

# CHAPTER 7

## **Procedures for the Management of Persons Found Not Guilty by Reason of Insanity of a Misdemeanor Offense, Pursuant to VA Code § 19.2-182.5(D)**

- I. The provisions of this chapter are restricted to individuals who have been acquitted only of a misdemeanor offense. Those individuals who have been acquitted by the courts as NGRI of both a felony and misdemeanor offense shall be subject to the provisions of this manual that apply to felony acquittees.**
  
- II. VA Code Section 19.2-182.5 (D) places statutory limitations upon the period of confinement in the custody of the Commissioner for individuals who have been found not guilty by reason of insanity of a misdemeanor offense.**
  - A. Acquittees found not guilty of a misdemeanor by reason of insanity on or after July 1, 2002 shall remain in the custody of the Commissioner for a period not to exceed one year from the date of acquittal.
  
  - B. If the Commissioner determines, prior to, or at the conclusion of one year, that the acquittee meets the criteria for: conditional release; release without conditions (unconditional release); emergency custody pursuant to § 37.2-808; temporary detention pursuant to § 37.2-809; or involuntary civil commitment pursuant to § 37.2-814 *et seq.*:
    1. The Commissioner shall petition the committing court for such.
  
    2. The Commissioner's duty to file such a petition does not preclude the ability of any other person who meets the requirements defined in §37.2-808 from doing so.
  
- III. Misdemeanant NGRIs remain subject to the provisions of other sections of Chapter 11.1 of Title 19.2 of the Code.**
  - A. The verdict of acquittal by reason of insanity of a misdemeanor offense, and the initial placement of the misdemeanant acquittee in the temporary custody of the Commissioner is based upon the criteria delineated in § 19.2-182.2 of the Code.
  
  - B. The revisions to § 19.2-182.5 did not change the statutory basis for the

(“forensic”) period of commitment to the custody of the Commissioner. That commitment period continues to be based upon the criteria set forth in § 19.2-182.3. That section of the Code provides for the commitment of the acquittee if he has a mental illness or intellectual disability and is in need of inpatient hospitalization. The court consider the following factors, in rendering its decision:

1. The extent to which the acquittee has mental illness or intellectual disability;
  2. 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;
  3. The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and
  4. Such other factors as the court deems relevant.
- C. The provisions of § 19.2-182.6, pertaining to Commissioner and acquittee petitions for release, and §19.2-182.7, pertaining to conditional release criteria and plans, are applicable to misdemeanor acquittees during the period of forensic commitment to the custody of the Commissioner.
- D. For all misdemeanor acquittees who have been conditionally released from the custody of the Commissioner, those sections of the Code that address revocation from conditional release shall continue to apply.

#### **IV. Specific operational procedures for the management of misdemeanor acquittees**

- A. Temporary Custody
1. Pursuant to § 19.2-182.2, misdemeanor acquittees are placed in the temporary custody of the Commissioner for the 45-day evaluation period, in the same manner as those acquitted of felony offenses. All departmental procedures for the evaluation and management of felony insanity acquittees, including initial placement, and the completion of the Analysis of Risk Report, are applicable to misdemeanor acquittees.
  2. Verification by the Forensic Coordinator that the offense for which the individual has been found not guilty by reason of insanity was a misdemeanor offense, and not a felony, and determination of the accurate date of acquittal of the misdemeanor offense by reason of insanity shall be completed as soon as possible following the placement of a misdemeanor acquittee in the temporary custody of the Commissioner.

- a. The Forensic Coordinator, or designee, will contact the committing NGRI court to determine the classification (misdemeanor or felony) for all offenses for which the individual has been acquitted.
- b. The Office of Forensic Services will seek proper verification of the actual date of acquittal (date of verdict) for all misdemeanor acquittees. (court orders for temporary custody are typically signed at a later date than the actual date of the verdict.)
- c. Each offense for which the acquittee has been found NGRI will be entered into the Forensic Information Management System (FIMS) along with the corresponding offense level (misdemeanor or felony) of each offense.
- d. The verified acquittal date shall be recorded in the Forensic Information Management System (FIMS).
- e. The verified date of acquittal shall be used to set the termination date for the completion of the one-year commitment period.

B. The privileging process for misdemeanor acquittees

It is the policy of the DBHDS that misdemeanor acquittees who have been committed to the custody of the Commissioner pursuant to § 19.2-182.3 shall remain under forensic status, and shall be subject to the acquittee privilege, risk management and treatment procedures of the DBHDS throughout the portion of their period of forensic hospitalization, until they have been conditionally or unconditionally released from the custody of the Commissioner, or transferred to civil commitment status.

It shall also remain the goal of the DBHDS that the principle of graduated release shall be adhered to with regard to the privileging process for misdemeanor acquittees who are in the custody of the Commissioner. The limited time parameters within which a misdemeanor may advance through the privileging process shall require that facility treatment teams maintain a proactive and expeditious approach with regard to identifying the readiness of misdemeanor NGRIs for increases in privileges, and with seeking appropriate privilege increases for eligible acquittees.

1. The FRP and the IFPC shall continue, as designated and appropriate, to be charged with approval of all:
  - a. Requests for increases in privileges, including transfer from the maximum security forensic unit to civil hospital placement;
  - b. Requests for conditional release from acquittees and treatment teams
  - c. Requests for release without conditions
  - d. Requests for approval of conditional release plans
  - e. Requests for approval of plans for return to conditional release for

acquittees who have been revoked while under forensic commitment status from conditional release.

2. Special considerations for recommending conditional or unconditional release to the committing court
  - a. Whenever appropriate, during a misdemeanor acquittee's period of hospitalization, the treatment team should seek IFPC and FRP approval of requests for conditional or unconditional release of the acquittee.
  - b. All entities involved in the development of requests for conditional or unconditional release of a misdemeanor acquittee by the committing court shall anticipate the time constraints that apply with misdemeanor acquittees.
  - c. There is no provision in § 19.2-182.5(D) for extension of the one-year commitment period for the completion of Commissioner-Appointed Evaluations, or for any other purpose.
  - d. In timing the development of requests for release, particular consideration should be given to the likelihood that petitions for release, pursuant to § 19.2-182.6, from the Commissioner to the committing court may require at least an additional 60 days for the completion of independent evaluations, pursuant to § 19.2-182.6(B) following the petition hearing, if such evaluations are ordered by the court.
  - e. The facility Forensic Coordinator shall have responsibility for informing the Commonwealth's Attorney for the jurisdiction of the committing court of the scheduled release of an acquittee not less than 30 days prior to the release date.

C. Placement on and duration of conditional release

1. A misdemeanor acquittee who has been placed on conditional release shall remain under that status for an indefinite time period, until and unless the committing court has unconditionally released him, revoked him from conditional release and recommitted him to the custody of the Commissioner, or civilly committed him as a result of a revocation process.
2. Revocation of Conditional Release
  - a. As noted above, the procedures defined in §§ 19.2-182.8, 19.2-182.9, and 19.2-182.10, regarding revocation from conditional release are applicable to misdemeanor acquittees who have been placed on conditional release.
  - b. In the event a misdemeanor acquittee is in need of revocation, the CSB shall initiate the revocation process, in accord with the

procedures outlined in § 19.2-182.8, or § 19.2-182.9.

- c. Whenever a misdemeanor acquittee has been revoked to a DBHDS hospital, all of the procedures outlined in Chapter 6 of these *Guidelines* shall be completed, with regard to the preparation of a packet for submission to the FRP within 30 days of the admission of the misdemeanor acquittee.
- d. In the event that the treatment team requests that the acquittee be approved for return to conditional release, and the FRP approves that request, the Panel must notify the court within sixty (60) days of the acquittee's hospitalization of its recommendation.
- e. If the court approves the conditional release of the acquittee at the scheduled hearing in the matter, then the misdemeanor acquittee shall be returned to the community, following the approval of a proper conditional release plan by the court.
- f. If it is the opinion of the treatment team that the misdemeanor acquittee is not ready for return to conditional release, and shall require continued hospitalization, the team should indicate that viewpoint in the privilege packet that is submitted to the FRP, following the revocation of the acquittee.
- g. If the FRP disapproves a request from a treatment team for approval of conditional release of a revoked misdemeanor acquittee, or if the Panel concurs with the team's assessment that the misdemeanor acquittee is in need of continuing hospitalization, the Panel shall direct the facility treatment team to seek a civil commitment of the misdemeanor acquittee from the committing court.

D. Procedures for misdemeanor acquittees recommended for civil commitment

The actions listed below are to be followed for all misdemeanor NGRIs who are considered ineligible for conditional or unconditional release, and who are candidates for civil commitment by the committing NGRI court:

1. Facilities should not submit privilege request packets to the FRP for civil commitment of misdemeanor NGRIs, unless the acquittee is hospitalized as a result of a revocation from conditional release.
2. Following review of the individual's clinical and risk status, facility treatment teams shall notify the facility IFPC of any plans to seek civil commitment for a misdemeanor acquittee who will have been in the custody of the Commissioner for one year from the date of acquittal.
3. A designated member of the treatment team will notify the acquittee of the treatment team's intent to petition the court for civil commitment, prior to sending the petition to the court. Notification of the acquittee shall be documented in the acquittee's medical record.

4. The facility Forensic Coordinator shall serve as petitioner for the civil commitment of the misdemeanor acquittees at the facility. The Forensic Coordinator shall complete all necessary arrangements for the prescreening and psychiatric evaluation of the acquittee, as well as scheduling of court hearings and other logistical matters in an expeditious and timely manner.
5. A qualified clinical psychologist or psychiatrist shall complete the physician's examination for the petition. That evaluator shall also attend the commitment hearing that the court schedules in the matter, in order to provide any requisite expert testimony.
6. The following documents should be sent to the committing NGRI court of jurisdiction for the misdemeanor acquittee as soon as the petition for civil commitment has been completed:
  - a. The completed civil commitment petition;
  - b. A cover letter notifying the court of jurisdiction indicating it is the treatment team's recommendation that the misdemeanor acquittee be civilly committed.
  - c. Copies of these documents shall be sent to the Commonwealth's Attorney in the case, the acquittee's attorney, the Chair of the FRP, the facility IFPC, and the Director of the Office of Forensic Services at the time that they are sent to the court.
7. Upon receipt of an order for the civil commitment of any misdemeanor acquittee by the committing court, a copy of that civil commitment order shall be forwarded to the head of the facility treatment team for inclusion in the patient's medical record. Copies of the commitment order shall also be forwarded to the Chair of the FRP, the DBHDS Office of Forensic Services, and the facility IFPC. This procedure shall not obviate any other archiving of civil commitment documents that may occur at the facility.
8. The facility Forensic Coordinator shall also ensure that the patient's legal status in the AVATAR system is changed to a civil AVATAR code. Receipt of the civil commitment order by the facility will terminate the misdemeanor acquittee's status as an active forensic case, unless there is an additional forensic status in force with the acquittee.
9. The case records of misdemeanor NGRIs shall be closed in the Forensic Information Management System (FIMS), once a misdemeanor acquittee has been civilly committed.
10. All other factors notwithstanding, any misdemeanor acquittee who has been civilly committed shall be placed in a hospital treatment setting that

is consistent with his status as a civilly committed patient, in accord with the level of privileges that he had attained prior to his civil commitment, and which addresses his current need for supervision or security.

- E. Procedures for misdemeanor acquittees who have been found Not Guilty by Reason of Insanity in more than one court.
  - 1. There are cases in which a misdemeanant acquittee has been acquitted in more than one court. In those instances in which the misdemeanant acquittee has also been acquitted of a felony in another court, it shall be necessary for the facility to coordinate all activities regarding the case with the court that will retain jurisdiction for the felony NGRI status of the acquittee.
  - 2. In cases of this type, the Facility Forensic coordinator shall contact the Office of Forensic Services for consultation on the proper procedures to be followed.