

**THE DEPARTMENT OF HEALTH
AND
FAMILY SERVICES**



**COMMUNITY SUPERVISION OF CONDITIONAL RELEASE CLIENTS
UNDER WSS. 971.17
NOT GUILTY BY REASON OF MENTAL DISEASE
OR DEFECT (NGI)**

PROCEDURES MANUAL

LAST UPDATED: September 19, 2007

Table of Contents

	Page
The NGI Finding	3
Commitment To The DHFS	3
Conditional Release Criteria	4
PDI/SME Reports	4
Conditional Release Plans	4
Agent Case Assignment Sources	5
• Institutional Case Assignment	5
• Conditional Release from an Institution.....	5
• Conditional Release- Direct Court Release	6
Setting An NGI Case Up On Records	6
No Supervision Fees/Court Costs/Restitution	6
Funding For Conditional Release Services	7
Need For Signed Releases Of Information	7
Level Of Supervision	8
Intrastate Transfer Of Cases.....	8
Out Of State Travel	8
Violations.....	8
• Apprehensions	8
• Custody's	9
Revocation Hearings	10
Revocation Withdrawal	10
Case Termination	11
Important Reminders.....	11
DHFS Contacts	12
Example of NGI Discharge Memo To Court	13

THE NGI FINDING

Less than one percent of all criminal pleas result in a Not Guilty By Reason of Mental Disease or Defect (NGI) commitment under Wisconsin State Statute 971.17

The NGI finding is a two-part court process. First, the defendant must be found guilty of the committing offense. The court then orders the defendant to be examined by two independent examiners. The criteria for the NGI plea is that the defendant was not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, the defendant lacked substantial capacity either to appreciate the wrongfulness of their conduct or conform their conduct to the requirements of the law.

Persons committed under this legal status are not considered to be “convicted”. Because of this, misdemeanor and felony NGI clients may vote during their commitment. A more appropriate term for persons committed under this legal status is “client” rather than “offender”.

COMMITMENT TO THE DHFS

Persons found NGI are committed to the Department of Health and Family Services (DHFS). The committing court determines placement. Options include Mendota Mental Health Institution (MMHI), Winnebago Mental Health Institution (WMHI) or directly back into the community (direct court release) on conditional release. The DHFS contracts with the Department of Corrections (DOC), Division of Community Corrections (DCC), to provide community supervision services to persons conditionally released. Each of the 8 DOC regions has a designated “NGI Regional Specialist” who assigns Conditional Release cases based upon the clients county or residence. Designated **NGI Agents function as the representatives of the DHFS.**

- An NGI client must be conditionally released to the community if a court determines that the defendant does not pose a significant risk of bodily harm to himself or herself or to others or of causing serious property damage. Once a person is conditionally released by a court, agents have full authority to supervise, detain and/or initiate revocation of the clients conditional release. There may be a time delay in the committing court issuing the actual commitment order and/or the order of placement specifying a conditional release to the community. Community safety concerns however, make it important that the agent begin supervising the client immediately upon the court granting the defendants conditional release. Agents should have the NGI client initially sign the DHFS Conditional Release Rules and Conditions form ([DDE-5614](#)). The DOC rules (DOC-10) do not apply to NGI cases.
- The NGI defendant may be committed to the DHFS for a specified period of time not exceeding two-thirds of the maximum term of imprisonment that could be imposed under wss 973.15(2)(a) against an offender convicted of the same crime or crimes. For felonies committed on or after July 30, 2002, the court shall commit defendants to a specified period not exceeding the maximum term of imprisonment that could be

imposed under wss 973.15(2)(a). First degree murder is a commitment for LIFE. The court sets the commitment period. The termination date of the commitment can not be extended or shortened by the agent. Time cannot be stopped or tolled. There are no administrative early discharges for NGI commitments. The committing court may only terminate a commitment rather than shortening it.

CONDITIONAL RELEASE CRITERIA

The committing court is also the releasing authority. In Wisconsin, the standard for conditional release is dangerousness. That is, the court will deny a petition for release if it "finds clear and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage if conditionally released". Defendants may petition the committing court for conditional release from WMHI or MMHI every six (6) months.

PREDISPOSITION INVESTIGATION REPORTS

If the court lacks sufficient information in making a decision for institutional placement or conditional release, it may adjourn the hearing and order the DHFS to conduct a predispositional investigation (PDI), form [CR-272](#) or a supplemental examination (SME), form [CR-273](#). PDI and SME reports are similar in content to the Presentence Investigation reports done by the DOC. SME's are inpatient examinations and are conducted by staff at MMHI, WMHI or independent examiners appointed by the court. PDI reports are completed by the contracted DHFS case manager. Agents are not assigned NGI cases until the court orders the client to be conditionally released.

CONDITIONAL RELEASE PLANS

When a petition for conditional release from WMHI or MMHI is granted by the committing court or an NGI client is released directly from the committing court to the community, a Conditional Release plan is developed. The plan is written by the contracted community case manager. The assigned agent, in collaboration with the DHFS contracted mental health provider (in coordination with the county of residence/placement 51.42 Board) reviews and provides input during the plan preparation. By statute, the plan must address provisions for supervision, medication, community services, residential services, vocational services and alcohol and other drug abuse treatment.

The court approved Conditional Release Plan, in conjunction with the standard [CONDITIONAL RELEASE RULES AND CONDITIONS, DDE-5614](#), provides the core of the agents case plan, supervision mandates and case direction. Agents may still add case appropriate rules at any time. Any additional rules imposed by the agent should be communicated to the assigned case manager.

AGENT CASE ASSIGNMENT SOURCES

Institutional Case Assignment

- Agents are not assigned NGI cases until a court has granted the clients petition for Conditional Release. Agents are not assigned institution cases and receive no points for clients who are committed to WMHI or MMHI for institutional care. When a client is granted a conditional release from WMHI or MMHI and based upon the clients county of residence, the respective institute will forward the completed form [DDE- 5213](#) (Admission to caseload - Mental Health), along with a copy of the commitment order and the order for Conditional Release, to the respective NGI Regional Specialist. If needed, the DHFS will assist in determining the client's resident county.
- Upon receipt of the [DDE-5213](#), the NGI Regional Specialist will assign the case to the NGI Agent who covers the clients county of residence. The NGI Regional Specialist will forward this information, noted on the bottom of the [DDE-5213](#), to the institution registrar and to the assigned agents Ledgerkeeper.
- Ledgerkeepers will enter these cases onto the ledger checking the "NGI" box on the Ledger screen and setting the classification as PPI for 30 days, then INST until the client is Conditionally Released. While the client remains in the institution, the case is not set-up on records with DOC's Central Record Unit. Therefore, a DOC-44 document is not issued to the supervising agent.

Once a petition for Conditional Release has been granted by the court, the institution social worker will forward file material on the case to the agent. The institution social worker will also keep the agent informed of significant case changes.

Conditional Release from an Institution

When the committing court grants a clients conditional release petition, the institution social worker and the contracted DHFS community case manager will prepare the conditional release treatment plan within 60 days. The agent shall review the plan as to its appropriateness and suggest modifications, if necessary.

- If possible, the agent should attend the conditional release-planning meeting held at the institution in person. If the agent is not able to attend in person, the [CONDITIONAL RELEASE RULES AND CONDITIONS \(DDE-5614\)](#), with any additional rules imposed by the agent, should be faxed to the institution for review during the planning meeting with the agent participating via telephone conference call.
- Upon a court order for conditional release, the agent does **not** prepare a DOC-15.

Conditional Release - Direct Court Release

After a court accepts an NGI plea, the defendant is committed to the DHFS. The court may determine that the client can be safely released directly into the community without placement at WMHI or MMHI. Usually, at the time of a direct court release, the committing court will also order the DHFS to complete a Conditional Release Plan (within 21 days) or a PDI (typically within 30 days).

- The NGI client should report **immediately** to the local DCC office, directly upon leaving the court for agent assignment and reporting instructions.
- Community safety concerns make it important that the agent begin supervising the client immediately. Agents have full authority to supervise, detain and/or revoke the client's conditional release. Agents should have the NGI client initially sign the Conditional Release Rules and Conditions form ([DDE-5614](#)).
- Sometimes, the DCC becomes aware of a new NGI Direct Court Release before the DHFS. The DCC intake office and/or assigned agent should contact the DHFS Forensic Services Specialist and Conditional Release Regional Provider (see Conditional Release Regional Providers map) immediately, to ensure that necessary services and court ordered reports are secured in a timely fashion.

SETTING AN NGI CASE UP ON RECORDS

It is the supervising agent's responsibility to set-up NGI cases with the DOC Central Records Unit (CRU).

- Upon receipt of the [CR-271 \(Order of Commitment\)](#) and the [CR-275 \(Order of Placement\)](#), from the committing court, the agent shall forward the orders to the DOC CRU. The order must contain:
 - The agent's area number.
 - Clients date of birth.
 - The commitment discharge date.
 - Include a copy of the DOC-3 (Face Sheet) with client identification information.

NO SUPERVISION FEES/COURT COSTS/RESTITUTION

Because the DHFS contracts with the DOC for supervision services, NGI clients are exempt from paying supervision fees. Additionally, NGI clients do not pay court costs or restitution.

FUNDING FOR CONDITIONAL RELEASE SERVICES

On April 14, 1993, the Wisconsin Supreme Court held that the DHFS was responsible for funding the conditions of release for those indigent persons who are committed as NGI and are subsequently conditionally released by the court.

The specific court case involved a conditionally released client by the name of Donald J. Rolo, a Langlade County resident. Mr. Rolo's conditions included placement at a group home or other residential facility to ensure compliance with a court order for medication. The county department refused to assume financial responsibility.

The DHFS has only limited funds to finance conditional release services. Therefore, the DHFS requires that all proposed budgets for services be reviewed to assure that the services are clinically appropriate and are necessary to implement the conditional release order of the court.

Examples of the types of services that the DHFS is authorized by statute to fund include: mental health medications, counseling, community support program services, residential placement costs - including community based residential facilities and alcohol and other drug abuse (AODA) outpatient treatment.

Services that the conditional release program are not authorized to fund include:

Any treatment related to physical health services or services for anyone other than the conditional release client (such as the clients spouse or children). Costs related to inpatient AODA treatment maybe allowed if approved in advance by the DHFS Forensic Services Specialist.

All income that conditionally released clients receive (e.g., employment, SSI, SSDI, VA benefits, etc.) must be reported and are used toward the cost of care pursuant to Wisconsin Statute 46.10.

NEED FOR SIGNED RELEASES OF INFORMATION

The DHFS contracts directly with the DOC and the regional conditional release mental health providers for services. As such, agents, the DHFS contracted case managers, WMHI /MMHI staff and DHFS Forensic Services Specialists may communicate with each other about NGI clients without the need for a signed release of information from the NGI client.

For those individuals and agencies the DHFS does not directly contract with, a release of information is necessary from the client to share any information regarding the client's treatment records. Nearly all information about NGI cases is considered confidential and is protected under wss 51.30.

LEVEL OF SUPERVISION

During the initial 30 days of conditional release supervision in the community, it is recommended that the agent supervise NGI clients at a level that consists of one face to face contact every seven days with one home visit within that initial 30 day period.

After the initial 30 days of supervision, the agent shall determine the next appropriate supervision level. **However, supervision level shall not be reduced below the Medium level without DHFS Forensic Services Specialist approval.**

INTRA-STATE TRANSFER OF CASES

All requests for case transfers to another area within the state must be reviewed by the DHFS Forensic Services Specialist. This step must occur **before** the supervising agent proceeds per section 11.02 of the DCC Operations Manual.

OUT OF STATE TRAVEL

NGI clients may not leave the state of Wisconsin. HFS 98.04(3)(k) states that NGI clients "May not live, work, travel or be trained or educated in another state, because persons committed to the department under s.971.17 or 980.06, Stats., are not covered by the interstate compact under s. 304.13, Stat., or by s. 304.135, Stats." This prohibition for out of state travel can not be waived by the agent or the committing court.

VIOLATIONS

Apprehensions -

- When an NGI client violates the court ordered conditions of release or the standard conditional release rules and the client's whereabouts and activities are unknown, the agent may issue an Apprehension Request (DOC-58). Check **NO** in the extradition section of the DOC-58.

However, if the client also has an active probation, parole or extended supervision case, follow DCC **Operations Manual** Chapter 09.01.04, "Apprehension Request". Check **YES** in the Extradition section of the DOC-58 if the offender's case is a felony.

- As soon as possible, the agent shall prepare the [PETITION FOR CAPIAS \(DDE-5206\)](#) and the [ORDER GRANTING CAPIAS \(DDE-5207\)](#) and submit them to the committing court for the judges signature. The court then routes the signed Capias to the sheriffs department warrants division. The Capias serves the dual purpose of a bench warrant and authorizes a law enforcement agency to detain the client pending further orders from the committing court.

- After the agent verifies (through the sheriffs department warrant division) that the Capias is active in the system, the agent shall cancel the Apprehension Request (DOC -58).

Custodies –

- **Every time** that an NGI client is placed in custody, the agent must submit the completed [STATEMENT OF PROBABLE CAUSE FOR DETENTION AND PETITION FOR REVOCATION OF CONDITIONAL RELEASE \(DDE-5177\)](#) to the committing court **and** the regional office of the State Public Defender responsible for handling cases in the county where the committing court is located **within 48 hours of detention, including weekends and legal holidays**. Copies of the [DDE-5177](#) should also be forwarded to the District Attorneys office and to the DHFS Forensic Services Specialist (see *DHFS CONTACTS* on page 11).
- Client behavior which could or does result in custody is a significant case event. Custodies and potential custodies are also opportunities for the team to review the clients conditional release plan and to make appropriate modifications to the plan. Consequently, as soon as possible, the agent, case manager, Forensic Services Specialist and other team members, as appropriate, should discuss (via email, telephone conference call or in person) the clients behavior, the need for custody and possible interventions and modifications to the treatment plan to address the problem behavior.
- A revocation hearing must be scheduled, by the court, **within 30 days of the date of detention**, unless the hearing or time deadline is waived by the detained person.

If a detention facility refuses to accept the Order To Detain (DOC-212), the agent shall prepare a Capias Order ([DDE-5206](#) and [DDE-5207](#)) for the committing court's signature and submit it to the detention facility.

- The supervising agent will determine where the client is to be detained pending the revocation hearing (as noted on the [DDE-5177](#)). In most cases, when revocation is being pursued, transportation is arranged to the appropriate mental health institute. The Forensic Services Specialist will contact the admissions office of WMHI or MMHI to ensure that space is available. The agent prepares the [ORDER TO TRANSPORT \(DDE-5205\)](#) for the committing courts signature. The court then forwards the Order to Transport to the sheriff's office to effect the transport.
- The Ledger keeper sets the classification to REV for a minimum 30 days, but not longer than 60 days or until receipt of the court's order revoking the Conditional Release.

Revocation Hearings

When revocation is pursued, the normal DOC revocation process is not followed. The revocation hearing will be conducted by the committing court. The local District Attorney is responsible for establishing clear and convincing evidence that any rule or condition of release has been violated, or that the safety of the person or others requires that the conditional release be revoked. The agent will be called to testify as to the reason(s) for the requested revocation.

- When a client is placed at WMHI or MMHI, the institutional social worker will contact the agent and the DHFS contracted case manager to discuss the nature and details of the violation.
- By the fifth (5) work day of the client's detention at the institution, the DHFS contracted case manager will arrange a conference call to include not less than the contracted case manager, institutional social worker, the DCC agent, and the designated DHFS Forensic Services Specialist. The conference call should address the nature and details of the violation; the impression of the returnee's difficulties (including client's self-report) in the community and his or her specific needs; and possible alternatives to revocation. The client's needs will offer direction to the group's assessment of community treatment plan viability. If a recommendation for or against revocation is not determined at this conference call, the team will need to reconvene for that purpose. If the group decides to develop an alternative to revocation plan (ATR), schedule the next conference call and determine what the group participants will be working on to accomplish this goal.
- The group's first and primary responsibility is to work together in the best interest of the client and the safety of the community. All participants will give voice to their opinions and assessments. When there are differences of opinion, the group is expected to articulate the reasons for the differences and to continue toward a consensus. Revocation will be pursued unless the DHFS and the DOC agree to an ATR.
- When the court revokes a client's conditional release, the agent obtains the revocation order ([CR-276](#)) and forwards it to the DOC's CRU.
- Client case files for persons revoked and re-institutionalized while on conditional release will physically remain with the assigned agent. The Ledger keeper will change the classification to UNCL until the court grants a new petition for Conditional Release.

Revocation Withdrawal -

If revocation is not pursued, the agent withdraws the petition, advises the committing court of this decision and if approved by the court, returns the client to active supervision.

CASE TERMINATION

Conditional Release cases may only be terminated by order of the court. In addition, the DOC/CRU can not remove the client from their records without a signed discharge order from the committing court.

- The agent should submit the [ORDER OF DISCHARGE UPON EXPIRATION OF COMMITMENT \(DDE-5180\)](#), to the committing court at least sixty (60) dates prior to the commitment expiration date. In a cover memo (see [EXAMPLE OF NGI DISCHARGE MEMO TO COURT](#) on page 12) the agent, in consultation with the DHFS contracted case manager, shall address the appropriateness of the DHFS or the appropriate county department under s. 51.42 or 51.437, Stats., to proceed against the client under Ch. 51 or Ch. 55, Stats.
- Upon receiving the signed [ORDER OF DISCHARGE UPON EXPIRATION OF COMMITMENT \(DDE-5180\)](#) from the committing court, the agent shall **forward copies to the DOC/CRU and the DHFS Forensic Services Specialist**. Agents then follow the normal DOC file termination process. Discharged NGI case files are then sent to Mendota Mental Health Institution, Admissions Office, for storage (see address on page 12). The DOC shall retain copies of the file materials for any concurrent period of probation, parole or extended supervision.
- Agents can not administratively terminate an NGI commitment early. Commitment discharge dates can not be extended. Clients have the statutory ability to petition for termination of their commitment (971.17(5) if at least six (6) months have lapsed since the person was last placed on conditional release or since the most recent petition was denied). Agents may inform clients of this statutory provision but should not encourage clients to initiate such action. **Agents shall inform the DHFS Forensic Services Specialist of any NGI client who petitions the court for an early termination of their commitment.**

IMPORTANT REMINDERS

The DHFS Conditional Release Program has become a national model for community reintegration of forensic clients. The program's reputation for effective, high quality community mental health services and low recidivism rates is due in large measure to its treatment team approach in working with this challenging population. Agents are a valued and important members of the treatment team. Community supervision skills and the unique authority to leverage treatment plan compliance are essential to our process. Timely, open communication between team members and a thorough understanding of each members role is critical to client success and community safety. Working as a cohesive team, the DHFS Conditional Release Program will continue to set new standards in community forensic work and provide the citizens of Wisconsin with the safest, most effective method of community reintegration for this population.

DHFS CONTACTS

Forensic Services Specialists

- Glenn Larson
(608) 266-2862
Fax: (608) 266-2579
Email: larsogp@dhfs.state.wi.us

Consultant for: Dane, Milwaukee and Western Regions

- Beth Dodsworth
(608) 267-7705
Fax: (608) 266-2579
Email: dodswba@dhfs.state.wi.us

Consultant for: Northern, Fox and Southeastern Regions

DHFS Mental Health Institution Admissions Offices

Mendota Mental Health Institution

301 Troy Drive
Madison, WI 53704
(608) 301-1352
Fax: (608) 301-1358
Switchboard: (608) 301-1000

Winnebago Mental Health Institution

PO Box 9
Winnebago, WI 54981
(920) 235-4910 extension 2916
Fax: (920) 237-2043
Switchboard: (920) 235-4910 extension 0

EXAMPLE OF NGI DISCHARGE MEMO TO COURT
(To be submitted on DOC letterhead)

September 19, 2007

Honorable _____
_____ County Circuit Court Branch
000 W. Main Street
Anytown, WI 00000

RE: John D. Doe
Case No: 99-CF-0000
Expiration of Commitment Order pursuant to WSS 971.17(6).

Dear Judge _____,

On 00-00-00, John Doe was found Not Guilty by Reason of Mental Disease or Defect for the crime(s) of _____000.00(0), _____000.00(0), and was committed to the Department of Health and Family Services (DHFS) for a period of _____.

In accordance with WSS 971.17(1), Mr. Doe's commitment to the DHFS will expire on **00-00-00**. The Department of Corrections has no authority to supervise Mr. Doe beyond this date.

Pursuant to WSS 971.17(6), this matter is being returned to the committing court for discharge. The Department has reviewed the defendant's case and finds no basis (or does find a basis) to proceed to commit the defendant pursuant to Wisconsin Statute Chapter 51 or 55. The Department of Corrections does not (or does) recommend that the committing court take such action and further, recommends that the defendant be discharged from Conditional Release **effective 00-00-00**.

Attached, for the court's convenience, is the form DDE-5180: "ORDER OF DISCHARGE UPON EXPIRATION OF COMMIMENT". Further information on this defendant will be provided to the court upon request.

Sincerely,

Agent # 00000

CC: DHFS; ADA; Defense Atty.