

CHAPTER 5

Planning For Conditional Release (§ 19.2-182.7)

I. Legal parameters of the Conditional Release planning process.

Virginia Code § 19.2-182.7 stipulates that at any time the court considers the acquittee's need for inpatient hospitalization, it shall place the acquittee on conditional release if it determines that:

- A. Based on consideration of the factors which the court must consider in its commitment decision
 1. The acquittee does not need inpatient hospitalization but needs outpatient treatment or monitoring to prevent his or her condition from deteriorating to a degree that he or she would need inpatient hospitalization;
 2. Appropriate outpatient supervision and treatment are reasonably available;
 3. There is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and
 4. Conditional release will not present an undue risk to public safety.
- B. 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.
- C. Only the court that originally found the acquittee not guilty by reason of insanity has the authority to conditionally release the acquittee.
- D. An acquittee can be found not guilty by reason of insanity by more than one court. When this occurs, the procedures outlined here apply to all courts having jurisdiction over the acquittee. In order for an acquittee to be released on conditional release or unconditional release, all courts in which the acquittee was found NGRI must approve either conditional or unconditional release.

II. At any time the hospital receives a recommendation for conditional release from the following sources, it must initiate the conditional release planning process:

- A. An order for conditional release from the committing NGRI court.
- B. A recommendation for conditional release as a result of an evaluation pursuant to Virginia Code § 19.2-182.2 or §19.2-182.5 (acquittee petition).
- C. A treatment team recommendation for conditional release approved by the IFPC.

Regardless of the reason for the request, the hospital must submit all requests for conditional release to the FRP for review and recommendations to the court.

III. Petitions for Release (§ 19.2-182.6.A)

- A. By Commissioner, pursuant to § 19.2-182.6.A
 - 1 On behalf of the Commissioner, the FRP may petition the committing court for an acquittee's conditional or unconditional release at any time it concludes hospitalization of the acquittee is no longer needed. See Table 3.3: Procedures for Petition For Release By the Commissioner.
 - 2 After reviewing the submission packet from the treatment team requesting conditional release, if the FRP approves the submission, it will petition the court for the release of the acquittee. The petition shall be accompanied by
 - a. A report of clinical findings supporting the petition, and
 - b. A conditional release or discharge plan, as appropriate, prepared jointly by the hospital and the appropriate CSB or BHA.
 - 3. A copy of the petition shall be sent to the
 - a. Judge having jurisdiction
 - b. Acquittee's attorney
 - c. Attorney for the Commonwealth for the jurisdiction in 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 or BHA if these are not the same).
 - e. Administrative Coordinator of the FRP.
 - 4. Appointment of evaluators
 - a. Upon receipt of a petition for release from the Commissioner, no further evaluations are required unless deemed necessary by the court, in which case the court shall order the Commissioner to

appoint two persons to assess and report on the acquittee's need for inpatient hospitalization (§19.2-182.6.B.2).

- (1) See Table 3.4: Petition For Release Hearing Evaluation
- (2) The Deputy Director of the Office of Forensic Services (or designee), acting for the Commissioner, shall make the appointments upon receipt of the court order.
- (3) As in other "Commissioner appointed" evaluations, these are independent evaluations and do not require the approval of the FRP when recommending conditional release or release without conditions.

b. Evaluations shall be completed and findings reported within 45 days of issuance of the court's order.

B. Acquittee Petition for Release pursuant to Virginia Code §19.2-182.6.B.1

1. According to § 19.2-182.6, the acquittee may petition the committing court for release only once in each year in which no annual judicial review is required.

2. According to § 19.2-182.6, a copy of the acquittee's petition shall be sent to the attorney for the Commonwealth in the committing jurisdiction.

3. Appointment of evaluators

a. Upon receipt of an acquittee's petition for release, the court shall order the Commissioner to appoint two persons (§ 19.2-182.6.B.1), to assess and report on the acquittee's need for inpatient hospitalization.

- (1) See Table 3.4: Petition For Release Hearing Evaluation
- (2) The DBHDS Office of Forensic Services, acting for the Commissioner, shall make the appointments upon receipt of the court order.
- (3) As in other "Commissioner appointed" evaluations, these are independent evaluations and do not require the approval of the FRP when recommending conditional release or release without conditions.

b. Evaluations shall be completed and findings reported within 45 days of issuance of the court's order.

4. Recommendation of Conditional or Unconditional Release by an evaluator

If either Commissioner appointed evaluator recommends conditional or unconditional release, the treatment team must develop a conditional

release plan or discharge plan with the appropriate CSB or BHA, and submit the plan(s) to the FRP. The FRP will, in turn, review and submit the conditional release and/or discharge plan to the court of jurisdiction, with the Panel's recommendation.

C. Court hearing

1. The court shall conduct a hearing on the petition for release upon receipt of the evaluation reports. As with all court hearings, the treatment team should notify the CSB or BHA of the scheduled date and time of the hearing as soon as it is made aware of an upcoming hearing.
2. Based upon the reports and other evidence provided at the hearing, the court shall
 - a. 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 consideration of the factors set forth in § 19.2-182.3.
 - b. Place the acquittee on conditional release if
 - (1) He or she meets the criteria for conditional release (§19.2-182.7), and
 - (2) The court has approved a conditional release plan prepared jointly by the hospital staff and appropriate CSB or BHA;
or
 - c. Release the acquittee from confinement if
 - (1) He or she does not need inpatient hospitalization,
 - (2) Does not meet the criteria for conditional release set forth in §19.2-182.7, and
 - (3) The court has approved a discharge plan prepared jointly by the hospital staff and appropriate CSB or BHA.

IV: Victim notification (§ 19.2-182.6(B), §19.2-182.4)

- A. Section § 19.2-182.6(B) requires the Commissioner to give notice of the hearing on the petition for release to any victim of the act resulting in the charges on which the acquittee was acquitted or to the next of kin of the victim at the last known address, provided the person submits a written request for such notification to the Commissioner. Section § 19.2-182.4.B requires the Commissioner to give notice of the granting of an unescorted community visit to any victim of a felony offense against the person punishable by more than five years in prison that resulted in the charges on which the acquittee was acquitted or

the next-of-kin of the victim at the last known address, provided the person seeking notice submits a written request for such notice to the Commissioner.

- B. Victims interested in receiving notification of these hearings shall write the Commissioner expressing their interest and provide their names and addresses, or other means of contacting the individual in a timely manner.
- C. Upon receipt of a written request for victim notification, the DBHDS Office of Forensic Services shall
 - 1. Notify the acquittee's facility Forensic Coordinator of the request
 - 2. Write the individual requesting notification informing the individual of the contact information for the facility in which the acquittee is receiving treatment.
 - 3. Send a copy of the letter to the Forensic Coordinator of the facility in which the acquittee is receiving treatment.
- D. The Forensic Coordinator shall
 - 1. Work closely with the treatment team and the court to monitor the acquittee's hearings pursuant to § §19.2-182.5 & 19.2-182.6(B),
 - 2. Notify the person requesting victim notification in writing (and by phone if time before the hearing is limited) as soon as possible after becoming aware of the likelihood of a hearing pursuant to § 19.2-182.6(B) or §19.2-182.5.
 - 3. Make contact with the Commonwealth's Attorney or the clerk of the court for the specific date and time of the hearing.

V. Guidelines for requesting conditional release

- A. All requests for conditional or unconditional release must be reviewed and approved by the FRP.
- B. General guidelines used by the FRP to determine suitability for conditional release include:
 - 1. Successful progression through the graduated release process. Most

acquittees, with the exception of those the judge may conditionally release from temporary custody, will have progressed through graduated levels of treatment and freedom before becoming eligible for recommendation for conditional release. The ability to demonstrate safe behavior and compliance with risk management plans in an environment substantially similar to what is recommended for conditional release is important to the public and the courts and provides a stronger case for conditional release.

2. Acquittee compliance and collaborative involvement with the comprehensive treatment program that has been implemented at the facility. This compliance extends to adherence to regimens of prescribed medication. Evidence from hospital documentation that acquittee is actively participating in treatment, and is allowed and willing to take medication without coercion or even supervision is useful in preparing for conditional release.
3. Clinical stability of acquittee
4. Acquittee shows
 - a. An understanding of his or her mental illness and how that mental illness was linked to the offense of which he or she was acquitted by reason of insanity,
 - b. An ability to manage his or her mental illness in order to avoid future offenses, and
 - c. An understanding of how he or she has changed since the time period of the NGRI offense.

VI. Development of the Conditional Release Plan

- A. Joint Work with CSB or BHA
 1. Virginia Code §§ 19.2-182.2, 19.2-182.5 (C), and 19.2-182.6(C) explicitly require CSBs or BHAs to plan for conditional release in conjunction with hospital staff and to implement the conditional release plan approved by the court. The conditional release plan shall be prepared jointly by the hospital and the CSB or BHA where the acquittee shall reside upon conditional release.
 2. Successful conditional release planning requires
 - a. Close working relationships early in the process,
 - b. Learning to trust each other's judgments and different perspectives,
 - c. Fully considering community concerns, and
 - d. Mutual work toward the goal of a timely, comprehensive, and safe conditional release outcome for the acquittee.

3. The CSB or BHA is a member of the treatment team for the acquittee. It is important for the CSB or BHA staff to meet with the acquittee as often as possible, and to routinely participate in the joint treatment team planning and conditional release planning process during the acquittee's hospitalization.
- B. Non-CSB/BHA provider involvement in conditional release plans:
1. Other providers may contribute to the plan but the CSB/BHA must provide the oversight and is held responsible for the overall implementation of the plan.
 2. Non-CSB/BHA staff providing components of the conditional release plan may be asked by the CSB/BHA to provide written confirmation of their willingness to provide specific components of the plan, regular progress updates to the supervising CSB/BHA, and shared information based upon mutually agreeable guidelines. Written confirmation might best be obtained prior to submission to the court of the proposed conditional release plan.
- C. Cross-Jurisdictional Conditional Release Placements
1. In some cases, acquittees may be conditionally released to CSB/BHA catchment areas that are different from the jurisdictions of the committing courts. This may occur when
 - a. The acquittee committed the NGRI offense away from his/her original CSB/BHA catchment area,
 - b. The acquittee chooses to change residences,
 - c. The family is willing to accept the placement of the acquittee after discharge; the family lives in a different county or city, etc.
 - d. Change of residence comports with clinical and legal recommendations.
 2. Individuals who have been found not guilty by reason of insanity may take up residence in any area of the state of their choosing. They are not required to return to the area from which they were originally acquitted by reason of insanity.
 - a. The CSB or BHA in the area of the acquittee's conditional release residence is responsible for implementing the conditional release plan and providing appropriate services.
 - b. The CSB or BHA from the original jurisdiction may provide consultation or collaboration, if appropriate.
 - c. The CSB or BHA that implements the conditional release plan is responsible for the supervision and monitoring of the acquittee and

for providing all of the required reports to the court and to the DBHDS.

4. When the CSB or BHA changes, the original CSB or BHA should remain involved until the new CSB or BHA has accepted the transfer and the responsibilities for case management.

D. Community Resource Planning

It is important that the CSB/BHA meet with the acquittee as soon as possible upon hospitalization in order to begin the planning process for the community-based resources that will be needed by the acquittee when conditional release is ordered. Planning for appropriate community-based resources, especially residential, can take a significant amount of time and it is important to begin the planning as soon as possible.

VII. Components of Conditional Release Plan

A. Conditions of Release

1. See format for a conditional release plan, provided in **Appendix F**. (Electronic files are available from the Office of Forensic Services.)
2. Examples of general conditions
 - a. Agreement to abide by all municipal, county, state and federal laws.
 - b. Agreement not to leave the Commonwealth of Virginia without first obtaining the written permission of the judge maintaining jurisdiction over his or her case and the supervising CSB. The understanding that, pursuant to § 19.2-182.15, he or she shall be guilty of a class 6 felony if he or she leaves the Commonwealth of Virginia without court permission.
 - d. Agreement not to use alcoholic beverages.
 - e. Agreement not to use or possess any illegal drugs or other medication not prescribed for the acquittee.
 - f. Agreement not to possess or use weapons.
3. Examples of specific rehabilitative components of community care that are typically focused upon in treatment and service provision with acquittees:
 - a. Substance use counseling and monitoring
 - b. Alcoholics Anonymous or Narcotics Anonymous groups, or other substance use treatment
 - c. Anger and aggression control groups
 - d. Group psychotherapy
 - e. Individual therapy

- f. Forensic support groups
 - g. Vocational programming
4. Examples of other special conditions that might be added to the conditional release plan
- a. Limitations on visits to family members, particularly in cases of long-standing acquttee difficulties with family
 - b. Limitations on unsupervised contact with children, particularly in cases where acquttee has a history of sex offenses against children
 - c. Other criminal justice supervisory relationships such as a probation or parole officer supervising acquttee's probation or parole from other criminal convictions
 - (1) In these cases, the probation/parole officer's name, address, and phone number should be spelled out and the working relationship between the CSB and the probation/parole officer should be clarified.
 - (2) A copy of the probation/parole conditions should be reviewed to ensure that there are no conflicts with the conditional release plan.
 - (3) A copy of the probation/parole conditions should be attached to the conditional release plan.
 - (4) An acquttee may also be subject to restrictions or reporting requirements required by other law enforcement entities such as the US Secret Service or Homeland Security.
5. Community and trial visits
- a. Consistent with the underlying principles of graduated release, it is expected that acquttees will have an opportunity to make a careful transition to community placement by participating in a continuum of community visits (escorted by facility staff and unescorted) that include both day and overnight stays (maximum of 48 hours).
 - b. If ordered by the court, visits for more than 48 hours (trial visits) can occur while the acquttee remains in the hospital. These trial visits allow an opportunity to test out the specifics of the conditional release plan prior to final discharge from the hospital. If appropriate for the acquttee, trial visits should be part of the conditional release plan submitted to the court.
 - c. Trial visits also help the acquttee become adjusted to the significant change of release from the hospital and help avoid the more drastic step of revocation of conditional release.
 - d. It is very important for the hospital staff to coordinate all community visits with the CSB/BHA staff. It is critical that the hospital staff notify the CSB/BHA of each community visit once the acquttee has reached the privilege level of unescorted, not

overnight. This notification procedure will facilitate the coordination necessary for the conditional release planning process, and help to maximize integration with community resources.

B. Acquittee's agreement to the conditions of release

1. It is recommended, but not required, that the acquittee review and agree to the proposed conditions of release.
2. The acquittee should be an active participant in the development of the conditional release plan.
 - a. The acquittee's interests and desires regarding conditional release should be taken into consideration in the development of the plan.
 - b. The acquittee should be familiar with the proposed conditional release plan and clearly indicate his/her willingness to comply with that plan.

C. CSB/BHA agreement to the conditions of release

1. The CSB/BHA staff who will supervise and implement the conditional release plan should collaborate in the development of the proposed conditional release plan, and should sign the plan.
2. A separate section of the conditional release plan is provided to give the CSB/BHA staff an opportunity to make independent recommendations and/or comments to the FRP and/or court regarding the proposed conditional release plan. All documents submitted to the FRP should be signed and dated.

VIII. Discharge Procedures

A. Court orders

1. A signed court order for conditional release or release without conditions is required before the acquittee may be discharged from the facility.
2. The court order shall be reviewed by the Forensic Coordinator before discharge. Any ambiguities or questions about the court order should be handled immediately by the facility Forensic Coordinator working with the court before the discharge of the acquittee.
 - a. The Office of Forensic Services is available to provide technical assistance.
 - b. The facility Forensic Coordinator shall provide a notice of

discharge and a copy of the court order to the Office of Forensic Services no later than one working day after discharge.

3. Formal notification to judge and others upon discharge
 - a. As most acquittees are discharged from the hospital to conditional release or release without conditions after the court order is signed, the Forensic Coordinator shall send a formal letter to the judge and shall send copies to the attorneys, the CSB(s), and the Director of Forensic Services noting
 - (1) The date of final discharge;
 - (2) The name, address, and phone number of the CSB staff member supervising the conditional release;
 - (3) Any other information that may be needed by the courts.
 - b. A formal letter to the court clarifies the acquittee's change in status and ensures that the court and all interested parties are fully informed about this important transition to the community.

B. Unexpected Discharges

1. If an unexpected discharge occurs (such as those unusual instances where an acquittee is released by the judge directly from the courtroom), the CSB or BHA where the acquittee was released shall be immediately notified by the facility staff.
2. The released acquittee should be provided appropriate information and encouraged to make immediate contact with service providers in the community in which he will reside.

IX. Plan to monitor compliance with the conditions of release

- A. A plan to monitor compliance, supporting the proposed conditions of release, shall also be part of the conditional release package. See format provided in **Appendix F**.
- B. The purposes of the plan to monitor compliance are to
 1. Clarify expectations regarding the conditions of release,
 2. Set up standards for monitoring the conditional release,
 3. Specify what noncompliance with the conditions would entail, and
 4. Determine, in advance, appropriate responses to noncompliance with the conditions of release.

- C. The goal is to discuss these issues in advance with the acquittee, the acquittee's family and support system, the facility treatment team, and the CSB/BHA staff responsible for supervising the acquittee.
- D. The plan to monitor compliance is intended to "inoculate against setbacks" by helping the acquittee and supervising staff think through possible setbacks and develop a variety of solutions to barriers that might be encountered.
- E. The plan to monitor compliance should be closely tied to the risk factors identified in the Analysis of Risk Report. Responses to noncompliance with the conditions of release should be developed keeping in mind the seriousness of individual risk factors. In order to promote continuity of care for acquittees on conditional release, hospital staff should provide copies of the Analysis of Risk Report, along with other risk assessment instruments and documents, to the NGRI Coordinator for the CSB/BHA.