
Competency to Stand Trial &
Sanity at the Time of the
Offense

§19.2-169.1

§19.2-169.5

Model Court Order

2
COURT NAME AND ADDRESS

Commonwealth of Virginia v. 3

TYPE OF EVALUATION AND REPORT

- 4 COMPETENCY EVALUATION: It appearing to the Court, on motion of
- 5 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) his ability to assist his attorney; and (3) his need for treatment in the event that he is found to be incompetent but restorable, or incompetent for the foreseeable future. No statement of the defendant relating to the time period of the alleged offense shall be included in the report.
- 6 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.
- 7 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:

- 8 the evaluation shall be performed on an outpatient basis at a mental health facility or in jail, as indicated below.
- 9 as outpatient services are unavailable, the evaluation of competency shall be performed on an inpatient basis, as indicated below.
- 10 the evaluation shall be conducted on an inpatient basis at a hospital designated by the Commissioner of the Department of Behavioral Health and Developmental Services because:
- no outpatient services are available
- 10 the results of outpatient evaluation (copy attached) indicate that hospitalization for further evaluation is necessary
- a court of competent jurisdiction has found, pursuant to Virginia Code §§ 19.2-169.6 or 37.2-814, that the defendant requires emergency treatment on an inpatient basis at this time.

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

- 11 _____
EVALUATOR(S): NAME(S) AND TITLE(S) OR NAME OF FACILITY
- qualified staff at a hospital to be designated by the Commissioner of the Department of Behavioral Health and Developmental Services or his designee. Hospitalization for evaluation shall not extend beyond 30 days from the date of admission.

DUE DATE AND TIME: 12

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.

13
DATE

14
JUDGE

Using This Form**1. Copies**

- a. Original – to court.
- b. First copy – to evaluator(s) or hospital.
- c. Second copy – to defendant’s lawyer.
- d. Third copy – to Commonwealth’s Attorney.

2. Prepared by clerk, signed by judge.**3. Attachments**

- a. DC-354, CUSTODIAL TRANSPORTATION ORDER.
- b. DC-4003, ORDER FOR TREATMENT OF INMATE (if entered).

4. Preparation details

Both types of evaluation may be ordered at the same time on this form.

Data Elements

1. Court case number.
2. Court name and address.
3. Name of defendant.
4. Check this box if competency evaluation is being ordered.
5. Check the appropriate box.
6. Check this box if sanity evaluation is being ordered on representations of defense counsel.
7. Check this box if sanity evaluation is requested by Commonwealth's Attorney.
8. Check this box if the evaluation is to be performed on an outpatient basis.
9. Check this box if the competency evaluation is to be performed on an inpatient basis because outpatient services are unavailable. This box applies to competency evaluation *only*.
10. Check this box if the sanity or insanity evaluation is to be performed on an inpatient basis and check the appropriate box to indicate underlying reason. These boxes apply to sanity and insanity evaluations only.
11. Check the appropriate box and, if applicable, identify evaluator(s) by inserting the evaluator's name and title or the evaluator's facility.
12. Date and time that evaluation reports must be received by court.
13. Date of entry of order.
14. Signature of 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.