

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

State of West Virginia,

v.

Case No.:

\_\_\_\_\_, Defendant

**ORDER FOR INITIAL FORENSIC EXAMINATIONS  
TO DETERMINE COMPETENCY OR CRIMINAL RESPONSIBILITY OR BOTH**

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, came the State of West Virginia, by and through its counsel, \_\_\_\_\_, Assistant Prosecuting Attorney, and the defendant, by and through his or her counsel, \_\_\_\_\_, pursuant to the motion of \_\_\_\_\_ for an order of this Court for a forensic evaluation regarding Defendant's competency to stand trial or defendant's criminal responsibility or both.

This Court, in accordance with W. Va. Code § 27-6A-2(a), having heard the arguments of counsel does hereby ORDER that the defendant undergo an initial forensic examination to determine defendant's competency to stand trial and, only if the

Defendant is determined competent, to determine whether defendant is not guilty by means of mental illness for the crimes charged. If it is determined that the Defendant is incompetent to stand trial, there shall be further determinations whether defendant is likely to regain competency, and whether defendant requires inpatient management at a mental health facility in order to regain competency.

The Court further **ORDERS** that this initial forensic examination shall be conducted pursuant to W. Va. Code § 27-6A-2(a), by (a qualified forensic <sup>psychologist</sup> ~~psychiatrist~~ or psychiatrist) at (The county or regional jail where defendant is being held or, if defendant is not being held in custody, at another prearranged place). The evaluation may not be made at a state-owned mental health facility unless the defendant resides there.

The Court further **ORDERS** the Qualified Forensic Evaluator listed above to provide a written and signed report of the examination and findings to be filed in triplicate with the Clerk of the Circuit Court for distribution to this Court and the attorneys of record within ten business days of the completion of the evaluation, unless the parties agree that an oral report may suffice.

This Court further **ORDERS** the Sheriff of \_\_\_\_\_ County or the Regional Jail to transport defendant to and from the site of the initial examination.

This Court further **ORDERS** the defendant to appear at \_\_\_\_\_ for the examination or that the defendant appear at the Sheriff's Office or Regional Jail for transport to the examination.

This Court further **ORDERS** that the party making the motion or other party shall ensure that any information relevant to the evaluations be sent to the Qualified Forensic Evaluator listed above within ten days of this order, including:

- (1) A copy of the warrant or indictment;
- (2) Information pertaining to the alleged crime, including statements by the defendant made to the police, investigative reports and transcripts of preliminary hearings, if any;
- (3) Any available psychiatric, psychological, medical or social records that are considered relevant;
- (4) A copy of the defendant's criminal record; and
- (5) If the evaluations are to include a diminished capacity assessment, the nature of any lesser included criminal offenses.

This Court further ORDERS that counsel for the defendant meet with defendant and defendant's family and friends and prepare a list of mental health facilities and professionals from which defendant has received treatment and forward that list to the Qualified Forensic Evaluator listed above prior to the scheduled examinations.

This Court finds that the Qualified Forensic Evaluator may release this order to other mental health facilities and professionals for the purpose of obtaining defendant's mental health records. This Court finds any mental health records requested by the Qualified Forensic Evaluator are sufficiently relevant to the proceeding before the Court to outweigh the importance of maintaining the confidentiality established by W. Va. Code § 27-3-1. This Court further finds that good cause exists such that the public interest and the need for disclosure outweighs the injury to the patient, to the patient-physician relationship and to the treatment services pursuant to 42 U.S.C.A. § 290dd-2 and 42 C.F.R. Part 2. Therefore, this Court ORDERS all facilities presented with this order to

release the defendant's mental health records to the Qualified Forensic Evaluator listed above who shall use them specifically for completing the examination ordered herein.

The Court further ORDERS that, upon receipt of an original invoice and a court order with a raised seal of the Clerk of this Court, the West Virginia Department of Health and Human Resources' Office of Behavioral Health Services shall pay for the initial examination pursuant to W. Va. Trial Court Rules, Rule 35.05 up to the maximum rates established in accordance with W. Va. Code §27-6A-11. The original invoice, a copy of the evaluation, and the court order shall be forwarded to the Director of the Office of Behavioral Health Services at 350 Capitol Street, Room 350, Charleston, West Virginia, 25301. The Court ORDERS the Clerk of the Court to forward copies of this Order to the counsel of record and the Qualified Forensic Evaluator listed above.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Judge

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Assistant Prosecuting Attorney  
Address  
Telephone and Fax  
Bar ID #

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Counsel for Defendant  
Address  
Telephone and Fax  
Bar ID #

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Entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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