

CHAPTER 3

Commitment to the Commissioner for Inpatient Hospitalization (§§ 19.2-182.3 through 19.2-182.6)

I. Placement following commitment to the custody of the Commissioner

- A. If a court determines that the acquittee has a mental illness or intellectual disability and is in need of inpatient hospitalization and commits the acquittee to the custody of the Commissioner, the FRP, as designated by the Commissioner, shall determine the appropriate placement for the acquittee, based on the acquittee's clinical needs and security requirements.
- B. Placement may be in any state-operated DBHDS facility. Specific considerations shall include:
 - 1. Potential for violence to self or others, and
 - 2. Potential for escape.
- C. The Office of Forensic Services is available to provide consultation and assistance in all matters regarding placement of acquittees.

II. Forensic Coordinator Responsibilities

- A. 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 their facility's 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 CSB or BHA 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 G** 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 DBHDS Office of Forensic Services of any initial admission, escape, attempted escape, serious incident, death, transfer to another facility, revocation admission, conditional release, or discharge of an insanity acquittee immediately, but not later than 1 working day subsequent to the event. (See **Appendix G** for additional Forensic Coordinator responsibilities.)

III. Transfer from a Civil unit back to the Maximum Security Unit of Central State Hospital

- A. In cases in which an acquittee requires a maximum-security environment, due to safety or security reasons, the Forensic Coordinator of the referring facility will initiate an immediate referral to the Central State Hospital Forensic Coordinator(s) with notification to the FRP, and to the Director of Forensic Services. The Forensic Coordinator of the referring hospital should notify the Office of Forensic Services of DBHDS within 24 hours of the transfer.
- B. All privileges are suspended while the acquittee is placed in maximum security.
- C. If the acquittee is returned to the referring facility or civil unit within 90 days, the FRP and the DBHDS Office of Forensic Services should be notified, but approval is not required. Privileges may be re-instated by the facility to which the acquittee is returned, following a review by the facility's Internal Forensic Privileging Committee (IFPC).
- D. If the stay on the Maximum Security 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 FRP. Review and approval by the Panel is required before any other privileges can be restored.

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

- A. The committing court shall hold hearings assessing the need for continued inpatient hospitalization for individuals acquitted of a felony by reason of insanity.
 - 1. A continuation of confinement hearing shall be conducted twelve months after the date of commitment,
 - 2. Continuation of confinement hearings shall be conducted at yearly intervals for first five years after commitment, and at 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. (See *Virginia Code* § 19.2-182.5)
- D. Forty–five days prior to the annual continuation of confinement hearing the treatment team shall provide to the Office of Forensic Services a report evaluating the acquittee’s condition and recommending treatment, to be prepared by a psychiatrist or a clinical psychologist. The report shall be submitted to the court thirty days prior to the continuation of confinement hearing.
 - 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 evaluates the acquittee’s condition and makes treatment recommendations 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 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 from which the acquittee was committed,
 - d. NGRI Coordinator of the CSB or BHA serving the locality to which the acquittee has been proposed for conditional release (and the original CSB/BHA if these are not the same),
 - e. Administrative coordinator of the FRP, and
 - f. Office of Forensic Services.
 - 4. FRP 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 or discharge plan shall be submitted to the FRP for review and approval, prior to submission to the court.
 - 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 shall notify the CSB/BHA 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 *Virginia Code* § 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 who is not treating the acquittee.
 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 (§ 19.2-182.6(B)) to assess and report on the acquittee's need for inpatient hospitalization.
 - a. Appointment of evaluators:
 - (1) The DBHDS Office of Forensic Services, or designee, acting for the Commissioner, shall make the appointments upon receipt of the court order.
 - (2) This evaluation is an independent evaluation and does not require the approval of the FRP when recommending conditional release or release without conditions.
 - (3) Evaluations shall be completed and findings reported within 45 days of issuance of the court's order.
 - (4) Recommendation of Conditional Release by the second evaluator. If the second evaluator recommends conditional release or unconditional release, the treatment team must develop a conditional release or discharge plan with the appropriate CSB or BHA, and submit the plan to the FRP. The FRP will, in turn, review and submit the conditional release or discharge plan to the court of jurisdiction along with the Panel's 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 has a mental illness or intellectual disability and continues to require inpatient hospitalization based on the factors set forth in *Virginia Code* §

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 CSB/BHA; 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 CSB/BHA.

V. Acquittee Petition for release, pursuant to *Virginia Code* § 19.2-182.6

- A. Upon receipt of an acquittee's 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 DBHDS Office of Forensic Services or designee, acting for the Commissioner, shall make the appointments upon receipt of the court order.
 - b. These evaluations are independent evaluations and do not require the approval of the FRP 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. Recommendation of Conditional Release by either appointed evaluator. 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 CSB or BHA, and submit the plan to the FRP. The FRP will, in turn, review and submit the conditional release plan to the court of jurisdiction along with the Panel's recommendation.
- B. At the conclusion of the hearing, 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 the acquittee 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. The acquittee meets the criteria for conditional release in § 19.2-182.7, and
 - b. The court has approved a conditional release plan prepared jointly by the hospital staff and appropriate CSB or BHA; or
3. Release the acquittee from confinement if
 - a. The acquittee 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 CSB or BHA.

VI. Release without Conditions from the Custody of the Commissioner

- A. The court shall release the acquittee from confinement if the acquittee does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in § 19.2-182.7, provided the court has approved a discharge plan prepared jointly by the hospital staff and the appropriate community services board.
- B. Only the court that found the acquittee not guilty by reason of insanity and placed the acquittee in the custody of the Commissioner has the jurisdiction to discharge or release the acquittee without conditions.
- C. Treatment team requests or recommendations to the court for release without conditions shall occur only after the review and approval of the FRP.
- D. A discharge plan prepared jointly by the hospital staff and appropriate CSB or BHA shall be submitted to the FRP with the request for release without conditions.
- E. If the FRP provisionally approves the treatment team's request for unconditional release, the Panel shall follow the procedures set forth in Table 3.3 regarding the Commissioner's petition for release of the acquittee.

VII. Escape from Custody of the Commissioner

- A. When an acquittee is unaccounted for the facility shall determine whether the acquittee has absconded from custody, including whether exigent circumstances have reasonably resulted in the acquittee's delayed return to the facility, or if the acquittee is out of compliance with the requirements of their risk management plan. The Forensic Coordinator, or designee, shall inform the Office of Forensic Services of the incident and the facility's determination within 1 working day of

the incident.

- B. 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 escapes from that custody shall be guilty of a Class 6 felony.

- C. If it is determined that an acquittee has absconded from custody, the facility shall
 - 1. Notify appropriate law enforcement officials
 - 2. Notify the court of jurisdiction, the Commonwealth Attorney, the acquittee's attorney and CSB/BHA.
 - 3. Issue a warrant for the acquittee's return
 - 4. Notify Central Office (Office of Forensic Services)
 - 5. Revoke all privileges of the acquittee
 - 6. If a request for victim notification has been received, notify victims or next-of kin of the victims.
 - 7. Acquittees on escape status cannot be discharged from the hospital (including AVATAR) except by court order.

- D. When it is determined that an acquittee's absence is due to exigent circumstances, or noncompliance with the risk management plan rather than escape, the treatment team shall suspend the acquittee's privileges pending a review by the acquittee's treatment team and the facility's IFPC.

The facility shall consider the acquittee's appropriateness for continued exercise of privileges, and develop a plan to mitigate the likelihood of the acquittee engaging in similar behavior. The results of the assessment and the facility's plan for mitigating the risk of escape shall be forwarded to the DBHDS Office of Forensic Services.

- E. Review by the FRP is required after an 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 FRP

- 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 Risk (ARR);
 - 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 FRP.
2. The Panel shall review the case and decide on appropriate placement and levels of privileges for the acquittee.

TABLE 3.1

Required Court Hearings for Felony Acquittees after Commitment to the 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
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, at the time of the judicial review, the felony acquittee may request release pursuant to § 19.2-182.5(B).

TABLE 3.2

Procedures for Annual Continuation of Confinement Evaluations

<p>LEGAL CITATION</p>	<p>§ 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.</p>
<p>EVALUATOR FOR ANNUAL REPORT</p>	<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 intellectual disability, and - qualified by training and experience to perform forensic evaluations.
<p>EVALUATOR FOR SECOND EVALUATION</p>	<p>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>Evaluators shall conduct examinations and report findings separately.</p>
<p>CONTENT</p>	<p>Each report must:</p> <ul style="list-style-type: none"> - evaluate the felony acquittee's condition, and - recommend treatment. <p>Annual reports recommending conditional release or release without conditions must be approved by the FRP prior to submission to the court.</p>
<p>TIME FRAME</p>	<p>The annual report must be submitted to the Office of Forensic Services 45 days prior to the hearing and is sent to the court 30 days prior to the 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>

TABLE 3.3

Procedures for Commissioner Petitions for Conditional or Unconditional Release

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 FRP of a request for release or conditional release
FORENSIC REVIEW PANEL	If the Panel approves the treatment team's request for conditional or unconditional release, then the Panel petitions the court on behalf of the Commissioner.
THE PETITION	The petition shall be signed by the Chair of the Panel, and shall be accompanied by - 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 CSB or BHA
TIME FRAME	Any time the FRP, as designated by the Commissioner, believes the acquittee no longer needs hospitalization. The Commissioner retains final decision-making authority regarding all placement decisions and recommendations to the court for the release of insanity acquittees.

TABLE 3.4

Procedures for Acquittee Petition for Release Evaluations

EVALUATION	Acquittee Petition for Release Evaluation
LEGAL CITATION	§ 19.2-182.6.B.1. Upon receipt of a petition for release by the acquittee, unless otherwise required by the court.
EVALUATOR	2 evaluators appointed by the Commissioner. One psychiatrist, and one clinical psychologist Both shall be <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. At least one evaluator shall not be employed by the hospital in which the acquittee is primarily confined. Evaluators shall conduct examinations and report findings separately.
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.

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 Behavioral Health and Developmental Services. This model order was developed in conjunction with the Office of the Attorney General.

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 DBHDS
Forensic Review Panel
Treatment Team

Model Order for Initial Commitment

VIRGINIA:

IN THE _____ COURT OF _____

COMMONWEALTH OF VIRGINIA

v. _____ DOCKET No.: _____

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 counsel, _____. Based upon the written evaluations submitted by _____, the oral testimony of _____, and the arguments of counsel, the court finds that the acquittee has ___ mentally illness or ___ intellectual disability and is in need of hospitalization based on the factors in Virginia Code § 19.2-182.3. Therefore, the court orders that the acquittee be committed 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 § 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 report so that issues regarding the 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
Supervising Community Services Board
Chief Forensic Coordinator, Central State Hospital
Commissioner of DBHDS
Attention: Director of Forensic Services
DBHDS Division of Forensic Services
P. O. Box 1797
Richmond, VA 23218

Model Order for Recommitment

Virginia:

In the _____ court of _____

Commonwealth of Virginia v. _____ 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 has a ___ mental illness or ___ intellectual disability, and is 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 Services,
P.O. Box 1797, Richmond, Va. 23218