

# Behavioral Health Care Subcommittee

Joint Commission on Health Care

## Treatment Needs of Individuals Found Not Guilty by Reason of Insanity

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## 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*.



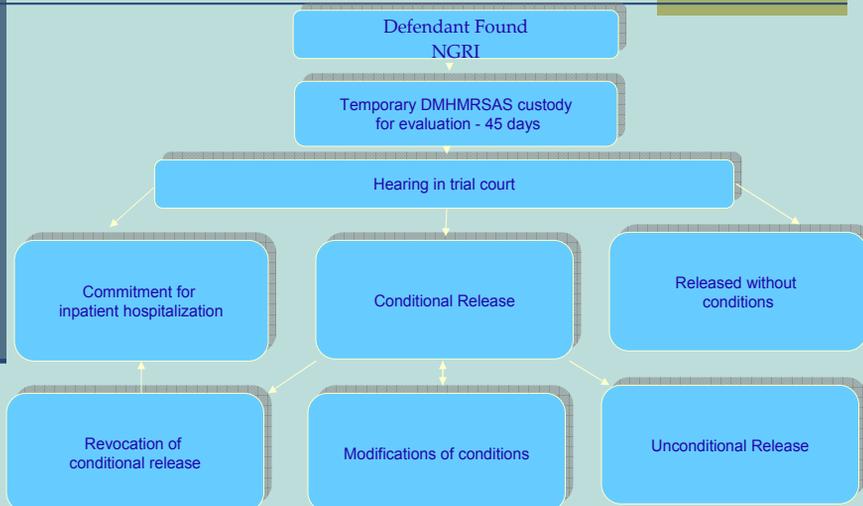
## Appropriate Treatment of Individuals with Mental Illness

- 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



## 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 to 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 acqittee'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](mailto: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 17<sup>th</sup> meeting.



## Internet Address

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

### Contact Information

[ksnead@leg.state.va.us](mailto:ksnead@leg.state.va.us)  
900 East Main Street, 1<sup>st</sup> Floor West  
P O Box 1322  
Richmond, VA 23218  
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## 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.

