**Kitsap County District Court, State of Washington**

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| STATE OF WASHINGTON,  Plaintiff,  v.  ENTER DEFENDANT NAME,  Defendant. | NO. Enter Case#  **Order for Competency Restoration Treatment**  **Out of Custody  In Custody**  **In Patient Treatment**  **Outpatient Treatment**  **Medication Authorization**  **Clerk’s action required: Para. 8, 12, 15** |

Based on the evidence presented by the parties and other relevant records in the case, the court finds the following facts –

**Findings of Fact and Procedural Setting**

**The Court finds –**

1. **Competency to Stand Trial.** By a preponderance of the evidence that, as a result of mental disease or defect, the Defendant lacks the capacity to:

Understand the nature of the proceedings against him/her, and/or

Assist in his/her own defense as a result of mental disease or defect.

The Defendant is not competent to stand trial, pursuant to RCW 10.77.010 and 10.77.050.

1. **Compelling State Interest**. The prosecution has objected to dismissal and moved for an order of competency restoration. Following a hearing, the Court finds there is a compelling state interest to order competency restoration treatment for the Defendant.
2. **Procedural Setting.** By clear and convincing evidence that the Defendant is charged with a non-felony offense that is a serious offense as defined in RCW 10.77.092.

**Serious Offense – Per Se.** RCW 10.77.092(1). The Defendant is charged with a crime listed in RCW 10.77.092(1) as a serious offense.  Additionally, the court has considered the individual facts alleged in this case, and finds that the charged non-felony crime(s) of       is a crime of harassment pursuant to RCW 9A.46.060 because at least one act of harassment occurred, and thus is a “serious offense” as defined in RCW 10.77.092(1)(e), or

**Serious Offense – Discretionary.** RCW 10.77.092(2). The court has determined that the Defendant is charged with a serious offense pursuant to RCW 10.77.092(2). In making that determination the court has taken into consideration the following factors –

* The extent to which the charge includes an allegation that the Defendant actually inflicted bodily or emotional harm on another person or that the Defendant created a reasonable apprehension of bodily harm.
* The extent of the impact of the alleged offense on the basic human need for security of the citizens within the jurisdiction.
* The number and nature of related charges pending against the Defendant.
* The length of potential confinement if the Defendant is convicted.
* The number of potential and actual victims or persons impacted by the Defendant’s alleged acts.

1. **Developmental Disability.** The Court finds the Defendant  has  does not have a developmental disability.

**Conclusion of Law**

1. Competency restoration treatment should be provided.

**Orders**

**6. Competency Restoration Treatment**. The Court orders the Defendant into a program for mental health treatment and restoration of competency, as described below. Any facility or provider providing services in accordance with this order shall be referred to as the “Treatment Facility.” The Treatment Facility shall promptly notify the Court and all parties of the date on which the competency restoration period commences by admission to the Treatment Facility and expires by discharge from the Treatment Facility so that a timely hearing date may be scheduled.

**Inpatient Treatment.** The Defendant shall be placed in the custody of the Secretary of the Department of Social and Health Services to undergo evaluation and treatment pursuant to RCW 10.77.088. The placement under this section shall not exceed 29 days. The length of the placement includes only the time the defendant is actually at the treatment facility and shall be in addition to reasonable time for transport to or from the treatment facility.

**Outpatient Treatment.** The Defendant shall be placed on conditional release for up to 90 days for mental health treatment and restoration of competency pursuant to RCW 10.77.088. DSHS has certified, as of the date of this order, that there is an available appropriate outpatient restoration program that has adequate space for the defendant at the following outpatient restoration program –

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| **Note** – *Outpatient competency restoration programs are being phased in over several years. There may not be one available in your area. Before you order outpatient competency restoration treatment, please check with DSHS before issuing the order* |

The Defendant is clinically appropriate for outpatient competency restoration treatment. The Defendant has indicated a willingness to adhere to medications or receive prescribed intravenous medication, and to abstain from alcohol and non-prescribed drugs. The Defendant must reside in housing approved by DSHS, adhere to medications or receive prescribed intramuscular medications, abstain from alcohol and unprescribed drugs, and follow any rules and conditions for participation established by DSHS.

**7. Administration of Medication.**

**Prosecution Not Requested Involuntary Medication.** The prosecution has not requested authorization for administration of involuntary medication. Involuntary medication is not authorized.

**Prosecution Not Met Burden for Involuntary Medication.** The prosecution has requested authorization for administration of involuntary medication, but has not met its burden of proof under *Sell v. United States,* 539 U.S. 166, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003). Involuntary medication is not authorized.

**Prosecution Met Burden; Involuntary Medication Authorized.** The prosecution has requested authorization for administration of involuntary medication. The prosecution has met its burden of proof under *Sell v. United States,* 539 U.S. 166, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003). Involuntary medication is therefore authorized.

The Treatment Facility may administer clinically appropriate medication for the purpose of competency restoration. If the Defendant refuses to take medication and/or allow necessary laboratory studies, the Treatment Facility may involuntarily administer clinically appropriate medications and obtain appropriate laboratory studies.

The court makes the following findings by clear, cogent and convincing evidence regarding the administration of involuntary medication –

* The prosecution has an important governmental interest at stake in trying to render the Defendant competent to stand trial on the charge(s) involved in this case. In making this finding, the court has considered the facts of this case, including the potential for future confinement, and the current length of Defendant’s confinement.
* Involuntary medication will significantly further the prosecution’s governmental interests in this case. Involuntary medication is substantially likely to render the Defendant competent. Involuntary medication is substantially unlikely to have side effects that interfere significantly with the Defendant’s ability to assist counsel in conducting a trial defense and thereby render the trial unfair.
* Involuntary medication is necessary to further the prosecution’s governmental interest. Any alternative, less intrusive treatments are unlikely to achieve substantially the same results. In making these findings, the court has considered less intrusive means for administering the medication, including examining the potential for future civil commitment.
* Involuntary medication is medically appropriate and in the Defendant’s best medical interest in light of the Defendant’s medical condition.

**Conditions for Administering Medication.** Any medication administered by the Treatment Facility pursuant to this order, whether on a voluntary or involuntary basis, shall be administered under the care of a duly authorized psychiatrist employed by the Treatment Facility, and shall be administered in the minimum dosage necessary. The psychiatrist shall take all precautions to minimize side effects on the Defendant and effects on any medical conditions of the Defendant.

**8. Access to Records.** The Treatment Facility and DSHS shall be entitled to receive any of the information described in RCW 10.77.060, whether the information is held by another mental health, medical, or education facility, a jail or other correctional facility, or elsewhere.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. If the competency evaluation was provided by an independent expert, the clerk of the court shall also provide DSHS with a copy of all previous court orders related to competency or criminal insanity and a copy of any of the evaluation report(s).
* The **prosecuting attorney** shall provide the discovery packet, including a statement of the Defendant’s criminal history, to DSHS. **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.

**9. Evaluation and Report.** The treatment facility shall evaluate the Defendant’s competency to stand trial before the end of any inpatient treatment period. If outpatient treatment is ordered, the Court will issue a separate evaluation order. The Treatment Facility shall prepare a written report with the results. The report shall ordinarily be distributed by the Treatment Facility within 2 business days of the final evaluation.

**Defense Attorney Presence**. The defense requests notification of the time and place of the evaluation at the contact information provided below. The defense attorney may be contacted at –      . DSHS shall contact the defense attorney regarding scheduling within a reasonable time.

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*.*

**Contents of Report**. The report shall include all of the contents required in the initial Order for Competency Evaluation.

**Copies of Report.** DSHS shall furnish a copy of the written report of the results of the evaluation to the Court, the prosecutor, the defense attorney, the Designated Crisis Responder (DCR) for the county of Kitsap, and the Jail/Detention facility (if the Defendant is currently held in the detention facility).

**10. Transportation and Admission to the DSHS Designated Facility.** This section is only applicable if the defendant will be undergoing inpatient restoration.

**In-Custody Defendant –**  The Defendant shall be transported and admitted to the Treatment Facility by the earlier of 7 days of DSHS’ receipt of this order or 14 days from the date of this order as required by statute and case law, 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).

The Jail/Detention facility shall transport the in-custody Defendant from the Jail/Detention facility to the Treatment Facility designated by DSHS and back. Transportation to the Treatment Facility shall occur within 1 day of the receipt of an offer of admission of the Defendant for restoration treatment.

**Inpatient Defendant –** The Defendant is currently admitted to a DSHS designated facility.

**Out-of-Custody Defendant –** Within 2 court days of entry of this order, the Defendant’s attorney shall contact DSHS to coordinate an admission date. The Defendant shall report to the DSHS designated facility as directed by DSHS. The Defendant shall obtain medical clearance prior to admission and shall follow the instructions of DSHS regarding medical clearance.

**11. Discharge.** Any Treatment Facility providing inpatient services related to competency shall discharge the Defendant as soon as the treatment facility determines that the Defendant is competent to stand trial. Discharge shall not be postponed during the writing and distribution of the evaluation report. The Treatment Facility shall promptly notify the Court and all parties of the date on which the competency restoration period expires by discharge from the Treatment Facility so that a timely hearing date may be scheduled.

**12. Next Hearing.** The next hearing date is scheduled for       (28 days from today’s date), at 9:00 am in Courtroom 104.

If the treatment program is an outpatient program, the Defendant is ordered to appear in this court for the next hearing.

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

The prosecuting attorney and the defense attorney agree to waive the presence of the Defendant or to the Defendant’s remote participation at a subsequent competency hearing or to presentation of an agreed order if the opinion of the Treatment Facility is that the Defendant remains incompetent and the hearing is held prior to the expiration of the current commitment period. **The report must be provided to the parties with sufficient time to accommodate remote participation for entry of a continued restoration order.**

**13.  Interpreter.** The Defendant requires the services of an interpreter in the following language –      .

**14. Time for trial period remains tolled.** The running of the time for trial period in this case remains tolled pursuant to CrRLJ 3.3(e)(1). *State v. Hand*, 192 Wn.2d 289, ¶¶33-39 (2018) (Madsen, J., concurring, joined by Stephens, J.).

**15. Firearm Restriction.** The Defendant shall immediately surrender any concealed pistol license and the Defendant may not possess a firearm unless the Defendant’s right to do so is restored by a superior court.

The Notice of Ineligibility to Possess Firearm is filed separately.

Dated and Filed Calendar Date.  The court approves the agreement of the parties to conduct this proceeding by video conference.

Done in open court in the presence of the defendant.



Judge

**Contact Distribution List for the Competency Evaluation report:**

* + - 1. Western State Hospital/DSHS. Email: [ofmhscourtorders@dshs.wa.gov](mailto:ofmhscourtorders@dshs.wa.gov)

1. Kitsap County District Court, 614 Division Street, MS-25, Port Orchard, WA 98366  
   Email: [probation@kitsap.gov](mailto:probation@kitsap.gov)
2. Kitsap County Jail, 614 Division Street, MS-33, Port Orchard. WA 98366  
   Email: [courtofficer@co.kitsap.wa.us](mailto:courtofficer@co.kitsap.wa.us)
3. Designated Crisis Responder: Kitsap Mental Health, 5455 Almira Drive NE, Bremerton, WA 98311  
   Email: [crt@kmhs.org](mailto:crt@kmhs.org)
4. Kitsap County Prosecutor’s Office, 614 Division Street, MS-35, Port Orchard, WA 98366  
   Email: [kcpa@co.kitsap.wa.us](mailto:kcpa@co.kitsap.wa.us)
5. Defense Attorney