

CHAPTER 3

**COMMITMENT TO
THE COMMISSIONER
FOR
INPATIENT HOSPITALIZATION**

<p style="text-align: center;">Commitment to Commissioner for Inpatient Hospitalization (§§ 19.2-182.3 through 19.2-182.6):</p>
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I. Placement following commitment to the custody of the Commissioner

- A. If a court determines that the acquittee is mentally ill or mentally retarded and in need of inpatient hospitalization and commits the acquittee to the custody of the Commissioner, the Forensic Review Panel, as designated by the Commissioner, shall, in accord with § 19.2-182.4 of the Code: Determine the appropriate placement for each acquittee, based on clinical needs and safety and security requirements; and
- B. Placement may be in any state-operated mental health, mental retardation or geriatric facility. Specific considerations include:
 - 1. Potential for violence to self or others, and
 - 2. Potential for escape.
- C. The Office of Forensic Services of the Division of Facility Management is available to provide consultation and assistance in all matters regarding placement of acquittees.

II. Forensic Coordinator Responsibilities

- A. Insanity acquittees shall be immediately brought to the attention of the Forensic Coordinator of the facility. The Forensic Coordinator monitors the progress, management, conditional release planning, and discharge planning for acquittees for the duration of their placement in the custody of the Commissioner.
- B. The Forensic Coordinator serves as a consultant to the facility treatment teams with regard to the hospital's role with the courts in acquittee matters, and the acquittee privileging process.
- C. The Forensic Coordinator ensures that the NGRI Coordinator of the appropriate community services board is notified of all court dates scheduled for acquittees in the custody of the Commissioner.
- D. Each hospital shall develop its own internal procedures defining the role of the Forensic Coordinator in the processes described in this manual. The Forensic Coordinator Responsibilities, listed in [Appendix I](#) of this volume, should be a guide to this role definition. Specific tasks of forensic coordinators in the

acquittee management process are described further in the succeeding chapters of this document.

- E. The Forensic Coordinator shall provide written notification to the DMHMRSAS Director of Forensic Services of any initial admission, escape, attempted escape, serious incident, death, transfer to another facility, conditional release or discharge of an insanity acquittee immediately, but not later than 1 working day subsequent to the event. (See [Appendix I](#) for additional forensic coordinator responsibilities.)

III. Transfer from a civil unit back to the Forensic Unit of Central State Hospital

- A. In cases in which an acquittee requires a maximum-security environment, due to safety or security reasons, an immediate referral should be made to the Central State Hospital Forensic Unit administrator with notification to the Forensic Review Panel, and to the Director of Forensic Services. The Forensic Coordinator of the sending civil hospital should notify the Office of Forensic Services of DMHMRSAS within 24 hours of the transfer.
- B. While at the Forensic Unit of Central State Hospital, the acquittee will be followed by a Forensic Unit treatment team with consultation from the referring civil unit treatment team regarding the goals of the Forensic Unit placement.
- C. If the acquittee is returned to the civil unit within 90 days, the Panel and the Director of Forensic Services should be notified, but approval is not required.
- D. If the stay on the Forensic Unit of Central State Hospital exceeds 90 days, the acquittee's eventual transfer to a civil unit will require the prior review and approval by the Panel. Review and approval by the Panel are also required before any other privileges can be restored to an acquittee, under these circumstances.

IV. Continuation of Confinement Hearings (§ 19.2-182.5) for those acquitted of felonies

- A. The committing court shall hold hearings assessing need for continued inpatient hospitalization for individuals acquitted of a felony by reason of insanity.
 - 1. Twelve months after date of commitment,
 - 2. Yearly intervals for first five years after commitment, and
 - 3. Biennial intervals, thereafter.
- B. See [Table 3.1: Required Court Hearings After Commitment to Commissioner for Inpatient Hospitalization](#).

- C. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court.
- D. The treatment team shall provide to the court, thirty days prior to the continuation of confinement hearing, a report evaluating the acquittee's condition and recommending treatment, to be prepared by a psychiatrist or a psychologist.
 - 1. See [Table 3.2: Annual Continuation of Confinement Hearing Report/Evaluation](#)
 - 2. The facility Forensic Coordinator shall
 - a. Review each final signed annual report to ensure that it addresses appropriate issues before it is provided to the court, and
 - b. Attach a cover letter to the annual report, with a copy of model language to be considered by the court in drafting a new order to comply the Code of Virginia (see examples later in chapter), if the report recommends inpatient treatment.
 - 3. Copies of the annual reports shall be sent to the
 - a. Judge having jurisdiction,
 - b. Acquittee's attorney,
 - c. Commonwealth's Attorney for the jurisdiction for which the acquittee was committed,
 - d. NGRI Coordinator of the Community services board serving the locality to which the acquittee has been proposed for conditional release (and the original community services board if these are not the same),
 - e. Administrative coordinator of the Forensic Review Panel, and
 - f. Office of Forensic Services, Division of Facility Management.
 - 4. Forensic Review Panel review and approval are required prior to submission of the annual report to the court in cases where the treatment team does not request continuation of hospitalization (e.g., in cases where the treatment team wishes to request conditional release, or release without conditions).
 - a. If conditional release is requested by the treatment team, a complete conditional release plan shall also be submitted to the Forensic Review Panel and, subsequently, to the committing court, following approval.
 - b. See [Chapter 5: Planning For Conditional Release](#)
 - 5. Annual reports shall be provided to the courts each year whether or not the court is required to hold a hearing.

- E. The treatment team or forensic coordinator shall notify the CSB as soon as possible of the date and time of the hearing. This is particularly important when the acquittee is returning to local jail to attend the hearing.
- F. According to section 19.2-182.5(B), the acquittee may request release at each continuation of confinement hearing.
1. Upon such request, a second evaluation of the acquittee's condition shall be completed by an appropriately qualified clinical psychologist or psychiatrist.
 2. A copy of that second evaluation shall be sent to the Commonwealth's Attorney for the jurisdiction from which the acquittee was committed.
 3. The Commissioner shall appoint the second evaluator (§ 19.2-182.5(B)) to assess and report on the acquittee's need for inpatient hospitalization.
 - a. Appointment of evaluators:
 - i. The Director of the Office of Forensic Services, acting for the Commissioner, shall make the appointments upon receipt of the court order.
 - ii. This evaluation is an independent evaluation and the evaluator does not require the approval of the Forensic Review Panel when recommending conditional release or release without conditions.
 - iii. Evaluations shall be completed and findings reported within 45 days of issuance of the court's order.
 - iv. If the second evaluator recommends conditional release, the treatment team must develop a conditional release plan with the appropriate community services board, and submit the plan to the Forensic Review Panel. The Forensic Review Panel will, in turn, review and submit the conditional release plan to the court of jurisdiction, with their recommendation.
- G. According to its determination following the hearing, and based upon the report and other evidence provided at the hearing, the court shall:
1. Order that the acquittee remain in the custody of the Commissioner if he or she is mentally ill or mentally retarded and continues to require inpatient hospitalization based on the factors set forth in § 19.2-182.3.
 2. Place the acquittee on conditional release if
 - a. He or she meets the criteria for conditional release, and
 - b. The court has approved a conditional release plan prepared jointly

by the hospital staff and appropriate community services board(s);
or

3. Release the acquittee from confinement if
 - a. He or she does not need inpatient hospitalization,
 - b. Does not meet the criteria for conditional release set forth in §19.2-182.7, and
 - c. The court has approved a discharge plan prepared jointly by the hospital staff and appropriate community services board.

V. Acquittee Petitions for release, pursuant to § 19.2-182.6

- A. Upon receipt of a petition for release, the court shall order the Commissioner to appoint two evaluators (§ 19.2-182.6(B)) to assess and report on the acquittee's need for inpatient hospitalization.
 1. Appointment of evaluators
 - a. The Director of the Office of Forensic Services, acting for the Commissioner, shall make the appointments upon receipt of the court order.
 - b. This evaluations are independent evaluations and do not require the approval of the Forensic Review Panel when recommending conditional release or release without conditions.
 - c. Evaluations shall be completed and findings reported within 45 days of issuance of the court's order.
 - d. If either of the evaluators appointed pursuant to § 19.2-182.6(B) recommends conditional release, the treatment team must develop a conditional release plan with the appropriate community services board, and submit the plan to the Forensic Review Panel. The Forensic Review Panel will, in turn, review and submit the conditional release plan to the court of jurisdiction, with their recommendation.
- B. According to its determination following the hearing, and based upon the reports and other evidence provided at the hearing, the court shall:
 1. Order that the acquittee remain in the custody of the Commissioner if he or she is mentally ill and continues to require inpatient hospitalization based on consideration of the factors set forth in § 19.2-182.3.
 2. Place the acquittee on conditional release if
 - a. He or she meets the criteria for conditional release, and

- b. The court has approved a conditional release plan prepared jointly by the hospital staff and appropriate community services board(s);
or
- 3. Release the acquittee from confinement if
 - a. He or she does not need inpatient hospitalization,
 - b. Does not meet the criteria for conditional release set forth in §19.2-182.7, and
 - c. The court has approved a discharge plan prepared jointly by the hospital staff and appropriate community services board.

VI. Escape from Custody of the Commissioner

- A. Virginia Code § 19.2-182.14 provides that any person who is placed in the temporary custody of the Commissioner or committed to the custody of the Commissioner after an acquittal by reason of insanity, and escapes from that custody shall be guilty of a Class 6 felony.
- B. Review by the Forensic Review Panel after acquittee returns to the Commissioner's custody from escape
 - 1. Within three weeks of the acquittee's return to the Commissioner's custody, the treatment team shall submit the following packet of information to the Forensic Review Panel
 - a. A review of the acquittee's escape, behavior during time on escape status, and a description of the circumstances of the return to hospitalization. This should include
 - (1) the acquittee's perspective;
 - (2) the treatment team's perspective;
 - (3) other relevant parties' perspectives (including family, victim, and law enforcement, if available); and
 - (4) other relevant information;
 - b. An updated Risk Assessment including an Analysis of Aggressive Behavior (AAB);
 - c. The results of a current mental status exam; and
 - d. Recommendations for future treatment and management that include level of recommended privileges.
 - e. All privilege levels are considered "revoked" until reviewed and approved by the Forensic Review Panel.
 - 2. The Panel shall review the case and decide on appropriate placement and levels of privileges for the acquittee.

Notification to Commonwealth's Attorney

Date: _____

Commonwealth's Attorney
Address

Dear _____:

Under the provisions of Virginia Code § 19.2-182.4, this facility is required to notify you in writing when an individual who has been found Not Guilty by Reason of Insanity and placed in the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services has been authorized to leave the grounds of the hospital in which he or she is confined. The individual noted below has been so authorized:

- Acquittee:
- Case No.:
- Court of Jurisdiction:
- Register No.:
- Date of Birth:
- Date Of NGRI Finding:

This individual has been approved for community visits by the Forensic Review Panel. During community visits, the individual will:

- _____ be accompanied by hospital staff.
- _____ not be accompanied by hospital staff.

The length of the community visits will be:

- _____ no longer than eight hours.
- _____ no longer than 48 hours.
- _____ as described in the court approved conditional release plan.

If you have any questions regarding the above, please contact me at _____.

Forensic Coordinator

xc: Office of Forensic Services, DMHMRSAS
Defense Attorney
Judge
Community Services Board NGRI Coordinator

TABLE 3.1

**Required Court Hearings for Felony Acquittees
After Commitment to Commissioner for Inpatient Hospitalization**

TIME AFTER DATE OF COMMITMENT TO COMMISSIONER	REQUIRED CONTINUATION OF CONFINEMENT HEARING?	ACQUITTEE ALLOWED TO PETITION FOR RELEASE PURSUANT TO §19.2-182.6 (A)?*	ACQUITTEE ALLOWED TO REQUEST RELEASE IN CONJUNCTION WITH JUDICIAL REVIEW PURSUANT TO §19.2-182.5 (B)?**
12 months (1 yr.)	yes	no	yes
24 months (2 yrs.)	yes	no	yes
36 months (3 yrs.)	yes	no	yes
48 months (4 yrs.)	yes	no	yes
60 months (5 yrs.)	yes	no	yes
72 months (6 yrs.)	no	yes	no
84 months (7 yrs.)	yes	no	yes
96 months (8 yrs.)	no	yes	no
108 months (9 yrs.)	yes	no	yes
120 months (10 yrs.)	no	yes	no
132 months (11 yrs.)	yes	no	yes

NOTE: The Commissioner may petition the committing court for conditional or unconditional release of the acquittee at any time he or she believes the acquittee no longer needs hospitalization (§ 19.2-182.6).

* The acquittee may petition the committing court for release of felony acquittees only once in each year in which no annual judicial review is required (§ 19.2-182.6 (A)).

** In years in which an annual judicial review is required pursuant to § 19.2-182.5 (B), at the time of the judicial review, the felony acquittee may request release.

TABLE 3.2
Continuation of Confinement Hearing Report/Evaluation

LEGAL CITATION	§ 19.2-182.5(A). The court shall conduct a hearing 12 months after date of commitment to assess each confined felony acquittee's need for inpatient hospitalization.
EVALUATOR FOR ANNUAL REPORT	<p>One evaluator. (This would normally be a person on the acquittee's treatment team.)</p> <p>Psychiatrist or Clinical Psychologist</p> <p>Shall be</p> <ul style="list-style-type: none"> - skilled in the diagnosis of mental illness and mental retardation, and - qualified by training and experience to perform forensic evaluations.
EVALUATOR FOR SECOND EVALUATION	<p>If the court so orders, a second evaluator will be appointed by the Commissioner if the first examiner recommends release or the felony acquittee requests release.</p> <ul style="list-style-type: none"> - Same credentials as above. - Not currently treating the acquittee. <p>Examinations and reports shall be conducted separately.</p>
CONTENT	<p>A report</p> <ul style="list-style-type: none"> - evaluating the felony acquittee's condition, and - recommending treatment. <p>The annual report may not recommend conditional release or release without conditions unless approved by the Forensic Review Panel.</p>
TIME FRAME	<p>Report is due 30 days prior to the court's hearing. Continuation of confinement hearings are held annually, starting 12 months after the date of the commitment, for the first five years. Biennial intervals thereafter.</p>

Cover Letter for Annual Report to the Court

Date: _____

The Honorable _____
Address

Re: _____

Case No.: _____

Reg. No.: _____

Dear Judge _____:

Enclosed is a copy of the annual report to the court on the condition of _____, who was previously found Not Guilty of a Felony by Reason of Insanity. It is provided to you as required by Virginia Code Section 19.2-182.5. The report recommends that the acquittee meets criteria for continued hospitalization.

For your convenience, I am also enclosing a model order recommitting the acquittee to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. This model order was developed in conjunction with the Virginia Supreme Court and the Office of the Attorney General. It complies with Virginia Code and a U.S. Supreme Court decision (Foucha v. Louisiana, 504 U.S. 71 (1992)); that decision requires a finding of mental illness in order to commit or recommit an insanity acquittee to hospitalization.

Please contact me at _____ if you have questions or if I may be of assistance to you.

Sincerely yours,

Forensic Coordinator

xc: Commonwealth's Attorney
 Acquittee's Attorney
 Community Services Board NGRI Coordinator
 Office of Forensic Services, Virginia DMHMRSAS
 Forensic Review Panel
 Treatment Team

(DMH 944E 1235 05/01/2003)

Model Order for Initial Commitment

VIRGINIA:
IN THE CIRCUIT COURT OF _____, or

IN THE GENERAL DISTRICT COURT OF _____

COMMONWEALTH OF VIRGINIA
VS.

NAME _____ DOCKET NO.-CR _____
DATE OF BIRTH _____ FELONY _____
MISDEMEANOR _____
OFFENSE DATE(S) _____

**Not Guilty by Reason of Insanity
Hearing on Temporary Custody Evaluation Reports and Inpatient Hospitalization**

The acquittee having been found not guilty by reason of insanity to the charge(s) of _____ on _____ and placed in temporary custody for evaluation. This date came the attorney for the Commonwealth, _____. The Acquittee, _____, was present in the court throughout the proceedings and was ably represented by the defense attorney, _____. Based upon the written evaluations submitted by _____, the oral testimony of _____, and the arguments of counsel, the Court finds that the acquittee is ___ mentally ill or ___ mentally retarded and in need of inpatient hospitalization based on the factors in Va. Code § 19.2-182.3. Therefore, the Court ORDERS that the acquittee be committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse 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. Before the hearing, the Commissioner shall provide a report to the court evaluating the acquittee's condition and recommending treatment, as provided in Va. Code 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 defense 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:

Date

Signature

Name of Judge

cc: 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

Model Order for Recommitment

VIRGINIA:
IN THE CIRCUIT COURT OF _____, or

IN THE GENERAL DISTRICT COURT OF _____

COMMONWEALTH OF VIRGINIA

VS.

NAME _____

DOCKET NO.-CR _____

DATE OF BIRTH _____

FELONY _____

MISDEMEANOR _____

OFFENSE DATE(S) _____

**Not Guilty by Reason of Insanity
Hearing on Evaluation Reports and 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 Va. Code § 19.2-182.3. Therefore, the Court ORDERS that the acquittee be recommitted to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse 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 Va. Code 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.

(DMH 944E 1244 05/01/2003)

6. [This order supersedes the prior orders of this Court in this case.]

ENTERED:

Date

Signature

Printed Name of Judge

cc: 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

TABLE 3.3
Procedures for Petition for Release by the Commissioner

LEGAL CITATION	§ 19.2-182.6 A. The Commissioner may petition the committing court for conditional or unconditional release of the acquittee at any time he or she believes the acquittee no longer needs hospitalization.
TREATMENT TEAM	Requests consideration by the Forensic Review Panel of a request for release
FORENSIC REVIEW PANEL	If the Panel approves the treatment team's request for release, then the Panel petitions the court for the release of the acquittee, on behalf of the Commissioner.
THE PETITION	<p>The petition shall be signed by the Chair of the Panel, and shall be accompanied by</p> <ul style="list-style-type: none"> - a report of clinical findings supporting the petition, and - a conditional release plan, or a discharge plan prepared jointly by the hospital and the appropriate community services board(s)
TIME FRAME	<p>Any time the Forensic Review Panel, as designated by the Commissioner, believes the acquittee no longer needs hospitalization.</p> <p>The Commissioner retains final decision-making authority regarding all placement decisions and recommendations to the Court for the release of insanity acquittees.</p>

TABLE 3.4
Petition for Release Hearing Evaluation

EVALUATION	Petition for Release Hearings
LEGAL CITATION	§ 19.2-182.6 B. Upon receipt of a petition for release, the court shall order the Commissioner to appoint two persons to assess and report on the acquittee's need for inpatient hospitalization.
EVALUATOR	<p>2 evaluators appointed by the Commissioner.</p> <p>One psychiatrist, and one clinical psychologist</p> <p>Both shall be</p> <ul style="list-style-type: none"> - skilled in the diagnosis of mental illness and mental retardation, <p>and</p> <ul style="list-style-type: none"> - qualified by training and experience to perform these evaluations. <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>
CONTENT	The evaluators shall review the acquittee's condition with respect to the factors set forth in § 19.2-182.3.
TIME FRAME	Report is due within 45 days of issuance of the court's order for evaluation.