

A Guide for Patients Deemed Not Guilty By Reason Of Insanity (“NGRI”) At Western State Hospital and Eastern State Hospital

Introduction

This guide provides information about the rights of patients who are at the adult psychiatric hospitals (Western State Hospital (WSH) and Eastern State Hospital (ESH)) run by the State of Washington’s Department of Social and Health Services (DSHS) following a finding of “not guilty by reason of insanity” (NGRI). These individuals have been charged with a crime, but due to their mental illness are acquitted of their charges. Because an NGRI patient has been deemed “not guilty” of committing the underlying criminal charge, they can only be hospitalized if they are deemed a “substantial danger to others” or if they present “a substantial likelihood of committing criminal acts jeopardizing public safety or security.” See RCW 10.77.110. NGRI patients cannot be committed to WSH or ESH for a longer time period than the possible maximum sentence for any criminal offense charged for which the patient was acquitted not guilty by reason of insanity.

This guide does not discuss the rights of individuals who are civilly committed under RCW 71.05 or those who are in the competency evaluation or restoration treatment process under RCW 10.77. It also does not discuss more general rights that affect all patients in WSH and ESH. For information about more general patient rights, see DRW’s publication titled “[Patient Rights at Western State Hospital and Eastern State Hospital.](#)”

Table of Contents

Section I: Definitions

1. Conditional Release
2. Final Discharge (Unconditional Release)
3. Risk Review Board
4. Public Safety Review Panel
5. Forensic Risk Assessment
6. Community Outpatient Treatment Readiness

Section II: Notable Legal Cases

1. Washington v Fletcher
2. Ross v Inslee

Section III: Rights and Privileges

1. Level System
 - a. What Can I Do to Move Up Levels?
 - b. What Can I Do if They Drop My Level?
2. Personal Property
3. Ground Access
4. Strip Searches and Body Cavity Searches
5. Involuntary Medications
 - a. Antipsychotic Medication
 - b. Other Medication

Section IV: Achieving Conditional Release and Final Discharge

1. Treatment Team, the RRB, and the PSRP
2. Filing Directly with DSHS

3. Filing Directly with the Court
4. Habeas Corpus
5. Right to an Attorney

Section V: What to Do if You Disagree with Your Treatment

1. NGRI Ombudsman
2. Forensic Directors at ESH and WSH

I. **Definitions**

The following terms are used throughout this guide and are of particular importance for NGRI patients.

1. Conditional Release

Conditional release (CR) involves specific patient privileges and is a change in an NGRI patient's legal status requiring court approval. Generally, the first stage of conditional release is getting unescorted hospital grounds privileges, followed by escorted community outings, unescorted outings with time and place restrictions, unescorted community day trips, and then unescorted overnights. Eventually, conditional release involves the right to live in the community under certain restrictions put in place by the court.

2. Final Discharge (Unconditional Release)

Final Discharge (FD), or Unconditional Release (UCR), involves a change in legal status for an NGRI patient requiring court approval. It generally follows a period of conditional release and means that an NGRI patient is released from DSHS custody and no longer must follow a court's conditions and supervision.

3. Risk Review Board (RRB)

The Risk Review Board (RRB) is a board of professional staff at WSH and ESH who are supposed to provide independent clinical judgment of NGRI patients and their readiness to progress in treatment and privileges. Patients must go in front of the RRB for all privilege requests related to escorted and unescorted grounds privileges, community outings, conditional release, and final discharge.

4. Public Safety Review Panel (PSRP)

The Public Safety Review Panel (PSRP) is a governor-appointed board made up of psychiatrists, psychologists, Department of Corrections staff, prosecutors, law enforcement, public defenders, and consumers or family advocates. PSRP members are not employed by DSHS. Under Washington State law, this panel advises DSHS and the courts on: 1) changes in an NGRI patient's release status, 2) grounds privileges,

and 3) allowing the patient to have temporary leave from the hospital with or without hospital staff accompanying them.

5. Forensic Risk Assessment (FRA)

A Forensic Risk Assessment (FRA) is an assessment for NGRI patients which looks at “static variables” as indicators of future behavior. In other words, it is an assessment designed to predict the potential for future offending behavior in order to identify intervention needs. This assessment is required in order for the hospital to support patient privileges affecting the public such as unescorted grounds privileges, escorted outings, conditional release into the community, and unconditional release. It is completed prior to a scheduled meeting with the RRB.

6. Community Outpatient Treatment Readiness Scale (COTREI)

The Community Outpatient Treatment Readiness Scale (COTREI) is an assessment for NGRI patients that uses “dynamic variables,” meaning someone’s day-to-day progress to determine community readiness. It is generally used to help guide patient progress through the level system, leading to conditional release and final discharge.

II. Notable Legal Cases

The following legal cases specifically address the rights of NGRI patients.

1. Washington v. Fletcher

The State of Washington vs. Fletcher is a 2018 legal decision requiring that an NGRI patient: 1) may petition the court directly for conditional release or final discharge at any time during their treatment, and 2) is entitled to legal counsel once a petition for conditional release or final discharge is filed with the court or an application for release is submitted to the Department of Social and Health Services (DSHS). An NGRI patient does not have the right to have an attorney assigned to them before they actually submit a petition to the court or an application for release to DSHS. Once the patient files the petition, the court may assign an attorney to represent them. Both WSH and ESH should have forms available to NGRI patients that can be used to petition the court directly, as discussed later in this guide.

2. Ross v. Inslee

Ross v. Inslee is a lawsuit that claimed Washington State DSHS was systematically violating NGRI patients' rights due to inadequate treatment and release planning. In 2016, DSHS entered into a settlement agreement in *Ross*, which resulted in new procedures for determining patient levels and corresponding privileges. This is supposed to make treatment and release planning more effective and fair. The *Ross* settlement also created new processes for NGRI patients to complain about rights violations and disagreements about their assigned level. It also led to the hiring of an NGRI Patient Ombudsman. The Ombudsman has the authority to investigate allegations of rights violations and advocate on behalf of NGRI patients. The new systems and procedures that came from the *Ross* settlement are discussed in more detail in the following sections.

III. Rights and Privileges

1. Level System

NGRI patients can work towards more freedom of movement and increased privileges through the hospital's level system. Levels correspond with certain privileges, such as community outings, escorted and unescorted hospital grounds privileges, authorized leaves, and conditional release. Both WSH and ESH use an assessment called the Community Outpatient Treatment Readiness (COTREI) scale to help determine what a patient's level should be. This is often called a "COTREI score."

The levels range from level 1 to level 6, with the corresponding privileges increasing with each level increase. There are also midway stages within a particular level—for example level 1A, 1B, 2A, 2B, etc. Most NGRI patients begin as a level 1A for the first 72 hours that they are at the hospital, which has no corresponding privileges. After the initial 72 hours, a patient can be moved up to a level 1B, which provides some privileges, such as attending off-ward treatment classes and outdoor yard time (different from full hospital grounds privileges). Within 30 days of hospital admission, an NGRI patient should receive their initial COTREI assessment and level recommendation. Additional COTREI assessments take place at least every 90 days during an NGRI patient's hospitalization.

Once a patient is recommended for a level that allows for escorted grounds privileges, the patient must go in front of the Risk Review Board (RRB) for approval. The patient must continue to go in front of the RRB each time the patient is being considered for a privilege increase or level that would allow more freedom of movement on hospital grounds or in the community (for example, unescorted grounds privileges, escorted community outings, unescorted day trips, conditional release into the community or final discharge).

a. What Can I Do to Move Up Levels?

Patients can move up levels based on their COTREI score, the FRA, the recommendations of their treatment team, and the recommendations of the RRB. The level system is supposed to provide guidance to NGRI patients on how to progress to final discharge, so it should describe the specific steps necessary to graduate to the next level. An NGRI patient's readiness for more privileges is assessed every 90 days during treatment plan conferences. However, a patient's level can be assessed at any time either by the treatment team or at the patient's own request. If a patient thinks that they should move to a higher level and the treatment team disagrees, the patient can appeal the treatment team's decision. Patients at WSH can appeal using the existing Center for Forensic Services appeal process. They can also request to be seen by the RRB. Patients at ESH may appeal a lack of support from their treatment team or the RRB by using the existing patient complaint process.

b. What Can I Do if They Drop My Level?

Any reduction in a patient's level must be made using clinical judgement and the reason for the reduction must be documented in the patient's medical records. An unintentional or minor violation of hospital rules alone is not enough for an automatic level reduction. Any patient who expresses disagreement with a level drop must be informed about how to contact the NGRI Ombudsman to voice their concerns. The NGRI Ombudsman has discretion to bring these concerns to a clinician not connected with the patient's treatment team for independent review. The patient might also consider using more general complaint processes at the hospital.

If a patient has privileges that a court has officially approved (for example, unescorted grounds access, escorted outings, or authorized leaves) the hospital must notify the court right away if it revokes these privileges. The court must then schedule a hearing within 30 days to determine whether the change in court-approved privileges is justified.

2. Personal Property

NGRI patients are able to have more personal property as they move up through the level system and work towards final discharge from the hospital. Any restrictions on personal property must be individualized to the person and documented in the patient's treatment plan. NGRI patients may talk with their treatment team about what items they are allowed to have. If they are not allowed to have certain items, they may ask their treatment team what the individualized reason is for this restriction. If they disagree, they may use the regular patient complaint process at WSH and ESH.

A patient may also get personal property items that are available through a checkout system, meaning they can have them for shorter periods of time and must return them to hospital staff who keep the property secured in a safe location. ESH and WSH have lists of items that are allowed on grounds and are part of the checkout system. Patients may ask to review this list. The hospital must also have a list of contraband items—meaning items that are not allowed for any patient, no matter their level—specific to different areas of the hospital. For example, if the hospital has maximum, intermediate, or minimum security areas, each level of security must have a unique contraband list that matches that security level.

3. Grounds Access

When an NGRI patient first arrives to ESH or WSH, they are generally only able to access the ward they are on, treatment spaces, and the outdoor recreational space attached to the ward (“the yard”.) In order to get additional access to hospital grounds, patients must move up in their levels or be granted such access by a court that is considering the patient's conditional release. Grounds privileges can either be escorted, meaning the patient is with at least one staff member, or unescorted, meaning the patient does not need to be with a staff member.

Escorted and unescorted grounds privileges should be based on individualized assessment of a patient. Unescorted grounds privileges must also be reviewed by the RRB and approved by the court. At WSH, a patient with grounds privileges is subject to being checked for contraband before leaving and upon returning to the ward.

4. Strip Searches and Body Cavity Searches

Strip searches and body cavity searches can only be conducted when there is reasonable suspicion that the patient is hiding contraband that is an imminent threat to life or security. Strip searches and body cavity searches must be ordered by a physician and approved by the Chief Executive Officer of the respective hospital. All strip searches and body cavity searches of patients will trigger an administrative report containing at a minimum the following: the date and time of the search; the facts indicating that the suspected contraband posed an imminent threat to life or security; names of the people involved in the search; location of the search; and, if any contraband was found, a written list and photographs of contraband items.

5. Involuntary Medications

The policies and practices for giving an NGRI patient medication when the patient does not want it depend on whether the medication is an antipsychotic or not.

a. Antipsychotic Medication

NGRI patients may be involuntarily treated with antipsychotic medication only by a court order. There is an exception for “treatment emergencies,” which allows for the hospital to involuntarily medicate an NGRI patient for up to 24 hours in certain situations. At WSH, a treatment emergency exists when a patient demonstrates behaviors or medical issues which present an imminent likelihood of serious harm. At ESH, a treatment emergency exists if the patient presents an imminent likelihood of serious harm to self or others, medical alternatives to antipsychotic medication are unlikely to be successful, the treatment proposed is needed to treat the illness or symptoms responsible for the imminent danger, and a physician states the patient condition qualifies as an emergency.

Patients may ask to review the court order for involuntary medication and can seek the assistance of their treatment team or attorney, if they have one. If an NGRI patient

wants to fight an involuntary medication court order, they should contact their attorney if one is assigned or other available advocates (see Section VI: What to Do If You Disagree with Your Treatment Team).

b. Other Medication

For medications that are not antipsychotics, WSH and ESH may administer medications involuntarily under what is sometimes referred to as a “concurring medical opinion override.” This means that two doctors have agreed that it is necessary to involuntarily medicate the patient after considering the risks, benefits, and alternatives to treatment as well as the diagnosis, treatment history, and other relevant factors of clinical decision making. This reasoning must be recorded in the patient’s treatment plan. At WSH, this decision must be reviewed again after 90 days. At ESH, all involuntary treatments other than the ordering of antipsychotic medication must be reviewed by the Medical Director or designee at 30 days, at the 90 day-commitment, and then at each 180 day commitment.

IV. Achieving Conditional Release and Final Discharge

Upon an NGRI patient’s arrival at WSH or ESH, staff should start the discharge planning process as soon as it is clinically appropriate to do so. The level system is supposed to help the patient get increasing privileges as they move towards conditional release and eventually final discharge. Moving to level 4 is generally considered to be the transition to conditional release. Once a patient moves to level 4, their progress is also overseen by the RRB and PSRP. Although the court does not get involved in deciding the patient’s level, the court must approve a patient’s change in legal status to conditional release or final discharge.

An individual may work towards higher levels with RRB and PSRP support in order to achieve conditional release or final discharge. Or, a patient can request conditional release or final discharge by filing an application with DSHS or petitioning the court directly.

1. Treatment Team, the RRB, and the PSRP

Similar to gaining levels and privileges, the first step for an NGRI patient to achieve conditional release and final discharge is typically to work with their treatment team. A patient may fill out a request form for whatever change they are requesting (note: these forms are different depending on whether it is for a change in level and privileges or a change in legal release status). The treatment team will review this request and determine whether they support it. The RRB is required to review the request when a patient is asking for privileges associated with level 3 and above, such as escorted grounds privileges (outside of the WSH quadrangle fence for patients at WSH), unescorted grounds privileges, or escorted and unescorted community outings. Additionally, the RRB reviews requests for any leave into the community to attend a funeral or visit the bedside of a seriously ill member of the immediate family.

The RRB will review the NGRI patient's request, treatment team opinion, and relevant assessments including previous and updated COTREI scores. The RRB will also interview the patient and the patient may advocate for themselves unless clinical or safety/security concerns exist. A patient has the right to decline an interview by the RRB. The patient may invite a guest to be present at the RRB interview of the patient, but the guest may not ask any questions of the RRB. The patient's guest might be an advocate, attorney, peer support specialist, hospital CEO, or others. Guests are not permitted to be present during the RRB deliberations.

After the RRB reviews all the materials and considers the patient interview, it will decide whether it supports the patient's request. The RRB is supposed to support a patient's request for conditional release or final discharge unless it can clearly identify concerns about the patient's dangerousness in the community. Those specific concerns are supposed to be documented and supported by the patient's treatment record. If the RRB decides not to support the patient's request, that decision should also be documented in the patient's records. The RRB should give the patient written feedback on steps they can take to gain the RRB's support.

If the RRB supports the patient's request, it will send its conclusions to DSHS for a formal recommendation. DSHS will then forward its recommendation to the Public Safety Review Panel (PSRP) for its review. When the PSRP receives a request for a

change in status or additional privileges, it has a specified period of time to review the request and respond to DSHS: 30 days for conditional release requests and 45 days for final discharge requests. Regardless of the PSRP's response (if any), DSHS should send its recommendation for conditional release or final discharge to the patient's attorney, the assigned prosecutor, and the court within ten days of the PSRP's review period.

Upon receipt of DSHS's recommendation, the court must schedule a hearing within 30 days (for conditional release) or 45 days (for final discharge). At the hearing, the petitioner must try to show that the NGRI patient no longer presents a substantial danger to others or a substantial likelihood of committing criminal acts.

Note that if DSHS believes that an NGRI patient is appropriate for conditional release or final discharge, it may petition the court on behalf of the patient even if the patient has not requested this.

An NGRI patient whose petition for conditional release or final discharge is denied by the court cannot re-apply for six months. The patient may discuss with their attorney whether they can appeal the court's decision.

2. Filing Directly with DSHS

Every six months, NGRI patients are entitled to an evaluation of their mental condition. Based on this evaluation, a report will be created that determines whether the patient meets the criteria for conditional release. This report should be filed with the court and kept in the patient's medical record. The patient can request a copy. An NGRI patient also may hire an expert to do this evaluation. If the patient cannot afford an expert and requests the appointment of an expert by the court, the court may appoint one but is not required to do so.

Directly following the six-month evaluation, a patient can submit an application for conditional release or final discharge to the Secretary of DSHS. DSHS will then handle the request for CR or final discharge in generally the same way it handles requests coming through the RRB and PSRP process, resulting in a court hearing as described above (see Section V(a): "Treatment Team, the RRB, and the PSRP"). The court then makes the ultimate decision about conditional release or final discharge. Staff should

provide a person who would like the assistance of counsel during the post-application process with the pleading form “Defendant’s Motion for Court-Appointed Counsel” which must be filed with the court immediately after submitting the application to DSHS.

3. Filing Directly with the Court

Another way for an NGRI patient to seek conditional release or final discharge is by filing a petition directly with the court. As previously mentioned, a patient does not have to go through the RRB or PSRP if the patient chooses instead to file directly with the court, but it is possible that the court will consider the PSRP’s or DSHS’s opinion of the patient’s request.

The forms for petitioning directly with the court—including asking for a court appointed attorney—were created by DSHS. They can be obtained by asking the treatment team. If that is not successful, a patient may want to contact the NGRI Ombudsman or DRW directly. The treatment team must also give instructions on how to fill out the court forms. The court recognizes that because an NGRI patient is not entitled to an attorney to help them submit the petition, the petition for conditional release or final discharge does not have to meet the same high standard that the court would expect from a trained attorney.

Upon receipt of an NGRI patient’s petition for conditional release or final discharge, the court must schedule a hearing within 30 days (for conditional release) or 45 days (for final discharge). The court may schedule a hearing even if DSHS actively does not support the patient’s request. At the hearing, the petitioner must try to show that the NGRI patient no longer presents, by reason of a mental disease, a substantial danger to others or a substantial likelihood of committing criminal acts.

An NGRI patient whose petition for conditional release or final discharge is denied by the court cannot re-apply for six months. The patient may discuss with their attorney whether they can appeal the court’s decision.

4. Habeas Corpus

An NGRI patient can submit a writ of habeas corpus at any time challenging their continued commitment and seeking release. A “writ of habeas corpus” is a document a

patient files with the court to ask for a review of his or her commitment. It explains to the court why the patient feels he or she is unlawfully detained, and that he or she would like to be released. For assistance with a writ of habeas corpus, a patient may ask their attorney (if they have one already working with them. They may also ask their treatment team about this.

5. Right to an Attorney

An NGRI patient does not have the right to an attorney during the entire duration of their commitment to the hospital. However, an NGRI patient does have the right to an attorney once they file an application to with DSHS or petition the court directly for conditional release or final discharge. Although in theory this right to an attorney is triggered as soon as the patient submits the application to DSHS or petitions the court directly, a patient should nevertheless consider filing a separate motion for court appointed attorney along with their application or petition. WSH and ESH staff should have court forms available to help NGRI patients file this motion along with the application or petition for conditional release or final discharge.

An NGRI patient likely had a criminal defense attorney assigned to them during the criminal proceedings that lead to their NGRI status. Therefore, there can be confusion about whether that original criminal defense attorney is still representing the NGRI patient later when the patient seeks conditional release or final discharge. Sometimes the original criminal defense attorney has withdrawn from representation, but sometimes they continued to be assigned throughout the NGRI patient's hospitalization. When the NGRI patient is taking steps towards conditional release or final discharge, they may want to figure out whether their original criminal defense attorney is still assigned to their case.

To find out whether the original criminal defense attorney is still assigned to represent an NGRI patient, please call or write to that attorney directly, or contact the county Public Defender's office if one exists. A patient may also contact the Washington State Office of Public Defense at:

Washington State Office of Public Defense
PO Box 40957
Olympia, WA 98504
(360) 586-3164 or 1-800-414-6064

WSH and ESH treatment teams can also help a patient identify if they have an attorney assigned and how to contact that attorney.

V. What to Do If You Disagree with Your Treatment

Sometimes an NGRI patient may have disagreements about their treatment that do not fall within the formal level and discharge planning processes described in the rest of this guide. In addition to the complaint strategies set forth in DRW's "[Patient Rights at Western State Hospital and Eastern State Hospital](#)," there are specific complaint mechanisms available to NGRI patients. Patients can contact the NGRI Ombudsman or write to the Director of Forensic Services at their Hospital.

1. NGRI Ombudsman

The NGRI Ombudsman is a government official appointed to receive and investigate complaints made by NGRI patients committed at WSH or ESH. The Ombudsman primary task is to ensure and achieve DSHS compliance with the *Ross* settlement. To do so, the Ombudsman is authorized to conduct fact-finding and advocacy regarding issues falling under the settlement. The NGRI Ombudsman is located at WSH but is available to NGRI patients at both WSH and ESH. The NGRI Ombudsman can be reached at:

Darrin Hall
NGRI Ombudsman – Western and Eastern State Hospitals
(253) 691-5293
HALLDAL@dshs.wa.gov

2. Forensic Directors at ESH and WSH

A patient can also write a letter to the Forensic Director. Both ESH and WSH have Directors who manage the Forensic Services. They can be reached at:

Director of Center for Forensic
Services
Western State Hospital
9601 Steilacoom Blvd SW
Lakewood, WA 98498

Administrative Director of Forensic
Services Unit
Eastern State Hospital
PO Box 800
Medical Lake, WA 99022

***This information booklet is a service of Disability Rights Washington
(DRW).***

***It provides general information as a public service only, and is not
legal advice.***

If you need legal advice, you should contact an attorney.

You do not have an attorney-client relationship with DRW.

***If you would like more information about this topic, call (800) 562-
2702 (voice)
or (800) 905-0209 (TTY).***

Always advocate in a timely manner. Please be aware that there are certain time limits or deadlines to file a complaint, a lawsuit, or take legal action.

To receive this information booklet in an alternative format, such as large print or Braille, please call Disability Rights Washington (DRW) toll-free at 1-800-562-2702.

Permission to reprint this publication is granted by the author, Disability Rights Washington, provided that the publication is distributed free of charge and with attribution.

Disability Rights Washington
315 Fifth Avenue South, Suite 850
Seattle, WA 98104
T: 206-324-1521 or 800-562-2702
Fax: 206-957-0729
Email: info@dr-wa.org
Website: DisabilityRightsWA.org
Interpreters Available

DRW was formerly known as Washington Protection and Advocacy System. DRW is a member of the National Disability Rights Network. A substantial portion of the DRW budget is federally funded.

This information is current as of March 2020