WEST VIRGINIA CODE: §27-6A-5

§27-6A-5. Release of acquittee to less restrictive environment; discharge from jurisdiction of the court; conditional release; and commitment.

(a) Upon receipt of the evaluation report as provided in §27-6A-4(e) of this code, and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing to determine the appropriate disposition of the acquittee. The hearing shall be conducted within 30 days receipt of the evaluation report. The circuit court may, sua sponte or upon motion, order that an independent dangerousness evaluation by an independent qualified forensic evaluator be performed to aid in its consideration of the proposed placement and supervision of the acquittee. The dangerousness evaluation shall be paid for by the department and shall be performed consistent with the department's program standards and requirements for the evaluations. As an alternative to ordering an independent dangerousness assessment, the court may avail itself of the services of the Dangerousness Assessment Review Board established in §27-6A-12 of this code. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, of the right to assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing is a civil proceeding.

(b) At the conclusion of the hearing, the court cannot commit the acquittee to a mental health facility or state hospital unless it finds by clear and convincing evidence that the acquittee has a mental illness or an intellectual disability, and that because of the nature or severity of acquittee's condition, the acquittee cannot be treated on an outpatient basis and requires inpatient management. The decision of the court shall be based upon consideration of the following factors:

(1) To what extent the acquittee has mental illness or an intellectual disability;

(2) The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself or herself in the foreseeable future;

(3) The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and

(4) Any other factors reflected in §27-5-4 of this code.

(c) If inpatient hospitalization is ordered by the court, the mental health facility or state hospital shall periodically provide written clinical reports to the court regarding the continued need for hospitalization as provided by this subsection. A report shall be sent to

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the court after the initial six months of treatment and every two years after the initial report is made. The court shall provide copies of the reports to the prosecutor and attorney for the acquittee. Within 30 days after receipt of the report, the court shall hold a hearing to consider the issue of the continued commitment of the acquittee. The acquittee may request a change in the conditions of confinement, and the trial court shall conduct a hearing on that request if six months or more have elapsed since the most recent hearing was conducted under this section.

(d) Notwithstanding anything in this section to the contrary, the court shall order the acquittee released if the court finds that the acquittee meets the criteria for conditional release as set forth in subsection (f) of this section. The court may order any other conditions it determines to be necessary in accordance with subsection (c) of this section. If the court finds that the acquittee does not need inpatient hospitalization nor does the acquittee meet the criteria for conditional release, the court shall release the acquittee without conditions, provided the court has approved a discharge plan prepared by the appropriate comprehensive community mental health center or licensed behavioral health provider in consultation with the department.

(e) The court shall order that any person, acquitted by reason of mental illness and committed pursuant to this section, who is sentenced to a term of incarceration for any other offense in the same proceeding or in any proceeding conducted prior to the proceeding in which the person is acquitted by reason of mental illness, complete any sentence imposed for the other offense prior to being placed in the custody of the department until released from commitment pursuant to §27-1-1 *et seq*. of this code. The court shall order that any acquittee by reason of mental illness and committed pursuant to this section who is sentenced to a term of incarceration in any proceeding conducted during the period of commitment be transferred to the custody of the correctional facility where he or she is to serve his or her sentence, and, upon completion of his or her sentence, that person shall be placed in the custody of the department until released from commitment pursuant to §27-1-1 *et seq* of this code.

(f) At any time the court considers the acquittee's need for inpatient hospitalization pursuant to this section, the court shall place the acquittee on conditional release if it finds that: (1) Based on consideration of the factors which the court must consider in its commitment decision as provided in subsection (b) of this section, the acquittee does not need inpatient hospitalization but may require outpatient treatment or monitoring to prevent his or her condition from deteriorating to a degree that he or she would become likely to cause serious harm to self or others; (2) appropriate outpatient supervision and treatment are reasonably available; (3) the acquittee is not mentally ill or does not have significant dangerousness risk factors associated with mental illness; (4) there is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and (5) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released acquittee to any orders and conditions it determines will best meet the acquittee's need for treatment and supervision and best serve the interests of justice and society.

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(g) The comprehensive community mental health center or licensed behavioral health provider designated by the department shall implement the court's conditional release orders and shall submit written reports to the court on the acquittee's progress and adjustment in the community no less frequently than every six months. An acquittee's conditional release shall not be revoked solely because of his or her voluntary admission to a state hospital.

(h) If at any time the court that conditionally released an acquittee pursuant to subsection (f) of this section finds reasonable cause exists to believe that an acquittee on conditional release has violated the conditions of his or her release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and requires inpatient hospitalization, it may order an evaluation of the acquittee by a qualified forensic evaluator. If the court, based on the evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that an acquittee on conditional release has violated the conditions of his or her release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and has a mental illness or an intellectual disability and requires inpatient hospitalization, the court may revoke the acquittee's conditional release and order him or her returned to the custody of the department.

(i) At any hearing pursuant to this section, the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, of the right to the assistance of counsel in preparation for and during the hearing, and of the right to introduce evidence and cross-examine witnesses at the hearing. The hearing shall be scheduled on an expedited basis. Written notice of the hearing shall be provided to the prosecuting attorney for the committing jurisdiction. The hearing is a civil proceeding.

(j) If during the term of the acquittee's conditional release the court finds that the acquittee has violated the conditions of his or her release, but does not require inpatient hospitalization, the court may hold the acquittee in contempt of court for violation of the conditional release order.

(k) The court may modify the conditions of release or remove the conditions placed on release pursuant to subsection (f) of this section upon petition by the comprehensive community mental health center or licensed behavioral health provider, the prosecuting attorney, the acquittee, or upon its own motion based upon the report of the comprehensive community mental health center or behavioral health provider: *Provided*, That the acquittee may petition no more frequently than annually and only six months after the conditional release order is entered. Upon petition, the court shall require the comprehensive community mental health center or behavioral health provider to provide a report on the acquittee's progress while on conditional release.

(l) As it considers appropriate and based on the report from the comprehensive community mental health center or behavioral health provider and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall

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provide notice of the order, and their right to object to it, within 10 days of its issuance, to the acquittee, the comprehensive community mental health center or behavioral health provider, and the prosecuting attorney for the committing jurisdiction and for the jurisdiction where the acquittee is residing on conditional release. The proposed order shall become final if no objection is filed within 10 days of its issuance. If an objection is filed, the court shall conduct a hearing at which the acquittee, the prosecuting attorney, and the comprehensive community mental health center or behavioral health provider have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release, as the court considers appropriate.

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