

**MENTAL EXAMINATION OF DEFENDANT**

(a) If the defendant may offer at the special sentencing proceeding expert testimony concerning his or her mental condition, the defendant shall notify the prosecuting attorney at least 30 days prior to the start of jury selection. This time may be extended by the court for good cause.

(b) If the defendant has provided such notification, the court, on motion of the prosecuting attorney, shall enter an order requiring the defendant to submit to examination by one or more experts designated by the prosecuting attorney. The court shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The defendant may have a representative present at the examination, who may observe the examination but not interfere with or otherwise obstruct the examination. Unless otherwise ordered by the court, the defendant or the defendant's representative may make an audio tape recording of the examination, which shall be made in an unobtrusive manner.

(c) By the date set by the court, the defendant or the defendant's attorney shall provide the State's experts with any reports generated by defense experts, all raw data relied on, and any test results. The information given to the experts shall be supplemented whenever new materials become available.

(d) If the State's expert believes that the material provided by the defendant is inadequate for a proper evaluation, the expert may request the court to require that further materials be provided. If the defendant fails to cooperate with the examination, the expert may request the court to require the defendant to answer specific questions or participate in specific tests. The court shall consider these requests at a closed hearing. The defendant and his or her attorneys shall be given an opportunity to be heard. The prosecuting attorney shall not be allowed to participate. The record of the hearing shall be sealed as provided in subsection (f).

(e) On completing the examination, the prosecution expert shall submit a report setting out the tests performed and their results, the conclusions reached by the expert, and the basis for those conclusions. The report shall be provided to the defendant's attorney and filed with the court.

(f) The expert's report and materials connected with it shall be sealed. The expert shall not discuss his or her conclusions or any information connected with the examination with anyone, other than the defendant's attorneys or other experts whose participation is necessary for a proper examination. Any such experts shall be under the same restrictions.

(g) Within 24 hours after a jury returns a verdict finding a defendant guilty of aggravated murder in the first degree, the court will require the defendant to elect whether he or she may present expert testimony at the special sentencing proceeding concerning his or her mental condition. If the defendant elects not to present such testimony, the report shall remain permanently sealed, the restrictions set out in subsection (f) shall remain permanently in effect, and the State shall be permanently prohibited from direct or derivative use against the defendant of the report or of materials or information provided to the expert. If the defendant elects to present such testimony, the court shall provide a copy of the experts' reports to the prosecuting attorney and shall relieve the experts of the restrictions. The prosecuting attorney may use information obtained from the expert solely to rebut expert testimony offered by the defense at the special sentencing proceeding.

(h) If, in any subsequent proceeding related to the crimes for which the defendant was convicted, the defendant places his or her mental status in issue, the court may direct that

relevant portions of the experts' reports be disclosed to the prosecuting attorney and that the experts shall discuss those portions with the prosecuting attorney.

[Adopted effective December 30, 1997.]