

SAMPLE Petition for Transfer to Outpatient Treatment
(Penal Code § 1026.2)

Name: [your name]

Address: [the address of the hospital where you are committed]

In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF [the name of the county where you were
found NGI]

In the Matter of, <u>[your name]</u> ,)	Case No.: <u>[Leave this line blank.]</u>
Petitioner,)	PETITION FOR TRANSFER TO OUTPATIENT TREATMENT
A person Judicially Committed under Penal Code Section 1026)	Cal. Penal Code § 1026.2
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TO THE HONORABLE PRESIDING JUDGE AND JUDGES OF THE
SUPERIOR COURT:

PLEASE TAKE NOTICE that Petitioner, [your name], committed under California Penal Code section 1026 does hereby request a hearing on Petitioner's suitability to be placed on conditional release. Petitioner has been confined to [name of the hospital where you are committed] for [length of time you have been committed], meeting the 180 day minimum required to obtain a hearing. Cal. Pen. Code § 1026.2(d). Petitioner has received the full benefit of treatment, is not a danger to the community, and respectfully requests placement in an appropriate outpatient treatment and supervision program. Cal. Penal Code § 1026.2 (2008).

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Petitioner requests appointment of counsel, a trial at which Petitioner has the right to be present, present evidence, and cross-examine adverse witnesses.

This application is based on the attached Declaration, and the following analysis:

INTRODUCTION

Section 1026, *et seq.* of the California Penal Code provides the procedures for commitment and release of individuals found not guilty by reason of insanity (NGI). *Id.* There are two purposes served by committing an insanity acquittee, “to treat his mental illness and to protect him and society from his potential dangerousness.” *People v. Wilder*, 33 Cal.App.4th 90, 100 (1995). Absent a diagnosis of mental illness, social dysfunctions, such as antisocial personality, cannot be used for continued hospitalization, even if they create a danger to the health and safety of others. *Foucha v. Louisiana*, 504 U.S. 71, 77-79, 118 S.Ct. 1780 (1992). Continued hospitalization of an NGI acquittee remains valid only if it can be demonstrated that the acquittee has a mental defect, disease, or disorder that makes the acquittee a danger to the health and safety of others. Pen. Code § 1026.2(e)

ANALYSIS

I. PETITIONER IS ENTITLED TO A RESTORATION OF SANITY HEARING COMPLIANT WITH STANDARDS OF DUE PROCESS UPON PETITIONER’S APPLICATION UNDER CALIFORNIA PENAL CODE SECTION 1026.2 TO DETERMINE PETITIONER’S SUITABILITY FOR TRANSFER TO COMMUNITY OUTPATIENT TREATMENT.

Pursuant to Penal Code section 1026.2, Petitioner is entitled to apply for conditional release on the basis that Petitioner’s sanity has been restored. Pen. Code § 1026.2(a). Petitioner is entitled to a hearing on his petition for restoration of sanity. *People v. Soiu*, 106 Cal.App.4th 1191 (2003). At this hearing, Petitioner

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has a right to counsel, to present evidence, and to examine and cross-examine witnesses. *Id.* at 1199-1201; *In re Reyes*, 161 Cal.App.3d 655, 658 (1984).

Petitioner contends that his right to present evidence includes the right to be examined by two court-appointed psychiatrists, and that the Court must consider the findings of such independent psychiatric examinations in determining Petitioner's application for outpatient care.

A request for release based on a California Penal Code section 1026.2 commitment is a two-step process. The first step is the court placing the acquittee in "an appropriate forensic conditional release program for one year," following a full court hearing on the matter, also known as an outpatient placement hearing. *Siou*, 106 Cal.App.4th 1191, 1196 (quoting Cal. Penal Code § 1026.2(e)). The second step typically occurs after one year, where the court holds a trial to determine whether sanity has been restored. *Id.*

The initial application for release of an NGI acquittee committed to a state hospital may be made "either by the person, or the medical director of the state hospital or other treatment facility...or by the community program director..." Upon the receipt of an acquittee's application for release, when the Court has found that the patient has been confined or on outpatient status for 180 days, the Court is required to hold a hearing to determine if the applicant would no longer be a danger to the health and safety of others if under supervision and treatment in the community. Cal. Pen. Code §§ 1026.2 (d)-(e). Although the court must obtain the hospital director's recommendation pursuant to Penal Code section 1026.2(l), Petitioner is entitled to a full judicial hearing whether or not the hospital's recommendation is favorable. Penal Code § 1026.2(e); see also *People v. Soiu*, 106 Cal.App.4th 1191, 1198 (2003). (based on the express language utilized by the

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Legislature, we conclude that the trial court could not deny defendant's section 1026.2 release application without holding a hearing at which he would be present.") Petitioner fulfills the statutory requirements under Penal Code section 1026.2 and is entitled to a hearing. Based on the length of Petitioner's confinement and Petitioner's timely application for release based on restoration of sanity, Petitioner is entitled to a hearing under California Penal Code section 1026.2 *et seq.*

II. PETITIONER WILL PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT PETITIONER IS NO LONGER A DANGER TO THE HEALTH AND SAFETY OF OTHERS, ALLOWING PETITIONER TO BE CONDITIONALLY RELEASED TO OUTPATIENT TREATMENT.

By a thorough presentation of evidence and witnesses, Petitioner will prove by a preponderance of the evidence that Petitioner has been restored to sanity and is therefore eligible for conditional release. In establishing that Petitioner has been restored to sanity, Petitioner must prove by preponderance of the evidence that Petitioner is no longer a danger to the health and safety of others due to a mental disease, defect, or disorder. Cal. Pen. Code §§ 1026.2(e) and (k). By this standard, Petitioner must prove only that he or she would not be "a danger to the health or safety of others... if under supervision and treatment in the community" or, in the alternative, that Petitioner is no longer mentally ill. Cal. Pen. Code §1026.2(e).

Petitioner's allegations of restored sanity do not require fact-pleading or detailed particularity. *In re Jones*, 260 Cal.App.2d 906, 912 (1968). Petitioner's claims need not be artful. *Id.* Indeed, "skill and perfection in petitioner's method of alleging sanity is (sic) not required." *Id.*, citing *Stewart v. Overholser*, 186 F. 2d 339, 349 (C.A.D.C. 1951).

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Petitioner will establish by a preponderance of the evidence that Petitioner is entitled to conditional release. Petitioner's Declaration establishes that Petitioner will no longer present a danger to the health and safety of others.

CONCLUSION

Petitioner has satisfied the statutory requirements necessary to entitle Petitioner to a restoration of sanity hearing under California Penal Code section 1026. At the hearing, Petitioner will establish his eligibility for conditional release on the basis that Petitioner is no longer a danger to the health and safety of others.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays:

- A. That this Court hold a hearing to determine Petitioner's suitability for community outpatient treatment; and
- B. That this Court appoint an attorney to represent Petitioner in this action; and
- C. That this Court order an independent psychiatric examination to evaluate Petitioner's present mental condition; and
- D. That this Court find that Petitioner is not a danger to the health and safety of others and, in accordance with that finding, order Petitioner placed in an appropriate outpatient treatment program.

Date: [date you sign this petition]

Respectfully submitted,

[your name]

Petitioner

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