

27-6A-3(f)

Post hearing finding of not competent to stand trial; not likely to regain competency, crime involves act of violence against a person

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

State of West Virginia,

v.

Case No.

_____,
Defendant.

**COURT'S FINDING ON DEFENDANT'S
COMPETENCY TO STAND TRIAL WHO IS CHARGED WITH A CRIME THAT
INVOLVES VIOLENCE TO A PERSON**

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 Defendant's counsel,

_____, for a hearing on Defendant's competency to stand trial.

Having reviewed the report(s) from the forensic examination(s) and heard arguments of counsel and the evidence presented, the Court **FINDS** that Defendant is not competent to stand trial because the Defendant does not exhibit sufficient present ability to consult with his/her lawyer with a reasonable degree of rational understanding, including a rational understanding and a factual understanding of

the procedures and charges against him/her as defined by W.Va. Code §27-6A-1(a)(2).

The Court further **FINDS** that the Defendant has received competency restoration services as defined by W.Va. Code §27-6A-1(a)(1) for at least 180 days in accordance with W.Va. Code §27-6A-3(f) and, if applicable, additional days of competency restoration treatment in accordance with W.Va. Code §27-6A-3(g). The Court further **FINDS** that Defendant has not attained competency and is not substantially likely to attain competency in the foreseeable future and that the charges or indictments against the Defendant involve an act of violence against a person.

The Court hereby **ORDERS** the Defendant be committed to mental health inpatient or outpatient facility as designated by the West Virginia Department of Health and Human Resources, which is the least restrictive environment available to manage the defendant and allow for the protection to the public.

This Court finds that the Defendant would have been convicted of the following offenses but for the determination that he/she is not competent to stand trial, and the court finds that the maximum sentence he/she would have received is

_____.

This Court further FINDS that it maintains jurisdiction over the defendant for no. of years, the maximum possible sentence defendant would have received if he/she had been convicted of the crime(s) charges, or until the defendant regains

competency and the criminal charges reach resolution whichever is sooner. The end date of the maximum sentence period is _____, 20__, and the Court's jurisdiction is extended thereafter by 10 days to allow the prosecuting attorney to institute civil commitment proceedings under Article 5 of Chapter 27 of the West Virginia Code. Thereafter the defendant shall be released from the facility if not first civilly committed.

The Court further **ORDERS** that a dangerousness risk assessment of the Defendant be conducted by a qualified forensic evaluator within 30 days and a copy of the completed report be provided to the Court within 10 days thereafter in accordance with W.Va. Code §27-6A-3(g)(2). The dangerousness risk assessment shall address at least the following factors:

1. The extent to which the Defendant has mental illness or an intellectual disability and whether the Defendant's mental illness or serious emotional disturbance is in remission;
2. The likelihood that the Defendant will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself or herself in the foreseeable future;
3. The likelihood that the Defendant can be adequately controlled with supervision and treatment on an outpatient basis;

4. Whether the Defendant is likely to participate in outpatient treatment with a legal obligation to do so;
5. Whether the Defendant is not likely to participate in outpatient treatment unless legally obligated to do so;
6. Whether the Defendant is a danger to self or others; and
7. Whether the Defendant's outpatient treatment is a suitable, less restrictive alternative to ongoing commitment.

The Court further **ORDERS** that upon receipt of the dangerousness risk assessment, the Chief Medical Officer at Sharpe Hospital shall prepare a recommended release plan for the Defendant, if warranted, that reflects the needs of the Defendant and the public and the Chief Medical Officer shall further provide a copy of the recommended release plan to the Court, the prosecutor, and the parties. If the Chief Medical Officer determines that the Defendant fails to meet clinical criteria for a release plan, the Court **ORDERS** the Chief Medical Officer to prepare a written recommendation for the Defendant's clinical disposition, placement, or treatment and provide a copy of the written recommendation to the Court, the prosecutor, and the parties.

Upon receipt of the dangerousness risk assessment and the Chief Medical Officer's recommended release plan or written recommendation the Court will schedule a hearing to consider the conditions for the release, if any, of the Defendant, the less

restrictive placement of the Defendant, and/or the referral of the Defendant's potential release and/or placement to the Dangerousness Assessment Review Board in accordance with W.Va. Code 27-6A-13.

The Court **ORDERS** the Clerk of this Court to forward copies of this Order to the parties in this matter.

Entered this _____ day of _____, 20__.

Judge

Assistant Prosecuting Attorney
Address
Telephone and Fax
Bar ID #

Counsel for Defendant
Address
Telephone and Fax
Bar ID #