WEST VIRGINIA CODE: §27-6A-2

§27-6A-2. Competency of defendant to stand trial; cause for appointment of qualified forensic evaluator; written report; observation period; rules.

(a) Whenever a court of record has reasonable cause to believe that a defendant in a criminal matter in which an indictment has been returned, or a warrant or summons issued, may be incompetent to stand trial, it shall, sua sponte, or upon motion filed by the state or by or on behalf of the defendant, order a forensic evaluation of the defendant's competency to stand trial to be conducted by a qualified forensic evaluator. If a court of record orders both a competency evaluation and a criminal responsibility or diminished capacity evaluation, the competency evaluation shall be performed first, and if the qualified forensic evaluator is of the opinion that the defendant is not competent to stand trial, no criminal responsibility or diminished capacity evaluation may be conducted absent further order of the court. The initial forensic evaluation may not be conducted at a state inpatient mental health facility unless the defendant is a current patient there or the court of record has found that the initial forensic evaluation cannot be performed at a community mental health center consistent with §27-2A-1(b)(4) of this code, at an outpatient facility, at a Division of Corrections and Rehabilitation Facility by a qualified forensic evaluator or at the office of the qualified forensic evaluator.

(b) The court shall require the party making the motion for the evaluation, and other parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluations within 10 business days of its evaluation order. The information shall include, but not be limited to:

(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.

(c) A qualified forensic evaluator shall schedule and arrange for the prompt completion of any court-ordered evaluation which may include record review and a defendant interview and shall, within 10 business days of the date of the completion of any evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of competency to stand trial. If it is the qualified forensic evaluator's opinion that the defendant is not

WV Legislature

competent to stand trial, the report shall state whether the defendant is substantially likely to attain competency within the next 90 days and, as provided in this section, and, whether the defendant may attain competency by receiving competency restoration services 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 a defendant is likely to attain competency, but 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 the reasons why competency restoration is not viable in a less restrictive environment or a jail-based competency restoration program.

(d) The report of a qualified forensic evaluator as to a defendant's competency shall be performed with standards and requirements established by the department consistent with best medical practices. The report shall address:

(1) The forensic evaluator's opinion on the defendant's competency to stand trial;

(2) A diagnosis, if any;

(3) A proposed plan for competency attainment if appropriate; and

(4) An opinion as to whether the individual is dangerous to himself, herself, or others.

(5) The court may extend the 10-day period for filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no event may the period exceed 30 days.

(e) If the court determines that the defendant has been uncooperative during the forensic evaluation ordered pursuant to subsection (a) of this section, or there have been one or more inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this section and the court has reason to believe that an observation period is necessary in order to determine if a person is competent to stand trial, the court may order the defendant be committed to a mental health facility designated by the department for a period not to exceed 15 days and an additional evaluation be conducted in accordance with subsection (a) of this section by a qualified forensic evaluator. The court shall order that at the conclusion of the 15-day observation period the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

(f) A mental health facility not operated by the state has no obligation to admit and treat a defendant under this section if the facility has no outpatient competency restoration program established and recognized by the department, notwithstanding the provisions of §27-2A-1(b)(4) and §27-5-9 of this code: *Provided*, That medication administration and medication management for stabilization on an outpatient basis shall be provided by the mental health facility.

WV Legislature

(g) A mental health facility not operated by the state that constitutes a charitable or public service organization as defined by §29-12-5(b)(1)(B) of this code, and provides competency restoration services pursuant to a court order may purchase liability coverage for injury or civil damages related to the provision of the services from the Board of Risk and Insurance Management.

(h) In consultation with the Supreme Court of Appeals, the secretary may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the provisions of this article. The secretary may promulgate emergency rules, pursuant to §29A-3-15 of this code, as may be required.

WV Legislature