WEST VIRGINIA CODE: §27-6A-4

§27-6A-4. Criminal responsibility or diminished capacity evaluation; court jurisdiction over persons found not guilty by reason of mental illness.

(a) If the court of record finds, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's criminal responsibility or diminished capacity will be a significant factor in his or her defense, the court shall appoint a qualified forensic evaluator to conduct a forensic evaluation of the defendant's state of mind at the time of the alleged offense. However, if a qualified forensic evaluator is of the opinion that the defendant is not competent to stand trial then no criminal responsibility or diminished capacity evaluation may be conducted. The forensic evaluation may not be conducted at a state inpatient mental health facility unless the defendant has been ordered to a mental health facility or state hospital in accordance with §27-6A-2(c) or §27-6A-3(f) or §27-6A-3(h) of this code. To the extent possible, qualified forensic evaluators who have conducted evaluations of competency under §27-6A-2(a) of this code, shall be used to evaluate criminal responsibility or diminished capacity under this subsection and all evaluations shall be performed consistent with the department's program standards and requirements for the reports.

(b) The court shall require the party making the motion for the evaluations, 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 evaluation 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 evaluation is to include a diminished capacity assessment, the nature of any lesser criminal offenses.

(c) A qualified forensic evaluator shall schedule and arrange within 15 days of the receipt of appropriate documents the completion of any court-ordered evaluation which may include record review and 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 criminal responsibility, and if ordered, on diminished capacity. The court may extend the 10-day period for filing the report if a qualified forensic evaluator

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shows good cause to extend the period, but in no event may the period exceed 30 days. If there are no objections by the state or defense counsel, the court may, by order, dismiss the requirement for a written report if the qualified forensic evaluator's opinion may otherwise be made known to the court and interested parties.

(d) If the court determines that the defendant has been uncooperative during a forensic evaluation ordered pursuant to subsection (a) of this section or there are inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this section, and the court has reason to believe that an observation period and additional forensic evaluation or evaluations are necessary in order to determine if a defendant was criminally responsible or with diminished capacity, the court may order the defendant be admitted to a mental health facility or state hospital designated by the department for a period not to exceed 15 days and an additional evaluation be conducted and a report rendered in like manner as subsections (a) and (b) of this section by a qualified forensic evaluator. At the conclusion of the observation period, the court shall enter a disposition order and 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.

(e) If the verdict in a criminal trial is a judgment of not guilty by reason of mental illness, the court shall determine on the record the offense or offenses of which the acquittee could have otherwise been convicted, and the maximum sentence he or she could have received. The acquittee shall remain under the court's jurisdiction until the expiration of the maximum sentence or until discharged by the court. The court shall order a qualified forensic evaluator to conduct a dangerousness evaluation to include dangerousness risk factors to be completed within 30 days of admission to the mental health facility and a report rendered to the court within 10 business days of the completion of the evaluation. The dangerousness evaluation shall be performed consistent with the department's program standards and requirements for such evaluations. The medical director of the mental health facility shall provide the court a written clinical summary report of the defendant's condition at least annually during the time of the court's jurisdiction. The court's jurisdiction continues an additional 10 days beyond any expiration to allow civil commitment proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq*. of this code. The defendant shall then be immediately released from the facility unless civilly committed.

(f) In addition to any court-ordered evaluations completed pursuant to §27-6A-2, §27-6A-3, and §27-6A-4 of this code, the defendant or the state has the right to an evaluation or evaluations by a forensic evaluator or evaluators of his or her choice and at his or her expense.

(g) The court shall place persons acquitted under subsection (e) of this section in the temporary custody of the department for evaluation to determine if the acquittee may be released with or without conditions or if the acquittee requires commitment. The court may authorize that the evaluation be conducted on an outpatient basis. If the court authorizes an outpatient evaluation, the department shall determine, on the basis of all information available, whether the evaluation shall be conducted on an outpatient basis or whether the

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acquittee shall be confined in a hospital for evaluation. If the court does not authorize an outpatient evaluation, the acquittee shall be confined in a hospital for evaluation. If an acquittee who is being evaluated on an outpatient basis fails to comply with the evaluation, the department shall petition the court for an order to confine the acquittee in a hospital for the evaluation. A copy of the petition shall be sent to the acquittee's attorney and the prosecutor of the acquittee's case. The evaluation shall be conducted by a qualified clinical evaluator skilled in the diagnosis of mental illness and intellectual disability and qualified by training and experience to perform the evaluations. The evaluator shall determine whether the acquittee currently has mental illness or intellectual disability and shall assess the acquittee and report on his or her condition and need for hospitalization with respect to the factors set forth in §27-6A-5(b) of this code. The evaluator shall conduct an examination and report his or her findings separately within 30 days of the department's assumption of custody of the acquittee. Copies of the report shall be sent to the acquittee's attorney, the prosecuting attorney for the jurisdiction where the person was acquitted, and the comprehensive community mental health center designated by the department. If the evaluator recommends conditional release or release without conditions, the court shall extend the evaluation period to permit the department and the comprehensive community mental health center or licensed behavioral health provider to jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.

(h) A mental health facility not operated by the state is not required to admit or treat a defendant or acquittee under this section except as otherwise provided by §27-2A-1(b)(4) and §27-5-9 of this code.

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