibility. Conversely, use of this Code section can be employed when the acquittee is non-compliant.

EXAMPLE: The acquittee who is abusing substances or failing other conditions of release may need more conditions added. These might include additions such as SA residential treatment programs, increased AA/NA meetings, or more frequent urine drug screens.

EXAMPLE: An acquittee who was evicted from their apartment for failing to clean, leading to insect infestation and threats of eviction. This could require a change in level of residential care, such as a new apartment with the requirement that the individual agree to in-home skill building services or even PACT services if available.

There is a condition at the end of the CRP template that states “I agree to additional special conditions that may be deemed necessary by the supervising CSB in the future.” This essentially allows the CSB to add services to the plan based upon their assessment of the situation.

The NGRI coordinator should modify the written plan, attach a letter describing the noncompliance and the changes made to the plan, and request court approval of those changes. The CSB has the flexibility given the language of the plan to add services and interventions based on their assessment, however the court should always be notified of the non-compliance and reasons for the adjustment and formal requests for modifications to the plan should always be made in writing.

**Revocation of
Conditional
Release**

§§ 19.2-182.8, 19.2-182.9

There are two types of revocations that can occur by Code: "non-emergency" and "emergency" revocations. Revocations (regardless of type), mean return to inpatient hospitalization at the state hospital.

In all cases where the NGRI Coordinator is considering the need for revocation, it is recommended that they or the case manager discuss the situation with the DBHDS Office of Forensic Services.

If necessary, the Office of Forensic Services will contact the Forensic Coordinator at the hospital, who may provide clinical guidance if needed and who can alert the hospital admissions staff of the potential admission.

Once the acquittee is revoked, the NGRI Coordinator should ensure that the hospital receives all relevant information about the reasons for the revocation and establish ongoing communication with the facility's treatment team.

Reasons for revocation of conditional release must always include the need for inpatient psychiatric hospitalization. If the individual does not need inpatient hospitalization, the CSB and the court have different options available.

Revocation is not considered a failure; it is an appropriate use of a tool to prevent bad consequences from happening to the acquittee or to others, i.e., re-offending, etc.

**Regular
(Non-
Emergency)
Revocation
of
Conditional
Release**

§ 19.2-182.8

This is used in non-emergency situations, however this is rarely used. The "regular" or "non emergency" revocation process continues at a slower pace than the emergency revocation process. Utilization of the "regular" or "non-emergency" revocation process is extremely rare but can be useful under certain circumstances. An example might include an individual demonstrating a resurgence of low-risk factors, but is noncompliant with many of the conditions of the CRP and likely to experience decompensation if not addressed.

CSB must petition the court for the revocation by issuing a letter to the court (a format for a petition for revocation is included in Appendix E). This letter should reference the revocation Code section and outline the rationale for the request in detail. Typically, this letter also requests a court date to hear the matter.

The court will appoint an independent evaluator, who will be a psychologist or psychiatrist who is qualified by training or experience to perform forensic evaluations.

After the evaluation is completed, the Judge will determine if revocation is warranted. The criteria for revocation is that the acquittee:

- a. Has violated the conditions of release, or is no longer a proper subject for conditional release based on application of the conditional release criteria, **and**
- b. Is mentally ill or intellectually disabled and requires inpatient hospitalization.

**Emergency
Revocation of
Conditional
Release**

§ 19.2-182.9

This Code section was developed to respond to emergency situations, or for situations when the NGRI judge may not be available to hold an expedited revocation hearing. The process mimics the civil ECO and TDO process but the criteria are different for insanity acquittees.

The revocation criteria is purposefully less restrictive than the civil commitment criteria, to allow for individuals on conditional release to be returned to the hospital as soon as possible, before any potential future violations of their release can occur and to prevent harm to the individual or the community.

There are many examples when emergency revocation is an appropriate alternative and consequence. This option is appropriate when the acquittee's non-compliance is due to mental illness and they require immediate hospitalization to address the issue to prevent re-offending, harm to the acquittee or others, or absconding. Another example of appropriate emergency revocation may include an escalating pattern of non-compliance due to mental illness (such as missed psychiatrist and case management appointments, being terminated from approved residential services, refusal to participate in 30-40 weekly hours of structured activities, etc.), when this pattern has historically led to significant decompensation.

The reasons for emergency revocation are the same as the "regular" or "non-emergency revocation" criteria. The acquittee:

a. Has violated the conditions of his release or is no longer a proper subject for conditional release, **and**

b. Is mentally ill or intellectually disabled and requires inpatient hospitalization.

Typically this process would begin with an ECO and an evaluation by the CSB's Emergency Services staff. The NGRI Coordinator should be involved throughout the entire process, communicating with the case manager and the Emergency Services staff. The NGRI Coordinator may have to provide education to Emergency Services about the revocation criteria and the differences between revocation and the civil ECO/TDO criteria. The Code simply states "requires inpatient hospitalization" and does not reference the civil TDO criteria of substantial likelihood of dangerousness to self or others.

Any Judge as defined in §37.1-1 or a Magistrate may issue a Temporary Detention Order authorizing the executing officer to place the acquittee in an appropriate institution. Again, the NGRI Coordinator may have to point out the section of the TDO that the Magistrate or Judge should be using. There is a special section for revocation that is separate from the civil TDO criteria on the form (see Appendix I).

***Emergency
Revocation
(Cont'd)***

The acquittee can be TDO'd to a state facility or a private local facility for a period not to exceed 72 hours. Following the TDO period, the acquittee is entitled to a hearing to determine whether he/she will be revoked.

The committing court or any General District court Judge or Special Justice (defined in § 37.1-1) can hear the matter. This means that the acquittee can go before the Special Justice holding commitment hearings, or he/she can return before the Judge of jurisdiction. Because this is difficult to schedule on short notice, often acquittees go before the Special Justice at the scheduled commitment hearing.

Before the hearing the acquittee will be examined by a psychiatrist or a clinical psychologist to certify whether the acquittee needs hospitalization.

The court shall revoke the acquittee's conditional release if the revocation criteria is met. Again, the civil commitment criteria does not apply.

Throughout this process, the NGRI Coordinator should notify the Defense Attorney, Commonwealth's Attorney and the Judge of the need for revocation and process followed to secure revocation.

In cases of revocation, the acquittee will always transfer to a state operated psychiatric facility following the hearing. The acquittee usually returns to the civil hospital from which they were discharged.

***Next Steps &
The Impact of
Revocation on
the Acquittee***

Revocation is a very serious step and can have very serious implications for the acquittee. It should only be used after other, less restrictive options have been explored.

Return to the state hospital does not guarantee a long term hospitalization but it might. If not appropriate to resume conditional release within 60 days, they will start the graduated release process all over again.

The CSB and the facility treatment team will develop a recommendation regarding continued hospitalization or resuming conditional release. Given the short time frame, the joint recommendation will be submitted to the FRP by the hospital within 21 days of revocation.

If the recommendation from the team and FRP is to resume conditional release, the Conditional Release Plan should be updated. The acquittee will go before the NGRI Judge and the Judge will have to approve Conditional Release and issue a new order.

If the recommendation is to continue hospitalization, the NGRI judge will likely issue a new revocation/commitment order for continued inpatient hospitalization.

Again, if the acquittee is not ready to resume conditional release within that very short window, they will be committed to the custody of the Commissioner and begin the privileging process from the beginning. This might result in another lengthy hospitalization.

The Code of Virginia allows the court of jurisdiction to find an acquittee in contempt of court as a result of the acquittee's violation of the Conditional Release Plan if they do not need inpatient hospitalization.

This Code section was expressly written for the acquittee who has violated their CRP but does NOT need inpatient hospitalization. In these situations, therapeutic interventions may not be the most appropriate action and the acquittee needs to be held accountable for the violation of the court-ordered CRP.

The CSB may request that the court find the acquittee in contempt of court for failure to follow their court-ordered CRP. If the Judge finds the acquittee in contempt of court, consequences could include a warning, paying a fine or even some jail time.

Reasons for contempt of court recommendations to the court could include a series of positive drug tests, leaving the state without permission, or new criminal activity.

Going to the hospital is not always effective. In some cases inappropriate hospitalization can be counter-therapeutic (such as attention-seekers or antisocial individuals). The CSB should use their clinical judgement, as well as consultation with the Forensic Services staff at DBHDS if necessary to determine the most appropriate course of action.

The Role of the CSB in Managing Non-Compliance

The CSB and the Revocation Process

The CSB NGRI Coordinator should be involved from the moment revocation is considered. The NGRI Coordinator should take the lead on the revocation process, including:

- a. Providing guidance to Emergency Services staff on applying the revocation criteria and requesting a TDO.
- b. Providing guidance to Magistrates and Special Justices as to the use of revocation criteria in issuing the TDO or revocation order.
- c. Reaching out to the state hospital admissions office and Forensic Coordinator immediately to prepare for admission and seek consultation on the process if needed. If the TDO bed is at a community hospital, after the revocation order is signed at the hearing, they will need to be transferred to the state facility. Giving the state facility a heads up at the time of the Emergency Services assessment or at the hearing will help ensure that process goes smoothly.
- d. Notifying the Office of Forensic Services of the revocation.
- d. Attending the revocation hearing to ensure that a revocation order is signed and that the individual is revoked back to the custody of the Commissioner.
- e. Communicate with the original court of jurisdiction to inform them of the revocation. This includes the Judge, the Commonwealth's Attorney, and the Defense Attorney.

The CSB and the Contempt of Court Process

First, it is important to do a thorough assessment of the acquittee's non-compliance and potential interventions. If the decision is made that the acquittee does not need inpatient hospitalization, but that the non-compliance warrants court intervention for a contempt of court option, then the NGRI Coordinator should initiate steps to request this option.

This will include writing a letter to the court outlining the nature of the violations and the rationale for the request.

It may be necessary to educate the court about the distinction between meeting revocation criteria and contempt of court criteria (willful violations of the CRP that are not going to respond to hospitalization).

Be clear with the court what the CSB would like to see happen.

Hopefully the CSB has communicated all previous violations and non-compliance to the court. CSBs must react to violations of the CRP immediately by informing the court as soon as they have occurred. In the notification, the CSB can request a formal hearing to address the CSB's concerns and discuss sanctions.

Building Relationships and Communication

As with all matters concerning acquittees on conditional release, COMMUNICATION is the key.

Decisions regarding non-compliance involve making informed judgment calls and the CSB is not alone. Utilize the resources available.

Often when thinking about the "team" we think about the team of CSB staff and other community providers who work with the acquittee. The CSB also needs think of the Commonwealth's Attorney and the Defense Attorney as part of the team. The NGRI Coordinator and in some cases the case manager should introduce themselves to the Commonwealth's Attorney and the Defense Attorney and enlist their help in resolving compliance issues. Both were participants in the conditional release process and want the acquittee to be safely managed in the community.

Most importantly, don't forget to utilize the DBHDS Forensic Services Office. They have the "advantage" of information about all acquittees on conditional release statewide and can provide assistance with what has and has not worked in other communities around the state.

The Office of Forensic Services at DBHDS can help the CSB determine if it is necessary to include the hospital Forensic Coordinator in the conversation. Even though they will not be directly involved with the acquittee in the community, in many cases Forensic Coordinator has worked with the NGRI acquittee for a number of years and has seen them in good times and bad. They can let you know what medications or strategies worked (or didn't) in the past. They can also be helpful in identifying signs of decompensation or relapse in its earliest stages.
