

APPENDIX D

COMMISSIONER APPOINTED EVALUATIONS

FOR THE COURT

Commissioner Appointed Evaluations For The Court

The attached NGRI evaluation emphasizes a broadly based assessment approach. Depending on individual considerations, various sections in the outline may be covered in more or less detail. For example, evaluations during temporary custody regarding newly admitted acquittees may emphasize background data in order to inform the court as fully as possible. For longer term patients and evaluations after petitions for release, the court may be well aware of much background material, and recent adjustment information would be an area of inquiry having greater importance for dispositional considerations. Psychometric information, as determined by individual cases, may be useful to obtain and include (e.g., MMPI, WAIS, Brief Psychiatric Rating Scale, Psychopathy Checklist, etc.)

A specific section should be devoted to an assessment of risk of future aggression. The outline suggests several factors which should be considered in such an assessment, including identification of risk factors based on the NGRI offense and other aggressive incidents in the acquittee's history. See Initial Analysis of Aggressive Behavior and AAB Updates (see [Appendix A](#)). Consideration of the offense for which the NGRI individual was acquitted is important because judicial decisions in Virginia have explicitly upheld different commitment standards for insanity acquittees, in part because they have already been shown beyond a reasonable doubt to have committed at least one dangerous act (i.e., the criminal offense for which they were acquitted). It is also appropriate to discuss the limitations and imprecision of assessing risk of future aggression, such as the difficulty of generalizing from one environment (e.g., the hospital) to another environment (e.g., the community).

The community services board and other community treatment providers who treated the acquittee in the past should be contacted for information about the acquittee's course of treatment with them, adherence to community treatment, and the community services board's resources for future conditional release. This is particularly necessary for temporary custody evaluations, and whenever a recommendation for conditional release or release without conditions is being considered.

Based upon background information, clinical data, and risk of future aggression assessments and taking into consideration the factors outlined in ' 19.2-182.3, the evaluation should include summary opinions regarding the acquittee's need for inpatient hospitalization. Provide clear rationales linking background information, assessment, and the ' 19.2-182.3 factors considered to your summary opinion. Tables 2.2, 2.3, and 2.4 clearly outline the criteria and supporting information needed in order to provide opinions regarding an acquittee's need for inpatient hospitalization, eligibility for conditional release, or eligibility for release without conditions. Consult those tables carefully.

Opinions regarding mental retardation should be based upon current American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria. These criteria require deficits in both level of intellectual functioning and adaptive capacity. See also the definition of mental retardation specified in Virginia Code section 37.1-1, and the criteria established by the AAMR.

Note that the phrase "maximum benefit of hospitalization" is not included in Virginia's criteria for commitment, conditional release, or release without conditions. Opinions regarding disposition of acquittees should be based directly upon the criteria outlined in Virginia Code. Therefore, recommendations based on an acquittee reaching "maximum benefit of hospitalization" should be avoided.

The evaluator shall summarize his or her final recommendation regarding court disposition within the criteria set forth in Virginia Code. The evaluator shall use the language in one of the following three paragraphs to conclude each Commissioner-appointed evaluation:

CONCLUSION A
ACQUITTEE MENTALLY ILL OR MENTALLY RETARDED
AND IN NEED OF INPATIENT HOSPITALIZATION

Based on my evaluation of Mr./Ms. _____ as discussed in this report, it is my opinion that Mr./Ms. _____ is mentally ill/mentally retarded and requires inpatient hospitalization at the present time. Taking into account Mr./Ms. _____'s current mental condition, psychiatric history, risk of aggressive behavior, amenability to outpatient supervision and treatment, and other relevant information, I believe that if Mr./Ms. _____ is not hospitalized, there would be a significant risk of bodily harm to other persons/himself/herself in the foreseeable future. I do not believe that Mr./Ms. _____ can be adequately controlled with supervision and treatment on an outpatient basis at this time. (Although the symptoms of Mr./Ms. _____'s mental illness are in/partially in remission, I do not believe outpatient treatment or monitoring would prevent his/her condition from deteriorating to a degree that he/she would need inpatient hospitalization.)

CONCLUSION B
ACQUITTEE NOT IN NEED OF INPATIENT HOSPITALIZATION
BUT A SUITABLE CANDIDATE FOR CONDITIONAL RELEASE

Based on my evaluation of Mr./Ms. _____ as discussed in this report, it is my opinion that Mr./Ms. _____ is not in need of inpatient hospitalization at the present time but needs outpatient treatment and monitoring to prevent his/her condition from deteriorating to a degree that he or she would need inpatient hospitalization. Appropriate outpatient supervision and treatment are reasonably available, as discussed in this report. There is significant reason to believe that Mr./Ms. _____, if conditionally released, would comply with a reasonable set of conditions. Based on my assessment of Mr./Ms. _____'s risk of future aggressive behavior, I do not believe conditional release would present an undue risk to public safety.

CONCLUSION C
ACQUITTEE NOT IN NEED OF INPATIENT HOSPITALIZATION
NOR IN NEED OF CONDITIONAL RELEASE

Based on my evaluation of Mr./Ms. _____ as discussed in this report, it is my opinion that Mr./Ms. _____ is not in need of inpatient hospitalization at the present time nor does he or she need outpatient treatment and monitoring to prevent his/her condition from deteriorating to a degree that he or she would need inpatient hospitalization.

Commissioner appointed evaluations are independent evaluations provided to the courts. As such, they do not require approval from the Forensic Review Panel when recommending conditional release or release without conditions.

Should inpatient hospitalization be recommended, an assessment of the appropriate level of security required during that hospitalization should be made.

Should conditional release be recommended, suggestions regarding appropriate conditions of release are useful for both the court and the staff developing appropriate conditional release plans.

This outline is offered as a guide and includes those issues that clinicians should consider or discuss in order to meaningfully inform the court regarding commitment, conditional release, or release without conditions decisions. As noted above, clinicians will choose to emphasize different elements of this outline depending upon the case at hand. As in any forensic report, it is important to use language that is comprehensible to the lay reader and to avoid excessive psychological jargon. Although it is reasonable to assume that the court may require testimony in order to clarify important issues or points, this does not justify the preparation of reports that are cursory or conclusory in nature. It is wise to prepare such a report assuming that you may be asked to re-examine an acquittee for the same issues one year hence. In such a case, a prudent clinician should develop the best data base possible in order to do a good job the next time around.

See the relevant tables included within the Guidelines for the following evaluations and dispositions

Evaluations Appointed By The Commissioner

Table 2.1	Temporary Custody Evaluation
Table 3.2	Evaluation after Commissioner's Request for Conditional Release in an Annual Continuation of Confinement Report
Table 3.4	Petition for Release Evaluation

Criteria for Dispositions

Table 2.2	Commitment to Commissioner for Inpatient Hospitalization
Table 2.3	Conditional Release
Table 2.4	Release Without Conditions

NGRI Commissioner Appointed Evaluation Outline

I. Identifying Information

- A. Name
- B. Sex
- C. Age
- D. Date of birth
- E. Level of education completed
- F. Judge
- G. Court of jurisdiction
- H. NGRI court case number
- I. NGRI offense(s)
- J. Date of NGRI adjudication
- K. Date of admission
- L. Type of evaluation
 - 1. Temporary custody evaluation, pursuant to ' 19.2-182.2,
 - 2. Evaluation after Commissioner's request for conditional release in an annual continuation of confinement report, pursuant to ' 19.2-182.5 (A), or
 - 3. Petition for release evaluation, pursuant to ' 19.2-182.6 (A).
- M. Date appointed by Commissioner to do evaluation.

II. Background Data

- A. Pre-offense history (education, employment, marital/family status, living situation)
- B. Mental illness and treatment history
 - 1. Psychiatric (dates, medication, treatment, response)

- a. Hospitalizations
- b. Community treatment (include any involvement by community services board)
- 2. Medical (disorders, treatment)
- 3. Substance abuse (types, frequency, duration, periods of abstinence)
- C. Criminal history (juvenile history, arrests, sentences, probation, parole, etc.)
- D. Date and description of NGRI offense
 - 1. From criminal records
 - 2. From pre-trial evaluations of criminal responsibility
 - 3. From acquittee's self-report
 - 4. From any other collaborating sources
- E. Information used in preparing evaluation
- F. Information sought but not obtained (note specific attempts with dates)
- G. Other (COTREI, psychometric testing, etc.)

III. Recent Adjustment

A. Participation in treatment

Include acquittee's perception of mental condition, need for treatment, nature of treatment, and value of treatment

B. Medication regimen

- 1. Response
- 2. Compliance

C. Behavioral strengths

D. Behavioral problems/deficits

E. Seclusions/special precautions

F. Escapes/escape attempts

IV. Mental Status Examination

- A. Description of present symptomatology
- B. Note level of patient cooperativeness, defensiveness, and insight into condition
- C. Diagnostic Impression
 - 1. Summary of past diagnoses and current diagnoses
 - 2. Describe conditions and comment on discrepancies
- D. Clearly and specifically describe acquittees current thoughts about any prior delusions, as well as content of any current delusions.

V. Risk of Future Aggression Assessment

- A. Summary of aggressive episodes and brief description of each, including recent hospital aggression
- B. Identification and exploration of any relevant risk factors
- C. Description of associated treatment and management for each risk factor
- D. Identification and exploration of supports and strengths related to future adjustment
- E. Conclusion regarding current risk of future aggression

VI. Summary Opinions/Recommendations

- A. Assess mental illness and mental retardation and need for inpatient hospitalization, based on factors described in ' 19.2-182.3. (NOTE: A 1992 U.S. Supreme Court decision, Foucha v. Louisiana, 504, U.S. 71 (1992), ruled that there must be a legal finding of mental illness or mental retardation in order to commit an acquittee to inpatient hospitalization.)

If recommending conditional release or release without conditions, specifically address the Virginia Code criteria for that disposition.

- 1. If inpatient hospitalization is needed, suggest level of security required.
- 2. If inpatient hospitalization is not needed and acquittee meets criteria for conditional release, suggest conditions needed for an appropriate conditional release plan.
- 3. If inpatient hospitalization is not needed and acquittee does not meet criteria for conditional release, suggest components needed for an appropriate discharge plan.

- B. The evaluator shall summarize his or her final recommendation regarding court disposition within the criteria set forth in Virginia Code. The evaluator shall use the language in one of the following three paragraphs to conclude each Commissioner-appointed evaluation:

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