

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

_____ DIVISION

STATE OF ARKANSAS

VS

CASE NO. : _____

(FULL NAME OF DEFENDANT) Date of Birth Sex Race

OFFENSE(S) CHARGED AND CODE NOS.:

PROSECUTING ATTORNEY'S NAME AND ADDRESS:

DEFENSE ATTORNEY'S NAME AND ADDRESS:

NAME OF ATTORNEY OR JUDGE REQUESTING EXAMINATION:

ARKANSAS ARREST TRACKING NUMBER:

DEFENDANT'S CUSTODY STATUS AND LOCATION:

ORDER FOR FITNESS TO PROCEED EXAMINATION OF DEFENDANT

Pursuant to Ark. Code Ann. § 5-2-327, this Court finds and ORDERS as follows:

1. There is reasonable suspicion to believe that the defendant may not be fit to proceed.
2. All further proceedings in the prosecution are immediately suspended.
3. The motion for examination of the defendant was made in good faith and not for the purpose of delay; and included the following facts and observations to support the motion for examination of the defendant:

4. The defendant shall undergo examination and the Director of the Division of Aging, Adult, and Behavioral Health Services [DAABHS] shall provide a qualified psychiatrist or qualified psychologist who will examine the defendant. The Director or his or her designee shall also determine the location of the examination.
5. The moving party or _____, as designated by the Court, shall email a copy of this Order to the DAABHS Director of Forensic Services at Forensics@dhs.arkansas.gov . If DAABHS is not conducting the evaluation, the moving party or _____, as designated by the Court, shall provide a copy of this order to the examiner selected by this court.
6. The prosecuting attorney shall provide the examiner any information relevant to the examination, including but not limited to the following:

- A. The name and address of any attorney involved in the matter; and
 - B. Information about the alleged offense (s).
- 7. Defense counsel shall provide the examiner either with a release of protected health information, signed by the defendant, with a list of all known previous healthcare providers; or, if the defendant cannot provide consent, a court order for the production of records.
- 8. Defense counsel shall make all reasonable efforts to provide the following information to the examiner:
 - A. psychiatric records,
 - B. medical records,
 - C. records pertaining to treatment of the defendant for substance or alcohol abuse; and/or

Additional information as identified below:

- 9. An examination report prepared by the examiner shall include the following:
 - A. An opinion as to whether or not the defendant is fit to proceed and the basis for the opinion;
 - 1. When determining whether the defendant is fit to proceed, the examiner shall consider:
 - (a) The capacity of the defendant to:
 - (i) Rationally understand the charges against him or her and the potential consequences of the pending criminal proceedings;
 - (ii) Disclose to his or her attorney pertinent facts, events, and states of mind;

- (iii) Engage in a reasoned choice of legal strategies and options;
 - (iv) Understand the adversarial nature of criminal proceedings;
 - (v) Exhibit appropriate courtroom behavior; and
 - (vi) Testify;
 - (b) As supported by current indications and the defendant's personal history, whether the defendant is a person with:
 - (i) A mental disease or defect; or
 - (ii) An intellectual disability; and
 - (c) The degree of impairment resulting from the mental disease or defect or intellectual disability, if existent, and the specific impact on the defendant's capacity to engage with his or her attorney in an effective manner;
- B. A substantiated diagnosis in the terminology of the American Psychiatric Association's most current edition of the Diagnostic and Statistical Manual of Mental Disorders;
- C. A statement that documents that the examiner explained to the defendant:
 - (i) The purpose of the examination;
 - (ii) The persons to whom the examination report is provided;
and
 - (iii) The limits on rules of confidentiality applying to the relationship between the examiner and the defendant; and
- D. A description in specific terms of:
 - (i) The procedures, techniques, and tests used in the examination;

(ii) The purpose of each procedure, technique, or test; and

(iii) The conclusions reached.

E. An opinion as to whether the defendant:

(i) Presents a substantial danger to himself or herself, others, or property; and

(ii) Presents a substantial risk to public safety without a prescribed regimen of medical, psychiatric, or psychological care or treatment.

F. If the examiner concludes that the defendant lacks fitness to proceed, the report shall contain:

(i) An opinion of the condition causing the lack of fitness to proceed;

(ii) An opinion of the treatment necessary for the defendant to obtain fitness to proceed; and

(iii) An opinion on the likelihood of the defendant attaining fitness to proceed under treatment.

10. The examiner's opinion on the defendant's fitness to proceed may not be based solely on the defendant's refusal to communicate during the examination.

11. The examination shall be for a period not exceeding sixty (60) days unless the Director of the Division of Aging, Adult, and Behavioral Health Services or his or her designee determines a longer period of examination is necessary for the purpose of the examination.

12. The examiner shall provide a copy of the report to DAABHS. DAABHS shall file a copy of the report with the Clerk of the Court.

13. The Clerk of the Court shall provide copies of the report to defense counsel and the

prosecuting attorney.

IT IS SO ORDERED.

Date

Circuit Judge

ARKANSAS DEPARTMENT OF HUMAN SERVICES
AUTHORIZATION TO DISCLOSE HEALTH INFORMATION

Client Name: _____ **Client ID:** _____
Mailing Address: _____ **Date of Birth:** _____

I, _____ hereby authorize
(Client or Personal Representative)

_____ to disclose specific health information
(Name of Provider/Plan)

from the records of the above named client to: OSAMH- FORENSICS DEPARTMENT
P.O. BOX 1437 SLOT S176 LITTLE ROCK, AR 72203-1437
PHONE 501-396-6302 FAX 501-686-9198 EMAIL: Forensics@dhs.arkansas.gov
(Recipient Name/Address/Phone/Fax/Email)

for the specific purpose(s): FORENSIC EVALUATION

Specific information to be disclosed: _____

If you use "All Medical Records" this will include any and all written information DHS may have concerning your health care and any illness or injury you may have suffered, including, but not limited to, medical history, consultations, prescriptions, treatment, medical evaluations, x-rays, results of tests, and copies of hospital or medical records pertaining to you.

I understand that this authorization will expire on the following date, event or condition: _____

I understand that if I fail to specify an expiration date or condition, this authorization is valid for the period of time needed to fulfill its purpose for up to one year, except for disclosures for financial transactions, wherein the authorization is valid indefinitely. I also understand that I may revoke this authorization at any time and that I will be asked to sign the *Revocation Section* on the back of this form. I further understand that any action taken on this authorization prior to the rescinded date is legal and binding.

I understand that my information may not be protected from re-disclosure by the requester of the information; however, if this information is protected by the Federal Substance Abuse Confidentiality Regulations, the recipient may not re-disclose such information without my further written authorization unless otherwise provided for by state or federal law.

I understand that if my record contains information relating to HIV infection, AIDS or AIDS-related conditions, sexually transmitted diseases, alcohol abuse, drug abuse, psychological or psychiatric conditions, genetic testing, family planning, or women, infant, & children (WIC) this disclosure will include that information.

I also understand that I may refuse to sign this authorization and that my refusal to sign will not affect my ability to obtain treatment, payment for services, or my eligibility for benefits; however, if a service is requested by a non-treatment provider (e.g., insurance company) for the sole purpose of creating health information (e.g., physical exam), service may be denied if authorization is not given. If treatment is research-related, treatment may be denied if authorization is not given.

I further understand that I may request a copy of this signed authorization. A copy of this authorization shall be as binding as the original.

(Signature of Client) (Date) (Witness-If Required)

(Signature of Personal Representative) (Date) (Personal Representative Relationship/Authority)

NOTE: This Authorization was revoked on _____
(Date) (Signature of Staff)