



# OLR RESEARCH REPORT

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## **SUPERVISION OF CRIMINAL ACQUITTEES**

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You asked for a summary of the laws governing the temporary leave, conditional release, and discharge of an “acquittee.” You also asked if any state laws require the Superior Court or Psychiatric Security Review Board to notify a town that may be affected by an acquittee’s release.

### **SUMMARY**

The Psychiatric Security Review Board (PSRB) is a state agency to which the Superior Court commits persons found not guilty of a crime by reason of mental disease or mental defect (“acquittees”). At the time of commitment, the Department of Mental Health and Addiction Services (DMHAS) takes custody of the acquittee and orders his or her confinement to (1) a psychiatric hospital (usually Connecticut Valley Hospital (CVH)) or (2) Department of Development Services’ (DDS) custody (only if he or she has mental retardation). Within 60 days, DDS or CVH must examine the acquittee’s mental health status and recommend to the court whether he or she should be discharged. The court, primarily considering public safety, then determines whether to discharge the acquittee or commit him or her to the PSRB.

Once the board takes jurisdiction over an acquittee, it decides (1) whether to commit him or her to DDS or CVH and (2) what level of supervision and treatment he or she requires. It also determines when and under what conditions an acquittee is released back into the community. If an acquittee is confined in CVH, the court must determine

a maximum confinement term that does not exceed the length of the maximum sentence the acquittee would have received if found guilty (CGS § [17a-582](#)).

An acquittee's commitment to the PSRB continues until discharged by a court order. Generally, an acquittee begins the transition process back into the community through a series of temporary leaves that gradually increase in length and duration and involve increasingly less supervision.

If an acquittee still has a mental disease or defect and is a danger to him or herself or others but no longer requires inpatient confinement, CVH or an acquittee can apply to the board for a conditional release order. If the order is granted, the acquittee is released back into the community under the supervision of a board designee and conditions the board sets. An order can be modified or terminated at any time if the acquittee's mental health status changes or he or she violates the conditions of the treatment plan or consent order.

The Superior Court must immediately discharge an acquittee from the board's supervision at the end of the maximum confinement term unless the prosecutor petitions against the discharge. Before the term is up, CVH, or any person or agency responsible for supervising or treating an acquittee can request the board to recommend a court ordered discharge. The board can make such a recommendation on its own motion; the acquittee can apply directly to the court.

Neither the board nor the Superior Court is required by law to notify any town that may be affected by an acquittee's release. But, non-parties can ask the board to notify them when it schedules a hearing. State law permits "interested parties" to provide the board with information to consider in its deliberations if it determines that the information is material, relevant, and reliable (CGS § [17a-596\(b\)](#)).

## **PSYCHIATRIC SECURITY REVIEW BOARD**

The PSRB is a state agency to which the Superior Court commits persons found not guilty of a crime by reason of mental disease or defect. The board can:

1. order confinement in a psychiatric hospital (either in Connecticut Valley Hospital's maximum security Whiting Forensic Division or its less restrictive Dutcher facility) or placement with the DDS commissioner,
2. approve temporary leave requests,

3. grant conditional release into the community with specific conditions,
4. modify or terminate conditional release, and
5. make recommendations to Superior Court concerning the appropriateness of discharge or continued commitment (CGS §§ [17a-580](#) to [17a-603](#)).

As part of its responsibility to supervise acquittees, the board reviews six-month reports on the acquittee's mental health status provided by CVH's superintendent. It must also hold an administrative hearing every two years or when the DMHAS, DDS, conditional release supervisor, treatment provider, or acquittee applies to the board for a change in status (CGS § [17a-585](#)).

## **BOARD HEARINGS**

All board hearings, except its deliberations, are open to the public. The board has the power to subpoena witnesses, documents and records. Before any hearing, the board, acquittee, acquittee's attorney, and prosecutor can each choose their own psychologist or psychiatrist to examine the acquittee. The examination results must be filed with the board and include an opinion as to whether (1) the acquittee's release would be a danger to him- or herself or others and (2) the acquittee could be adequately controlled with treatment as a condition of release.

To facilitate the examination, the board can order the acquittee to be placed in the temporary custody of a psychiatric hospital or DDS.

### ***Evidence***

The board must consider all available evidence about the acquittee, including trial records; information provided by the prosecutor, acquittee, and other interested parties; information on the acquittee's mental condition; and the acquittee's entire psychiatric and criminal history. The acquittee has the burden of proving by a preponderance of the evidence that he or she is entitled to conditional release or discharge.

## ***Rights***

At a board hearing, an acquittee has all rights given to a party in a contested case under the Uniform Administrative Procedure Act (e.g. to call witnesses, cross-examine witnesses called by the prosecutor, and provide other evidence to prove his or her case). The acquittee has the right to appear at all proceedings, except board deliberations. He or she also has the right to be represented by an attorney or have one appointed if he or she cannot afford one, and consult with that attorney before the hearing.

All documents and reports introduced at the hearing must be made available to the acquittee, acquittee's attorney, and the prosecutor.

## ***Decisions***

The board must provide a written decision to the acquittee, acquittee's attorney, prosecutor, and any crime victim who requests it within 25 days of the hearing.

## ***Victim Notification***

Among other things, crime victims are permitted to receive notice of court or administrative procedures involving their perpetrator and to voice their opinions before any action becomes final. The PSRB must notify an acquittee's victims of all board proceedings that could result in any change in the acquittee's commitment order, if the victim requests it. Victims include legal representatives and, if the victim is deceased, any immediate family member (CGS §§ [17a-595](#) to [17a-601](#)).

## **TEMPORARY LEAVE**

An acquittee whose mental disease or defect can be controlled with or without supervision may be discharged before the maximum commitment period expires. He or she generally begins the transition process back into the community through the use of temporary leaves. This includes starting with small, incremental leaves, such as short visits with family members. Temporary leaves gradually increase in duration and involve less and less supervision. In some cases, PSRB may allow an acquittee to live on his or her own for up to seven consecutive days per week and return to CVH once a week for a clinical assessment. This allows CVH and community providers to assess the person's adjustment to community living and determine whether he or she is clinically ready for conditional release.

By law, the CVH superintendant or a designee can apply to the board for a temporary leave order. The board is not required to hold a hearing on an application unless the prosecutor requests it within 10 days of receiving a copy of the application. The board can approve the application if it determines that the leave will not pose a danger to the acquittee or others. It can set conditions for the temporary leave, including assigning a family member or agency designee to supervise the acquittee. Prior to any designation, the board must notify the person or designee and give him or her an opportunity to address the board. Any designee must comply with the conditions the board sets in its order for the leave (CGS § [17a-587](#)).

## **CONDITIONAL RELEASE**

The PSRB may authorize an acquittee to be conditionally released into the community when it finds that the person no longer needs to be hospitalized but cannot safely be released without supervision. CVH, the acquittee, or other party can make community treatment supervision recommendations. But the board sets released conditions and it determines will adequately prevent the acquittee from being dangerous.

### ***Application for Conditional Release***

The CVH superintendant can apply to the board for a conditional release order. The application must include a conditional release plan. An acquittee may also apply for such an order once every six months. If an acquittee applies, CVH must submit a report to the board indicating the appropriateness of the release. The board must hold a hearing between 30 and 60 days of receiving the application.

### ***Conditional Release Report***

Once CVH and community providers that will be treating and supervising the acquittee determine that acquittee will not pose a danger if conditionally released, CVH must develop a conditional release plan and present it to the board along with its application for conditional release. Table 1 provides a list of potential plan components. (This list is not exhaustive.)

**Table 1: CVH Conditional Release Plan Components**

<b>Conditional Release Plan Components</b>	
Supervision	Recommendations for driving a vehicle
Supervision by the Judicial Branch's Office of Adult Probation	Limits on internet access
Residential plan indicating where and with whom the acquittee will live	Announced and unannounced visits to the acquittee's residence
Mental health treatment plan by designated community providers	Sex offender registration, if required by law
Substance abuse treatment	Random and scheduled drug and alcohol screenings
Prohibited contacts	Restrictions on movement
DNA submissions	Budgeting assistance
Provisions regarding out-of-state travel	Emergency plans
Listing on the statewide protection order registry, if appropriate	Vocational or educational plans

CVH gives a copy of the conditional release plan to each community agency named in the application. Each agency must sign a "Conditional Release Application Community Provider Approval Form," that specifies services the agency will provide.

After receiving a conditional release application from either CVH or an acquittee, the board must hold a hearing no earlier than 30 days and no later than 60 days and must provide copies of the application to the prosecutor and the acquittee's attorney at least 30 days in advance. At the hearing, CVH and the DMHAS consulting forensic psychologist must testify and provide opinions on whether the application should be granted. The acquittee's lawyer can cross-examine them and present evidence including expert testimony in support of the application. The board must issue an order within 25 days of its decision. (CGS § [17a-588](#)).

***Conditional Release Supervisor***

As part of the conditional release order, the board designates a person or agency to supervise the acquittee and report to the board on his or her progress and compliance with the order. The supervisor is responsible for, among other things:

1. participating in the development and review of treatment plans;
2. coordinating treatment and monitoring;
3. periodic meetings with the acquittee;
4. chairing meetings of the acquittee's treatment providers;
5. submitting progress reports to the board;
6. immediately reporting emergencies to the board, including changes in the acquittee's mental health status, violations of release conditions, treatment noncompliance, or positive drug or alcohol screenings;
7. testifying at board hearings; and
8. ensuring treatment providers understand board rules, emergency reporting protocols, and DMHAS policies and procedures

### ***Implementation Meeting***

When the board grants a conditional release, a board representative meets with CVH, the DMHAS Conditional Release Services Unit (CRSU), community providers, and the acquittee to review the conditional release order and make certain all parties understand it. The acquittee must sign an acknowledgment stating that he or she understands and accepts its terms. The conditional release supervisor must schedule a meeting of all the acquittee's community treatment providers one month after his or her release to review and assess the acquittee's treatment plan.

### ***Conditional Release Services***

As part of the conditional release order, an acquittee must receive community-based service. These may include probation supervision, an individualized treatment plan, medication monitoring, assessments of job and volunteer sites, community provider meetings, and conditions for out-of-state travel.

***Probation Services.*** If recommended as part of the conditional release plan, CVH refers an acquittee to the Judicial Branch's Office of Adult Probation. In some cases, the board selects the office as a conditional release supervisor. Among other things, a probation officer may require an acquittee to report in person and by phone on certain days and times.

**Individualized Treatment Plan.** The conditional release supervisor, community providers, and the acquittee review and assess the individualized treatment plan developed as part of the application. The plan identifies the acquittee's clinical needs, risk factors that may trigger dangerous behavior and clinical interventions to manage them, and clinical and legal obligations and responsibilities of community providers.

**Medication Monitoring.** When preparing the conditional release application, CVH and community providers assess whether an acquittee requires medication monitoring. The board orders the level of monitoring that is either proposed in the application or it thinks is necessary for public safety. Medication monitoring can include face-to-face observation and random blood draws to monitor serum levels.

**Assessment of Job and Volunteer Sites.** Community providers must assess whether an acquittee is able to find and maintain paid or volunteer work. Assessments must include the acquittee's vocational interests, relevant skills and abilities, and clinical and risk issues. Additional factors include:

1. whether out-of-state travel is required,
2. the location and safety concerns of the surrounding neighborhood,
3. transportation access,
4. bonding or licensing requirements,
5. if working will affect the acquittee's ability to comply with treatment, and
6. whether the site is likely to provide the acquittee access to prohibited items such as weapons, alcohol, or drugs.

The board requires an acquittee, with community providers' assistance, to notify an employer that he or she is under board supervision. This is required because (1) PSRB's commitment orders are public records and (2) a criminal record check will not reveal neither the crimes for which the acquittee was prosecuted nor that he or she was acquitted by reason of mental disease or defect. The employer is not entitled to confidential psychiatric and medical information unless the acquittee consents in writing. An employer may deny a job to or fire an acquittee from a job based on his or her PSRB commitment or criminal record.

**Community Provider Meetings.** Community providers, CRSU, and a six month reporter from the DMHAS Office of Forensic Evaluations must meet quarterly. The purpose of the meeting is to assess risk management issues, treatment, compliance with conditions of the release order and treatment plan, and review of clinical issues. The group also discusses any proposals to modify the treatment plan or conditional release order.

**Out-of-State Travel.** In some cases, the board gives an acquittee permission to travel out of state for recreational or treatment activities. The conditional release supervisor must apply at least four weeks in advance and demonstrate that the trip is clinically appropriate, beneficial, and not a public safety risk. Requests for ongoing out-of-state travel require a modification of the board's conditional release order.

### **Supervisor Reports**

A conditional release supervisor periodically notifies the board, on a form it provides, of an acquittee's compliance with release conditions and adjustment to the community. The supervisor must contact all community providers and an acquittee's employer monthly to monitor the acquittee's and provider's compliance with the conditional release order. The supervisor must also confirm diagnostic medication information, random drug and alcohol screen dates and results, and therapist and psychiatrist appointments.

In addition, an acquittee's supervising agency must submit a report to the board every six months on the acquittee's mental status, mental condition, and course of treatment. The report includes the acquittee's progress, compliance with the release order, adjustment to community living, and risk of danger under the current treatment plan. Agency employees must interview the acquittee and all community providers when developing the report. Generally, copies are sent to the prosecutor, acquittee's attorney, conditional release supervisor, and treating psychiatrist.

### **Conditional Release Modifications**

An acquittee or a person or agency responsible for his or her supervision or treatment can apply to the board to add, change, or remove certain release order conditions. Generally, the conditional release supervisor coordinates the application with CRSU and community providers. The application must include a report with supporting facts. The board must hold a hearing on the application within 60 days. An acquittee can only apply to modify a release order

once every six months, unless the board has modified the order without holding a hearing within the previous six months (CGS §§ [17a-591](#)).

The board must hold either a contested or stipulated hearing on a modification application between 30 to 60 days of receiving it. It sends a copy of the application to the prosecutor and the acquittee's attorney. Each must review the application and decide within 14 days whether they intend to present testimony, in which case it must hold a contested case hearing. The board can also order a contested hearing on its own motion.

If a contested hearing is held, the conditional release supervisor and community providers may be called as witnesses for either side. If parties agree that witness testimony is unnecessary, the board will base its decision on the administrative record and application.

### ***Conditional Release Terminations***

If the board determines that an acquittee has violated terms of the conditional release or his or her mental health status has changed, it can either modify or terminate the conditional release and order that the acquittee be rehospitalized. The prosecutor can notify the board at any time of facts that indicate a modification or termination is necessary.

### ***Emergency Reporting***

Community providers must immediately report to the board:

1. changes in an acquittee's mental status,
2. increased level of risk,
3. changes in services provided,
4. violations of the release order or any law,
5. treatment or medication non-compliance,
6. positive drug or alcohol screenings,
7. possession or access to weapons, and
8. association with known criminals.

The board can issue a more restrictive conditional release order or order the acquittee's rehospitalization based on these reports.

In addition, a peace officer or person or agency treating or supervising the acquittee can take him or her into custody or request such action. This can be done only if there is reasonable cause to believe the acquittee is a danger to him or herself or others and needs immediate care. The acquittee is then rehospitalized. The board must hold a hearing within 30 days after the acquittee is taken into custody (CGS § [17a-594](#)).

## **COURT-ORDERED DISCHARGES**

### ***Board Recommendations***

The board cannot discharge an acquittee from custody, but it can recommend that a Superior Court judge do so. The CVH superintendant or any person or agency responsible for supervising or treating an acquittee can request the board to make such a recommendation. The requestor must submit a report to the board with supporting facts. The board must hold a hearing within 60 days and send copies of the request and report to the prosecutor and the acquittee's attorney 30 days in advance.

It can also make a discharge recommendation to the court on its own. If it is considering doing so, it must notify the prosecutor and acquittee's attorney. It need not hold a hearing unless the prosecutor requests one within 10 days of learning that the board is considering this option (CGS § [17a-592](#)).

### ***Discharge Applications and Reports***

The board can recommend to the court that an acquittee be discharged from custody; the acquittee can directly apply to the court. The court must send the acquittee's attorney and the prosecutor copies of an application or recommendation for discharge. An acquittee can only apply for discharge once every six months.

The board recommendation or acquittee application must include:

1. the dates on which any prior discharge recommendations or applications were filed and any associated decisions court decisions;

2. a statement of facts, including any change in circumstances since the last recommendation or application, that would qualify the acquittee for discharge; and
3. for board recommendations, supporting findings and conclusions.

If the prosecutor has reasonable cause to believe that the acquittee remains a danger to him- or herself or others when the maximum confinement term is up, he or she may petition the court within 135 days before the acquittee's release to prevent the discharge. The board must file a report about the appropriateness of the discharge or confinement with the court within 90 days after an acquittee files an application for discharge or the prosecutor petitions for continued confinement.

The prosecutor and the acquittee's attorney can each request that the acquittee be examined by a mental health professional of their choice if the board (1) recommends discharge and applies for such an order or (2) submits a report in response to an acquittee's discharge application or prosecutor's confinement petition. The examiners must file separate reports with the court.

Once the court receives all of the reports, it must hold a hearing. At the hearing, the acquittee has the burden of proving by a preponderance of the evidence that discharge would not endanger him or herself or others. The court must make a finding on the acquittee's mental condition and issue a ruling approving or denying the (1) discharge or (2) prosecutor's request to continue the acquittee's PSRB commitment (CGS § [17a-593](#)).

## **ADDITIONAL RESOURCES**

Connecticut Valley Hospital website:  
<http://www.ct.gov/dmhas/cwp/view.asp?a=3519&q=416778>, last visited on December 13, 2011.

Psychiatric Security Review Board website:  
<http://www.ct.gov/psrb/site/default.asp>, last visited on December 13, 2011.

Psychiatric Security Review Board, "Conditional Release Manual," October 2008,  
[http://www.ct.gov/psrb/lib/psrb/documents/conditional\\_release\\_manual\\_-\\_website.pdf](http://www.ct.gov/psrb/lib/psrb/documents/conditional_release_manual_-_website.pdf), last visited on December 13, 2011.