

|  |  |
|--|--|
| DISTRICT COURT, El Paso County, Colorado<br>Court Address: 270 South Tejon Street<br>Colorado Springs, CO 80903  | DATE FILED: June 12, 2020                                |
| <b>People of the State of Colorado</b><br>vs.<br><b>Defendant: Letecia Stauch</b>  | <b>▲ COURT USE ONLY ▲</b>                                |
| Deputy District Attorney: Michael J. Allen, #42955<br>Martha McKinney, #28745<br>Angelina Gratiano, #50674<br>Address: 105 E. Vermijo Colorado Springs, CO 80903<br>Phone Number: 520-6000<br>District Attorney: Daniel H. May, #11379 | Case #: 20CR1358<br>Division #: 15S<br>Courtroom #: S403 |
| <b>[P-08]</b><br><b>People's Motion to Require Defense to Disclose Mental Health Documents to the Prosecution</b>  |  |

1. The District Attorney of the Fourth Judicial District of the State of Colorado, through his duly appointed Deputy District Attorney, respectfully move this Court to require the defense to provide the following documents and information to the People:
  - a. Any reports of competency evaluations including second evaluations.
  - b. Information and documents relating to the competency evaluation that are created by, obtained by, reviewed by, or relied on by an evaluator performing a court-ordered evaluation.
  - c. The names, addresses, reports, and statements of each physician or psychologist who has examined or treated the defendant for competency.
  - d. The names, addresses, reports, and statements of each mental health professional who has examined or treated the defendant for a mental disability or developmental disability.
  
2. The purpose of the competency statutes is not to penalize or punish the defendant. *Cappelli v. Demlow*, 935 P.2d 57, 62 (Colo. App. 1996). "Rather, the purpose of commitment for a competency evaluation is to furnish both the state and the defendant with an opportunity to assess the defendant's mental status, to determine if treatment is appropriate, and to ensure the protection of members of society." *Id.*

3. C.R.S. § 16-8.5-104(1) states that “*when a defendant raises the issue of competency to proceed, or when the court determines that the defendant is incompetent to proceed and orders that the defendant undergo restoration treatment, any claim by the defendant to confidentiality or privilege is deemed waived, and the district attorney, the defense attorney, and the court are granted access, without written consent of the defendant or further order of the court, to:*
  - a. Reports of competency evaluations including second evaluations;
  - b. Information and documents relating to the competency evaluation that are created by, obtained by, reviewed by, or relied on by an evaluator performing a court-ordered evaluation and;
  - c. The evaluation for the purpose of discussing the competency evaluation
4. C.R.S. § 16-8.5-104(4) allows the court to order additional information be provided to the evaluator or to either party in the case.
5. C.R.S. § 16-8.4-104(5) requires the court to “order both the prosecutor and the defendant or the defendant’s counsel to exchange the names, address, reports, and statements of each physician or psychologist who has examined or treated the defendant for competency.”
6. C.R.S. § 16-8.5-105(3) allows an evaluator to use the medical and social history of the defendant to aid in forming an opinion as to the defendant’s competency.
7. The definition of incompetence in C.R.S. § 16-8.5-101(12) requires, in part, that a defendant have a mental disability or developmental disability.
8. Mental disability, in turn, is defined under C.R.S. § 16-8.5-101(15) as a “substantial disorder of thought, mood, perception, or cognitive ability that results in marked functional disability, significantly interfering with adaptive behavior.”
9. Each competency evaluation report must contain “[a]n opinion as to whether the defendant suffers from a mental disability or developmental disability.” C.R.S. §16-8.5-105(d). In addition, it must include a *diagnosis* and *prognosis* of the defendant’s mental disability or developmental disability.” C.R.S. §16-8.5-105(c). A complete mental health history is critical to reaching the correct diagnosis and determining the individual’s prognosis.
10. The People believe that mental health records exist but do not know where or what doctors treated Defendant, so the People do not have any meaningful method of obtaining those records on their own.

11. Defense counsel, on the other hand, can talk to Defendant and/or family members and can obtain information as to whether those records exist and where they are. Although, defense counsel may not currently have this information in their possession, they can easily obtain it.
12. A complete mental health history is essential for a thorough competency evaluation. Physicians and psychologists at the Colorado Mental Health Institute at Pueblo (CMHIP) prefer to have a complete history when evaluating a defendant. Similarly, complete mental health records are necessary to prepare for a competency hearing
13. The issue of whether mental health records must be provided to the prosecution in the context of competency has not been addressed directly by Colorado Courts. However, that issue has been addressed in the context of insanity and impaired mental condition where the Colorado Supreme Court has interpreted similarly worded statutes.
14. In *Gray v. District Court*, 884 P.2d 286 (Colo. 1994) (overruled on other grounds) and *People v. Ullery*, 984 P.2d 586 (Colo. 1999), the Supreme Court ruled that a plain reading of the sanity statute indicated that the legislature had created a statutory waiver to any claim of confidentiality or privilege to physician/psychologist-patient communications and medical records that predated and post-dated the criminal offense and that a defendant who asserts defenses of insanity or impaired mental condition consents to disclosure of information concerning the defendant's medical condition. The holdings in *Gray* were subsequently cited by the Colorado Court of Appeals in evaluating the waiver of privilege in the competency context. *People v. Zapata*, 443 P.3d 78, 83 (Colo. App. 2016).
15. The sanity statute, C.R.S. §16-8-103, at that time also required the court to order "both the prosecutor and the defendant to exchange the names, address, reports, and statements of any physician or psychologist who has examined or treated the defendant for his mental condition." The same language is now found in C.R.S. §16-8-103.6.
16. The current competency statutes provide a mechanism that could ultimately lead to dismissal of all charges. If the Defendant were to be found by this Court to be incompetent to proceed and restoration attempts ultimately failed, this Court, after finding "that there is not a substantial probability that the defendant will be restored to competency in the foreseeable future," could dismiss all charges. C.R.S. §16-8.5-116(4).
17. Without impugning the motivations of current defense counsel, it should be noted that competency proceedings have the potential to be used as a sword rather than a shield. It is possible that an individual, even in the Defendant's situation, could ultimately have a full dismissal of charges through a finding of incompetence. It is critical for a competency evaluator to receive as much information as possible in order to accurately diagnosis the Defendant and give an opinion as to competency. The Defendant is not required to provide any documentation to the evaluator and could potentially refuse to cooperate thereby creating a void of information.

18. Here, the statute is clear that once Defendant placed her competency at issue, she waived her privilege and the District Attorney is granted access to certain mental health records of the Defendant. To rule otherwise, would provide the Defendant and defense counsel with the sole ability to provide or not provide information to the evaluator and strategically use that power to present select historical information that best suits their objectives.

The People request that the Court order the defense to provide the information and documents requested in this motion for the grounds stated above within one week of the Court's Order.

Respectfully submitted on June 12, 2020.

/s/  
Michael J. Allen, #42955  
Senior Deputy District Attorney

Martha McKinney, #28745  
Chief Deputy District Attorney

Angelina Gratiano, #50674  
Deputy District Attorney

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing **[P-08] People's Motion to Require Defense to Disclose Mental Health Documents to the Prosecution** was served via ICCES on all parties who appear of record and have entered their appearances herein according to ICCES:

Date:

By: /s/  
Paralegal