REPORT OF THE
JOINT COMMISSION ON HEALTH CARE

Report on Needs of Individuals Found Not Guilty by Reason of Insanity or Incompetent to Stand Trial

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 5

COMMONWEALTH OF VIRGINIA
RICHMOND
2006

JOINT COMMISSION ON HEALTH CARE: 2005

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COMMONWEALTH of VIRGINIA

Joint Commission on Health Care

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Executive Director

900 E. Main Street, Suite 3072E
P.O. Box 1322
Richmond, Virginia 23218
(804) 786-5445
Fax (804) 786-5538

December 30, 2005

TO: The Honorable Mark R. Warner, Governor of Virginia
and
Members of the Virginia General Assembly

On behalf of the Joint Commission on Health Care, I respectfully submit a report on the needs of individuals found not guilty by reason of insanity or incompetent to stand trial. Senate Joint Resolution 324 of the 2005 General Assembly Session required the Joint Commission on Health Care to provide an executive summary of findings and recommendations prior to the 2006 General Assembly Session.

This report, consisting of an executive summary and study presentation, is submitted for your consideration. The Joint Commission would like to recognize the assistance provided by a number of associations and state agencies in completing this study.

Respectfully submitted,

Kim Snead

Kim Snead
Executive Director

PREFACE

Issues related to how to address the needs of individuals found not guilty by reason of insanity (NGRI) or incompetent to stand trial (IST) were raised in the study resolution SJR 324 (2005). SJR 324 initially requested a study by the Joint Legislative Audit and Review Commission, but the resolution was amended to direct the study to the Joint Commission on Health Care (JCHC) through its Behavioral Health Care Subcommittee. This report consists of an executive summary and the presentation made to JCHC's Behavioral Health Care Subcommittee on September 13, 2005.

In conducting this study, a number of objectives for the NGRI-acquittee system were noted including: protecting public safety by ensuring that acquittees are not released into the community until they are ready for such release; and fair treatment in terms of balancing an acquittee's need for treatment with the curtailment of his freedom as well as considering the best use of inpatient bed capacity within Virginia's psychiatric hospitals. The study found that the number of NGRI acquittees has increased in recent years and that inadequate community services have meant that some acquittees who could live in the community have remained in State hospitals.

In response to the study findings, JCHC will introduce legislation and budget amendments during the 2006 General Assembly Session. The legislation seeks to address specific aspects of the NGRI acquittee system. The budget amendments seek to support initiatives to divert individuals with behavioral health care needs from the criminal justice system and to provide treatment for individuals who are not diverted. In addition, the Behavioral Health Care Subcommittee and JCHC voted to continue to address NGRI-related issues by including them on the Subcommittee's 2006 workplan.

On behalf of the Joint Commission on Health Care and its staff, I would like to thank the numerous individuals, agencies, and associations that assisted in conducting this study including: the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Office of the Attorney General; the State Crime Commission; the Indigent Defense Commission; the Psychiatric Society of Virginia and Northern Virginia; the University of Virginia Institute of Law; the Virginia Association of Community Services Boards (including representatives of individual community services boards); and the Virginia Office for Protection and Advocacy.

Kim Snead
Executive Director

December 2005

NEEDS OF INDIVIDUALS FOUND NOT GUILTY BY REASON OF INSANITY OR INCOMPETENT TO STAND TRIAL

EXECUTIVE SUMMARY

Authority for the Study

SJR 324 (2005) requested the Joint Commission on Health Care (JCHC) through its Behavioral Health Care Subcommittee to study the needs of individuals found not guilty by reason of insanity (NGRI) or incompetent to stand trial (IST). (It should be noted that SJR 324 originally requested a study by the Joint Legislative Audit and Review Commission, but the resolution was amended to direct the study to the Behavioral Health Care Subcommittee of the Joint Commission on Health Care.)

Background

Virginia is one of 24 states that have adopted a version of the McNaughten standard in allowing a NGRI defense. As noted in the *Report of the Virginia State Crime Commission SJR 381 Not Guilty by Reason of Insanity*, RD 31 (2004):

"To establish an insanity defense, the defendant must show that he did not know the difference between right and wrong or that he did not understand the nature and consequences of his acts." Once a defendant has been acquitted by being found NGRI, *the Code of VA* § 19.2-182.2 requires the acquittee to be placed in temporary custody of the DMHMRSAS Commissioner for evaluation. Within 45 days, DMHMRSAS must make a recommendation to the committing Court to:

- Release without conditions
- Release with conditions
- Commit for inpatient hospitalization.

The Court subsequently holds a civil hearing to determine the disposition. Acquittees committed by the Court are placed in the custody of the DMHMRSAS Commissioner. A DMHMRSAS fact sheet on the NGRI system notes that "restriction of liberties of acquittees is based on identified risks and clinical treatment needs [with] gradual increases in freedom based on successful completion of the previous, more restrictive level of privileges."

Study Findings

As of June 30, 2004, there were 222 NGRI acquittees held within a State hospital – 209 felon and 13 misdemeanant acquittees. DMHMRSAS reports that the "number of NGRI admissions has been increasing which decreases the number of short-term acute beds available given longer lengths of stay than most civilly committed individuals." DMHMRSAS reported that the median length of

stay between State hospital admission and the first conditional release was 35.7 months for felon acquittees and 12.7 months for misdemeanant acquittees. Given the intention not to increase the number of State hospital beds, the bed space that is available becomes quite valuable.

Issues related to the NGRI study were discussed during meetings of the Forensic Services Work Group (convened by DMHMRSAS). In addition, an ad hoc workgroup was convened by JCHC staff to develop recommendations regarding the study provisions of SJR 324 including to:

- Determine appropriate treatment of acquittees
- Review/revise diagnostic categories as possible NGRI defense
- Examine discharge alternative to expedite return to community
- Provide coordination when release conditions are violated but hospitalization is not required
- Determine needs and impact of persons found incompetent to stand trial on mental health system.

The workgroup developed a number of recommendations which seek to facilitate appropriate treatment and eventual release of acquittees into the community. However, the workgroup also determined that a number of more complex issues could not be studied adequately within the one-year timeframe.

Options and Public Comments

The following options were proposed and public comments received regarding the options. The options that were approved by JCHC are shown in bold text.

Option I: Continue to address NGRI issues related to community- and hospital-based programs by including the review of Virginia's NGRI system on the Behavioral Health Care Subcommittee's workplan for 2006.
All 5 comments received supported Option I.
Virginia Association of Community Services Boards
Thomas L. Hafemeister, J.D., Ph.D.
Alan Reynolds
Steven Shoon
Bill Whittig, Ed.D., LCSW

Option II: Introduce legislation to amend the *Code of Virginia*, Title 19.2 Chapter 11.1 to clarify that voluntary admissions to State hospitals do not have to result in revocation of conditional release for NGRI acquittees.
Four comments were received in support of Option II.
Virginia Association of Community Services Boards
Thomas L. Hafemeister, J.D., Ph.D.

Alan Reynolds
Steven Shoon

Option III: Introduce legislation to amend the *Code of Virginia*, Title 19.2 Chapter 11 to remove language prohibiting psychiatrists and clinical psychologists who are employed by the Commonwealth from being paid for completing evaluations.
Two comments were received in support of Option III.
Virginia Association of Community Services Boards
Thomas L. Hafemeister, J.D., Ph.D.

Option IV: Introduce budget amendment to increase funding of the Discharge Assistance Plan to be used to facilitate release of NGRI acquittees into the community.
Two comments were received in support of Option IV.
Virginia Association of Community Services Boards
Thomas L. Hafemeister, J.D., Ph.D.

Option V: Introduce legislation to amend the *Code of Virginia*, Title 19.2 Chapter 11.1 to increase the time from 30 to ~~45~~ 60 days that an acquittee is allowed to be involuntarily committed to a State hospital without automatically having his conditional release revoked.
Three comments were received in support of Option V. VACSB recommended an increase from 30 to 60 days "in light of the amount of necessary court paperwork and the ongoing workload" a recommendation that DMHMRSAS staff indicated as an acceptable change in the recommendation. Mr. Alan Reynolds recommended increasing the time to 180 days noting that the longer timeframe "would allow an acquittee to avoid an overextended stay in the custody of the Commissioner, and it's the equivalent of the standard involuntary commitment order." This much longer timeframe could be reviewed if a second year study is initiated.
Virginia Association of Community Services Boards
Thomas L. Hafemeister, J.D., Ph.D.
Alan Reynolds

Option VI: Introduce legislation and accompanying budget amendment to amend the *Code of Virginia*, Title 19.2 Chapter 11 to either increase or remove the limitation on the fees paid psychiatrists and clinical psychologists for completing competency evaluations and to provide funding for the fee increase.
Two comments were received in support of Option VI.
Virginia Association of Community Services Boards
Thomas L. Hafemeister, J.D., Ph.D.

Option VII: Introduce a budget amendment to provide funding for competency restoration treatment and follow-up competency evaluations for adult defendants who do not require hospitalization.

Two comments were received in support of Option VII.
Virginia Association of Community Services Boards
Thomas L. Hafemeister, J.D., Ph.D.

Option VIII: Introduce legislation to amend the *Code of Virginia*, Title 19.2 Chapter 11.1 so that consideration of violations of conditional release may be considered by the Court on an expedited basis.
Two comments were received in support of Option VIII.
Virginia Association of Community Services Boards
Thomas L. Hafemeister, J.D., Ph.D.

Option IX: Continue to consider and support initiatives designed to divert individuals with behavioral health care needs from the criminal justice system and to provide treatment for individuals who are not diverted.
Three comments were received in support of Option IX.
Virginia Association of Community Services Boards
Thomas L. Hafemeister, J.D., Ph.D.
Steven Shoon

JCHC Staff for this Report
Kim Snead
Executive Director

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STUDY OF VIRGINIA'S NOT GUILTY BY REASON OF INSANITY PROGRAM

Behavioral Health Care Subcommittee
Joint Commission on Health Care

Kim Snead

September 13, 2005
Richmond, Virginia

Authority for the Study

- Senate Joint Resolution 324 (Senator Puller) requested JCHC through the Behavioral Health Care Subcommittee to:

  " (i) determine the appropriate treatment of acquittees; (ii) review and revise diagnostic categories that are amenable to treatment and therefore eligible for inclusion as a possible NGRI defense; (iii) examine discharge alternatives that will expedite return to the community as well as free up acute care psychiatric beds; (iv) explore the advisability and feasibility of coordination between the Department of Mental Health, Mental Retardation and Substance Abuse Services, community services boards, and the criminal justice system when an acquittee violates conditions of release that are not related to a psychiatric illness and therefore not appropriate for rehospitalization, e.g., illegal drug use, refusal to take drug screens, and failure to keep appointments; (v) determine the needs and impact of persons found incompetent to stand trial on the mental health state system; and (vi) consider such other related issues as the Subcommittee deems appropriate to meet the objectives of this study."

Background

- As noted in the *Report of the Virginia State Crime Commission SJR 381 Not Guilty by Reason on Insanity* RD 31 (2004);

  "The question of the defendant's sanity involves two separate considerations: 1) the defendant's mental competency to stand trial, and 2) the defendant's mental responsibility for the alleged offense. The defense of not guilty by reason of insanity pertains to the latter consideration and must not be confused with the defendant's competency to stand trial. Insanity at the time of the offense is a defense that, if successful, necessitates an acquittal."

- A verdict of NGRI does not mean the defendant is not guilty. In fact, the United States Supreme Court in 1983 in *Jones v. United States* ruled that a NGRI verdict "establishes two facts: 1) The defendant committed an act that constitutes a criminal offense, and 2) He committed the act because of mental illness."

History of NGRI Program in Virginia

- Statutory provisions, allowing for a different disposition if a defendant were found to be insane, date back to the 1800s in Virginia
  - However, the current NGRI program was established in 1991 with the addition of Chapter 11.1 to Title 19.2 of the *Code of Virginia.*
- Virginia is one of 24 states that has adopted a version of the McNaughten standard in allowing a NGRI defense. As noted in the *Report of the Virginia State Crime Commission SJR 381 Not Guilty by Reason on Insanity* RD 31 (2004):

  "The Virginia Supreme Court has adopted both the McNaughten 'right from wrong' test and the irresistible impulse test.[20] To establish an insanity defense, the defendant must show that he did not know the difference between right and wrong or that he did not understand the nature and consequences of his acts."

  [20]Dejarnette v. Commonwealth, 75 Va. 867 (1881).

NGRI System in Virginia

- *Code of Virginia* § 19.2-182.2 requires NGRI acquittees to be placed in temporary custody of the DMHMRSAS Commissioner for evaluation. Within 45 days, DMHMRSAS must make a recommendation to the committing Court to:
  - — Release without conditions
  - — Release with conditions
  - — Commit for inpatient hospitalization.
- The Court subsequently holds a civil hearing to determine the disposition.
- Acquittees committed by the Court are placed in the custody of the DMHMRSAS Commissioner.

NGRI Privileging Process
from DMHMRSAS Fact Sheet on NGRI Program

- **"Active Treatment of NGRIs** ...
  - — Restriction of liberties of acquittees is based on identified risks and clinical treatment needs...
  - — Gradual increases in freedom based on successful completion of the previous, more restrictive level of privileges"
    - Inpatient treatment maximum security then to civil settings
    - Escorted and then unescorted privileges on hospital grounds
    - Escorted in community then unescorted in community but not overnight
    - Unescorted in community < 48 hours
    - Conditional release
    - Unconditional release

Source: *DMHMRSAS Not Guilty by Reason of Insanity (NGRI) Program* Fact Sheet.

NGRI Privileging Process
from DMHMRSAS Fact Sheet on NGRI Program

- Privileging decisions delegated by the Commissioner pursuant to *Code* § 19.2-182.13 to "review requests...[for lessening restrictions on] acquittees who are...in the custody of the Commissioner."
  - — Internal Forensic Privileging Committee
    - 5 members appointed by the hospital director
    - Chaired by psychiatrist or clinical psychologist
    - Receives referral for consideration of change in privileging from hospital treatment team
  - — Forensic Review Panel
    - 7 or more members appointed for 3-year terms
      - 2 psychiatrists
      - 2 clinical psychologists
      - 2 additional licensed mental health professionals
      - CSB representative
      - Others as appointed
    - Chaired by appointee of the Commissioner who must be psychiatrist or clinical psychologist.

Source: *DMHMRSAS Not Guilty by Reason of Insanity (NGRI) Program* Fact Sheet.

NGRI System in Virginia

- DMHMRSAS reported that as of June 30, 2004 there were:
  - — 222 NGRI acquittees in a State hospital
    - 209 felony acquittees with following charges
      - 39 homicide
      - 23 attempted murder or sex crimes
      - 109 other felony against person
      - 35 other felony against property
      - 2 felony substance abuse or weapons offense
    - 13 misdemeanant acquittees

"The number of NGRI admissions has been increasing which decreases the number of short-term acute beds available given longer lengths of stay than most civilly committed individuals."

Source: *DMHMRSAS Not Guilty by Reason of Insanity (NGRI) Program* Fact Sheet.

NGRI System in Virginia

- Length of stay as measured by the amount of time spent in the State hospital before the first conditional release for releases occurring during fiscal years 2001 and 2005

	Average	Median	No.
Felony	41 months	35.7 months	136
Misdemeanant	34 months	12.7 months	46

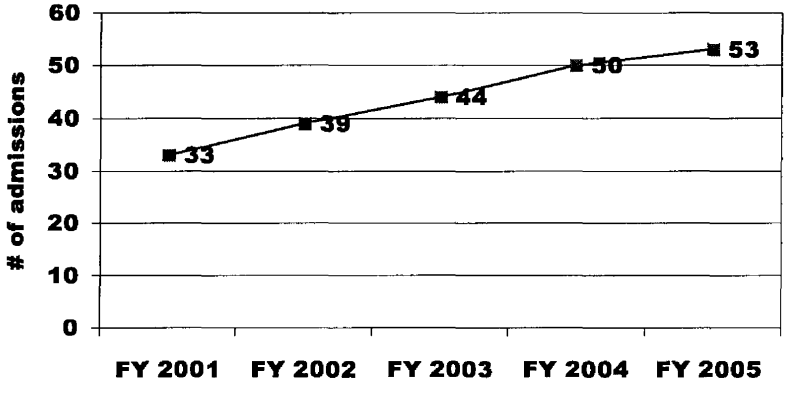
- Number of revocations of conditional release occurring during fiscal years 2001 and 2005

	On Release	Revoked	%
Felony	180	34	18.9%
Misdemeanant	68	16	23.5%

Source: *DMHMRSAS Excel Spreadsheet, September 12, 2005.*

Admission Rates FY'01- FY'05: New NGRIs

from DMHMRSAS presentation to Subcommittees of the Senate Finance Committee on July 19, 2005



DMHMRSAS Secure Forensic Placement

from DMHMRSAS presentation to Subcommittees of the Senate Finance Committee on July 19, 2005

- NGRIs are only one of six categories of forensic patients served by DMHMRSAS (FY 2005 admission figures are noted):
  - Emergency treatment (jail TDOs) – 389
  - Restoration to competency – 311
  - Competency evaluation – 118
  - NGRIs – 53
  - DOC parolees – 22
  - Unrestorable incompetent to stand trial – 2
- DMHMRSAS indicates "Forensic patients have been relatively stable (400-450 [patients]) from 2001-2005; discharge rates have prevented severe overcrowding
  - Forensic patients comprise...30% of all adult psychiatric beds...
  - Increases in categories with prolonged LOS (e.g. NGRIs, Restorations) may yield long-term increase in forensic cases."

Source: DMHMRSAS presentation to Subcommittees of the Senate Finance Committee on July 19, 2005.

DMHMRSAS Secure Forensic Placement

from DMHMRSAS presentation to Subcommittees of the Senate Finance Committee on July 19, 2005

- **3 Levels of Secure Confinement**
  - 2 Maximum Security Units (CSH; 177 beds)
    - Secure internal facilities and external perimeter
    - Full-time security force controls internal and external access
    - Specialized treatment and aggression management teams
  - 2 Medium Security Units (ESH: 65 beds; WSH: 24 beds)
    - Two levels of locked barrier access to units
    - Specialized forensic treatment teams
  - 8 Hospitals have forensic patients in locked settings
  - Special placements available for geriatric and deaf forensic patients in civil hospitals

Source: DMHMRSAS presentation to Subcommittees of the Senate Finance Committee on July 19, 2005.

Study of Virginia's NGRI System

- NGRI-related issues were discussed during meetings of the Forensic Services Work Group as well as in individual contacts with interested parties.
- An ad hoc workgroup was convened subsequently by JCHC staff to discuss recommendations regarding the study provisions of SJR 324
  - — Community services boards, DMHMRSAS, Indigent Defense Commission, Office of the Attorney General, Psychiatric Society of Virginia and Northern Virginia, State Crime Commission, University of Virginia Institute of Law, Psychiatry and Public Policy, and Virginia Office for Protection and Advocacy were represented.

Determine Appropriate Treatment of Acquittees

- Public safety
  - — Ensuring that acquittees are not released into the community until they are "ready" for release.
- Fair treatment
  - — Balancing the acquittees' need for treatment with the reality that being hospitalized or on release with conditions is a curtailment of liberty
    - Enactment of SB 482 (2002) limited the time misdemeanant acquittees could be held in the custody of the DMHMRSAS Commissioner to one year from the date of acquittal.
  - — Balancing the need for inpatient hospitalizations for acquittees with that of civilly committed patients
    - A higher standard of need must be met for civil commitment – dangerous to self or others or unable to care for self – than for commitment as an NGRI acquittee
    - "DMHMRSAS inpatient bed capacity is fixed at current levels" making available bed space quite valuable.

Determine Appropriate Treatment of Acquittees

- NGRI acquittees come into the mental health system via the criminal justice system. This obviously results in a different legal status than experienced by individuals committed to State hospitals via civil procedures
  - — NGRI acquittees can only be released from the Commissioner's custody by the committing court
  - — Some acquittees remain in State hospitals longer than civil patients with similar treatment needs would typically be held.
- It may be useful for DMHMRSAS to have a community- or hospital-based program that serves as a step-down unit that would not be a part of the acute care bed total
  - — DMHMRSAS has established a Transitional Living Community at Eastern State Hospital that could serve as a hospital-based prototype.
    - The Transitional Living Center serves as a "prerelease residential area" for acquittees who have unescorted community privileges and are almost ready for conditional release.

Determine Appropriate Treatment of Acquittees

- *Code of VA* § 19.2-182.9 has been interpreted to require any admission to a State hospital, even a voluntary admission to result in revocation of conditional release
  - — This could deter acquittees on conditional release from voluntarily seeking needed treatment in a State hospital.

OPTION 1: Continue to address NGRI issues related to community- and hospital-based programs by including the review of Virginia's NGRI system on the Behavioral Health Care Subcommittee's workplan for 2006.

OPTION 2: Introduce legislation to amend the *Code of VA*, Title 19.2 Chapter 11.1 to clarify that voluntary admissions to State hospitals do not have to result in revocation of conditional release for NGRI acquittees.

Review and Revise Diagnostic Categories for Inclusion as Possible NGRI Defense

- Workgroup members generally agreed that delineating certain diagnostic categories of mental illness as appropriate for a NGRI defense was neither feasible nor necessary
- The workgroup recommendations included:
  - Ensuring that the initial sanity evaluations needed for a NGRI finding continue to be as well-founded as possible by requiring professional qualifications and specific forensic training for the evaluators
  - Increasing the pool of qualified evaluators by allowing psychiatrists and clinical psychologists who are employed by the State to be paid for completing evaluations
    - Payment is prohibited in statute except for professionals employed by UVA School of Medicine and MCV (and for those not employed by the Commonwealth).

OPTION 3: Introduce legislation to amend the *Code of VA*, Title 19.2 Chapter 11 to remove language prohibiting psychiatrists and clinical psychologists who are employed by the Commonwealth from being paid for completing evaluations.

Examine Discharge Alternatives to Expedite Return to Community

- Some workgroup members indicated that the lack of available community services has meant that some acquittees who could live in the community have remained in State hospitals
  - DMHMRSAS recently determined that community release of 26-40 acquittees in the Commissioner's custody "would be greatly facilitated by the availability of Discharge Assistance Plan (DAP) funding to supplement their placement in supervised community housing, and to enhance their receipt of a higher level of community treatment and monitoring than would otherwise be available to them." (These acquittees currently have unescorted community privileges.)

Examine Discharge Alternatives to Expedite Return to Community

- *Code of VA* § 19.2-182.10 allows an acquittee who is involuntarily committed to a State hospital but improves within 30 days to be returned to conditional release status with the approval of the committing Court
  - — 30 days is too short a time for treatment resulting in some unnecessary recommitments to the custody of the Commissioner
  - — DMHMRSAS suggested increasing the timeframe to 45 days to increase likelihood of acquittees returning to conditional release.
- DMHMRSAS, in partnership with a few localities, has been able to free up State hospital beds by completing competency evaluations and restorations within the community and thereby avoiding the need to admit individuals to a State hospital
  - — Completing these evaluations and restorations in the community is a much less costly and more timely process
  - — However, *Code of VA* § 19.2-175 has limited compensation for these competency evaluations to $400 (except in capital cases) since 1986.
  - — Moreover, *Code of VA* § 19.2-169.2 allows defendants to receive competency restoration treatment on an outpatient basis, but no funding is provided to complete outpatient restoration for adult defendants.

Examine Discharge Alternatives to Expedite Return to Community

OPTION 4: Introduce budget amendment to increase funding of the Discharge Assistance Plan to be used to facilitate release of NGRI acquittees into the community.

OPTION 5: Introduce legislation to amend the *Code of VA*, Title 19.2 Chapter 11.1 to increase the time from 30 to 45 days that an acquittee is allowed to be involuntarily committed to a State hospital without automatically having his conditional release revoked.

OPTION 6: Introduce legislation and accompanying budget amendment to amend the *Code of VA*, Title 19.2 Chapter 11 to either increase or remove the limitation on the fees paid psychiatrists and clinical psychologists for completing competency evaluations and to provide funding for the fee increase.

OPTION 7: Introduce a budget amendment to provide funding for competency restoration treatment and follow-up competency evaluations for adult defendants who do not require hospitalization.

Provide Coordination when Release Conditions Are Violated but Hospitalization Is Not Required

- *Code of VA* § 19.2-182.7 provides for judicial discretion by allowing an acquittee who has violated conditional release but does not require inpatient hospitalization to be held in contempt of court
  - — This allows for further restrictions to be placed on the acquittee which could involve being held in jail.
- Workgroup representatives indicated a problem in getting the revocation hearing on the Court docket in a reasonable time
  - — The acquittee continues to violate conditional release and the community services board providing oversight has little recourse in addressing the violations
  - — Language to expedite a Court's consideration of NGRI dispositional evaluations contained in *Code of VA* § 19.2-182.3 is not included in § 19.2-182.8 which addresses revocation of conditional release.

Provide Coordination when Release Conditions Are Violated but Hospitalization Is Not Required

(Language in *Code of VA* § 19.2-182.3 reads in part: "Upon receipt of the evaluation report...the court shall schedule the matter for hearing on an expedited basis, giving the matter priority over other civil matters before the court....")

OPTION 8: Introduce legislation to amend the *Code of VA*, Title 19.2 Chapter 11.1 so that consideration of violations of conditional release may be considered by the Court on an expedited basis.

Determine Needs and Impact of Persons Found Incompetent to Stand Trial on Mental Health System

- DMHMRSAS has worked with the BHC Subcommittee and its predecessor the Joint Commission on Behavioral Health Care (JCBHC) in an effort to reduce the number of individuals having behavioral health care needs from inappropriately entering the criminal justice system.

- In 2003, DMHMRSAS established the Forensic Services Work Group to address the needs of individuals with BHC issues within the criminal justice system
  - — Treatment of individuals found incompetent to stand trial (who are subsequently referred to DMHMRSAS for restoration of competency) "has been a major focus of the work group's efforts"
  - — The Work Group recommended in its 2004 Report that individuals with behavioral health care needs should be diverted from jail using both pre- and post-booking programs.

Determine Needs and Impact of Persons Found Incompetent to Stand Trial on Mental Health System

- Diversion and behavioral health care initiatives have been developed in collaboration with the Forensic Services Work Group, the Virginia Association of Community Services Boards (and CSB representatives), the Department of Criminal Justice Services, the Department of Corrections, the Department of Juvenile Justice, the Department of Medical Assistance Services, the Commission on Youth, and others.
  - — Many of these initiatives have been introduced in the form of legislation or budget amendments by the Behavioral Health Care Subcommittee and its predecessor JCBHC.

OPTION 9: Continue to consider and support initiatives designed to divert individuals with behavioral health care needs from the criminal justice system and to provide treatment for individuals who are not diverted.

APPENDIX A

ENROLLED

SENATE JOINT RESOLUTION NO. 324

Directing the Joint Commission on Health Care, through its Behavioral Health Care Subcommittee, to study the needs of patients found not guilty by reason of insanity and persons found incompetent to stand trial. Report.

Agreed to by the Senate, February 25, 2005
Agreed to by the House of Delegates, February 24, 2005

WHEREAS, the 2002 General Assembly enacted Senate Bill No. 482 that limited the amount of time that a person found not guilty by reason of insanity (NGRI) of a misdemeanor on or after July 1, 2002, could remain in the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services for no more than one year; and

WHEREAS, persons judged to be incompetent to stand trial usually lack the ability to understand, communicate, or make rational decisions; and

WHEREAS, persons who would normally spend many years in the custody of the Commissioner began to reenter the local community and be placed under the supervision of local community services boards; and

WHEREAS, persons found not guilty by reason of insanity of a felony and persons found incompetent to stand trial are still subject to an indeterminate sentence; and

WHEREAS, the Commissioner has identified 213 NGRI patients statewide whose cases are under consideration for conditional release; and

WHEREAS, the increasing number of NGRI patients and persons found incompetent to stand trial that are anticipated to reenter the community is likely to have both fiscal, and in a few instances, community safety implications upon localities; and

WHEREAS, the impact on the mental heath state system is that most state hospitals do not have sufficient acute care beds partially due to NGRI patients taking longer to discharge even after their symptoms are in remission; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Commission on Health Care, through its Behavioral Health Care Subcommittee, be directed to study the needs of patients found not guilty by reason of insanity and persons found incompetent to stand trial.

In conducting the study, the Commission shall (i) determine the appropriate treatment of acquittees; (ii) review and revise diagnostic categories that are amenable to treatment and therefore eligible for inclusion as a possible NGRI defense; (iii) examine discharge alternatives that will expedite return to the community as well as free up acute care psychiatric beds; (iv) explore the advisability and feasibility of coordination between the Department of Mental Health, Mental Retardation and Substance Abuse Services, community services boards, and the criminal justice system when an acquittee violates conditions of release that are not related to a psychiatric illness and therefore not appropriate for rehospitalization, e.g., illegal drug use, refusal to take drug screens, and failure to keep appointments; (v) determine the needs and impact of persons found incompetent to stand trial on the mental health state system; and (vi) consider such other related issues as the Subcommittee deems appropriate to meet the objectives of this study.

All agencies of the Commonwealth shall provide assistance to the Commission for this study, upon request.

The Joint Commission on Health Care shall complete its meetings by November 30, 2005, and the Director shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2006 Regular Session of the General Assembly. The executive summary shall state whether the Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

ENROLLED

SJ324ER

JOINT COMMISSION ON HEALTH CARE

Executive Director

Kim Snead

Principal Health Policy Analyst

April Kees

Senior Health Policy Analyst

Catherine W. Harrison

Intern

Ridgely Minter

Office Manager

Mamie White Jones

Joint Commission on Health Care
900 East Main Street, Suite 3072E
P.O. Box 1322
Richmond, Virginia 23218
(804) 786-5445
(804) 786-5538 (FAX)

E-Mail: jchc@leg.state.va.us

Internet Address:

http://legis.state.va.us/jchc/jchchome.htm