

# Section 5:

## Conditional Release

- ❖ First Steps in Implementing the CRP \_\_\_\_\_ Pg. 59
- ❖ The Role of the CSB NGRI Coordinator \_\_\_\_\_ Pg. 61
- ❖ The Role of the CSB Case Manager \_\_\_\_\_ Pg. 63
- ❖ Required Reports \_\_\_\_\_ Pg. 65
- ❖ Modifying the CRP \_\_\_\_\_ Pg. 69
- ❖ Ensuring Acquittee Success on Conditional Release \_\_\_\_\_ Pg. 73
- ❖ Communication with the Court \_\_\_\_\_ Pg. 74

## **First Steps in Implementing the Conditional Release Plan**



Does the acquittee fully understand all of the components of the Conditional Release Plan?



Do all of the community treatment providers and staff understand all of the components of the Conditional Release Plan?



Have the acquittee and all treatment providers been provided a copy of the Conditional Release Plan before discharge?



Do the acquittee and all providers understand the role of the NGRI Coordinator and the importance of providing regular updates to him/her?



Do the case manager and all providers, including the NGRI Coordinator, understand the reporting requirements to the court and to DBHDS?

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### **Code Requirements**

§19.2-182.7

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The CSB is required by Code to:

1. Implement the court's conditional release orders, and

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2. Submit written reports to the court no less frequently than every six months.

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The Conditional Release Plan is itself a court order in its entirety. Changing any of the general or special conditions in the plan must be pre-approved by the court of jurisdiction.

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**First Steps Upon Release**

Ensure that all members of the treatment team, including CSB and non-CSB providers have a copy of the Conditional Release Plan prior to the discharge and that they understand that they are also obligated to comply with the written plan.

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Ensure that all providers understand the role of the NGRI Coordinator and the importance of communication about all aspects of the acquittee's treatment.

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Establish a communication loop in order to monitor the implementation of the CRP and the acquittee's status. In some boards this is a monthly meeting with all staff working with NGRI acquittees to discuss acquittees' cases, successes and challenges, etc. However this is done, it is crucial that everyone start and remain on the same page, with an awareness of the plan and communication about how the person is doing after discharge.

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The treatment team should, individually or collectively, meet with the acquittee very soon after discharge to check in and address any challenges with adjustment. Acquittees will need different things in the initial phase of community re-integration:

Some will be anxious and will require a lot of reassurance and support.

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Some will be tempted to use/abuse drugs again and will require drug testing and monitoring of other SA treatment services.

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Some will want to "test the waters" after being in the hospital and will not want to follow the CRP.

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But overall, most acquittees will be very successful with the right supports in place during the transition.

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It is important to set expectations with the acquittee upon release. These conversations should start long before discharge, but be repeated once the individual is in the community.

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The acquittee should have a copy of the CRP before leaving the hospital, but at the very least the CSB should make sure that he/she has a copy when discharged. The case manager and NGRI Coordinator should review it with the acquittee upon release. This is a good way to build a relationship with the acquittee and to set expectations. Make sure the acquittee is very clear on all conditions and what can or might happen if any violations occur.

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**The Role of the CSB NGRI Coordinator**



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**CSB NGRI  
Coordinator  
Responsibilities**

The Executive Director of each CSB is required to designate a member or his/her staff to serve as the NGRI Coordinator.

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CSBs have different "models" of how the NGRI Coordinator role fits into the agency structure.

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In some, the NGRI Coordinator is also the direct case manager.

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In others, the NGRI Coordinator assigns cases to case managers directly under their supervision.

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Finally, in some CSBs the NGRI Coordinator serves in an administrative role but case management is "spread out" through agency programs depending on services provided.

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Regardless of agency structure, it is essential that the NGRI Coordinator maintain consistent communication with community providers, the acquittee, the court, and DBHDS Office of Forensic Services.

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The main functions of this individual are:

1. To oversee compliance of the CSB and the acquittee with the court order for Conditional Release;
2. To coordinate the submission of required reports; and
3. To maintain the training and expertise that are needed for the job.

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The CSB NGRI Coordinator is the single point of contact and accountability for all matters related to NGRI cases in that particular jurisdiction. This includes accountability for all aspects of the CRP and acting as a central point from which to facilitate communication with judges, attorneys, hospital Forensic Coordinator (and other staff from the state facilities), and the DBHDS-Forensic Office.

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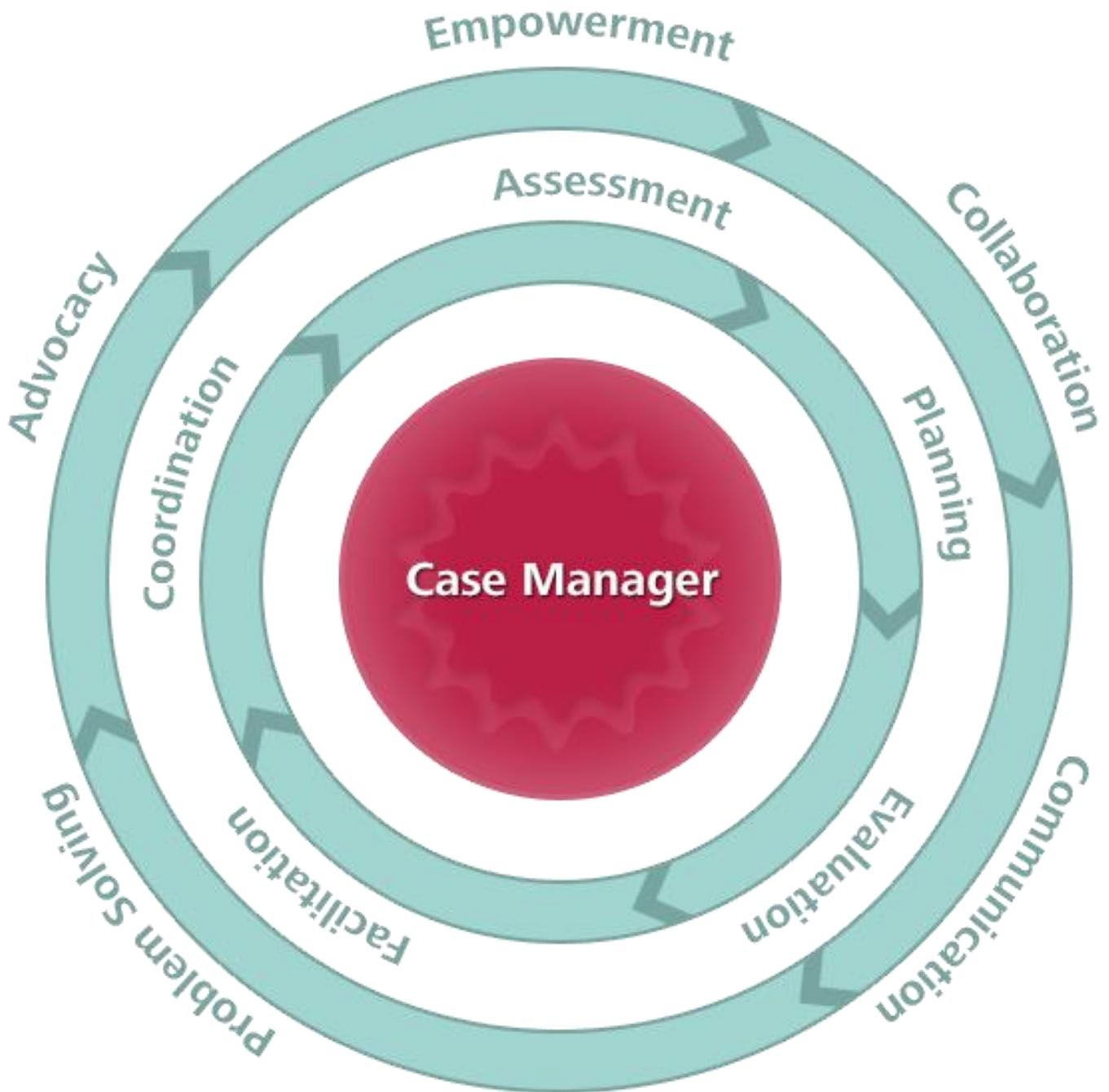
It is extremely important for the NGRI Coordinator to be familiar with the "Guidelines for the Management of Individuals Found NGRI." This manual can be found on the Department website, under the Office of Forensic Services (<http://dbhds.virginia.gov/professionals-and-service-providers/forensic-services/ngri-manual>).

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It is strongly recommended that the NGRI Coordinator personally sign all correspondence to the court. However, if the NGRI Coordinator chooses to designate other staff to communicate with the court, the NGRI Coordinator should ensure that:

1. Designated staff understand their role with the court and are competent to communicate with the court.
2. Understand the compliance requirements within the Code of Virginia, and
3. That any correspondence is first reviewed (and preferably co-signed) by the NGRI Coordinator.

*The Role of the CSB Case Manager*



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**CSB Case  
Manager Duties  
Related to NGRI  
Acquittes**

At times the CSB NGRI Coordinator serves as the acquittee's case manager. However, often these are separate roles in the agency.

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The case manager for an NGRI acquittee needs to have a good understanding of the CRP and the requirements of both the General and Special conditions.

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The case manager must stay in close contact with all involved service providers to ensure they are following their part of the CRP and communicating any significant information to the NGRI Coordinator.

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They should utilize treatment planning meetings or other staffing to discuss the CRP, concerns, etc. with all providers.

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Maintaining good notes in order to monitor the acquittee is critical. These notes are particularly important for major decisions, such as revocation or reduction or removal of conditions (unconditional release).

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If the NGRI Coordinator does not personally write the required written reports, the case manager should complete the monthly reports and 6-month court reports and send them to the NGRI Coordinator for review and preferably co-signature before it goes to DBHDS-Forensic Office or the court.

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Case managers should be available to accompany the NGRI Coordinator and acquittee to court whenever necessary. They know best whether the conditions are still relevant or need any modification and can discuss with the NGRI Coordinator whether he/she will recommend modifications to the court.

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Most importantly, the case manager is the glue that holds the treatment providers and acquittee, and ultimately the Conditional Release Plan, together. They should facilitate ongoing communication, collaboration, and consensus with all members of the treatment team and NGRI Coordinator.

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## **Required Reports**

### **Monthly Reports**

- Required by Performance Contract between DBHDS and the CSBs.
- Must follow approved template (see Appendix F).
- Due monthly for the first 12 months following release from the hospital.
- The first report is usually due to DBHDS by the 10th of the month following the first full calendar month after release.
- The subsequent reports are due by the 10th of the month following the month being reviewed.
- Only full calendar months should be reviewed, do not split months.
- The six-month report is separate and does not replace the monthly report.
- Always include written comments at the end of the report.
- Must be signed by the case manager and/or the NGRI Coordinator.
- Submitted only to the Office of Forensic Services at DBHDS.
- Can be submitted via fax or mail.

### **Six-Month Reports**

- Required by Virginia Code section § 19.2-182.7.
- Must follow approved template (see Appendix G).
- Due every six months for the duration of conditional release.
- First report is due six months from the day of release, and the following report is due six months from the date of the previous report and so forth.
- The monthly report is separate and does not replace the six-month report.
- Always attach a cover letter describing the reason for the report, a brief summary of progress, and recommendations.
- Letter and report are submitted to both the Office of Forensic Services at DBHDS and to all members of the court with jurisdiction over the case.
- Original signed report should be sent to the judge via mail, copies can be faxed or mailed to DBHDS, the defense attorney, and the Commonwealth's Attorney.

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**The Monthly Report**  
(see Appendix F)

DBHDS Office of Forensic Services will issue a written letter to the CSB's NGRI Coordinator upon the conditional release of any acquittee. In this letter, the details of the reporting requirements are explained. This letter will include the due date of the first monthly report. The first report is due after the first *full* calendar month post-release. For example, if the acquittee is released January 21, 2016, then the first monthly report would be due March 10, 2016 and would cover January 21 -February 29, 2016.

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From that point forward, the reports are due by the 10<sup>th</sup> of the following month. For instance, all March reports are due by April 10<sup>th</sup>, all April reports are due by May 10<sup>th</sup>, all May reports are due by June 10<sup>th</sup>, etc.

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If completing a monthly report in a month that the 6-month report to the court is due, the CSB should complete both. They are separate reports and the six-month report does not replace the monthly report.

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Before completing the monthly report, the author of the report should review all progress notes, gather feedback from treatment team members, and gather results of any urinalysis or blood work required by the CRP.

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1. Enter the name of the acquittee and the court with jurisdiction over the case. Then enter the date the report was written. Below, under *Time Period in Review* enter the month and year that the report is reviewing.

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2. The next section that many people overlook has to do with new charges and new convictions. These are different but both important. If the acquittee has been arrested and charged with a new offense, list the offense and date in the first line. If they have then been convicted of a new offense, it goes in the second line. Make sure to list the offense and the date. Do not leave blank, enter N/A or None if there is nothing to report.

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3. The next part of the form is the part where the acquittee's compliance and progress with all conditions is reviewed. First, enter all of the General Conditions in the column on the left, then indicate whether they Always, Sometimes, or Never comply with that condition by putting a check mark in the appropriate box, then enter a brief description of their progress/challenges for that condition that month. This is important not to leave blank. If they have been fully compliant, one sentence indicating that is sufficient. If they have had compliance issues, briefly describe in the right hand column and provide a detailed description at the end of the report. The same should be done for the special conditions. If the condition is very lengthy, it may be shortened as long as the meaning is still clear on the report.

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4. In the next section, the CSB should indicate the last face to face with the acquittee, any and all urinalysis drug screens that month (along with the date and result of each screen).

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5. A narrative summary of the month should be included at the end of the report. This should never be blank. Indicate if the acquittee has been compliant or non-compliant, if there was progress or setbacks that month, and any other relevant details...particularly if there have been challenges.

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6. Finally, the author of the report should sign it, indicate their title, CSB, contact info, and put the date it was signed. If the person writing the report is not the NGRI Coordinator, the NGRI Coordinator should review and co-sign all reports.

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***The Six-Month  
Report to the Court  
(see Appendix G)***

§ 19.2-182.7 states that the CSB “shall submit written reports to the court on the acquittee’s progress and adjustment in the community no less frequently than every six months.” **However, it is important that all violations of conditional release be reported to the court immediately, and should not wait until the next monthly report or six-month report is due.**

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DBHDS Office of Forensic Services, in their letter to the NGRI Coordinator following the acquittee's release, will indicate the due date of the first six-month report. It is based on the acquittee's actual release date. The report does not require listing the "period being reviewed" so the date listed on the six-month report should be the date the report was actually written.

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The report should always be accompanied by a cover letter. Samples are included in Appendix E. The cover letter should include the acquittee's name, case number, explanation of the author's role and purpose of the report, and brief description of progress/challenges and recommendations. Without the cover letter, these reports may get lost in the system and the judge may not know why they have been sent or what to do with the information.

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This report is to be completed by the NGRI Coordinator or other staff designated by the CSB. If the author of the report is not the NGRI Coordinator, the NGRI Coordinator should co-sign the report before it is sent to the court. DBHDS strongly recommends that the NGRI Coordinator be the person to write the cover letter to the Judge, attach the report and mail it to all parties. At the very least the NGRI coordinator should co-sign the report and review the cover letter before it is sent.

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The original letter and report should be mailed to the Judge with jurisdiction over the case. Copies can be either mailed or faxed to the Defense Attorney, Commonwealth's Attorney, and the DBHDS Office of Forensic Services.

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All relevant information on the acquittee's progress needs to be collected for the previous 6 months, which is why good monthly reports and regular documentation are critical. It is imperative that the writer contact all service providers and relevant family or friends to gather this information.

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The goal is to provide a comprehensive assessment of the client’s progress and adjustment in the community. This report resembles the monthly report in format, but it requires specific recommendations to the court with the rationale for the recommendation.

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Through an agreement with the CSBs, DBHDS issues payments in installments for every acquittee returning to the community onto conditional release. These payments are issued based on the submission of the monthly and six-month reports. (\$500 after initial release, \$1000 after receipt of 6 monthly reports and 1 six-month report, and \$2000 after receipt of 12 monthly reports and 2 six-month reports).

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**The Six-Month Report to the Court (Cont'd)**

In the narrative section of this report, the author of the report will again want to make sure to explain:

1. The *types* of services that the acquittee has received (rather than local program names that the average reader won't understand).
2. Level of compliance, challenges and steps taken to resolve them, and any other relevant information.
3. Also indicate any other important changes to treatment/services that occurred during the reporting period that did not require the court to approve – such as change of address, increase in service frequency or intensity, or voluntary or community based hospitalizations.

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Changes allowable without court approval are limited, so the CRP should be reviewed carefully and if in doubt, contact the Office of Forensic Services for consultation.

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The final section of the report requires the CSB to make a recommendation to either: continue conditional release without changes, modify current conditional release order, revoke conditional release, or remove conditions. This is very important and should be taken seriously, as the court will carefully consider the recommendations.

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If requesting any change to the conditional release (modification, revocation, or unconditional release), then the CSB must include a narrative description of the changes proposed, reference the section of the CRP that is impacted, and give a rationale for those changes.

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If the CSB is modifying the conditions, changes should also be made to the written CRP itself and the plan should be resubmitted along with the report to the court for final approval from the judge before changes go into effect.

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Significant changes to the conditions of release will require a new order from the Judge approving the new plan. The CSB may have to request a new hearing to obtain formal approval, or may be able to request that the court indicate their approval in writing and return it to the CSB. Either way, follow-up with the Clerk's office, Commonwealth's Attorney and Defense Attorney may be necessary to move the process along.

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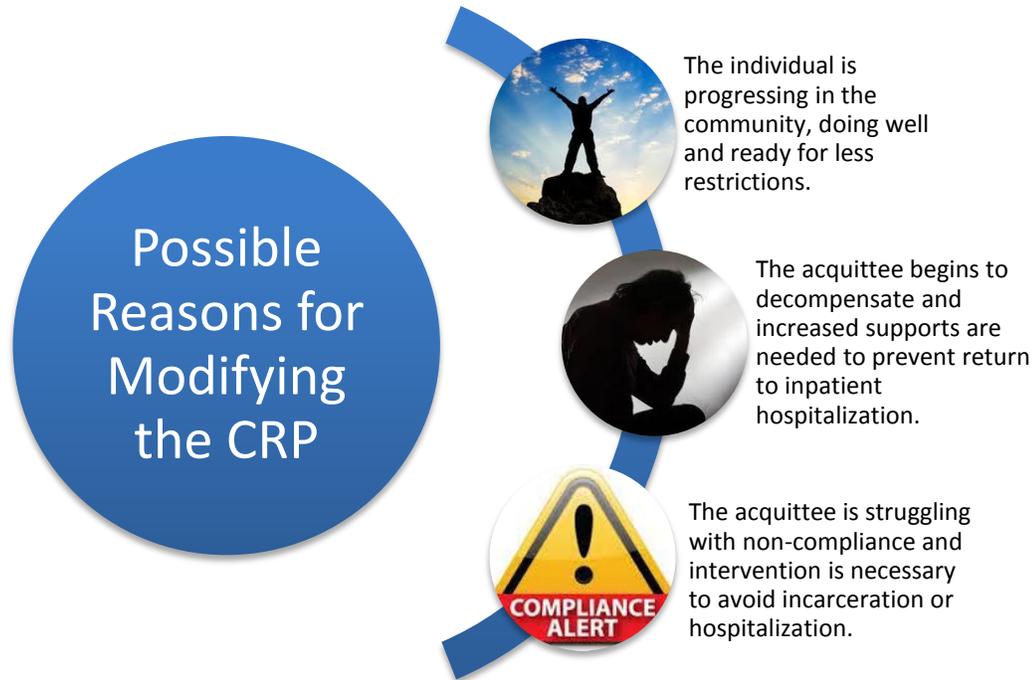
Again, if there have been significant problems with the acquittee's compliance with conditions over the reporting period, the CSB should not wait to report this in the six-month report, but should instead notify the court and all parties immediately, with recommendations for next steps.

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If this report is done later than the original deadline, the next 6-month period starts from the date it was written, and the due date schedule adjusts accordingly. DBHDS tracks the timeliness of reports, and will issue reminders for late reports.

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## Modifying the Conditional Release Plan



### ***Modification of the CRP***

If the assigned CSB determines that the CRP needs to be modified, it is incumbent on them to recommend that the court of jurisdiction approve the modified CRP. Only the court of jurisdiction has the authority to actually approve the modified CRP, and any of the general or specific conditions, unless the plan contains language that allows the CSB to alter the CRP.

Examples of when the CSB should recommend that the CRP be modified include:

1. When the service needs identified in the plan change.
2. The acquttee has improved and no longer needs services described in one of the conditions.
3. The acquttee's compliance and the adjustment in the community is poor and additional conditions need to be added before revocation is needed.

Generally, the plan can and should be modified whenever the acquttee has demonstrated success or setbacks, always keeping in mind the management of identified risk factors and the safety of the acquttee and the community.

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**Procedures for Modifications**

The court of jurisdiction may modify conditions of release whenever it deems it necessary, based on reports from the supervising CSB or upon petition from the Commonwealth's Attorney or acquittee (the acquittee can petition for modification only once annually commencing 6-months post-release).

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In cases where the CSB is requesting modifications to the plan:

1. The petition should be accompanied by a report explaining the request and providing clear rationale in support of the request.

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2. Provide any other evidence in support of the request, such as letters from collateral sources such as family or service providers.

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3. Copies of any correspondence should be sent to the Judge, as well as the Commonwealth's Attorney, Defense Attorney, and the Office of Forensic Services at DBHDS.

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There are two possible means of modifying the conditions:

1. In cases involving **minor modifications that have been built into the written CRP** the CSB should notify the court in writing that they plan to modify the conditions in some way, and request notification of any objections. For instance, if the CRP indicates that after the initial 6 months of conditional release the frequency of case management visits can be reduced to every other week with approval of the treatment team and NGRI coordinator. In this case, the CSB can make the modification and simply inform the court in writing that it has done so based upon the plan's stipulations.

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2. For changes that are more **significant** the CSB would request formal written approval of a modified CRP from the court, and a) request that the judge order compliance with the new version of the CRP via a new court order, or b) request a court hearing to present the request to the Judge directly. This will depend on how the court typically prefers to handle these changes, and the CWA and Defense Attorney's agreement with proposed changes. Often, if everyone agrees no formal hearing is necessary. If there are objections from one party or another, it may be best to have a hearing to discuss it.

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**Procedures for  
Modifications (Cont'd)**

Plans should be modified, regardless of time frame, as long as the individual is ready for the change to the plan. CSBs should not keep to a strict time frame if it is not appropriate for the individual. Begin with the end in mind. This is a live and dynamic process!

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Whenever changes to the conditions of the CRP are approved, remember to update the monthly and six-month reports to reflect the modification.

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**Out-of-State Travel  
Permission**

§19.2-182.15

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Virginia Code makes it a Class 6 felony for an acquittee who has been placed on conditional release to leave the Commonwealth of Virginia without permission from the court with jurisdiction over the case.

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In some geographic regions where an individual may need to work or attend appointments or activities across state lines, the CSB may consider incorporating a special condition related to out-of-state travel into the CRP. The circumstances and limits to travel should be clearly spelled out in the plan.

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If not already incorporated into the CRP, the CSB will have to seek written permission from the court to allow the acquittee to travel out of state.

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The following issues should be considered in any decision for such a request:

Length of time on conditional release.

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Degree of compliance with conditions.

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Degree of compliance with psychotropic medications.

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Risk factors identified in the AAB.

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The acquittee's understanding of the criminal penalty for escape.

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The availability of support systems should the acquittee begin to experience difficulties.

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The availability of a trusted person to accompany the acquittee.

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Any request for a modification of the conditional release order should specify the dates, locations, purpose, notifications/permissions, and other details necessary to demonstrate that risk factors will be managed appropriately.

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***Transfer of  
Monitoring  
Responsibilities from  
One CSB to Another  
on Conditional  
Release***

In some cases, acquittees may request relocation to another CSB's catchment area. In other cases the services and supports needed to manage the acquittee's risk do not exist in the current CSB's catchment area. In these instances, the supervising CSB may decide to pursue transfer of the CRP to a different CSB.

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In all cases in which transfer is considered, the original supervising CSB must ensure that the change comports with clinical and legal recommendations. Risk should always be considered when proposing this type of modification.

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Acquittees may take up residence in any area of the state of their choosing. The original CSB must evaluate the availability of appropriate services and supports to mitigate the acquittee's risk factors. If the original CSB does not agree that the move would be in the best interest of the acquittee or the community at large, they should not proceed with transfer. In this case, the acquittee may request modification of their plan by working with their attorney, and the court will make the final decision.

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If the current CSB supports the transfer, the current NGRI Coordinator should reach out to the receiving CSB's NGRI Coordinator to discuss the move, services available, etc. If the receiving CSB agrees to accept the transfer, the CSBs should work collaboratively to modify the existing CRP and should agree on all changes made. Both CSBs must feel comfortable with the new plan before moving ahead. Once this has been done, the NGRI Coordinator of the current CSB should take steps to seek approval from the court before moving forward with transfer.

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As with other CRP modifications, this change would require approval of the Judge. No changes in supervising CSB should occur until the modified conditional release plan (listing the new CSB) is submitted in writing, with justification for the change, and upon receipt of a written approval or modified court order from the Judge.

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The original CSB should remain involved in monitoring the acquittee's release until the court has issued written approval, and until the new CSB has accepted the transfer and the CRP. The current CSB should ensure that there is a clear plan for transition in the revised CRP and clarity on the timeframe when the receiving CSB will begin full supervision, monitoring, and reporting to the court.

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All modifications to the supervising CSB should be reported immediately to the Office of Forensic Services at DBHDS with written court approval and a copy of the updated Conditional Release Plan.

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## **Ensuring Acquittee Success on Conditional Release**



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### ***Tips for Ensuring Success on Conditional Release***

The AAB is a very useful, comprehensive document. Regular review of the risk factors will ensure better community integration and longer tenure in the community.

It is important to gather information from all treatment providers, including “outside” treatment providers, in order to have a comprehensive view of the acquittee. Acquittees may present differently to different providers. It is important for the acquittee to understand that all providers are communicating and coordinating their treatment. The CSB manages risk in an ongoing manner with regular monitoring and review. There are lots of eyes on the acquittee!

The acquittee should be conducting him/herself in such a way that his mental health is valued and priority is given to maintaining stability. Continued clinical wellness and safety should be the foundation and driving force behind any CRP and in making any modification.

Almost all acquittees are subject to random or periodic breathalyzer, blood or urine analysis to monitor for the use of alcohol or illicit drugs. Detection of any drugs or alcohol or refusal to be tested constitutes non-compliance with the CRP. There is a good reason that these tests are included in the CRP. Substance abuse is a major area to review both with providers and NGRI acquittees. This is the biggest risk area that leads to relapse and decompensation and, potentially, to re-offending.

Communicate, communicate, communicate! All members of the acquittee's treatment team, especially the NGRI Coordinator, should be made aware of any problems as they arise. The DBHDS Forensic Office staff are available to assist the CSB with creative problem-solving to get the acquittee back on track, and can solicit help from the hospital Forensic Coordinator when necessary for their clinical input.

Provide opportunities for the acquittee to achieve greater autonomy as they demonstrate success. Failing to acknowledge progress may result in discouragement and future non-compliance if the acquittee feels that future independence is impossible.

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## Communicating with the Court



***The individual at the CSB who communicates with the court is representing the entire CSB. This CSB staff person should make sure that they are authorized to “speak for” the CSB and to make recommendations to the court. DBHDS recommends that this always be the same person, and that this be the NGRl Coordinator.***

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**Written  
Communication  
(see Appendix E  
and Appendix I)**

Put your communication with the court in writing if at all possible. This ensures that the communication becomes a part of the court record, and that the message sent to all parties involved is consistent.

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Letters should be addressed to the Judge, and originals should be signed and mailed to the Judge. Copies should be mailed to the Defense Attorney, Commonwealth's Attorney, and the Office of Forensic Services at DBHDS.

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All correspondence should include the following elements:

1. The acquittee's name in the subject line with the court case number(s).
  2. Introduction that the subject of your letter is an insanity acquittee and, if the acquittee is on conditional release, reference the appropriate Code section (§19.2-182.7) for conditional release and the date of release.
  3. Make sure that the purpose for your letter about the acquittee and any requests are clearly stated.
  4. Do not use clinical jargon or acronyms, and use program descriptions rather than names (such as a "supervised group home" vs. "New Beginnings").
  5. Make it easy for the Judge to understand and respond to your request for modifications - reference all relevant Code sections and provide model court orders if needed.
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**Verbal  
Communication**

Any time that you communicate with the court and you need an immediate response, a follow up phone call may be needed even if your written communication was very clear. The courts are very busy entities. It may be necessary to call the court and ask to speak with the Judge's secretary or clerk for assistance with your request. Depending on the nature of the request, it may be necessary to call the Commonwealth's Attorney or the Defense Attorney.

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***Tips for Testifying***

It is recommended you request a subpoena or court order before testifying.

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Most times, you are considered a fact witness. When you are required to testify, remember Sgt. Joe Friday "Just the facts, Ma'am." Facts are: he said, she did, the lab reports show, etc. Also keep in mind that the Judge can qualify you as an expert witness.

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Check with your agency HIPAA coordinators on the limits to what information you can provide in your testimony.

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Be prepared; bring copy of CRP but don't bring any records unless you've been served a subpoena ducis tecum - again check with your agency's HIPAA experts or attorney if necessary.

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Don't volunteer information - again only present the facts and only answer the question being asked.

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Don't take your cell phone, even if the court permits this. It will look very unprofessional if it goes off in court.

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Don't let the attorneys rattle you. Slow down by taking a breath or pause as if thinking about your response. Look at the attorney and direct your remarks to them. Usually the attorneys won't spend a whole lot of time with you. They're busy folks too and want to move on. Occasionally an attorney will challenge you with something like "that's just an educated guess, isn't it?" A good response is "No. That's my best professional assessment."

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Look the part of the professional. Dress as well if not better than you would everyday for work; no jeans, tee shirts, knit shirts, shorts. Dressing professionally helps your credibility.

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Be honest. Be believable. Be professional.

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