

# **CHAPTER 2**

## **TEMPORARY CUSTODY FOR EVALUATION**

## Temporary Custody For Evaluation (§ 19.2-182.2)

### I. Placement

1. When a person is acquitted by reason of insanity, the court shall place the person so acquitted ("the acquittee") in the temporary custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for evaluation as to whether the acquittee may be
  1. Released with conditions, or
  2. Released without conditions, or
  3. Committed.
  
2. Temporary custody placements shall be to the Forensic Unit of Central State Hospital, unless otherwise directed by the Office of Forensic Services. Acquittes who have been placed in the temporary custody of the Commissioner shall not be transferred to a civil unit or placed in a civil unit, unless approved in advance by the Temporary Custody triage team. (That team includes the Assistant Commissioner for Facility Management, Director of Forensic Services, Forensic Review Panel Chair or designee, and the forensic coordinators from the Forensic Unit and the designated civil facility.)
  1. Section 19.2-174.1 requires that certain information be provided to the Commissioner.
    - a. Before the Commissioner assumes custody of the acquittee, the court shall provide the Commissioner of DMHMRSAS with the following information, if available:
      - (1) The temporary custody order;
      - (2) the names and addresses for the attorney for the Commonwealth, the attorney for the acquittee, and the judge having jurisdiction over the acquittee;
      - (3) a copy of the warrant or the indictment; and
      - (4) a copy of the criminal incident information as defined in § 2.2-3701, or a copy of the arrest report, or a summary of the facts relating to the crime.

- b. If the information is not available prior to admission, it shall be provided by the party requesting admission, or the party with custody of the acquittee to the Commissioner of DMHMRSAS within ninety-six hours of admission.
2. Since temporary custody and evaluation is designed to assist the judge in making an appropriate disposition, facility staff shall immediately begin to gather the necessary information to complete the temporary custody evaluations.
- a. Obtain the relevant Analysis of Aggressive Behavior (AAB) information and complete the Initial AAB within 30 days after admission (See [Appendix A: Analysis of Aggressive Behavior](#) for more information.).
  - b. Complete the initial Community Outpatient Treatment Readiness Scale (COTREI) within the first 30 days after admission (See [Appendix B: Community Outpatient Treatment Readiness Scale](#)).
  - c. Contact the appropriate community services board to gather relevant information and begin the collaborative planning required to manage the acquittee.
  - d. Obtain copies of the sanity evaluation(s) and competency evaluation(s), if available.

## II. Assignment of Community Services Board Case Manager

- A. The Procedures for Continuity of Care between Community Services Boards and State Psychiatric Facilities (Revised Client Service Management Guidelines, page 11) includes the following policy:  
 “Community Services Boards shall ensure that each individual hospitalized in a state psychiatric facility who will require services and supports upon return to the community is assigned a CSB case manager who will be responsible for hospital liaison activity involving the individual’s treatment and discharge planning”.
- B. As soon as an acquittee is placed in the temporary custody of the Commissioner, the responsible community services board shall assign a case manager to that acquittee.
- C. Since the court may conditionally release an acquittee, or release an acquittee without conditions from temporary custody, it is essential that the CSB case manager be prepared to immediately (i) provide information to Forensic Unit staff and to the temporary custody evaluators, and (ii) engage in planning for conditional release or release without conditions.
- D. All predischarge planning activities of the CSB case manager and the facility shall

be conducted in a manner that is consistent with the *Uniform Statewide Discharge Planning Protocols for Community Services Boards and State Mental Health and Mental Retardation Facilities* that have been issued by the Commissioner of the DMHMRSAS.

- E. The CSB case manager who is assigned to each acquittee referred to the DMHMRSAS for inpatient care, shall provide pre-discharge planning for any acquittee who resided in the Board's service area prior to admission, or who chooses to reside there after discharge, in conformance with § 37.1-98 of the Code of Virginia, and in accord with the parameters outlined in the Performance Contract maintained by the DMHMRSAS with Community Services Boards.

### III. Temporary Custody Evaluation

- A. After an acquittee is placed in the temporary custody of the Commissioner, the Director of Forensic Services, acting for the Commissioner, shall appoint as soon as possible two evaluators to perform the evaluations. (See [Table 2.1: Temporary Custody Evaluation](#).)
- B. Qualifications of evaluators
  - 1. One evaluator shall be a psychiatrist.
  - 2. The other evaluator shall be a clinical psychologist.
  - 3. Both evaluators shall be
    - a. Skilled in diagnosis of mental illness and mental retardation, and
    - b. Qualified by training and experience to perform such evaluations.
  - 4. At least one temporary custody evaluator shall not be employed by the hospital in which the acquittee is primarily confined.
  - 5. Neither evaluator shall have provided previous court evaluation or consultation regarding the acquittee's insanity or mental state at the time of offense.
- C. The evaluation shall assess
  - 1. Whether the acquittee is currently mentally ill or mentally retarded,
  - 2. The acquittee's condition, and

3. The acquittee's need for hospitalization based upon factors set forth in § 19.2-182.3.

D. Parameters for the evaluations

1. The evaluators shall
  - a. Conduct their examinations separately,
  - b. Prepare separate reports, and
  - c. Report their findings to the court within 45 days of the Commissioner's assumption of temporary custody
2. The report to the court shall follow the outline provided in [Appendix D](#) of this manual.
3. Copies of the report shall be sent to the
  - a. Judge having jurisdiction
  - b. Acquittee's attorney
  - c. Attorney for the Commonwealth for the jurisdiction where the person was acquitted
  - d. NGRI Coordinator of the community services board serving the locality where the acquittee was acquitted,
  - e. Chair of the Forensic Review Panel,
  - f. Office of Forensic Services, Division of Facilities Management
  - g. Acquittee's facility Forensic Coordinator.

#### IV. Cases in Which One or Both Evaluators Recommend Conditional Release

- A. When the facility is made aware of an evaluator's recommendation for conditional release, staff will begin developing an appropriate conditional release plan.
  1. Facility staff shall immediately contact the appropriate community services board staff (CSB NGRI Coordinator) to make arrangements for prompt, joint development of the plan.
  2. See also [Chapter 5](#): Planning for Conditional Release.
- B. Extension of Temporary Custody Evaluation Period
  1. Upon receipt of an evaluation recommending conditional release, the Forensic Coordinator should write the court requesting a court order extending temporary custody if more time is needed to prepare the conditional release plan.

2. Virginia Code section 19.2-182.2 provides that the court shall extend the evaluation period to permit the facility and the appropriate community services board to jointly prepare a conditional release plan before the hearing.
- C. The conditional release plan shall be submitted to the Forensic Review Panel for review before submission to the court.
- D. If it is not possible to develop an appropriate conditional release plan, the treatment team shall make a referral to the Forensic Review Panel for consultation and guidance.

The referral shall contain:

1. A complete description of attempts made to develop an appropriate conditional release plan,
2. A discussion of why these attempts have not been successful, and
3. Alternative recommendation(s) for disposition of the acquittee.

**V. Instances in Which One or Both Evaluators Recommend Release Without Conditions**

- A. The procedure described in [Section IV](#) above is used.
- B. A discharge plan is developed instead of a conditional release plan.

**VI. Hearing and Disposition**

Upon receipt of the temporary custody evaluators' reports, and, when applicable, a conditional release or discharge plan, the court will schedule a hearing to determine whether or not the acquittee should be committed to the custody of the Commissioner, conditionally released, or released without conditions. (See [Tables 2.2](#), [2.3](#), and [2.4](#) for the criteria for commitment to the Commissioner for inpatient hospitalization, conditional release, and release without conditions.)

**Model Temporary Custody Order**

VIRGINIA:  
IN THE CIRCUIT COURT OF \_\_\_\_\_, or

IN THE GENERAL DISTRICT COURT OF \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
VS.

NAME \_\_\_\_\_ DOCKET NO.-CR \_\_\_\_\_  
FELONY \_\_\_\_\_  
MISDEMEANOR \_\_\_\_\_

DATE OF BIRTH \_\_\_\_\_ OFFENSE DATE(S) \_\_\_\_\_

**Finding of Not Guilty by Reason of Insanity  
and  
Temporary Custody Evaluations and Hearing Date**

This date came the attorney for the Commonwealth, \_\_\_\_\_ and the Defendant, \_\_\_\_\_, who was present in the court throughout the proceedings and was represented by counsel, \_\_\_\_\_. Based upon the written evaluation(s) submitted by \_\_\_\_\_, the oral testimony of \_\_\_\_\_, and the arguments of counsel, the Court finds the Defendant not guilty by reason of insanity to the charge(s) of \_\_\_\_\_.

It is hereby ADJUDGED, ORDERED AND DECREED 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 Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) 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 Admissions 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) a copy of this order; (b) all supporting clinical documentation including evaluations of mental status at the time of the offense and evaluations of competency to stand trial, if available; and (c) legal documentation required by § 19.2-174.1. If the information is not available at the hearing, it shall be provided by the party requesting placement or the person having custody directly to the Commissioner within ninety-six hours of the person being placed into the Commissioner's custody.

**Finding of Not Guilty by Reason of Insanity and  
Temporary Custody Evaluations and Hearing Date  
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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 DMHMRSAS.

6. In the event the Acquittee's presence is required at any hearing in this cause, the Court will issue an Order to Transport, directing the Sheriff of \_\_\_\_\_County, or his designees, to resume custody of and return the Acquittee 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

\_\_\_\_\_  
Name of Judge

\_\_\_\_\_  
\_\_\_\_\_  
Defense Attorney  
Name and Address

\_\_\_\_\_  
\_\_\_\_\_  
Commonwealth's Attorney  
Name and Address

xc: Commonwealth's Attorney  
Acquittee's Attorney  
Community Services Board NGRI Coordinator  
Commissioner of DMHMRSAS  
Attn: Office of Forensic Services  
P.O. Box 1797, Richmond, VA 23218-1797  
Phone: 804-786-8044  
FAX: 804-786-9621

**TABLE 2.1**  
**Temporary Custody Evaluation**

<b>LEGAL CITATION</b>	§ 19.2-182.2 The court shall place the person so acquitted in temporary custody of the Commissioner of DMHMRSAS for evaluation as to whether the acquittee may be released with or without conditions or requires commitment.
<b>EVALUATORS</b>	<p>2 evaluators appointed by the Commissioner.</p> <p>One psychiatrist, and one clinical psychologist. Both shall be</p> <ul style="list-style-type: none"> <li>- skilled in the diagnosis of mental illness and mental retardation, and</li> <li>- qualified by training and experience to perform these evaluations.</li> </ul> <p>At least one evaluator shall not be employed by the hospital in which the acquittee is primarily confined.</p> <p>Examinations and reports shall be conducted separately.</p>
<b>CONTENT</b>	<p>The evaluators shall</p> <ul style="list-style-type: none"> <li>- determine whether the acquittee is currently mentally ill or mentally retarded, and</li> <li>- assess the acquittee and report on his condition and need for hospitalization with respect to the factors set forth in §19.2-182.3.</li> </ul>
<b>TIME FRAME</b>	Report is due within 45 days of the Commissioner's assumption of custody.

**TABLE 2.2**  
**Criteria For Commitment To Commissioner**  
**For Inpatient Hospitalization**

<b>LEGAL CITATION</b>	§ 19.2-182.3
<b>CRITERIA</b>	<p><b>Is mentally ill or mentally retarded and in need of inpatient hospitalization, based on consideration of the following factors</b></p> <ul style="list-style-type: none"> <li>- <b>To what extent the acquittee is mentally ill or mentally retarded, as those terms are defined in § 37.1-1;</b></li> <li>- <b>The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;</b></li> <li>- <b>The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and</b></li> <li>- <b>Such other factors as the court deems relevant</b></li> </ul>
<b>SUPPORTING INFORMATION</b>	<p><b>If the court determines that an acquittee does not need inpatient hospitalization solely because of treatment or habilitation he or she is currently receiving, but the court is not persuaded that the acquittee will continue to receive such treatment or habilitation, it may commit him for inpatient hospitalization.</b></p>

**TABLE 2.3**  
**Criteria For Conditional Release**

<b>LEGAL CITATION</b>	§ 19.2-182.7
<b>CRITERIA</b>	<ul style="list-style-type: none"> <li>- Based on consideration of the factors which the court must consider in its commitment decision, the acquittee does not need inpatient hospitalization but does need outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he or she would need inpatient hospitalization;</li> <li>- Appropriate outpatient supervision and treatment are reasonably available;</li> <li>- There is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and</li> <li>- Conditional release will not present an undue risk to public safety.</li> </ul>
<b>SUPPORTING INFORMATION</b>	<ul style="list-style-type: none"> <li>- The court shall subject a conditionally released acquittee to such orders and conditions it deems will best meet the acquittee's need for treatment and supervision and best serve the interests of justice and society.</li> <li>- The acquittee must meet the criteria set forth above and the court must approve a conditional release plan prepared jointly by the hospital and the appropriate community services board.</li> </ul>

**TABLE 2.4.**  
**Criteria For Release Without Conditions**

<b>LEGAL CITATION</b>	§ 19.2-182.3
<b>CRITERIA</b>	<ul style="list-style-type: none"><li>- Does not need inpatient hospitalization, nor</li><li>- Meet criteria for conditional release.</li></ul>
<b>SUPPORTING INFORMATION</b>	<ul style="list-style-type: none"><li>- The court must approve a discharge plan prepared jointly by the hospital staff and the appropriate community services board before the acquittee may be released without conditions.</li></ul>