

\_\_\_\_\_ Court of Washington  
County of \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff  
vs.  
\_\_\_\_\_,  
Defendant  
DOB: \_\_\_\_\_

No.  
**Order for Competency Evaluation under  
RCW 10.77.060  
(ORCE)**  
**Clerk's Action Required: para. 3  
(interpreter), 6, 8**

**This matter** came before the court on the motion of  the attorney for the defendant  the prosecutor  the court who has reason to doubt the defendant's competency based on a good faith belief that as a result of a mental disease or defect, the defendant may lack the capacity to understand the proceedings against him or her or to assist in his or her own defense.

The defendant is charged with:

- the felony crime(s) of \_\_\_\_\_
- the nonfelony crime(s) of \_\_\_\_\_ and
- At least one of the nonfelony charges** is a "serious offense" as defined in RCW 10.77.092
- None of the nonfelony charges** are a "serious offense" as defined in RCW 10.77.092.
- The court is reserving ruling on whether any of the nonfelony crimes charged is a serious offense as defined in RCW 10.77.092.
- This matter is not pending trial. The current probation report and/or other supplemental materials are attached.

There is reason to believe that the defendant may have a developmental disability.  
*(Information regarding why it is believed the defendant may have a developmental disability may be added here):*

- The defendant receives Developmental Disability Administration Services.
- The defendant received special education services specifically for a developmental disability.

Other \_\_\_\_\_

The following additional information supports the request for evaluation.  
(Information regarding why it is believed the defendant is not competent may be added here):

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**The court finds** that there is reason to doubt the defendant's competency and that the defendant is in need of a forensic mental health evaluation; and

**The court orders:**

1. **Evaluation.** The court orders a competency evaluation of the defendant.

The defendant is to be evaluated by:

Hospital evaluator: a qualified expert who shall be approved by the prosecuting attorney, and who is designated by the Secretary of the Department of Social and Health Services (DSHS).

Other: \_\_\_\_\_

The evaluation shall be completed as specified below.

2. **Place of Evaluation.** The evaluation shall occur at the following location (*check only one*):

Evaluation in a **Jail/Detention Facility.** The defendant is held in \_\_\_\_\_ Jail/Detention facility, and the examination shall take place in that facility. If the defendant is transferred to another Jail/Detention facility, the Jail/Detention facility and the parties are to immediately inform the DSHS at the contact information listed on the final page of this order. If the defendant is transferred to another Jail/Detention facility, the examination shall take place in that facility.

If the evaluator determines that the evaluation should take place at a facility designated by DSHS, then the evaluator shall notify the court, the prosecutor, and the defense attorney of that fact, as soon as is reasonably practicable. *Written notice and a conformed copy of this order, without more, shall direct transport in compliance with this order.*

**Out-of-Custody Evaluation.** As the defendant is not currently in custody, the defendant's attorney shall contact DSHS to schedule and arrange an appointment for examination at an agreed location.

The defendant is held in \_\_\_\_\_. The evaluation may occur at that location.

If the defendant is incarcerated or committed to another treatment facility before the evaluation, the defendant's attorney shall immediately notify DSHS. A

separate order must be entered to authorize in-patient examination if necessary to complete the evaluation.

**In-Patient Evaluation.** The examination is to occur at the State Hospital or other secure facility determined by DSHS. The defendant is committed to the care and custody of DSHS for up to 15 days from the date of admission to the facility, based upon the following (check the appropriate finding):

The defendant is charged with murder in the first or second degree;  
Or

The court finds that it is more likely than not that an evaluation in the jail will be inadequate to complete an accurate evaluation;  
Or

The court finds that an evaluation outside the jail setting is necessary for the health, safety, or welfare of the defendant.

If the defendant is released from Jail/Detention facility or released to a treatment facility under RCW 71.05 prior to the examination, the defendant's attorney shall notify DSHS which shall schedule an appointment for an examination at an agreed location.

If the defendant is in custody, transportation shall be arranged as stated in this order. If the defendant is released from custody prior to the examination, the defendant's attorney shall contact DSHS to schedule an appointment for admission to the facility. A released defendant must obtain medical clearance prior to admission to the facility.

### 3. Evaluation Requirements

The following requirements supplement those found in chapter 10.77 RCW:

**Developmental Disabilities Professional.** Based upon advisement that the defendant may have a developmental disability, the evaluation must be performed by a developmental disabilities professional.

**Interpreter.** The defendant requires the services of an interpreter in the following language: \_\_\_\_\_

**Defense Attorney Presence.** The defense attorney requests notification of the time and place of the evaluation at the contact information provided below. **The defense attorney may be contacted at:**

\_\_\_\_\_ (Only check this box if defense counsel wants notice and opportunity to be present.)

The evaluation may proceed without the defense attorney present if notice has been provided.

The evaluation may not proceed without the defense attorney present. The current criminal charge(s) shall not be discussed with the defendant outside the forensic interview.

Defense attorney is available on (dates and times during the day, evening, and any weekend in the next \_\_\_\_ days):

\_\_\_\_\_.

[ ] **Defense Expert.** A defense expert has been appointed under RCW 10.77.060 and DSHS is directed to contact the defense attorney to determine whether the expert will be witnessing DSHS's evaluation.

[ ] **Additional Evaluation Requirements** \_\_\_\_\_

\_\_\_\_\_.

#### 4. Report Contents and Distribution

The evaluator shall distribute the report to the court, prosecuting attorney, defense attorney, the designated crisis responder (DCR), and the professional person at the Jail/Detention facility. Distribution of the evaluation report by a facility providing inpatient services shall ordinarily be accomplished within two working days or less following the final evaluation of the defendant. The report of the evaluation shall include the following pursuant to RCW 10.77.060:

- A description of the nature of the evaluation;
- A diagnosis or description of the current mental status of the defendant;
- **COMPETENCY:** If the defendant suffers from a mental disease or defect, or has a developmental disability, an opinion as to competency;
- **NON-FELONY, SERIOUS OFFENSE:** For a non-felony defendant charged with at least one serious offense, an opinion as to whether the defendant is unlikely to be restored within the statutory restoration period;
- **DCR EVALUATION:** An opinion as to whether the defendant should be evaluated by a designated crisis responder under chapter 71.05 RCW.
- **Other:** \_\_\_\_\_

The secretary may execute such agreements as appropriate and necessary to implement this section, which may include designation of more than one evaluator.

#### 5. Timing

**Evaluation:** The evaluation shall be completed and the report distributed within the timelines set out under RCW 10.77.065 and .068 and relevant legal authority, including: *Trueblood v. Washington State Department of Social and Health Services*, 101 F. Supp. 3d 1010 (W.D. Wash. 2015), *vacated on other grounds*, 822 F.3d 1037 (9th Cir. 2016); [\*Trueblood v. Washington State Department of Social and Health Services, No. C14-1178 MJP\*](#), 2017 WL 1488479, 2017 U.S. Dist. LEXIS 65532 (W.D. Wash. Apr. 26, 2017) (Order Adopting (in Part) the Parties' Mediated Settlement Agreement).

**In-jail Evaluations:** Defendant shall be evaluated in-jail and the evaluation report distributed within 14 days of the receipt of this order or 21 days from the signature date of this order, whichever is shorter.

**Inpatient Evaluations:** In-jail defendants who are ordered to receive an inpatient evaluation shall be admitted within 7 days of receipt of this order or 14 days from

the signature date of this order, whichever is shorter. Distribution of an evaluation report by a facility providing inpatient services shall ordinarily be accomplished within two working days or less following the final evaluation of the defendant.

**Out-of-custody Evaluations:** Pursuant to RCW 10.77.068, there is a performance target of 21 days or less for an out-of-custody evaluation and the distribution of the evaluation report.

The court will consider a future motion by either party, DSHS, and/or the designated evaluator for an extension of the statutory deadline due to good cause. To facilitate such a motion if needed, the court and parties agree that the parties, DSHS, or the Attorney General's Office, need not adhere to the local rules regarding notice and are presumptively granted a motion to shorten time for any Motion to Extend Reporting Date for Good Cause.

The court finds good cause to extend the timing of the evaluation and the distribution of the report until \_\_\_\_\_ (date) because:

\_\_\_\_\_  
\_\_\_\_\_.

Other: \_\_\_\_\_  
\_\_\_\_\_.

## 6. Records

In accordance with RCW 10.77.060, the evaluator is granted access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant for the purpose of conducting the examination.

In consideration of the urgent nature of this evaluation, it is ordered that all records requested by the evaluator shall be provided as soon as possible, but no later than 2 days from the date requested.

For the purpose of this evaluation, the evaluator is also specifically granted access to records containing information regarding alcohol and drug abuse evaluation and treatment, and the authority to disclose this information to the undersigned court, the prosecuting attorney, the defense counsel, and others as designated in RCW 10.77.060 and 10.77.065. Access and authority to disclose is granted in compliance with the confidentiality requirements set forth in RCW 70.96A.150 and 42 CFR Part 2.

**Within 24 hours** of the signing of this order:

- The **clerk of the court** shall provide this order and the charging documents, including the request for bail and certification of probable cause to DSHS.  
 Instead of the clerk of the court providing these documents, they shall be provided by \_\_\_\_\_.
- The **prosecuting attorney** shall provide the discovery packet, including a statement of the defendant's criminal history, to DSHS or the county appointed evaluator. ***If the defense provides this information, the prosecuting attorney shall be included in the communication so that duplicates are not sent.***

- The **jail administrator** shall provide the defendant's medical clearance information to DSHS, if this order requires transportation of the defendant to a facility designated by DSHS.

**7. Transportation and Discharge**

The Jail/Detention facility shall transport the in-custody defendant from the Jail/Detention facility to the facility designated by DSHS and back. Transportation to the facility shall occur within 1 day of the receipt of an offer of admission of the defendant for competency evaluation.

Any facility providing inpatient services related to competency shall discharge the defendant as soon as the facility determines that the defendant is competent to stand trial. Discharge shall not be postponed during the writing and distribution of the evaluation report.

If the defendant is discharged to the custody of a Jail/Detention facility, the Jail/Detention facility must continue the medication regimen prescribed by the facility, when clinically appropriate, unless the defendant refuses to cooperate with medication and there is no forced medication order in effect.

**8. Next Hearing**

The next hearing date is scheduled for:\_\_\_\_\_.

- A separate scheduling order shall be filed (if required by local practice).

If the defendant is admitted to a facility designated by DSHS from a Jail/Detention facility, the defendant shall be returned to jail before this court date, except as provided below:

- All parties agree  to waive the presence of the defendant or  to the defendant's remote participation at a subsequent competency hearing or presentation of an agreed order if the recommendation of the evaluator is for continuation of the stay of criminal proceedings, or if the opinion of the evaluator is that the defendant remains incompetent and there is no remaining restoration period, and the hearing is held prior to the expiration of the authorized commitment period.

**9. Immunity Agreement**

- The parties have not made any immunity agreement. *(If no box is checked, this is the default.)*
- The parties stipulate that statements, admissions, or confessions made by a defendant in the course of a court-ordered evaluation under this chapter are not admissible into evidence against the defendant on the issue of guilt in any criminal proceeding, unless the defendant has placed his or her mental health at issue. The statement is admissible for any other purpose or proceeding allowed by law. This prohibition may not be used to argue for derivative suppression of other evidence lawfully obtained as a result of an otherwise inadmissible statement, admission, or confession.

**10. Stay of Proceedings**

- All time from the entry of this order and during this examination period and until this court enters an order finding the defendant to be competent to proceed is excluded from the calculation of time for trial under CrR 3.3, CrRLJ 3.3, and JuCR 7.8.
- The case is at the post-sentencing stage. Jurisdiction is tolled. RCW 10.77.050; *State v. Campbell*, 95 Wn.2d 954, 957 (1981).

**Dated** \_\_\_\_\_

\_\_\_\_\_  
**Judge**

Print Name: \_\_\_\_\_

Approved as to form

Approved as to form

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Attorney for the Defendant

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

WSBA No. \_\_\_\_\_

WSBA No. \_\_\_\_\_

Contact and Distribution List (contact information including email address, phone, and/or fax should be included to receive scheduling communications and/or reports).

1. State Hospital/DSHS

Eastern State [eshfsuadmin@dshs.wa.gov](mailto:eshfsuadmin@dshs.wa.gov) \_\_\_\_\_

Western State [OFMHSCOURTORDERS@dshs.wa.gov](mailto:OFMHSCOURTORDERS@dshs.wa.gov) \_\_\_\_\_

DSHS/Child Study and Treatment Center \_\_\_\_\_

2. Ordering Court \_\_\_\_\_

3. Jail/Detention Facility \_\_\_\_\_

4. DCR \_\_\_\_\_

5. Prosecuting Attorney \_\_\_\_\_

6. Defense Attorney \_\_\_\_\_

7. Alternate contact for defense \_\_\_\_\_

8. Other \_\_\_\_\_