REPORT OF THE
JOINT COMMISSION ON HEALTH CARE

Treatment Needs of Individuals Found Not Guilty by Reason of Insanity

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

REPORT DOCUMENT NO. 143

COMMONWEALTH OF VIRGINIA
RICHMOND
2008

Code of Virginia § 30-168.

The Joint Commission on Health Care (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to study, report and make recommendations on all areas of health care provision, regulation, insurance, liability, licensing, and delivery of services. In so doing, the Commission shall endeavor to ensure that the Commonwealth as provider, financier, and regulator adopts the most cost-effective and efficacious means of delivery of health care services so that the greatest number of Virginians receive quality health care. Further, the Commission shall encourage the development of uniform policies and services to ensure the availability of quality, affordable and accessible health services and provide a forum for continuing the review and study of programs and services.

The Commission may make recommendations and coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting the provision and delivery of health care.

For the purposes of this chapter, "health care" shall include behavioral health care.

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Vice-Chairman
The Honorable Stephen H. Martin

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The Honorable Harry B. Blevins
The Honorable R. Edward Houck
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Preface

Senate Joint Resolution 324 introduced by Senator Puller during the 2005 General Assembly Session was amended to direct the Joint Commission on Health Care (JCHC), through its Behavioral Health Care Subcommittee (BHC), to study the needs of patients found not guilty by reason of insanity and persons found incompetent to stand trial.

This is the third and final JCHC report in response to this study resolution. Legislation based on the study findings was introduced by JCHC and enacted by the General Assembly during the 2006, 2007 and 2008 Sessions. (Study findings and the actions taken by JCHC during the first two years of the study are detailed in Senate Document 5 – 2006 and Report Document 78 – 2007.) The legislative options approved by JCHC for introduction during the 2008 General Assembly included to:

- Introduce legislation to amend *Code of Virginia* § 19.2-169.3.B to limit to 45 days the treatment provided to restore competency for a defendant charged with a minor, nonviolent misdemeanor offense and to provide the court with options of ordering release or commitment pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 (civil commitment statute).
- Introduce a budget amendment to provide funding of $410,000 GFs for each year of the biennium for DMHMRSAS to fund outpatient restorations for adults (including $20,000 to train additional CSB/BHA staff in completing competency restoration.)
- Introduce legislation to move language clarifying that voluntary admission to a State hospital should not automatically result in revocation of the acquittee's conditional release. Language would be removed from *Code of Virginia* §§ 19.2-182.8 and 19.2-182.9 and placed in another (possibly new) subsection of the *Code*.

On behalf of the Joint Commission and staff, I would like to thank the numerous individuals who assisted with this three-year study including representatives of community services boards; the Department of Mental Health, Mental Retardation and Substance Abuse Services; Indigent Defense Commission; National Alliance for the Mentally Ill, Virginia; Office of the Attorney General; Psychiatric Society of Virginia (and of Northern Virginia); Supreme Court of Virginia; University of Virginia Institute of Law, Psychiatry and Public Policy; and Virginia Office of Protection and Advocacy.

Kim Snead
Executive Director

April 2008

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Treatment Needs of Individuals Found Not Guilty by Reason of Insanity

Executive Summary

Authority for the Study

Senate Joint Resolution 324 introduced by Senator Linda T. Puller during the 2005 General Assembly Session directed the Joint Commission on Health Care (JCHC), through its Behavioral Health Care Subcommittee (BHC), to study the needs of patients found not guilty by reason of insanity (NGRI) and persons found incompetent to stand trial (IST). In conducting the study, JCHC was asked 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; and
(v) determine the needs and impact of persons found incompetent to stand trial on the mental health state system.

This is the third and final JCHC report in response to SJR 324 (2005). Legislation based on the study findings was introduced by JCHC and enacted by the General Assembly during the 2006 and 2007 Sessions. However, the BHC Subcommittee voted to include continuation of the study in its 2007 work plan.

Background

In Virginia, statutory provisions, allowing for a different disposition if a defendant were found to be mentally ill, date back to the 1800s. 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 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):

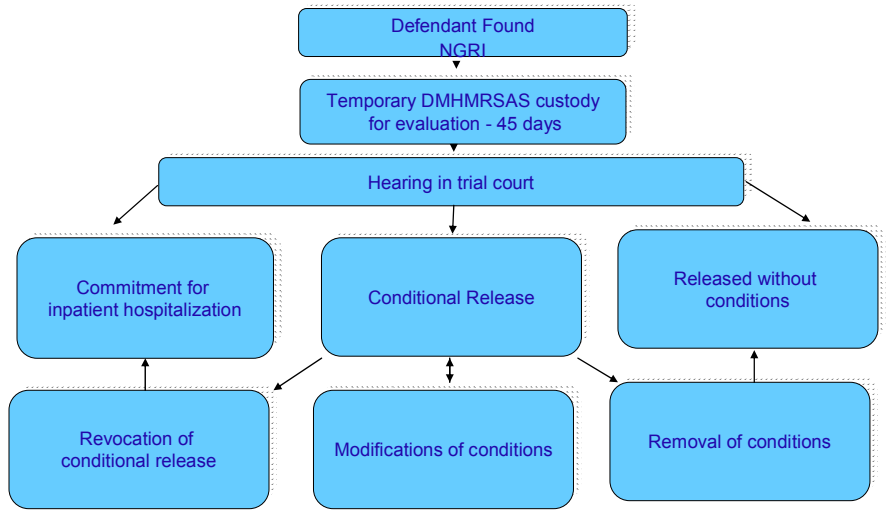
> "The question of the defendant's sanity involves two separate considerations: 1) the defendant's mental competency to stand trial, and 2) the defendant's mental responsibility for the alleged offense. The defense of not guilty by reason of insanity pertains to the latter consideration and must not be confused with the defendant's competency to stand trial."

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."

NGRI System in Virginia

Once a defendant has been acquitted by being found NGRI, *the Code of Virginia* § 19.2-182.2 requires the acquittee to be placed in temporary custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) Commissioner for evaluation. The figure below shows the dispositions that are provided for NGRI acquittees in statute.

Disposition of Insanity Acquittees Under *Code of Virginia*
Sections 19.2-182.2 through 19.2-182.16



Source: DMHMRSAS.

Note: A new court order is required for each step of the process.

An initial review of Virginia's current NGRI system, which was reported to the BHC Subcommittee in 2005, found that the number of NGRI acquittees has increased in recent years. Furthermore, a lack of sufficient community services resulted in some acquittees remaining in State hospitals longer than necessary. The length of stay, as measured by the amount of time spent in the State hospital before the first conditional release (for releases that occurred during fiscal years 2001 through 2005) was reported by DMHMRSAS to be:

Type of Charge	Average Length of Hospitalization	Median Length of Hospitalization	Number of Acquittees Released
Misdemeanor	34 months	12.7 months	46
Felony	41 months	35.7 months	136

Source: DMHMRSAS Excel Spreadsheet dated September 12, 2005.

DMHMRSAS reported as of September 7, 2007, there were 221 NGRI acquittees in a State hospital. Of the 221 acquittees, 216 had the following felony charges:

- 31 homicide
- 28 attempted murder or sex offense
- 117 other felony against person
- 31 felony against property
- 6 substance abuse or weapons offense
- 3 other felony minor offenses.

Five acquittees had a misdemeanor against a person or sex offense charges.

"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."[1] The number of individuals arrested and found to be incompetent to stand trial as well as individuals found not guilty by reason of insanity could be reduced substantially by:

- Providing appropriate care in the community,
- Diverting individuals who are mentally ill from the criminal justice system whenever possible, and
- Reforming the civil commitment system.

These are issues that have been the subject of many reviews over the years and are being considered with new resolve in the aftermath of the tragedy at Virginia Tech.

Study Issues

For the last three years, NGRI-related issues have been discussed during meetings of DMHMRSAS' Forensic Special Populations Work Group as well as in work groups convened by JCHC staff. Work group meetings included representatives from the following entities:

- Community services boards;
- DMHMRSAS;
- Indigent Defense Commission;
- National Alliance for the Mentally Ill Virginia;
- Office of the Attorney General;
- Psychiatric Society of Virginia and Northern Virginia;

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

- Supreme Court of Virginia;
- University of Virginia Institute of Law, Psychiatry and Public Policy;
- Virginia Office for Protection and Advocacy; and
- Virginia State Crime Commission.

The following DMHMRSAS/legislative issues were suggested in work group meetings or with DMHMRSAS staff.

Issues for DMHMRSAS Consideration

Some State hospital beds would become available, if additional transitional unit(s) were opened on the grounds of a State hospital to house acquittees who, while not ready for community placement, do not need all the services of a fully-staffed hospital unit. One transitional unit located on the grounds of Eastern State Hospital serves NGRI acquittees and civil patients.

DMHMRSAS officials are interested in providing NGRI-related training for prosecutors, defense attorneys, and other court personnel. If provided, the training should address issues discussed in the work group, including:

- The differences in commitment criteria related to revocation of an acquittee's conditional release and involuntary civil commitment.
- That the supervising CSB and the Court will lack jurisdiction to enforce release conditions for any NGRI acquittee allowed to move out-of-state; consequently unconditional release is the most viable alternative for out-of-state placements.
- The need to apply other sanctions (such as contempt of court) for violations of conditional release when hospitalization is not appropriate.

Issues to Consider for Legislative Action

Code of Virginia §19.2-169.3 provides alternative dispositions for defendants who have undergone treatment to be restored to competency and been found to be "likely to remain incompetent for the foreseeable future." Option 2 would limit the restoration timeframe to 45 days for defendants found incompetent to stand trial (IST) and charged with a minor, nonviolent misdemeanor. The legislation would benefit individuals charged with a nonviolent misdemeanor who cannot be tried in a timely manner because they are "likely to remain incompetent for the foreseeable future." Alternative dispositions available to the Court would include release or involuntary civil commitment.

Although DMHMRSAS receives funding for outpatient restoration services for juveniles, no funding is received for adult restorations. The lack of funding results in mentally ill adults remaining in jail longer awaiting either restoration services in the jail or within a State hospital, and places a burden on the CSB/BHAs which receive the court orders. The number of orders for adult

outpatient competency restorations has increased significantly in recent years from 26 orders in FY 2004 to 65 orders in FY 2007. Option 3 would provide funding for outpatient restoration services for adults.

HB 791 and SB 289 (2006) were enacted to amend *Code* §§ 19.2-182.8 and 19.2-182.9 clarifying that voluntary admission to a State hospital by an NGRI acquittee should not automatically result in revocation of that acquittee's conditional release. Placement of the clarifying language within *Code* sections that address revocation of conditional release has created some confusion. Option 4 would remove the language from *Code* §§19.2-182.8 and 19.2-182.9 and place that language in another *Code* Section (possibly § 19.2-182.7 where general conditions of conditional release are discussed).

Statutory Firearm Restrictions

Executive Order 50 (2007) closed the loophole in State procedures that allowed persons involuntarily committed to outpatient treatment to purchase firearms. JCHC staff consulted with DMHMRSAS and staff of the Office of the Attorney General in reviewing State statutes governing the purchase of firearms by individuals found to be incompetent to stand trial and for NGRI acquittees. Although statutory clarification may be needed, a comprehensive review of *Code of Virginia* provisions as recommended in the Virginia Tech Review Panel's report would be the best approach.

No *Code* section restricts the possession of firearms specifically for persons found IST. This may be the case because being incompetent to stand trial is expected to be a temporary status unless the person is found to be unrestorable for the foreseeable future. In practice, persons found to be IST, upon commitment for restoration may be addressed under the firearm restrictions in the involuntary commitment statute.[2] This is the same statute that included the outpatient commitment loophole addressed by Executive Order earlier this year.

[2] § 18.2-308.1:3. "Purchase, possession or transportation of firearm by persons involuntarily committed; penalty.

A. It shall be unlawful for any person involuntarily committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 to purchase, possess or transport a firearm during the period of such person's commitment. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following his release from commitment, petition the circuit court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. The court may, in its discretion and for good cause shown, grant the petition. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order."

(1994, c. 907; 2004, c. 995.) *Code of VA* § 18.2-308.1:3.

Statutory Firearm Restrictions and NGRI

Statutory firearm restrictions for NGRI acquittees are defined in *Code of Virginia* § 18.2-308.1:1.[3] Possessing or transporting a firearm is a Class 1 misdemeanor for any NGRI acquittee committed to the Commissioner's custody except when the charge involved is:

- Class 3 or 4 misdemeanor
- Driving while intoxicated § 18.2-266
- Disorderly conduct § 18.2-415
- Trespassing § 18.2-119
- Any local ordinance establishing similar offenses.

Upon discharge from custody, an acquittee may petition the circuit court "for a permit to possess or carry a firearm." (The same process as allowed for persons subject to involuntary commitment.)

Policy Options

Option 1: Take no action.

☑ **Option 2:** Introduce legislation to amend *Code of Virginia* § 19.2-169.3.B to limit to 45 days the treatment provided to restore competency for a defendant charged with a minor, nonviolent misdemeanor offense and to provide the court with options of ordering release or commitment pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 (civil commitment statute).

☑ **Option 3:** Introduce a budget amendment to provide funding of $410,000 GFs for each year of the biennium for DMHMRSAS to fund outpatient restorations for adults (including $20,000 to train additional CSB/BHA staff in completing competency restoration.)

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[3] § 18.2-308.1:1. Possession or transportation of firearms by persons acquitted by reason of insanity; penalty; permit.

A. It shall be unlawful for any person acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, pursuant to Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2, on a charge of treason, any felony or any offense punishable as a misdemeanor under Title 54.1 or a Class 1 or Class 2 misdemeanor under this title, except those misdemeanor violations of (i) Article 2 (§ 18.2-266 et seq.) of Chapter 7 of this title, (ii) Article 2 (§ 18.2-415 et seq.) of Chapter 9 of this title, or (iii) § 18.2-119, or (iv) an ordinance of any county, city, or town similar to the offenses specified in (i), (ii), or (iii), to knowingly and intentionally possess or transport any firearm. A violation of this section shall be punishable as a Class 1 misdemeanor.

B. Any person so acquitted may, upon discharge from the custody of the Commissioner, petition the circuit court in which he resides for a permit to possess or carry a firearm. The court may, in its discretion and for good cause shown, grant the petition and issue a permit, in which event the provisions of subsection A do not apply. (1990, c. 692.)

☑ **Option 4:** Introduce legislation that would move language clarifying that voluntary admission to a State hospital should not automatically result in revocation of the acquittee's conditional release. Language would be removed from *Code of Virginia* §§ 19.2-182.8 and 19.2-182.9 and placed in another *Code* Section.

JCHC Staff for this Report
Kim Snead
Executive Director

Behavioral Health Care Subcommittee

Joint Commission on Health Care

Treatment Needs of Individuals Found Not Guilty by Reason of Insanity

Kim Snead
Executive Director
September 19, 2007

Authority for the Study

- Third year of study requested in Senate Joint Resolution 324 – 2005 (Senator Puller) for the Behavioral Health Care (BHC) Subcommittee to study the needs of persons found not guilty by reason of insanity (NGRI) and the impact on the mental health system of persons found incompetent to stand trial (IST).
  - Legislation based on study findings was introduced by JCHC and enacted by the General Assembly during the 2006 and 2007 Sessions (See Attachment).
  - BHC Subcommittee voted to include continuation of the study in its 2007 work plan.

Background

- As noted in *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."

- 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."

NGRI System in Virginia

- DMHMRSAS reported as of September 7, 2007, there were 221 NGRI acquittees in a State hospital
  - 216 acquittees with the following felony charges
    - 31 homicide
    - 28 attempted murder or sex offense
    - 117 other felony against person
    - 31 felony against property
    - 6 substance abuse or weapons offense
    - 3 other felony minor offense
  - 5 acquittees with misdemeanor against person or sex offense charges.

"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."

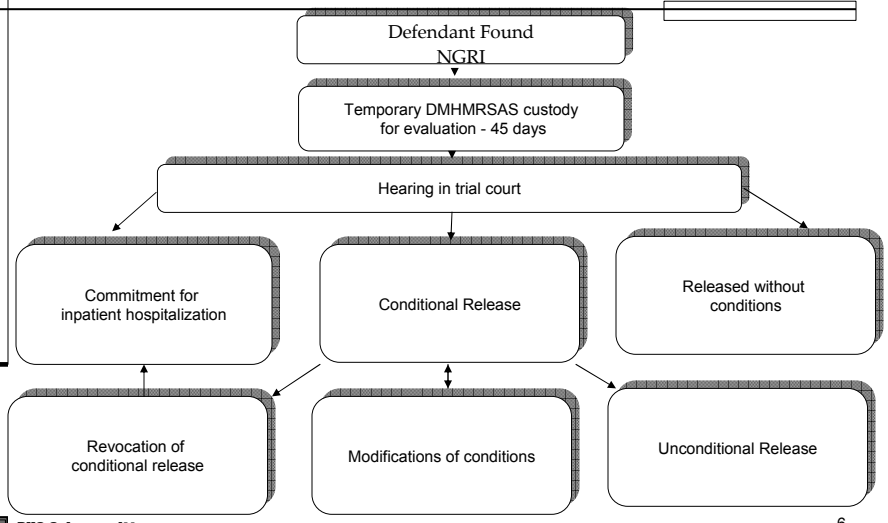
Source: *DMHMRSAS Not Guilty by Reason of Insanity (NGRI) Program* Fact Sheet.

Appropriate Treatment of Individuals with Mental Illness

- The number of individuals arrested and found to be incompetent to stand trial as well as individuals found not guilty by reason of insanity could be reduced substantially by:
  - Providing appropriate care in the community,
  - Diverting individuals who are mentally ill from the criminal justice system whenever possible, and
  - Reforming the civil commitment system.
- These are issues that have been the subject of many reviews over the years and are being considered with new resolve in the aftermath of the tragedy at Virginia Tech.

Disposition of Insanity Acquittees Under

Code of Virginia §§ 19.2-182.2 through 19.2-182.16



Note: A new court order is required for each step in this process.
Source: DMHMRSAS.

Study of Virginia's NGRI System

- For the last three years, NGRI-related issues have been discussed during meetings of DHMRSAS' Forensic Special Populations Work Group as well as in work groups convened by JCHC staff.
  - Work group meetings included representatives of community services boards; DMHMRSAS; Indigent Defense Commission; National Alliance for the Mentally Ill Virginia; Office of the Attorney General; Psychiatric Society of Virginia and Northern Virginia; State Crime Commission; Supreme Court of Virginia; University of Virginia Institute of Law, Psychiatry and Public Policy; and Virginia Office for Protection and Advocacy.
- The following DMHMRSAS/legislative issues were suggested in work group meetings or with DMHMRSAS staff except for the firearm issues.

Issues for DMHMRSAS Consideration

- Some State hospital beds would become available, if additional transitional unit(s) were opened on the grounds of a State hospital to house acquittees who while not ready for community placement, do not need all of the services of a fully-staffed hospital unit.
  - One transitional unit that serves NGRI acquittees and civil patients is located on the grounds of Eastern State Hospital.

Issues for DMHMRSAS Consideration

- DMHMRSAS officials are interested in providing NGRI-related training for prosecutors, defense attorneys, and other court personnel. If provided, the training should address issues discussed in the work group, including:
  - The differences in commitment criteria related to revocation of an acquittee's conditional release and involuntary civil commitment.
  - That the supervising CSB and the Court will lack jurisdiction to enforce release conditions for any NGRI acquittee allowed to move out-of-state; consequently unconditional release is the most viable alternative for out-of-state placements.
  - The need to apply other sanctions (such as contempt of court) for violations of conditional release when hospitalization is not appropriate.

Issues to Consider for Legislative Action

- *Code* § 19.2-169.3 provides alternative dispositions for defendants who have undergone treatment to be restored to competency and been found to be "likely to remain incompetent for the foreseeable future."
  - Option 2 would limit the restoration timeframe to 45 days for defendants found IST and charged with a minor, nonviolent misdemeanor.
    - The legislation would benefit individuals charged with a nonviolent misdemeanor who cannot be tried in a timely manner because they are "likely to remain incompetent for the foreseeable future."
    - Alternative dispositions available to the Court would include – release or involuntary civil commitment.

Issues to Consider for Legislative Action

- Although DMHMRSAS receives funding for outpatient restoration for juveniles, no funding is received for adult restorations. The lack of funding:
  - Results in mentally ill adults remaining in jail longer awaiting either restoration services in the jail or within a State hospital.
  - Places a burden on the CSB/BHAs which receive the court orders.
  - The number of orders for adult outpatient competency restorations has increased significantly in recent years
    - 26 orders in FY 2004
    - 41 orders in FY 2005
    - 60 orders in FY 2006
    - 65 orders in FY 2007.
  - Option 3 would provide funding for outpatient restoration for adults.

Issues to Consider for Legislative Action

- HB 791 and SB 289 (2006) were enacted to amend *Code* §§ 19.2-182.8 and 19.2-182.9 clarifying that voluntary admission to a State hospital by an NGRI acquittee should not automatically result in revocation of that acquittee's conditional release.
  - Placement of the clarifying language within *Code* sections that address revocation of conditional release has created some confusion.
    - Option 4 would remove the language from *Code* §§ 19.2-182.8 and 19.2-182.9 and place that language in another *Code* Section (possibly § 19.2-182.7 where general conditions of conditional release are discussed).

Statutory Firearm Restrictions

- Executive Order 50 (2007) closed the loophole in State procedure that allowed persons involuntarily committed to outpatient treatment to purchase firearms.
- JCHC staff consulted with DMHMSAS and OAG staff in reviewing State statutes governing the purchase of firearms by individuals found to be incompetent to stand trial (IST) and for NGRI acquittees.
  - Although statutory clarification may be needed, a comprehensive review of *Code of VA* provisions as recommended in the Virginia Tech Review Panel's report would be the best approach.

Statutory Firearm Restrictions – IST

- No *Code* section restricts the possession of firearms specifically for persons found IST. This may be the case because being incompetent to stand trial is expected to be a temporary status unless the person is found to be unrestorable for the foreseeable future.
  - In practice, persons found the be IST, upon commitment for restoration may be addressed under the firearm restrictions in the involuntary commitment statute (*Code of VA* § 18.2-308.1:3).
    - This is the same statute that included the outpatient commitment loophole addressed by Executive Order earlier this year.

Statutory Firearm Restrictions and Involuntary Commitment

§ 18.2-308.1:3. Purchase, possession or transportation of firearm by persons involuntarily committed; penalty.

A. It shall be unlawful for any person involuntarily committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 to purchase, possess or transport a firearm during the period of such person's commitment. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following his release from commitment, petition the circuit court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. The court may, in its discretion and for good cause shown, grant the petition. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

(1994, c. 907; 2004, c. 995.)

Statutory Firearm Restrictions and NGRI

- Statutory firearm restrictions for NGRI acquittees are spelled out in *Code of VA* § 18.2-308.1:1).
  - Possessing or transporting a firearm is a Class 1 misdemeanor for any NGRI acquittee committed to the Commissioner's custody except when the charge involved is:
    - Class 3 or 4 misdemeanor
    - Driving while intoxicated § 18.2-266
    - Disorderly conduct § 18.2-415
    - Trespassing § 18.2-119
    - Any local ordinance establishing similar offenses.
  - Upon discharge from custody, an acquittee may petition the circuit court "for a permit to possess or carry a firearm." (The same process as allowed for persons subject to involuntary commitment.)

Statutory Firearm Restrictions and NGRI

§ 18.2-308.1:1. Possession or transportation of firearms by persons acquitted by reason of insanity; penalty; permit.

A. It shall be unlawful for any person acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, pursuant to Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2, on a charge of treason, any felony or any offense punishable as a misdemeanor under Title 54.1 or a Class 1 or Class 2 misdemeanor under this title, except those misdemeanor violations of (i) Article 2 (§ 18.2-266 et seq.) of Chapter 7 of this title, (ii) Article 2 (§ 18.2-415 et seq.) of Chapter 9 of this title, or (iii) § 18.2-119, or (iv) an ordinance of any county, city, or town similar to the offenses specified in (i), (ii), or (iii), to knowingly and intentionally possess or transport any firearm. A violation of this section shall be punishable as a Class 1 misdemeanor.

B. Any person so acquitted may, upon discharge from the custody of the Commissioner, petition the circuit court in which he resides for a permit to possess or carry a firearm. The court may, in its discretion and for good cause shown, grant the petition and issue a permit, in which event the provisions of subsection A do not apply.

(1990, c. 692.)

Policy Options

Option 1: Take no action.

Option 2: Introduce legislation to amend *Code of VA* § 19.2-169.3.B to limit to 45 days the treatment provided to restore competency for a defendant charged with a minor, nonviolent misdemeanor offense and to provide the court with options of ordering release or commitment pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 (civil commitment statute).

Policy Options

Option 3: Introduce a budget amendment to provide funding of $410,000 GFs for each year of the biennium for DMHMRSAS to fund outpatient restorations for adults (including $20,000 to train additional CSB/BHA staff in completing competency restoration.)

Option 4: Introduce legislation that would move language clarifying that voluntary admission to a State hospital should not automatically result in revocation of the acquittee's conditional release. Language would be removed from *Code of VA* §§ 19.2-182.8 and 19.2-182.9 and placed in another *Code* Section.

Public Comments

- Written public comments on the proposed options may be submitted to JCHC by close of business on October 10, 2007. Comments may be submitted via:
  - E-mail (sareid@leg.state.va.us)
  - Facsimile (804/786-5538) or
  - Mail to Joint Commission on Health Care
    P.O. Box 1322
    Richmond, Virginia 23218
- Comments will be summarized and presented to JCHC during its October 17th meeting.

Internet Address

Joint Commission on Health Care website
http://jchc.state.va.us

Contact Information
ksnead@leg.state.va.us
900 East Main Street, 1st Floor West
P O Box 1322
Richmond, VA 23218
804-786-5445 Fax 804-786-5538

Previous JCHC Legislation

2006 Legislation

House Bill 789 and Senate Bill 251

(Chief Patrons: Delegate Brink and Senator Puller)

- **Purpose:** Eliminates remaining prohibition against compensating mental health experts employed by the Commonwealth to render professional service in trials involving an insanity defense or after conviction in a case in which the offense indicates sexual abnormality. Compensation is limited to that provided during non-state hours and approved as being outside the scope of state employment.
- **Final Action:** HB 789 and SB 251 were passed by both chambers of the General Assembly and were approved by the Governor (*2006 Acts of Assembly*, Chapters 114 and 170 respectively).

2006 Legislation

House Bill 790 and Senate Bill 250

(Chief Patrons: Delegate Melvin and Senator Puller)

- **Final Action:** HB 790 and SB 250 were passed unanimously by both chambers of the General Assembly and were approved by the Governor (*2006 Acts of Assembly*, Chapters 199 and 225 respectively).
- **Purpose:** Extends from 30 to 60 days the time that an individual, who is on conditional release following acquittal based on being not guilty by reason of insanity (NGRI), may receive inpatient treatment in a State psychiatric hospital and not have his conditional release automatically revoked.

2006 Legislation

House Bill 791 and Senate Bill 289

(Chief Patrons: Delegate Brink and Senator Blevins)

- **Purpose:** Allows a NGRI acquittee on conditional release to voluntarily admit himself to a State psychiatric hospital without having his conditional release automatically revoked.
- **Final Action:** HB 791 and SB 289 were passed unanimously by both chambers of the General Assembly and were approved by the Governor (*2006 Acts of Assembly*, Chapters 343 and 370 respectively).

2006 Legislation

Senate Bill 288

(Chief Patron: Senator Blevins)

- **Purpose:** Requires a hearing on revocation of conditional release of a NGRI acquittee to be scheduled on an expedited basis and given priority over other civil matters before the court.
- **Final Action:** SB 288 was passed unanimously by both chambers of the General Assembly and was approved by the Governor (*2006 Acts of Assembly*, Chapter 369).

House Bill 2368/Senate Bill 965

Chief Patrons: Delegate Nutter/Senator Puller

- **Purpose:** To increase to $750 the maximum fee paid to psychiatrists, clinical psychologists or other experts "appointed by the court to render professional" mental health services. Since the 1980s, a statutory limitation of $400 for fees other than those paid in capital murder cases has been in place.
  - *Code of VA* Section 19.2-175.
- **Final Action:** HB 2368 was passed unanimously by both chambers of the General Assembly and approved by the Governor. SB 965 was passed by the Senate, but left in House Appropriations.
  - *2007 Acts of Assembly*, Chapter 829.

House Bill 2369/Senate Bill 1104

Chief Patrons: Delegate Brink/Senator Puller

- **Purpose:** To allow the DMHMRSAS Commissioner to designate the community services board that will be involved in working with NGRI acquittees and to add the term "behavioral health authority" wherever the term "community services board" appears to recognize the one authority that operates in Richmond.
  - *Code of VA* Title 19.2, Chapter 11.1.
- **Final Action:** HB 2369 and SB 1104 were passed unanimously by both chambers of the General Assembly and approved by the Governor.
  - *2007 Acts of Assembly*, Chapters 485 and 565 respectively.

Senate Bill 1103

Chief Patron: Senator Puller

- **Purpose:** To indicate in six places that competency evaluations are to be made available to directors of community services boards. This is in keeping with the stated preference (in that *Code* Section) that services to restore competency should be provided on an outpatient basis, unless inpatient hospital treatment is required.
  - *Code of VA* Section 19.2-169.2.
- **Final Action:** SB 1103 was passed unanimously by both chambers of the General Assembly and approved by the Governor.
  - *2007 Acts of Assembly*, Chapter 781.

Senate Bill 1134

Chief Patron: Senator Lambert

- **Purpose:** To provide flexibility to the Court and clarify that the requirement for the DMHMRSAS Commissioner to appoint two mental health professionals to evaluate an acquittee's need for continued hospitalization only applies when the acquittee has submitted the petition. This would remove the requirement for additional evaluations when the Commissioner has petitioned the Court.
  - SB 1134 was amended requiring the Court if it determines additional evaluations are needed, to order the Commissioner to appoint two mental health professionals "to assess and report on the acquittee's need for inpatient hospitalization…."
  - *Code of VA* Section 19.2-182.
- **Final Action:** SB 1134, as amended, was passed by both chambers of the General Assembly and approved by the Governor.
  - *2007 Acts of Assembly*, Chapter 785.

Appendix A

2005 SESSION

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.

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