

\*\*\*\*\*

## COVERSHEET FOR DMH AND DDSN EVALUATION ORDERS

1. The Competency to Stand Trial Evaluation orders (SCCA 221 and SCCA 487) and the Criminal Responsibility (McNaughten) Evaluation order (SCCA 222) should **not** be altered. It is important for purposes of compliance with the statutes as well as timeliness, efficiency and quality control in conducting evaluations that the applicable form order be used **exactly** as published, **without alterations or additions** to the terms of the form order.
  
2. Additional records **must** be attached to the order for a complete evaluation. It is the duty of counsel requesting the evaluation to obtain these records in advance and have them ready at the time the judge signs the order so that the evaluation will not be delayed. Within five (5) days of its issuance, counsel must file the order with the Clerk and serve the order on the examining agency. A list of the necessary records is available on the last page of the order, and may include:
  - Completed DMH/DDSN Outpatient Information Appointment Sheet
  - Copy of the indictments(s)
  - Copy of the arresting agency's incident report
  - Copy of the warrant(s)
  - Law enforcement investigative reports
  - The defendant or juvenile's statements to law enforcement, written or electronically recorded
  - Witness statements to law enforcement
  - Autopsy reports
  - Defendant's school psychological records
  - Defendant's Rule 5(f) notice of insanity records
  - Copy of the Juvenile Petition
  - Special education records, including psychological evaluations and IEPs
  - School records, including disciplinary and attendance records
  - Mental health records, including inpatient and outpatient evaluation and/or treatment
  
3. Only **one** Competency to Stand Trial evaluation can be ordered. For Defendants with mental illness, the order is addressed to the Department of Mental Health. For Defendants with an intellectual disability, the order is addressed to the Department of Disabilities and Special Needs. The order may not be addressed to both agencies. In the event there is a dual diagnosis or uncertainty as to the correct diagnosis, the order is first addressed to the Department of Mental Health, and the examiners will determine whether further referral is necessary. All orders for criminal responsibility evaluation, regardless of the diagnosis, are forwarded to the Department of Mental Health.



**COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION.** The examining facility shall schedule the ordered examination no later than thirty (30) days from the examining agency's receipt of this order. If the juvenile is currently released pursuant to S.C. Code Ann. §63-19-810 (A) counsel for the juvenile will be notified of the date, place and time of the evaluation. Counsel for the juvenile shall notify the person responsible for producing the juvenile (parent/guardians/custodian) of the evaluation. The person responsible for producing the juvenile (parent/guardians/custodian) is responsible for making transportation arrangements to attend the examination. In the event the juvenile does not appear at the scheduled examination, upon written notice of such failure by the examining agency to the Court and to the South Carolina Department of Juvenile Justice, a summons or a warrant may be issued for the apprehension of the juvenile and of the responsible person. If the juvenile is in detention at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport the juvenile to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event the juvenile is in the custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

**TRANSFER TO ALTERNATE AGENCY.** If the initial examination is performed by the Department of Mental Health, and examiners find indications of an intellectual disability or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that the juvenile is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not an intellectual disability or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that the juvenile does "not have an intellectual disability or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created in connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

**FINDING OF DUAL DIAGNOSIS.** If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis of mental illness and an intellectual disability or a related disability, no opinion on the juvenile's mental competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate the juvenile to render a final report on the juvenile's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for purposes of completing the dual evaluation.

**AUTHORIZATION FOR INPATIENT EVALUATION.** In the event examiners from either agency determine the juvenile requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, the juvenile shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to the juvenile's mental competency to stand trial. If the examination and observation of defendant has not concluded at the end of the initial inpatient fifteen (15) days, the juvenile may be kept in the continued custody of the agency for an additional period not to exceed fifteen (15) days, provided the director of the examining facility or his designee notifies this Court in writing. The issuance of an additional Court order allowing for the inpatient commitment(s) as discussed in this paragraph is not necessary.

**DETENTION BEYOND EVALUATION PERIOD.** If, in the judgment of the designated examiners, the juvenile is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, the juvenile may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order **shall** be necessary for ongoing pre-trial inpatient detention of the juvenile as discussed in this paragraph.

**ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT.** Within ten (10) days of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420 (C) (2006); thus, the

report is a statutory exception to the rule against hearsay and shall be admissible without need for foundational testimony. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law.

**OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES.** The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of the juvenile during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization in proper form. In the event the examining agency's evaluation opinion is contested, an examiner may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach the juvenile at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

**MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS.** State agency examiners conducting the evaluation may need clinical and school records concerning the juvenile to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning the juvenile to the Department of Mental Health or the Department of Disabilities and Special Needs, or both.

**COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS.** Upon written request from the examining agency, counsel for the prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by the juvenile (both written and electronic), the juvenile's medical records, and prior psychiatric or psychological evaluations of the juvenile. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client

privilege or work-product doctrine.

**DUTIES OF DEFENSE COUNSEL.** Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does the juvenile have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court or family court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with the juvenile prior to the interview to discuss this Court order, the evaluation process, the clinical interview, the juvenile's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. The juvenile's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of the juvenile to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without completion of the evaluation.

**FILING, SERVICE, AND TRANSMITTAL OF ORDER.** It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise

of the issuance of this order and forthcoming service upon the agency:

### Evaluation Order Service Information

#### Department of Mental Health

Child & Adolescent Forensic Service  
S. C. Department of Mental Health  
CBHS Forensic Center  
7901 Farrow Road – Building 6  
Columbia, S.C. 29203-3220  
(803) 935-5600 (Phone)  
(803) 935-5544 (Fax)  
Email: [fes-paralegal@scdmh.org](mailto:fes-paralegal@scdmh.org)

#### Department of Disabilities and Special Needs

Office of Behavioral Supports  
Department of Disabilities and Special Needs  
Post Office Box 4706  
Columbia, S.C. 29240  
  
(803) 898-9694 (Phone)  
(803) 898-9660 (Fax)  
Email: [OBSForensics@ddsn.sc.gov](mailto:OBSForensics@ddsn.sc.gov)

#### AND IT IS SO ORDERED.

\_\_\_\_\_  
Presiding Family Court Judge

\_\_\_\_\_, South Carolina

Dated: \_\_\_\_\_

#### Prosecutor Contact Information

#### Defense Contact Information

\_\_\_\_\_  
Prosecutor

\_\_\_\_\_  
Defense Counsel

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

\_\_\_\_\_  
Email

The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet

2. Copy of the Juvenile Petition
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. The Juvenile's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Autopsy reports (if applicable)
9. Special education records, including psychological evaluations and IEPs
10. School Records, including disciplinary and attendance records
11. Mental health records, including inpatient and outpatient evaluation and/or treatment