

Competency to Stand Trial &
Sanity at the Time of the
Offense

§19.2-169.1

§19.2-169.5

Model Court Order

Using This Form

1. Copies
 - a. Original – to court.
 - b. First copy – to evaluator(s) or hospital.
 - c. Second copy – to defendant’s lawyer.
 - d. Third copy – to Commonwealth’s Attorney.
2. Prepared by clerk, signed by judge.
3. Attachments
 - a. DC-354, CUSTODIAL TRANSPORTATION ORDER.
 - b. DC-4003, ORDER FOR TREATMENT OF INMATE (if entered).
4. Preparation details

Both types of evaluation may be ordered at the same time on this form.

ORDER FOR PSYCHOLOGICAL EVALUATION

Commonwealth of Virginia Va. Code §§ 19.2-168, 19.2-168.1, 19.2-169.1, 19.2-169.5

Case No. 1

2
COURT NAME AND ADDRESS

Commonwealth of Virginia v. 3

TYPE OF EVALUATION AND REPORT

- 4 **COMPETENCY EVALUATION:** It appearing to the Court, on motion of
 - 5 Commonwealth's Attorney defendant's attorney the Court
 and upon hearing evidence or representations of counsel, that there is probable cause to believe that the defendant lacks substantial capacity to understand the proceedings against him or to assist in his own defense, the Court therefore appoints the evaluator(s) listed below to evaluate the defendant and to submit a report, on or before the date shown below, to this Court, the Commonwealth's Attorney and the defendant's attorney, concerning: (1) the defendant's capacity to understand the proceedings against him; (2) his ability to assist his attorney; and (3) his need for treatment in the event that he is found to be incompetent but restorable, or incompetent for the foreseeable future. No statement of the defendant relating to the time period of the alleged offense shall be included in the report.
- 6 **SANITY AT THE TIME OF THE OFFENSE:** It appearing to the Court, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's sanity may be a significant factor in his defense and that the defendant is financially unable to pay for expert assistance, the Court therefore appoints the evaluator(s) listed below to evaluate the defendant's sanity at the time of the offense and, where appropriate, to assist in the development of an insanity defense. They shall prepare and submit a full report, on or before the date shown below, solely to the defendant's attorney, concerning the defendant's sanity at the time of the offense, including whether he may have had a significant mental disease or defect which rendered him insane at the time of the offense. If further evaluation on this issue is necessary, the evaluator(s) shall so state.
- 7 The motion for the evaluation having been made by the Commonwealth after receiving notice pursuant to Virginia Code § 19.2-168, the Court also orders the defendant to submit to an evaluation and has advised the defendant that a refusal to cooperate with the Commonwealth's evaluator(s) could result in the exclusion of defendant's expert evidence. The Court further orders the evaluator(s) to submit to the attorneys for the Commonwealth and defendant copies of the report and the records obtained during the evaluation.

DESIGNATION OF EVALUATOR(S)

The Court finds and concludes that:

- 8 the evaluation shall be performed on an outpatient basis at a mental health facility or in jail, as indicated below.
- 9 as outpatient services are unavailable, the evaluation of competency shall be performed on an inpatient basis, as indicated below.
- 10 the evaluation shall be conducted on an inpatient basis at a hospital designated by the Commissioner of the Department of Behavioral Health and Developmental Services because:
 - no outpatient services are available
 - 10 the results of outpatient evaluation (copy attached) indicate that hospitalization for further evaluation is necessary
 - a court of competent jurisdiction has found, pursuant to Virginia Code §§ 19.2-169.6 or 37.2-814, that the defendant requires emergency treatment on an inpatient basis at this time.

The Court therefore appoints the following evaluator(s) to conduct the evaluation:

11
EVALUATOR(S): NAME(S) AND TITLE(S) OR NAME OF FACILITY

qualified staff at a hospital to be designated by the Commissioner of the Department of Behavioral Health and Developmental Services or his designee. Hospitalization for evaluation shall not extend beyond 30 days from the date of admission.

DUE DATE AND TIME: 12

The Court further orders that the Commonwealth's Attorney and the defendant's attorney forward appropriate background information to the evaluator(s) as required by law.

TO EVALUATORS AND ATTORNEYS: See reverse for additional instructions.

13
DATE

14
JUDGE

Data Elements

1. Court case number.
2. Court name and address.
3. Name of defendant.
4. Check this box if competency evaluation is being ordered.
5. Check the appropriate box.
6. Check this box if sanity evaluation is being ordered on representations of defense counsel.
7. Check this box if sanity evaluation is requested by Commonwealth's Attorney.
8. Check this box if the evaluation is to be performed on an outpatient basis.
9. Check this box if the competency evaluation is to be performed on an inpatient basis because outpatient services are unavailable. This box applies to competency evaluation *only*.
10. Check this box if the sanity or insanity evaluation is to be performed on an inpatient basis and check the appropriate box to indicate underlying reason. These boxes apply to sanity and insanity evaluations only.
11. Check the appropriate box and, if applicable, identify evaluator(s) by inserting the evaluator's name and title or the evaluator's facility.
12. Date and time that evaluation reports must be received by court.
13. Date of entry of order.
14. Signature of judge.

ADDITIONAL INSTRUCTIONS TO EVALUATOR(S) AND ATTORNEYS

Providing Background Information

1. **Competency Evaluation:** Prior to an evaluation of competency pursuant to Va. Code § 19.2-169.1, the Commonwealth's Attorney must forward to the evaluator(s) within 96 hours of the issuance of this order:
 - a. a copy of the warrant;
 - b. the names and addresses of the Commonwealth's Attorney, the defendant's attorney, and the judge ordering the evaluation;
 - c. information about the alleged crime; and
 - d. a summary of the reasons for the evaluation request.

The defendant's attorney must provide any available psychiatric records and other information that are deemed relevant within 96 hours of the issuance of this order. Va. Code § 19.2-169.1(C).

2. **Sanity at the Time of the Offense:** Prior to an evaluation of sanity at the time of the offense, the party making the motion for the evaluation must forward to the evaluator(s):
 - a. a copy of the warrant;
 - b. the names and addresses of the Commonwealth's Attorney, the defendant's attorney, and the judge ordering the evaluation;
 - c. information about the alleged crime, including statements by the defendant made to the police and transcripts of preliminary hearings, if any;
 - d. a summary of the reasons for the evaluation request;
 - e. any available psychiatric, psychological, medical or social records that are deemed relevant; and
 - f. a copy of defendant's criminal record, to the extent reasonably available.Va. Code § 19.2-169.5(C).

Use of Information Obtained During Evaluation

No statement of disclosure by the defendant concerning the alleged offense made during the evaluation may be used against the defendant at the trial as evidence, or as a basis for such evidence, except on the issue of his/her mental condition at the time of the offense after the defendant raises the issue pursuant to § 19.2-168 of the Code of Virginia. Va. Code § 19.2-169.7.

Restoration of Competency to
Stand Trial

§19.2-169.2

Model Court Order

Using This Form

1. Copies
 - a. Original – to court.
 - b. First copy – to entity named in Data Element No. 5.
 - c. Second copy – to defendant’s lawyer.
 - d. Third copy – to Commonwealth’s Attorney.
2. Prepared by clerk, signed by judge.
3. Attachments – district court form DC-354, CUSTODIAL TRANSPORTATION ORDER
4. Preparation details – none.

**ORDER FOR TREATMENT OF
INCOMPETENT DEFENDANT**

Commonwealth of Virginia VA. CODE §§ 19.2-169.2, 19.2-169.3

Case No. 1

2

COURT NAME AND ADDRESS

Commonwealth of Virginia v. 3

The Court having found, pursuant to Virginia Code § 19.2-169.1(E), that the Defendant is incompetent to stand trial, and having found further, based on the attached report or other evidence, that the Defendant can be treated to restore his or her competency

4 on an outpatient basis in jail or through a local mental health facility

5 solely on an inpatient basis in a hospital

the Court therefore ORDERS

NAME OF OUTPATIENT THERAPIST OR FACILITY

6 qualified staff at a hospital to be designated by the Commissioner of Behavioral Health and Developmental Services or his or her designee

to treat the Defendant in an effort to restore him to competency.

If, at any time after treatment commences, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court concerning (1) the defendant's capacity to understand the proceedings against him and (2) the defendant's ability to assist his attorney.

If, at any time after treatment commences, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating and indicating whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent.

7 *Defendant charged with a misdemeanor crime enumerated in Virginia Code § 19.2-169.3(C).* If the defendant has not been restored to competency after forty-five (45) days from the date of commencement of treatment, the director of the community services board or behavioral health authority, or the director of the treating inpatient facility, or any of their designees, shall send a report indicating the defendant's status to the court. The report shall also indicate whether the defendant should be released or committed pursuant to § 37.2-817 or certified pursuant to § 37.2-806.

If the defendant has not been restored to competency by six (6) months from the date of the commencement of treatment, the board, authority, or inpatient facility director or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to Virginia Code § 37.2-806 in the event he is found to be unrestorably incompetent.

8

DATE

9

JUDGE

WARNING TO DEFENDANT: PURSUANT TO § 18.2-308.1:3, YOU SHALL NOT PURCHASE, POSSESS, OR TRANSPORT A FIREARM UNLESS AND UNTIL YOU ARE RELEASED FROM TREATMENT AND OBTAIN A COURT ORDER RESTORING YOUR RIGHT TO DO SO.

Data Elements

1. Court case number.
2. Court name and address.
3. Name of accused.
4. Type of treatment location suitable for defendant to receive treatment. Check this box if the defendant can be treated on an outpatient basis.
5. Type of treatment location suitable for defendant to receive treatment. Check this box if the defendant cannot be treated on an outpatient basis.
6. Check the appropriate box indicating order and, if applicable, name the therapy provider, to show specific therapy provider.
7. Check this box if the defendant was charged with a misdemeanor crime enumerated in Virginia Code § 19.2-169.3(C).
8. Date of entry of order.
9. Signature of judge.

Unrestorably Incompetent to
Stand Trial – But in Need of
Continued Hospitalization

§19.2-169.3

Model Court Order

VIRGINIA

IN THE CIRCUIT COURT
OF

Commonwealth of Virginia,

Plaintiff,

Vs.

Defendant

Case #:

**Finding of Unrestorable Incompetency & Order for Civil Commitment Pursuant to
§ 37.2-814 – 37.2-819**

This day came the Attorney for the Commonwealth, _____,
and the Defendant, _____ who was present in court
throughout the proceedings and was represented by counsel, _____.

Based upon the evaluation(s) of competency to stand trial submitted by
_____ (Hospital) and the arguments of counsel, the Court finds the
Defendant unrestorably incompetent to stand trial and likely to remain so for the
foreseeable future. It is hereby ADJUDGED, ORDERED, AND DECREED THAT:

1. The Defendant, pursuant to Virginia Code Section 19.2-169.3, is unrestorably incompetent to stand trial;
2. The Defendant shall be remanded to _____
(hospital) and _____ (hospital) is hereby ordered
to petition the _____ General District Court/ Special Justice for
an order of involuntary civil commitment for this Defendant pursuant to the
provisions of § 37.2-814 et seq.;
3. Any judge with competent jurisdiction under Title 37.2 may entertain a petition
for commitment or recommitment of this Defendant filed in accordance with §
37.2-814;
4. In accordance with § 19.2-169.3 (c), the charge(s) of _____
against this unrestorably incompetent Defendant is/are hereby Dismissed
Nolle Prossed

Enter this the _____ day of _____, 2012.

Judge

NGRI Finding & Order for
Temporary Custody Evaluation

§19.2-182.2

Model Court Order

Virginia:

In the General District Court or Circuit Court of _____

Commonwealth of Virginia

VS

_____ Case No.: _____

NOT GUILTY BY REASON OF INSANITY - INITIAL EVALUATIONS AND HEARING

The Defendant having been found not guilty by reason of insanity of the charge(s) of _____, it is hereby

ORDERED AND ADJUDGED that

1. The Acquittee, pursuant to Virginia Code Section 19.2-182.2, shall be placed in the temporary custody of the Commissioner of the Department of Behavioral Health and Developmental Services (DBHDS) for evaluation, in accordance with the provisions of that section, as to whether the Acquittee may be released with or without conditions or requires commitment.

2. The Clerk of the Court is directed to contact the Program Director for the Forensic Unit of Central State Hospital, or his designee, for an admission date and time. The Sheriff of _____ County, or his designee, shall transport the Acquittee to Central State Hospital---Forensic Unit on the agreed date and time, together with a copy of this Order and any other supporting legal and clinical documentation.

3. The evaluators' reports shall be sent to the Court on or before forty-five days after the Commissioner's assumption of custody. Copies of the reports shall be sent to the Acquittee's attorney, the attorney for the Commonwealth of the jurisdiction where the Acquittee was acquitted, and the community services board serving the locality where the Acquittee was acquitted.

4. This cause is scheduled for a hearing at _____ o'clock on the

_____ day of _____, 20__ to determine whether the Acquittee shall be released with or without conditions or requires commitment. The Acquittee shall have the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing.

5. Copies of this order shall be sent to the Acquittee, the counsel for the Acquittee, the attorney for the Commonwealth of the jurisdiction where the Acquittee was acquitted, the community services board serving the locality where the acquittee was acquitted, and the Commissioner of DBHDS.

6. In the event the Acquittee's presence is required at any hearing in this cause, the Court shall issue an Order to Transport, directing the Sheriff of _____ County, or his designee, to resume custody of and transport the Acquittee back to the jurisdiction of this Court.

7. This Court retains jurisdiction in this cause, and the Acquittee shall not be discharged or released from custody of the Commissioner without further Order of this Court.

ENTERED:

DATE

SIGNATURE OF JUDGE

NAME OF JUDGE

cc: Commonwealth's Attorney
Acquittee's Attorney
Community Services Board
Commissioner of DBHDS
Attn: Forensic Section
Division of Forensic Services
P.O. Box 1797
Richmond, VA 23218

NGRI Petition for Release

§19.2-182.5B

Model Court Order

Virginia:
In the General District Court or Circuit Court of _____
Commonwealth of Virginia
VS.

Case No: _____

**NOT GUILTY BY REASON OF INSANITY - ORDER FOR EVALUATION & HEARING DATE
UPON PETITION FOR RELEASE FROM INPATIENT HOSPITALIZATION
AT THE TIME OF ANNUAL CONTINUATION OF CONFINEMENT HEARING**

The Acquittee having been previously found not guilty by reason of insanity and committed to the custody of the Commissioner of the Department of Behavioral Health and Developmental Services, for inpatient hospitalization, and the Court having been petitioned for the Acquittee's conditional release by the Acquittee at the time of the annual review, pursuant to Virginia Code Section 19.2-182.5B, it is hereby ORDER AND ADJUDGED that:

1. Pursuant to Virginia Code Section 19.2-182.5B, the Commissioner shall arrange for the Acquittee to be evaluated by one person in the same manner as set forth in Virginia Code Section 19.2-182.2 to assess and report on the Acquittee's need for inpatient hospitalization by reviewing his/her condition with respect to the factors set forth in Virginia Code Sections 19.2-182.3 and 19.2-182.7.
2. The evaluation shall be completed and findings reported within forty-five days of the date of the Commissioner's receipt of this order. Copies of the report shall be sent to the Acquittee's attorney, the attorney for the Commonwealth of the jurisdiction where the Acquittee was acquitted, the community services board serving the locality where the Acquittee was acquitted, and the Commissioner of DBHDS.
3. A hearing shall be held in this court on the _____ day of _____, 20____, at _____ o'clock, to determine whether the Acquittee shall be released with or without conditions or requires continued inpatient hospitalization. The Acquittee shall have the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing.
4. Copies of this order shall be sent to the Acquittee, the counsel for the Acquittee, the attorney for the Commonwealth of the jurisdiction where the Acquittee was acquitted, the community services board where the Acquittee shall reside upon discharge, and the Commissioner of DBHDS.
5. In the event the Acquittee's presence is required at any hearing in this cause, the Court shall issue an Order to Transport, directing the Sheriff of _____ County, or his designee, to resume custody of and transport the Acquittee back to the jurisdiction of this Court.
6. This Court retains jurisdiction on this cause and the Acquittee shall not be discharged or released from custody of the Commissioner without further Order of this Court.

cc: Commonwealth's Attorney
 Acquittee's Attorney
 Community Services Board
 Commissioner of DBHDS
 Attn: Forensic Section
 P.O. Box 1797
 Richmond, Va. 23218
 Eastern State Hospital
 Attn: Forensic Coordinator
 Forensic Services, Bldg. 2
 4601 Ironbound Road
 Williamsburg, Va. 23188

ENTERED: _____
 DATE

 SIGNATURE OF JUDGE

 NAME OF JUDGE

NGRI Annual Recommitment

§19.2-182.3

Model Court Order

Virginia:
In the General District Court or Circuit Court of _____
Commonwealth of Virginia
VS.

Case No: _____

NOT GUILTY BY REASON OF INSANITY – RECOMMITMENT FOR INPATIENT HOSPITALIZATION

This day came the Attorney for the Commonwealth, _____. The Acquittee, _____, was present in the Court throughout the proceedings and was represented by Counsel, _____. Based upon the evaluation(s) submitted by _____, the testimony of _____, and the arguments of counsel, the Court finds that the Acquittee is mentally ill, or mentally retarded, and in need of hospitalization based on the factors in Virginia Code Section 19.2-182.3. Therefore, the Court ORDERS that the Acquittee be recommitted to the custody of the Commissioner of the Department of Behavioral Health and Developmental Services.

THE COURT FURTHER ORDERS THAT:

1. On _____, a hearing shall be held to review the Acquittee's need for inpatient hospitalization unless an earlier hearing is scheduled as provided by law.
2. Prior to the hearing, the Commissioner shall provide a report to the Court evaluating the Acquittee's condition and recommending treatment, as provided in Virginia Code Section **19.2-182.5**, together with a copy of this order.
3. Copies of the items described in (2) shall also be sent to the Attorney for the Commonwealth for the jurisdiction from which the Acquittee was committed and the Acquittee's Attorney.
4. The Clerk shall notify the Judge of the receipt of the reports so that issues regarding Acquittee's right to counsel may be timely addressed.
5. The Acquittee remains under the jurisdiction of this Court and shall not be released from custody and inpatient hospitalization without further Order of the Court.
6. This ORDER supersedes the prior ORDERS of this Court in this case.

ENTERED:

SIGNATURE OF JUDGE:

NAME OF JUDGE:

cc: Commonwealth's Attorney
Acquittee's Attorney
Community Services Board
Commissioner of DBHDS
Attn: Forensic Section
P.O. Box 1797
Richmond, Va. 23218

NGRI Conditional Release

§19.2-182.6

Model Court Order

NOT GUILTY BY REASON OF INSANITY - ORDER FOR CONDITIONAL RELEASE

Upon a petition submitted by the Forensic Review Panel, on behalf of the Commissioner of the Department of Behavioral Health and Developmental Services (DBHDS), pursuant to Virginia Code Section 19.2-182.6, this day came the Attorney for the Commonwealth, _____, and the Acquittee _____. The Acquittee was present in the Court throughout the proceedings and was represented by Counsel, _____. After review of the report of clinical findings and a conditional release plan prepared in accordance with Virginia Code Section 19.2-182.6, it is hereby ORDERED AND ADJUDGED that:

1. The Acquittee meets the criteria for conditional release as provided in Virginia Code Section 19.2-182.7.
2. The Acquittee shall be conditionally released pursuant to Virginia Code Section 19.2-182.7, subject to the following orders and conditions, which the Court deems will best meet the Acquittee's need for treatment and supervision, and best serve the interests of justice and society:
**[The conditional release plan jointly prepared by the hospital staff and the community services board, which is attached and is hereby incorporated by reference.]*
**[Other terms and conditions imposed by the court.]*
3. The community services board serving the locality in which the Acquittee will reside upon release shall implement the Court's conditional release orders, pursuant to Virginia Code Section 19.2-182.7, and shall submit written reports to the Court on the Acquittee's progress and adjustment in the community no less frequently than every six months from the date of this order.
4. Copies of this order shall be sent to the Acquittee, the counsel for the Acquittee, the attorney for the Commonwealth of the jurisdiction where the Acquittee was acquitted, the community services board implementing the conditional release plan, and the Commissioner of DBHDS.
5. The Court retains jurisdiction in this cause, and the Acquittee shall not be released from conditional release without further Order of this Court.

ENTERED: _____

SIGNATURE OF JUDGE

DATE: _____

cc: Commonwealth's Attorney
Acquittee's Attorney
Community Services Board
Commissioner of DBHDS
Attn: Forensic Section
Office of Behavioral Health
P.O. Box 1797
Richmond, VA 23218

NGRI Revocation of Conditional Release

§19.2-182.8

Model Court Order

Virginia:

In the General District/ Circuit Court of _____

Commonwealth of Virginia

VS.

Case No: _____

**NOT GUILTY BY REASON OF INSANITY -
REVOCATION OF CONDITIONAL RELEASE**

The Acquittee having been previously found not guilty by reason of insanity on _____ for charges of _____, _____, & _____ and later placed on conditional release, pursuant to Virginia Code Section 19.2-182.7, and this Court having held a hearing pursuant to Virginia Code Section 19.2-182.8 after receipt of an evaluation by _____ addressing factors pertaining to whether the Acquittee's conditional release should be revoked, hereby

ORDERS AND ADJUDGES that

1. This Court finds by a preponderance of the evidence that the Acquittee has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and requires inpatient hospitalization.

2. Pursuant to Virginia Code Section 19.2-182.8, the Acquittee's conditional release is revoked and the Acquittee shall be returned to the custody of the Commissioner of the Department of Behavioral Health and Developmental Services.

3. Within 60 days of resumption of custody, if in the opinion of hospital staff treating the Acquittee, the Acquittee's condition improves to the degree that the Acquittee is an appropriate candidate for conditional release, he may be, with the approval of this court, conditionally released as if revocation had not taken place.

4. If the Acquittee is not released, pursuant to Virginia Code Section 19.2-182.10, within 60 days of resumption of custody, then before the expiration of one year from the date of this order, the Commissioner shall, in accordance with Virginia Code Section 19.2-182.5, provide a report evaluating the Acquittee's condition and recommending treatment.

5. Copies of this order shall be sent to the Acquittee, Defense Attorney, Office of the Commonwealth Attorney, _____ Community Services Board, _____ (hospital), and the Commissioner of DBHDS.

6. This Court retains jurisdiction in this cause, and the Acquittee shall not be discharged or released from custody of the Commissioner without further Order of that Court.

Entered: _____
