

ORDER FOR PSYCHOLOGICAL EVALUATION

Case No.

Commonwealth of Virginia Va. Code §§ 19.2-168, 19.2-168.1, 19.2-169.1, 19.2-169.5

.....
COURT NAME AND ADDRESS

Commonwealth of Virginia v.

TYPE OF EVALUATION AND REPORT

- COMPETENCY EVALUATION:** It appearing to the Court, on motion of
 - Commonwealth’s Attorney defendant’s attorney the Court
 and upon hearing evidence or representations of counsel, that there is probable cause to believe that the defendant lacks substantial capacity to understand the proceedings against him or to assist in his own defense, the Court therefore appoints the evaluator(s) listed below to evaluate the defendant and to submit a report, on or before the date shown below, to this Court, the Commonwealth’s Attorney and the defendant’s attorney, concerning: (1) the defendant’s capacity to understand the proceedings against him; (2) the defendant’s ability to assist his attorney; (3) the defendant’s need for treatment in the event that he is found to be incompetent but restorable, or incompetent for the foreseeable future and (4) if the defendant has been charged with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or a misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128, whether the defendant should be evaluated to determine whether he meets criteria for temporary detention pursuant to § 37.2-809 in the event he is found incompetent but restorable or incompetent for the foreseeable future. If a need for restoration treatment is identified in the event he is found incompetent but restorable, or incompetent for the foreseeable future, the report shall state whether inpatient or outpatient treatment (community-based or jail-based) is recommended. In cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition, and where prior medical or educational records are available to support the diagnosis, or if the defendant was previously determined to be unrestorably incompetent in the past two years, the report may recommend that the court find the defendant unrestorably incompetent to stand trial. No statements of the defendant relating to the time period of the alleged offense shall be included in the report.
- SANITY AT THE TIME OF THE OFFENSE:** It appearing to the Court, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant’s sanity may be a significant factor in his defense and that the defendant is financially unable to pay for expert assistance, the Court therefore appoints the evaluator(s) listed below to evaluate the defendant’s sanity at the time of the offense and, where appropriate, to assist in the development of an insanity defense. They shall prepare and submit a full report, on or before the date shown below, solely to the defendant’s attorney, concerning the defendant’s sanity at the time of the offense, including whether he may have had a significant mental disease or defect which rendered him insane at the time of the offense. If further evaluation on this issue is necessary, the evaluator(s) shall so state.
- The motion for the evaluation having been made by the Commonwealth after receiving notice pursuant to Virginia Code § 19.2-168, the Court also orders the defendant to submit to an evaluation and has advised the defendant that a refusal to cooperate with the Commonwealth’s evaluator(s) could result in the exclusion of defendant’s expert evidence. The Court further orders the evaluator(s) to submit to the attorneys for the Commonwealth and defendant copies of the report and the records obtained during the evaluation.

DESIGNATION OF EVALUATOR(S)

The Court finds and concludes that:

- the evaluation shall be performed on an outpatient basis at a mental health facility or in jail.

The Court therefore appoints the following evaluator(s) to conduct the evaluation:

.....
EVALUATOR(S): NAME(S) AND TITLE(S) OR NAME OF FACILITY

- the evaluation shall be conducted on an inpatient basis by qualified staff at a hospital designated by the Commissioner of the Department of Behavioral Health and Developmental Services because:
 - an outpatient evaluation (copy attached) has been conducted and the outpatient evaluator opined that a hospital-based evaluation is needed to reliably reach an opinion.
 - the defendant is currently in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to Virginia Code §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2.

DUE DATE AND TIME:

The Court further orders that the Commonwealth’s Attorney and the defendant’s attorney forward appropriate background information to the evaluator(s) as required by law. **TO EVALUATORS AND ATTORNEYS:** See reverse for additional instructions.

.....
DATE

.....
JUDGE

ADDITIONAL INSTRUCTIONS TO EVALUATOR(S) AND ATTORNEYS

Providing Background Information

1. **Competency Evaluation:** Prior to an evaluation of competency pursuant to Va. Code § 19.2-169.1, the Commonwealth's Attorney must forward to the evaluator(s) within 96 hours of the issuance of this order:
 - a. a copy of the warrant;
 - b. the names and addresses of the Commonwealth's Attorney, the defendant's attorney, and the judge ordering the evaluation;
 - c. information about the alleged crime; and
 - d. a summary of the reasons for the evaluation request.

The defendant's attorney must provide any available psychiatric records and other information that are deemed relevant within 96 hours of the issuance of this order. Va. Code § 19.2-169.1(C).

2. **Sanity at the Time of the Offense:** Prior to an evaluation of sanity at the time of the offense, the party making the motion for the evaluation must forward to the evaluator(s):
 - a. a copy of the warrant;
 - b. the names and addresses of the Commonwealth's Attorney, the defendant's attorney, and the judge ordering the evaluation;
 - c. information about the alleged crime, including statements by the defendant made to the police and transcripts of preliminary hearings, if any;
 - d. a summary of the reasons for the evaluation request;
 - e. any available psychiatric, psychological, medical or social records that are deemed relevant; and
 - f. a copy of defendant's criminal record, to the extent reasonably available.Va. Code § 19.2-169.5(C).

Use of Information Obtained During Evaluation

No statement of disclosure by the defendant concerning the alleged offense made during the evaluation may be used against the defendant at the trial as evidence, or as a basis for such evidence, except on the issue of his/her mental condition at the time of the offense after the defendant raises the issue pursuant to § 19.2-168 of the Code of Virginia. Va. Code § 19.2-169.7.