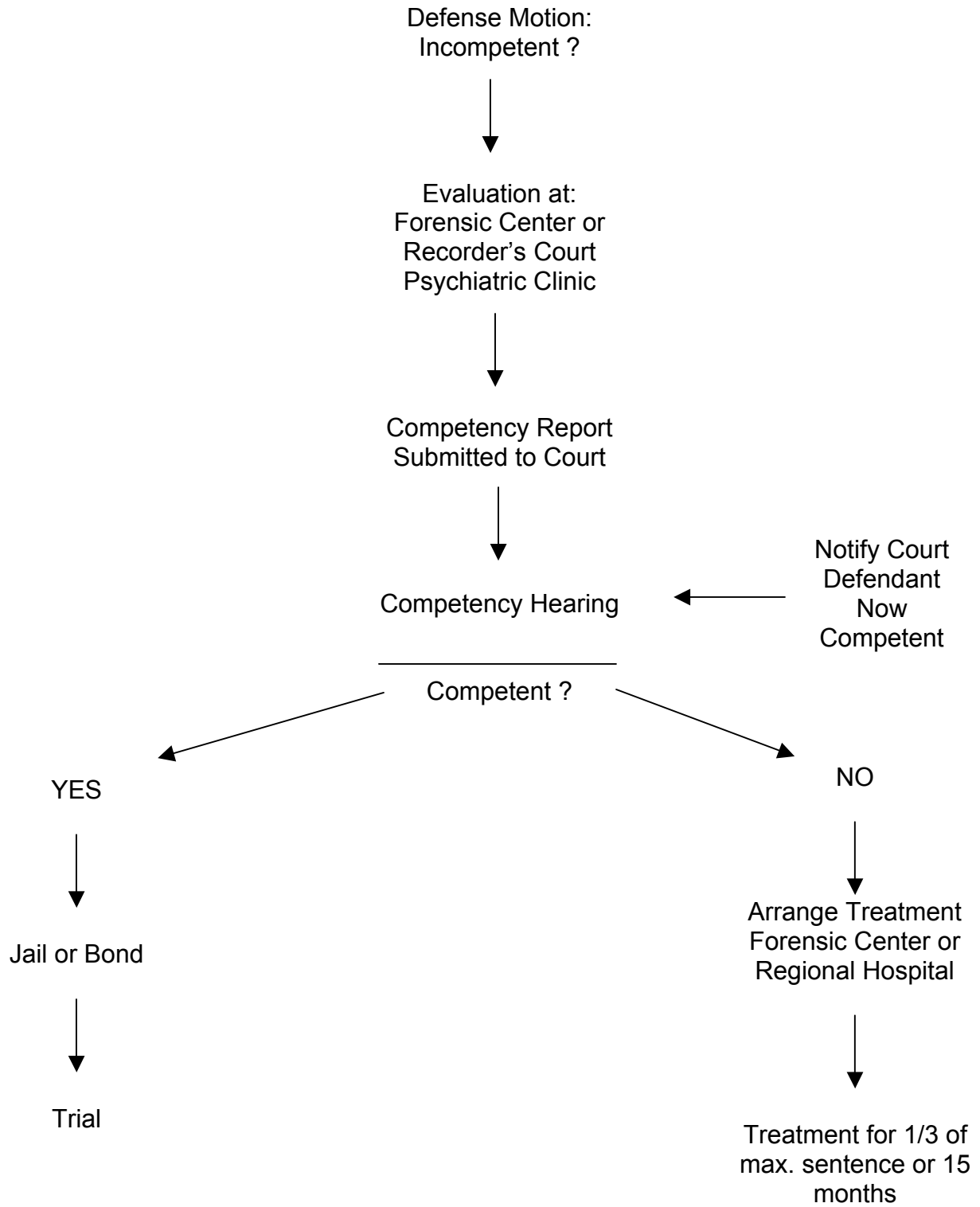


The Assessment and Treatment of Mentally Ill Offenders

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Competency to Stand Trial



Competency to Stand Trial

The focus of this issue is whether a defendant as a consequence of a mental disorder presently is capable of understanding the nature and object of proceedings against him or her and is capable of assisting his or her defense in a rational manner. The issue usually is raised prior to trial. There are occasions, however, when the issue is raised after a trial has been concluded and an adjudication rendered.

When this occurs, the focus is on the defendant's functioning at the time the trial occurred.

COMPETENCY TO STAND TRIAL

Referral form

Defendant: _____ DOB: _____

Attorney: _____

Charges for which the defendant is standing trial:

Describe the specific offenses with which defendant is charged (alleged act, time place):

Describe the *specific* behavior of the defendant which leads you to believe that he/she may be incompetent to stand trial or was suffering from a significant mental abnormality at the time of the offense:

Have you observed the behavior yourself? If not, who are the sources of these observations?

COMPETENCY TO STAND TRIAL

Interview Format-

Mental Status

1. Reality testing; orientation as to time, place and person
2. Capacity for relationships; ability to establish and maintain a relationship with counsel; trust of attorney
3. Ability to conceptualize behavioral alternatives and consequences and to plan a course of action; social judgment
4. Mannerisms, odd behavior — likely to be considered disruptive to judge or jury
5. Adequacy of ego defenses; deterioration of ego functioning under stress
6. Understanding of pleas
 - What do "guilty" and "innocent" mean?
 - What are the consequences of each of these pleas?
 - Understanding plea bargaining
7. Understanding the "right to remain silent"
 - Dictionary definition
 - Application: If a judge asks Client a question, does Client have to answer it?
 - Awareness of Client that he (she) will be cross-examined if he (she) chooses to testify
8. Awareness of appropriate courtroom behavior

Awareness and Comprehension of the Charges

- A. Knowledge of the charges
- B. Comprehension of the charges
- C. Knowledge of the specific act charged
- D. Knowledge of potential and likely penalties; understanding of probation
- E. Appreciation of the strength of the prosecutor's case
- F. Knowledge and appreciation of available defenses

Awareness and Comprehension of Courtroom Procedures

- Role of Defense Attorney
 - Who is he (she)?
 - What is he (she) supposed to do? What is his (her) job?
Understanding of Attorney-Client privilege: Does attorney have to report Client's conversations.
 - Magical expectations about the attorney
- Role of Prosecuting Attorney
- Role of Judge
- Role of Jury
- Expectations about witnesses:
 - Who are they likely to be?
 - What are they likely to say?

Awareness of process of testimony: Who asks questions?

Understanding of cross-examination: What would Client do if a witness told a lie about him (her)?

COMPETENCY

STATEMENT OF CHARGES:

ROLES & RESPONSIBILITIES:

JUDGE:

PROSECUTOR:

OWN ATTORNEY:

JURY:

CONCEPT OF PLEA BARGAINING:

EXPLAIN _____

UNDERSTAND _____

NO JURY TRIAL?

SELF-INCRIMINATION?

UNDERSTAND CONSEQUENCES PLEA/CONVICTION

DECISION PROCESS?

BEHAVIOR CONTROL:

Incompetency to Stand Trial Order: Treatment

This type of commitment order is issued after a defendant has been adjudicated incompetent to stand trial, determined to be in need of inpatient treatment in order to be restored to competency, and deemed to require such treatment in a maximum security setting. This type of order permits the provision of treatment until the defendant is restored to competency or until the expiration of statutory limitations.

Statutory limitations for this type of order are for no more than one third of the maximum sentence that the defendant could receive if convicted of the alleged crime with which he or she is charged, or a maximum of 15 months, whichever is less.

Incompetency to Stand Trial Order: Probated

This type of commitment order is issued whenever an incompetent defendant has been treated for the maximum time allowable under an Incompetency to Stand Trial Order; Treatment, has not been restored to competency, and continues to be in need of treatment in a maximum security setting. The order permits for the ongoing treatment of such defendants. This type of order is valid for varying time periods ranging from 60-day, 90-day, and one-year periods, with review at 6-month intervals for the 1-year order.

Some areas of law in which competency is an issue

Civil law

- Acting in public or professional capacity
- Authorizing disclosure of medical records
- Consent to treatment
- Contract
- Guardianship—care for one's self and property
- Making a will
- Obtaining a driver's license
- Receiving benefits
- Retaining private counsel
- Suing or being sued
- Testifying in court
- Voting

Criminal law

- Assuming responsibility for a criminal act
- Execution
- Consenting to sexual intercourse
- Entertaining premeditation or "specific intent" of a crime
- Making a confession
- Making a plea
- Providing testimony in court
- Standing trial
- Being sentenced
- Waiving the insanity defense
- Waiving the right to counsel

Family law

- Adoption
- Divorce
- Marriage
- Terminating parental relations with a child

Source. Amended from Bisbing SB: "Competency and Capacity," in *Legal Medicine*, 2nd Edition. St. Louis, O Mosbv, 1991.

Criminal Responsibility (CR)

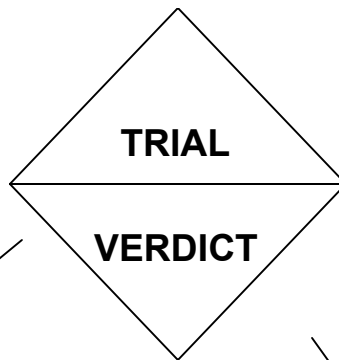
Insanity
Defense
Proposed



CR Evaluation at:
Forensic Center
or
Recorder's Court
Psychiatric Clinic



**CR Report
Issued**



Not Guilty by
Reason of
Insanity

Not Guilty

Guilty

Guilty but
Mentally Ill



Department of
Mental Health

Discharged

Department
of
Corrections

Department
of
Corrections

CRIMINAL RESPONSIBILITY

Mental illness: a substantial disorder of thought or mood which significantly impairs judgment/ behavior/ capacity to recognize reality, or ability to cope with the ordinary demands of life.

Mental retardation: significantly subnormal intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.

MCL 768.20a

An individual is legally insane if/ as a result of mental illness...or as the result of being mentally retarded..., that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.

An individual who was under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of his or her alleged offense is not considered to have been legally insane solely because of being under the influence of the alcohol or controlled substances.

CRIMINAL RESPONSIBILITY EXAMINATION ISSUES

I. Presence of Mental Illness

- A. Cardinal or prominent symptoms reported (or nor) by parent in time period of offense.
- B. Course
 - 1. Past history/vulnerability/"typical symptoms
 - 2. Observations/hospitalizations just before and just after offense
 - 3. Role of medications
- C. Role of drugs

II. Prongs of ALI (insanity criteria)

- A. Appreciate wrongfulness: Understanding/cognition
 - 1. Patient's verbalized understanding of the act, its meaning and its consequences
 - 2. Implications of inferences from observed behavior - consider
 - a. Planning and rehearsal
 - b. Deliberation
 - c. Concealment/Disregard
 - d. Choice and use of weapon
 - 3. Consider role of psychological features such as:
 - a. Reality testing
 - b. Reasoning
 - c. Thought content
- B. Capacity to conform behavior: choice and control
 - 1. Patient's description of motivation and subjective controls
 - 2. Observations of the quality of the behavior, e.g., organized/directed
 - 3. Capacity (general & specific) for decision making/awareness of options
 - 4. Capacity for delay/deterability
 - 5. Past conforming

CONDUCTING THE EVALUATION

Preliminaries:

- Important Concepts
- Review and Consultation

Evaluation of Client:

- Informed Consent
- Clinical Interview
 - Social History
 - Psychiatric History
 - Mental Status Exam
- Narrative of Offense
 - Events and Behavior
 - Thoughts and Feelings
 - Role of Drugs
 - Planfulness and Choice
 - Past Responses to Similar Situations
- Diagnostic Impression

Collateral Information:

- Proximal Witnesses
- Psychological Tests
- Other Experts

Decision-Making:

- Presence of Mental Disease or Defect
- Legal Insanity

Report and Records

MALINGERING INSANITY

Malingered Psychosis During the Crime

- ◆ Faking psychosis while actually committing the crime.(rare)
 - ◆ Faking psychosis during the crime in the evaluation, and either:
 1. Claiming to be well now
 2. Still faking psychosis
 - ◆ Actually psychotic during the crime, but superimposing faked exculpatory symptoms at the evaluation. Either:
 1. Still psychotic at the evaluation
 2. No longer psychotic at the evaluation
-

Not guilty by Reason of Insanity Order: Diagnostic

This type of commitment order is issued upon a defendant being adjudicated Not Guilty by Reason of Insanity of a criminal charge. The order is intended to provide a period for an inpatient assessment and evaluation to determine if the individual is in need of treatment for the mental illness which resulted in the adjudication, and the most appropriate setting for that treatment to occur. This order is for diagnostic purposes only and does not permit treatment of the individual without the individual's permission, except on an emergency basis. This type of order is valid for a 60 day period.

Not Guilty by Reason of Insanity Order: Treatment

This type of commitment order is issued when an individual who has been adjudicated Not Guilty by Reason of Insanity is determined to be in need of treatment in a maximum security setting. The order is intended to provide mental health treatment in a safe and secure setting. This type of order is issued in sequential progression, and is valid for 60-day, 90-day, and one-year periods, with review at 6-month intervals.

Civil Commitment Order: Probated

This type of commitment order is issued when an individual has been determined to be in need of mental health services in a hospital setting, but is not a defendant to a criminal charge. The individual ordinarily has been committed to a state psychiatric hospital for the provision of those services, who has been transferred to the Center for Forensic Psychiatry if he or she proves unusually difficult to safely manage in the less restrictive setting, and if the Center and the state hospital directors agree that a transfer is an appropriate disposition.

NGRI COMMITTEE'S ROLE RELATIVE TO THE ALS PROCESS

- 1) REVIEWS AND APPROVES PRE-PLACEMENT AND PLACEMENT PLANS
- 2) PROVIDES ONGOING MONITORING DURING PLACEMENT
- 3) REVIEW AND APPROVES CERTAIN ACTIONS
- 4) IN CONJUNCTION WITH AREA HOSPITAL, REVIEWS AND APPROVES OF REHOSPITALIZATION
- 5) IN CONJUNCTION WITH AREA HOSPITAL, DETERMINES WHEN REHOSPITALIZATION SHOULD RESULT IN SUSPENSION OR REVOCATION OF ALS
- 6) DETERMINES WHEN REPLACEMENT ON ALS AFTER PERIOD OF HOSPITALIZATION IS APPROPRIATE

WHEN SHOULD PATIENTS BE CONSIDERED FOR AUTHORIZED LEAVE STATUS (ALS)?

1. APPROPRIATE PERIOD WITHOUT A SIGNIFICANT BEHAVIORAL INCIDENT
2. APPROPRIATE PERIOD OF SYMPTOM STABILIZATION
3. NO RECENT SIGNIFICANT MEDICATION CHANGES
4. ACTIVE PARTICIPATION IN TREATMENT PROGRAM
5. POSSESSES INSIGHT INTO THE NEED FOR COMPLIANCE WITH TREATMENT PROGRAM
6. RECOGNITION OF SYMPTOMS OF MENTAL ILLNESS
7. ABLE TO RELATE SYMPTOMS OF MENTAL ILLNESS TO BEHAVIORS THAT RESULTED IN NGRI ADJUDICATION
8. ACCEPTS RESPONSIBILITY FOR ILLEGAL CONDUCT THAT RESULTED IN NGRI ADJUDICATION AND HAS AN APPRECIATION OF ITS IMPACT ON OTHERS
9. NO CURRENT SIGNIFICANT STRESSORS
10. PROVIDED WITH OPPORTUNITIES TO FUNCTION IN LESS STRUCTURED/LESS SECURE SETTING AND HANDLED WELL
11. AVAILABLE PLACEMENT WHICH IS CAPABLE OF MEETING STRUCTURE AND MONITORING NEEDS
12. AVAILABLE MENTAL HEALTH SERVICES WHICH ARE CAPABLE OF MEETING TREATMENT AND MONITORING NEEDS

RECOMMENDED FORMATS FOR FORENSIC PSYCHIATRIC REPORTS

Pollack (1974) recommended the following format for a forensic psychiatric report:

I. *Identifying data.*

II. *Agency or person requesting examination and reasons for request.*

III. *Identification of place, dates, and duration of examinations).*

IV. *Itemization and identification of all data basic to opinions:*

All persons examined and interviewed, all records, and all collateral material reviewed before or after examination of the patient and all materials used as the basis of the psychiatrist's opinions should be itemized and identified. The relevant materials from such reports should not be copied into the report but referred to in VII (see below) when used to justify the psychiatric opinion.

V. *Outline of psychiatric-legal issues:*

If not provided by the attorney or judge, the psychiatrist should outline the specific legal issues to be addressed.

VI. *Psychiatrist's opinions:*

A separate paragraph should be provided for each psychiatric conclusion that relates to the specific legal inquiry.

VII. *Data and reasoning basic to opinions:*

The psychiatrist should provide an itemization of those materials considered basic for his opinions and indicate why these opinions were given highest priority as opposed to other opinions considered by him but considered less likely. Pollack advocated including all significant materials here—both data supporting his opinions and those which appear contrary. In another separate paragraph, if indicated, there should be an outline of other possible conclusions or interpretations of behavior and an opinion as to their ranking order on the scale of probability. This approach indicates all data were considered and gives an accounting of data and opinions considered but discarded. It is similar to a medical differential diagnosis.