

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 Defendant, by and through his/her counsel, _____, and the Assistant Prosecuting Attorney, by and through its counsel, _____, pursuant to the motion of _____ for an order of this Court for a forensic evaluation regarding Defendant's competency to stand trial as defined by W.Va. Code §27-6A-1(a)(2) or Defendant's criminal responsibility in accordance with W.Va. Code §27-6A-4, or both.

The Court, in accordance with W. Va. Code § 27-6A-2(a), having heard the arguments of counsel hereby **ORDERS** that the Defendant shall 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 reason of mental illness for the crimes charged. If it is determined that the Defendant is not competent to stand trial as defined by W.Va. Code §27-6A-1(a)(2), there shall be further determinations as to whether Defendant is substantially 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, by (Name of Qualified Forensic Evaluator) at:

- a. _____: The county or regional jail where Defendant is being held; or
- b. _____: If the Defendant is not being held in custody, at another prearranged place; or
- c. _____: A community mental health center, an outpatient facility, or the office of the qualified forensic evaluator; or
- d. _____: At a state inpatient mental health facility if the Defendant is a current patient or if the forensic evaluation cannot be performed at a community mental health center, outpatient facility, or the office of the qualified forensic evaluator.

The Court further **ORDERS** that the Qualified Forensic Evaluator shall 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.

The Court further **ORDERS** that the Qualified Forensic Evaluator's report shall determine whether the Defendant is substantially likely to attain competency within the next 90 days and whether the Defendant may attain competency by receiving competency restoration services as defined by W.Va. Code §27-6A-1(a)(1) at an outpatient mental health facility, outpatient mental health practice, or a jail-based competency restoration program, if available. If the Qualified Forensic Evaluator determines that competency restoration can only be attained by inpatient management in a mental health facility or state hospital, the Qualified Forensic Evaluator shall set forth in his or her report why competency restoration is not viable in a less restrictive environment or a jail-based competency restoration program.

The Court further **ORDERS** that the report of the Qualified Forensic Evaluator as to the Defendant's competency shall be performed with the standards and requirements established by the Department consistent with best medical practices. Pursuant to W.Va. Code §27-6A-2(d), the Qualified Forensic Evaluator's report shall address:

1. The Qualified Forensic Evaluator's opinion on the Defendant's competency to stand trial, if any;
2. A diagnosis, if any;
3. A proposed plan for competency attainment, if appropriate; and

4. An opinion as to whether the Defendant is dangerous to himself, herself, or others.

The Court further **ORDERS** the Sheriff of _____ County or the Regional Jail to transport Defendant to and from the site of the initial examination.

The Court further **ORDERS** the Defendant to appear at _____ for the examination.

The 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 within ten business 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.

The 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.

The Court further **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 further **FINDS** that 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 in accordance with W. Va. Code § 27-3-1(b)(2). 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, the 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 Health Facilities 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 William R. Sharpe, Jr. Hospital, Attn: Business Manager at 936 Sharpe Hospital Road, Weston, WV 26452.

The Court further **ORDERS** the Clerk of the Court to forward certified copies of this Order to the counsel of record and the Qualified Forensic Evaluator listed above.

Entered this _____ day of _____, 20__.

Judge

Assistant Prosecuting Attorney
Address
Telephone and Fax
WV State Bar ID #

Counsel for Defendant
Address
Telephone and Fax
WV State Bar ID #