

CHAPTER 2

Temporary Custody For Evaluation (§ 19.2-182.2)

I. Placement

- A. 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 DBHDS for evaluation as to whether the acquittee may be
 - 1. Released with conditions;
 - 2. Released without conditions; or
 - 3. Committed for further treatment.
- B. Inpatient temporary custody placements shall be to the Forensic Unit of Central State Hospital, unless otherwise directed by the DBHDS 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 Deputy Director of Forensic Services, Forensic Services Operation Manager, and the Forensic Coordinators from the Central State Hospital Forensic Unit and the designated civil facility).
- C. Under Virginia Code §19.2-182.2 the court may authorize the completion of Temporary Custody evaluations on either an inpatient or outpatient basis. If the court authorizes the evaluation be conducted on an outpatient basis, the Commissioner then determines whether the evaluations will be conducted on an inpatient or outpatient basis. If the Commissioner determines that inpatient evaluation is required in cases where the court has authorized outpatient evaluation, the court will be notified and any necessary modifications to the order will be requested within 10 business days of receiving the original order. Examples of possible reasons for outpatient evaluations include, but not limited to, when the acquittee is pregnant and will give birth during the period of temporary custody, when the individual is residing in a nursing home or other care environment which cannot be easily replicated in a DBHDS facility, when the individual is in VADOC custody and bringing them into DBHDS custody increases risk to public safety, or when the individual has been placed on bond, is following the conditions of bond and bringing them into an inpatient setting will

result in suspension/termination of benefits, loss of employment, and/or potential loss of support system.

D. Inpatient Temporary Custody Evaluations:

1. All court orders for NGRI inpatient temporary custody will be sent to Central State Hospital (CSH). CSH will gather all required documents (at minimum the court order and original sanity evaluation) and will proceed with admission to CSH Maximum Security.
2. If the recommendation is for the acquittee to be treated in a facility/unit other than CSH Maximum Security, then the Deputy Director of Forensic Services shall consult with the Temporary Custody triage team and will have three working days to respond, via email, with concerns/opinions/recommendations.
3. Upon final decision, the Deputy Director of Forensic Services shall notify the appropriate facility and Chief Forensic Coordinator at CSH.
4. Upon the Commissioner's assumption of custody, Central Office will assign evaluators to complete the Temporary Custody Evaluations and will send out required notifications.
5. CSH or designated hospital will be responsible for completing the Initial Analysis of Risk Report (IARR) and will send a copy to both evaluators.
6. The evaluators will coordinate with CSH, or the designated hospital where the acquittee is assigned, to make appointments to evaluate acquittee.
7. Each of the two evaluators will submit a completed evaluation to their facility's Forensic Coordinator, and the Forensic Coordinator or their designee will send the court a cover letter with the evaluation report attached. Once both evaluation reports have been sent, the facility where the acquittee is assigned will follow up with a summary letter with guidance on what happens next and a model order.

- E. Outpatient Temporary Evaluations: All court orders for NGRI outpatient temporary custody will be sent to the facility nearest to the acquittee's physical location. The assigned facility will gather all required documents (at a minimum the court order, original sanity evaluation, competency evaluation if ordered, warrants, arrest reports, police reports, jail mental health records, and relevant DBHDS treatment records if available) and will send the temporary custody packet to DBHDS Central Office within 5 days of receipt of the order, in order for a decision to be made regarding appropriateness for outpatient evaluation.

1. Within two working days of receipt of the requisite materials, the Deputy Director of Forensic Services, or their designee, shall conduct a review of the case and make a recommendation for placement during Temporary Custody.
2. If the Deputy Director of Forensic Services, or their designee, determines that the evaluations will not be completed on an outpatient basis, the responsible facility will send a letter to the court requesting that the order be changed to inpatient evaluation and will follow up with the court until a response is received and/or a new order is issued.
3. If the decision is made that the evaluations will be conducted on an outpatient basis, the Deputy Director of Forensic Services shall notify the Forensic Coordinator at the assigned facility of their decision, and Central Office will assign evaluators to complete the Temporary Custody Evaluations and will send out required notifications.
4. All evaluations will be completed at the state hospital or CSB/BHA closest to where the acquittee is located if the acquittee is in the community. If the acquittee is in a nursing home or in the custody of the Department of Corrections then the evaluations will be completed at those locations.
5. The hospital closest to where the acquittee is located will be responsible for completing the Initial Analysis of Risk Report (ARR) and will send it to both evaluators within 30 days.
6. The evaluators will coordinate with the assigned hospital or the CSB/BHA to schedule appointments to meet with the acquittee.
7. Each of the two evaluators will submit their completed evaluation to the Forensic Coordinator at their hospital and the Forensic Coordinator, or their designee, will send the court a cover letter with the evaluation attached. Once both reports are sent, the designated facility will follow up with a summary letter with guidance on what happens next and a model order.
8. If the acquittee is non-compliant with the court order for evaluation, the designated facility will be responsible for notifying Central Office and will then submit a request in writing to the court, on behalf of the Commissioner, to order the individual be admitted to a hospital for

completion of the evaluations required pursuant to Virginia Code §19.2-182.2. Upon admission to a DBHDS facility under the new order, the evaluators shall conduct their examinations and report their findings within 45 days of the Commissioner's assumption of custody.

- F. Virginia Code Section §19.2-174.1 requires that certain information be provided to the Commissioner.
1. Before the Commissioner assumes custody of the acquittee, the court shall provide the Commissioner of DBHDS with the following information, if available:
 - a. The temporary custody order;
 - b. The names and addresses for the attorney for the Commonwealth, the attorney for the acquittee, and the judge having jurisdiction over the acquittee;
 - c. A copy of the warrant or the indictment; and
 - d. A copy of the criminal incident information as defined in §2.2-3701 of the Virginia Code, or a copy of the arrest report, or a summary of the facts relating to the crime.
 - e. 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 DBHDS within ninety-six hours of admission. If the 96-hour period expires on a Saturday, Sunday, or legal holiday, the 96 hours shall be extended to the next business day.
 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 Risk (ARR) information and complete the Initial AAR within 30 days after admission (See Appendix A: Analysis of Risk for more information.).
 - b. Contact the appropriate CSB/BHA to gather relevant information and begin the collaborative planning required to manage the acquittee.
 - c. Obtain copies of the sanity evaluation(s) and competency evaluation(s), if available.

II. Assignment of Community Services Board/Behavioral Health Authority (CSB/BHA) Case Manager

- A. As required by Virginia Code § 37.2-505 and detailed in the *Collaborative Discharge Protocols for Community Services Boards and State Hospitals: Adult & Geriatric* and the Community Services Performance Contract's *Community Services Board Administrative Requirements* (see *Continuity of Care Procedures*), it is the responsibility of CSBs/BHAs to assure that individuals receive discharge planning services, beginning at the time of admission to the state facility, that enable timely discharge from the state facility and appropriate post-discharge, community-based services.
- B. All pre-discharge planning activities of the CSB/BHA case manager and the facility shall be conducted in a manner that is consistent with the *Collaborative Discharge Protocols for Community Services Boards and State Hospitals: Adult & Geriatric* that have been issued by the Commissioner of DBHDS.
- C. As soon as an acquittee is placed in the temporary custody of the Commissioner, the responsible CSB shall assign a case manager to that acquittee.
- D. Since the court may conditionally release an acquittee, or release an acquittee without conditions from temporary custody, it is essential that the CSB/BHA case manager be prepared to immediately (i) provide information to State Hospital staff and to the temporary custody evaluators, and (ii) engage in planning for conditional release or release without conditions.
- E. The CSB/BHA case manager who is assigned to each acquittee referred to the DBHDS 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 § 37.2- 505 of the Code of Virginia, and in accord with the parameters outlined in the Performance Contract maintained by the DBHDS with CSBs/BHAs.

III. Temporary Custody Evaluation

- A. After an acquittee is placed in the temporary custody of the Commissioner, the Deputy 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 psychiatrist and
 - 2. One clinical psychologist.

3. The psychiatrist or clinical psychologist shall be skilled in the diagnosis of mental illness and intellectual disability and qualified by training and experience to perform such evaluations. The Commissioner shall appoint both evaluators, at least one of whom shall not be employed by the hospital in which the acquittee is primarily confined. If an evaluator is employed by the hospital in which the acquittee is confined then they shall not be currently providing treatment. The evaluators shall determine whether the acquittee currently has mental illness or intellectual disability and shall assess the acquittee and report on his condition and need for hospitalization with respect to the factors set forth in § 19.2-182.3.
- C. Neither evaluator shall have provided previous court evaluation or consultation regarding the acquittee's insanity or mental state at the time of offense.
- D. The evaluation shall assess:
1. Whether the acquittee has a mental illness or intellectual disability,
 2. The acquittee's condition, and
 3. The acquittee's need for hospitalization based upon factors set forth in §19.2-182.3.
- E. 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 reports to the court shall follow the outline provided in Appendix D of this manual.
 3. Copies of the reports 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 CSB/BHA serving the locality or the case management CSB where the acquittee resides,
 - e. Chair of the FRP,

- f. DBHDS Office of Forensic Services,
- g. Forensic Coordinator of the hospital where the acquittee is assigned.

IV. Cases in Which One or Both Evaluators Recommend Conditional Release or Release without Conditions

- A. When the facility is made aware of an evaluator's recommendation for conditional release or release without conditions, staff will begin developing an appropriate conditional release plan or discharge plan.
 - 1. Facility staff shall immediately contact the appropriate CSB/BHA staff (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 or release without conditions, 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 or discharge plan. Typically an additional 45 day period is requested.
 - 2. *Virginia Code* § 19.2-182.2 provides that the court shall extend the evaluation period to permit DBHDS and the appropriate CSB or BHA to jointly prepare a conditional release plan or discharge plan before the hearing.
- C. The conditional release plan or discharge plan shall be submitted to the FRP for review before submission to the court.
- D. If it is not possible to develop an appropriate conditional release plan or discharge plan, the treatment team shall make a referral to the FRP for consultation and guidance.

The referral shall contain:

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

V. 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.)

TABLE 2.1
Evaluation during Temporary Custody

LEGAL CITATION	§ 19.2-182.2 The court shall place the person so acquitted in temporary custody of the Commissioner of DBHDS for evaluation as to whether the acquittee may be released with or without conditions or requires commitment. The court may authorize the evaluation be conducted on an outpatient basis.
EVALUATORS	<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"> - skilled in the diagnosis of mental illness and intellectual disability, and - qualified by training and experience to perform these evaluations. <p>If the acquittee is confined in a hospital, at least one evaluator shall not be employed by the hospital in which the acquittee is primarily confined.</p> <p>Evaluators shall conduct examinations and report findings separately.</p>
CONTENT	<p>The evaluators shall</p> <ul style="list-style-type: none"> - determine whether the acquittee currently has a mental illness or intellectual disability, and - assess the acquittee and report on his condition and need for hospitalization with respect to the factors set forth in §19.2-182.3.
TIME FRAME	Report is due within 45 days of the Commissioner's assumption of custody.

TABLE 2.2
Criteria for Commitment for Inpatient Hospitalization

LEGAL CITATION	§ 19.2-182.3
CRITERIA	<p>Has a mental illness or intellectual disability and is in need of inpatient hospitalization, based on consideration of the following factors</p> <ul style="list-style-type: none"> - To what extent the acquittee has a mental illness or intellectual disability, as those terms are defined in § 37.2-100; - 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; - The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and - Such other factors as the court deems relevant
ADDITIONAL INFORMATION	<p>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.</p>

TABLE 2.3
Criteria for Conditional Release

LEGAL CITATION	§ 19.2-182.7
CRITERIA	<ul style="list-style-type: none"> - Based on consideration of the factors which the court must consider in its commitment decision, the acquittee does not need inpatient hospitalization but needs outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he or she would need inpatient hospitalization; - Appropriate outpatient supervision and treatment are reasonably available; - There is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and - Conditional release will not present an undue risk to public safety.
ADDITIONAL INFORMATION	<ul style="list-style-type: none"> - 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. - 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 CSB/BHA.

TABLE 2.4.
Criteria for Release without Conditions

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

Model Temporary Custody Order

Virginia:

In the _____ court of

Commonwealth of Virginia

vs _____ Case No.: _____

NOT GUILTY BY REASON OF INSANITY· INITIAL FINDING AND ORDER FOR EVALUATION

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. The court hereby authorizes/ does not authorize (**circle one**) that such evaluations may be conducted on an outpatient basis. If the court has authorized outpatient evaluation but the Commissioner determines that inpatient evaluation is warranted, this order shall suffice to allow the Commissioner the authority to admit the individual for inpatient care.
2. The Clerk of the court is directed to contact the Chief Forensic Coordinator at Central State Hospital or his designee, for a designation of the appropriate facility, admission date and time. The Sheriff of _____ County, or his designee, shall transport the Acquittee to the designated facility 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 in the case where the acquittee has been admitted to a DBHDS facility he shall not be discharged or released from custody of the Commissioner without further Order of this court.

ENTERED:

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

Model Order for Extension of Temporary Custody

VIRGINIA:

IN THE _____ COURT OF _____, COMMONWEALTH OF VIRGINIA
VS. NAME _____ DOCKETT No.-CR _____

**Not Guilty by Reason of Insanity
Extension of Temporary Custody Period for
Development of Conditional Release Plan or Discharge Plan and Hearing Date**

The defendant previously having been found not guilty by reason of insanity and placed in the temporary custody of the Commissioner of the Department of Behavioral Health and Developmental Services for evaluation, and evaluations of the acquittee having been conducted resulting in a determination that the acquittee has a mental illness or intellectual disability and a recommendation by at least one evaluator that the acquittee be conditionally released or released without conditions;

Therefore, the court ORDERS that

1. Pursuant to Virginia Code § 19.2-182.2, the period of temporary custody for evaluation is extended.
2. The hospital to which the acquittee is assigned and the appropriate Community Services Board shall jointly prepare a conditional release plan or a discharge plan, as applicable. The conditional release plan or discharge plan shall be sent to the court on or before *_____. Copies of the conditional release plan or discharge plan shall be sent to the acquittee’s attorney and the attorney for the Commonwealth of the jurisdiction where the defendant was acquitted.
3. On *_____, a hearing will be held to determine whether the acquittee shall be released with or without conditions or requires commitment.
4. The acquittee shall not be discharged or released from custody without further order of this court.

Entered: _____
Date

cc: Commonwealth’s Attorney
Acquittee’s Attorney
Supervising Community Services Board
Chief Forensic Coordinator, Central State Hospital
Commissioner of DBHDS

Signature

Name of Judge

Attention: Office of Forensic Services
P. O. Box 1797, Richmond, VA 23218