
OVERSIGHT COUNCIL FOR IMPROVING CRIMINAL JUSTICE RESPONSES FOR PERSONS WITH MENTAL ILLNESS

Handouts

APRIL 5, 2018
UNIFIED JUDICIAL SYSTEM

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Order for Evaluation

STATE OF SOUTH DAKOTA

IN CIRCUIT/ MAGISTRATE COURT

COUNTY OF

JUDICIAL CIRCUIT

* * * * *

STATE OF SOUTH DAKOTA,

Plaintiff,

CR.

- ORDER FOR EVAL FOR MENTAL HEALTH COMPETENCY **(OFEC)**
- ORDER FOR EVAL FOR GUILTY BUT MENTALLY ILL PLEA **(OFEMI)**
- ORDER FOR EVAL FOR NOT GUILTY BY REASON OF INSANITY PLEA **(OFERI)**
- ORDER FOR EVAL FOR MENTAL HEALTH COMPETENCY; GUILTY BUT MENTALLY ILL PLEA; AND NOT GUILTY BY REASON OF INSANITY PLEA **(OFECMIRI)**
- ORDER FOR EVAL FOR MENTAL HEALTH COMPETENCY AND GUILTY BUT MENTALLY ILL PLEA **(OFECMI)**
- ORDER FOR EVAL FOR MENTAL HEALTH COMPETENCY AND NOT GUILTY BY REASON OF INSANITY PLEA **(OFECRI)**
- ORDER FOR EVAL FOR GUILTY BUT MENTALLY ILL AND NOT GUILTY BY REASON OF INSANITY PLEA **(OFEMIRI)**

(Check appropriate box)

,

Defendant.

* * * * *

The defendant _____, through his/her attorney, _____, having motioned the Court for an evaluation for the purposes of determining MENTAL HEALTH COMPETENCY, and the Court being familiar with the file, and believing that such an evaluation is necessary, now, therefore, it is hereby:

ORDERED that _____ (provider name and address) be and hereby is appointed to perform the required evaluation of the defendant, and it is further

ORDERED that the required evaluation be paid by _____.

Dated this _____ day of _____ 20____.

BY THE COURT:

ATTEST:

Clerk of Courts

Competency Evaluation Training

Best Practices in the Evaluation of Competence to Stand Trial

Dr. Patricia Zapf

20 hours • 20 CEU • \$500

Video time: 10.5 hours • Total Quizzes: 105 items

Objectives

- Describe important legal cases that deal with issues relevant to the interpretation adjudicative competence standards and statutes
- Describe the developments in the conceptualization of the Dusky Standard
- Describe the research on evaluations of adjudicative competence
- Describe theoretical issues in competency evaluation
- Describe the most recent clinical guidance on competency evaluation
- Describe the best practices model
- Describe the administration procedures for various competency assessment instruments
- Describe the psychometric properties of CAIs
- Describe the process for case and opinion formulation
- Describe the process of communicating opinions regarding criminal competence
- Describe required, appropriate, and inappropriate report contents
- Describe opinions about competence in the written report and through expert testimony

Audience

- Psychiatrists
- Psychologists
- Social Workers
- Mental Health Professionals
- Beginner, Intermediate, and Advanced

Modules and Curriculum

1. Foundations of Forensic Mental Health Assessment (Video: 53 mins | Quiz: 12 items)

- Heilbrun, K., & LaDuke, C. D. (2015). Foundational aspects of forensic mental health assessment. In B. L. Cutler & P. A. Zapf (Eds.), *APA Handbook of Forensic Psychology: Vol 1. Individual and Situational Influences in Criminal and Civil Contexts* (pp. 3-18). Washington, DC: APA.

The Legal Context (Video: 71 mins | Quiz: 17 items)

- Zapf, P. A., & Roesch, R. (2009). *Best Practices in Forensic Mental Health Assessment: Evaluation of Competence to Stand Trial*. New York: Oxford. Chapter 1: The Legal Context
- Mossman, D., Noffsinger, S. G., Ash, P., Frierson, R. L., Gerbasi, J., Hackett, M., et al. (2007). AAPL practice guideline for the forensic psychiatric evaluation of competence to stand trial. *Journal of the American Academy of Psychiatry and the Law*, 35, S3-S72.
- Utah's Competency Statute

2. Forensic Mental Health Concepts (Video: 53 mins | Quiz: 11 items)

- Zapf, P. A., & Roesch, R. (2009). *Best Practices in Forensic Mental Health Assessment: Evaluation of Competence to Stand Trial*. New York: Oxford. Chapter 2: Forensic Mental Health Concepts
- Attorney CST Questionnaire (Appendix A)
- Philipsborn, J. T. (2004). Searching for uniformity in adjudications of the accused's competence to assist and consult in capital cases. *Psychology, Public Policy, and Law*, 10, 417-442.

3. Empirical Foundations and Limits (Video: 53 mins | Quiz: 9 items)

- Zapf, P. A., & Roesch, R. (2009). *Best Practices in Forensic Mental Health Assessment: Evaluation of Competence to Stand Trial*. New York: Oxford. Chapter 3: Empirical Foundations and Limits
 - Interdisciplinary Fitness Interview Training Manual
 - Pirelli, G. Gottdiener, W. H., & Zapf, P. A. (2011). A meta-analytic review of competency to stand trial research. *Psychology, Public Policy, and Law*, 17, 1-53.
- 4. Preparation for the Evaluation (Video: 55 mins | Quiz: 7 items)**
- 5a. Competency Assessment Instruments (Video: 58 mins | Quiz: 9 items)**
- Zapf, P. A., & Roesch, R. (2009). *Best Practices in Forensic Mental Health Assessment: Evaluation of Competence to Stand Trial*. New York: Oxford. Chapter 4: Preparation for the Evaluation
 - Appendix D: Relevant Competence-Related Domains and Areas of Inquiry
- 5. Data Collection (Video: 55 mins | Quiz: 9 items)**
- Zapf, P. A., & Roesch, R. (2009). *Best Practices in Forensic Mental Health Assessment: Evaluation of Competence to Stand Trial*. New York: Oxford. Chapter 5: Data Collection
 - Appendix D: Relevant Competence-Related Domains and Areas of Inquiry
 - Forensic Evaluation Outline
 - Types of Third-Party/Collateral Data
 - Sources of Collateral Data
- 6. Interpretation (Video: 57 mins | Quiz: 5 items)**
- Zapf, P. A., & Roesch, R. (2009). *Best Practices in Forensic Mental Health Assessment: Evaluation of Competence to Stand Trial*. New York: Oxford. Chapter 6: Interpretation
 - Appendix D: Relevant Competence-Related Domains and Areas of Inquiry
- 7. Report Writing & Expert Testimony (Video: 73 mins | Quiz: 11 items)**
- Zapf, P. A., & Roesch, R. (2009). *Best Practices in Forensic Mental Health Assessment: Evaluation of Competence to Stand Trial*. New York: Oxford. Chapter 7: Report Writing & Testimony
 - Grisso, T. (2010). Guidance for improving forensic reports: A review of common errors. *Open Access Journal of Forensic Psychology*, 2, 102-115.
- 8. Advanced Formulation (Video: 41 mins: Quiz: 5 items)**
- Maroney, T. A. (2006). Emotional competence, “rational understanding,” and the criminal defendant. *American Criminal Law Review*, 43, 1375-1435.
- 9. Special Populations: Intellectual Disabilities (Video: 62 mins | Quiz: 10 items)**
- Kalbeitzer, R., & Benedetti, R. (2009). Assessment of competency to stand trial in individuals with mental retardation. *Journal of Forensic Psychology Practice*, 9, 237-248.
 - Noffsinger, S. G. (2001). Restoration of competency practice guidelines. *International Journal of Offender and Comparative Criminology*, 45, 356-362.
 - Salekin, K. L., Olley, J. G., & Hedge, K. A. (2010). Offenders with intellectual disability: Characteristics, prevalence, and issues in forensic assessment. *Journal of Mental Health Research in Intellectual Disabilities*, 3, 97-116.
 - AAPL Guidelines for Psychiatric Evaluations of Competence to Stand Trial
 - Sample Evaluation Report

1

Competency Exam Overview

Improving Criminal Justice Responses for Persons with Mental Illness

2

What is competency?

- Competency process is used to determine ability of the defendant to understand the nature and consequences of the proceedings and aid in own defense
- While mentally incompetent, a person cannot be tried, sentenced, or punished for any public offense.

3

Who orders the exam and when does it occur?

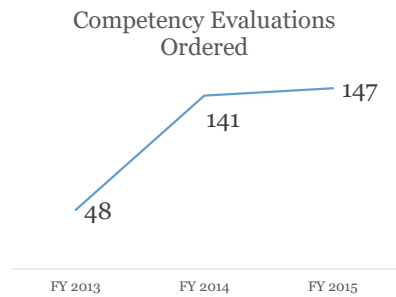
- The prosecution, defense, or court may raise a motion for a hearing to determine competency, and may be brought at any time after commencement of prosecution and prior to sentencing.

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graph LR; A[Prosecution Begins] --> B[No Motion for Exam]; A --> C[Motion for Exam]; B --> D[Court Proceedings Continue]; C --> E[Competency Exam]; E --> F[Hearing]; F --> G[Competent]; F --> H[Not Competent]; G --> I[Court Proceedings Continue]; H --> J[Commit to HSC]; H --> K[Commit to Private Facility];
```

The flowchart illustrates the process of determining competency. It starts with 'Prosecution Begins', which branches into 'No Motion for Exam' (leading to 'Court Proceedings Continue') and 'Motion for Exam' (leading to 'Competency Exam'). An orange arrow points to the 'Competency Exam' box. From 'Competency Exam', the process moves to 'Hearing'. The 'Hearing' box branches into 'Competent' (leading to 'Court Proceedings Continue') and 'Not Competent' (leading to 'Commit to HSC' and 'Commit to Private Facility').

Why was it necessary to address the issue of competency in HB 1183?

- Court orders regarding competency evaluations tripled in a 3-year period, while multi-purpose evaluations and wait times for evaluations drove higher costs.



How does HB 1183 ensure speedier court processing and shorter jail stays?

- Reallocate funds used at the Human Services Center for the costs associated with forensic evaluations to establish a contract with the SD Association of County Commissioners to create a fund for the purpose of assisting counties with the cost of court-ordered competency evaluations.
- Sets a 21-day timeframe for completion of competency evaluations and expands the types of professionals who can perform these examinations.
- Adds to the list of professionals who are able to complete the exam.

Why was it necessary to address the issue of competency in HB 1183?

- Inmates with orders for forensic evaluation stayed far longer than the pretrial and convicted populations analyzed.
- For example, in FY15 Pennington County identified 10 inmates who had competency evaluations ordered. They stayed in jail an average of 223 days.
- Only psychiatrists or psychologists could perform competency exams, which increased the wait times.

The following professionals may now conduct an evaluation:

1. A licensed or certified psychiatrist;
2. A licensed clinical psychologist;
3. * A certified social worker with competency evaluation training;
4. * Certified nurse practitioner or clinical nurse specialist with current psychiatric certification and competency evaluation training;
5. * Licensed professional counselor-mental health with training

*Added as a result of 1183

Now, there are currently 30 licensed professionals available to conduct court ordered competency evaluations.

- Rapid City (9)
- Sioux Falls (8)
- Yankton (4)
- Watertown (3)
- Lemmon
- Mansfield
- Mitchell
- Jamestown, North Dakota
- Marshall, Minnesota

Oversight Council

Improving Criminal Justice Responses for
Persons with Mental Illness

How is the Oversight Council involved with competency exam payments?

Review

- Review task force recommendations, track implementation and evaluate compliance
- Review data and reporting required by this Act
- Review compliance with the training required by this Act
- Review the recommendations of the crisis intervention team training review team
- Review the crisis response grants distributed
- Review DCI's development of training on mental illness
- Review the payments to counties for mental competency examinations and reports

Evaluations Eligible for Reimbursement

Eric Erickson

Which Evaluations are covered?

“Evaluation” means a mental health evaluation court-ordered pursuant to SDCL §23-10A-3, as the same may be amended from time-to-time, conducted for the purpose of determining a defendant’s ability to understand the nature and consequences of the proceeding against the defendant or to assist properly in the defendant’s defense.

*Note the limitation on which evaluations are covered.

Authorized Evaluators

“Authorized Evaluator” means a medical professional with the qualifications set forth in SDCL §23A-46-1 and included on the list of evaluators maintained by the Department of Social Services pursuant to SDCL § 23A-46-1.1 (2017).

Following each funding period the SDACC will provide a list of the Authorized Evaluators utilized by the counties and the cost of each Provider.

Eligible Expenses

Costs eligible for reimbursement from the CEF Fund include the costs paid by a county to an Authorized Evaluator for an Evaluation, and properly submitted to the Board for reimbursement hereunder, provided said costs do not exceed the Maximum Fees and are not otherwise ineligible under these rules or applicable statute.

Maximum Fees.

The amount of fees reimbursed to a county, or considered in determining the county’s portion of the Fund, paid to an Authorized Evaluator may not exceed \$1,500.00 per Evaluation. Notwithstanding the foregoing, the Board, by a two-thirds (2/3) majority may approve higher amounts in the event of extraordinary circumstances or surplus funds.

Repayment

If a county receives CEF funds and that county subsequently recovers all of the Evaluation costs from either the defendant or some other source within one year of the county's receipt of the CEF funds for such defendant, the county shall repay the amount recovered to the SDACC to be deposited in the Fund.

Distribution of the Fund

At the end of each Funding Period, the Board shall utilize the available Fund to reimburse counties for the amount of their approved claims. In the event the amount available from the Fund is less than the total amount of approved claims, the available amount of the Fund shall be distributed as follows:

The total amount of claims approved for each county shall be divided by the total amount of claims approved for all counties to determine the percentage of the available Fund to be allocated to such county. Each county shall then receive its portion of the Fund.

Sample Calculation using the formula:

Sample Calculation of County A's Percentage of the Fund:

County A's approved claims ÷ total approved claims = County A's percentage. As an example:

\$3,000.00 (County A's approved claims) ÷ \$200,000.00 (total approved claims) = .015 (county's A's percentage).

Calculation of County A's payment from the Fund:

\$114,500 (Available Fund) X .015 (County A's percentage) = \$1,717.50 (Paid to County A)

Summary of the Competency Exam Claims

Bob Wilcox

How many competency exam reimbursement claims have been processed?

- 41 total claims
 - 22 are “good”
 - 19 are not payable on their face
- Of those 19 claims that are not payable on their face:
 - 3 were not competency exams.
 - 6 are unclear if the exam was a competency exam or something else
 - 10 are for competency exams plus something else, but the bill was not clear as to how much the competency exam cost
- The 22 “good” claims totals \$21,362

CIT State Coordinator Job Description



MARTY J. JACKLEY
ATTORNEY GENERAL

STATE OF SOUTH DAKOTA
LAW ENFORCEMENT STANDARDS AND TRAINING COMMISSION

DIVISION OF CRIMINAL INVESTIGATION
GEORGE S. MICKELSON CRIMINAL JUSTICE CENTER
1302 EAST HIGHWAY 14 – SUITE 5
PIERRE, SOUTH DAKOTA 57501-8505
PHONE (605) 773-3584
FAX (605) 773-7203

MEMORANDUM

TO: Greg Sattizahn, SD Mental Health Initiative Oversight Commission

FROM: Chad Mosteller, SD Law Enforcement Training Administrator *CM*

DATE: March 29, 2018

RE: Statewide CIT Coordinator

The purpose of this memo is to outline the overall job responsibilities of a statewide CIT Coordinator, the intended goals and outcomes, and the projected costs. This is a newly-created position, and the costs associated with it as well as the projected costs are subject to change. This one-year position would be under the supervision of the SD Division of Criminal Investigation, Law Enforcement Training (LET), would use Attorney General FTE hours, and would be categorized as a temporary position.

Once permission is granted to hire this employee, SD LET would advertise within the law enforcement community. This person would be given access to a state vehicle, state network, and per diem reimbursement rates. He/she would also be eligible for state lodging rates. SD LET, Sheriff Leidholt, and Assistant Chief Don Hedrick would review all resumes and applications as well as participate in the formal interview process. We would advertise and be specific in selecting someone with the following qualifications:

- Graduation from a college or university with a Bachelor's Degree in psychology, sociology, criminal justice, or a related field or an equivalent combination of related education and experience;
- Knowledge of crisis intervention training including, but not limited to, the Memphis model, mental health disorders, and law enforcement protocol;
- Successful completion of a criminal background investigation;
- Strong planning, organization, project management, and time management skills;
- Proficiency in Microsoft Office products especially PowerPoint;
- Strong interpersonal, oral, and written communication skills, excellent presentation skills, and ability to interact well with a diverse array of state and local stakeholders;
- Strong problem solving and troubleshooting capabilities;
- Awareness of or strong sensitivity to mental and substance use disorders;
- Law enforcement experience;

- Ability to establish and maintain effective working relationships with law enforcement and other criminal justice professionals, behavioral health professionals, advocacy groups, and the members of the public.

Unless the selected person is from Pierre, it would be unreasonable to have someone move to Pierre for a one-year term. Our intention would be to work with the person selected and provide him/her reasonable accommodations to effectively complete the job. For example, if the selected person is from the Rapid City area, we would work to get him/her a workstation at the Rapid City DCI office.

LET has historically facilitated mental health training throughout the state. To maintain certification, an officer must complete two hours of mental health training every two years. In past years, many mental health classes have been cancelled due to lack of interest. We believe agencies hesitate to send their officers to an eight-hour or longer mental health response class because the state minimum is two hours. Limited resources are often cited for the reason. We feel another reason is agencies do not understand the lasting benefits they and the community receive from CIT trained officers. We believe this position would be able to liaison with our law enforcement agencies and generate the interest and desire for law enforcement administrators to send their officers to advanced mental health trainings. Our goals for this position would be the following:

- Contact every law enforcement entity in the state and formally explain the benefits of advanced mental health and CIT training, which includes providing guidance and materials as well as a personal CIT template for their unique jurisdiction;
- Coordinate at least six Mental Health First Aid for Public Safety (eight hours) classes throughout the state of South Dakota;
- Identify sources for professional online training and implement this into the existing state online academy;
- Attend yearly law enforcement related conferences held in SD and be an advocate for CIT.

To fulfill these goals, this position would require significant in-state travel. To effectively communicate with the law enforcement entities, face-to-face conversations are extremely important. This position is responsible for coordinating training and technical assistance to cities, counties, and tribal communities throughout the state. We believe this position will facilitate an increased desire for communities to implement CIT within their respective areas. We also believe this will increase the number of crisis intervention trained officers within the state.

Although our expectation would be to focus on the above-listed goals, this position would be required to accomplish other related duties. Depending on time and resources, the following list of duties may be assigned to this position:

- Assist agencies to determine which program (e.g., CIT or CIP) is the best fit, what aspects of crisis intervention are most needed, and how best to deliver the training;
- Attend extensive training and/or ongoing training on the Memphis model or similar programs if they do not already have it;
- Provide technical assistance to communities to coordinate, deliver, and sustain crisis intervention training;
- Develop a process for communities to request assistance with crisis intervention training;
- Promote crisis intervention training to law enforcement and community groups;

- Establish a crisis intervention train-the-trainer course;
- Serve as a primary point of contact for crisis intervention training for law enforcement and other community partners;
- Conduct outreach to generate interest and promote crisis intervention training to law enforcement and community groups through venues such as annual conferences and other state and local meetings;
- Act as a liaison with groups that support crisis intervention efforts in the community such as NAMI South Dakota, the Veterans Administration, community mental health centers, and others so they will be involved in and support the training;
- Assist, as needed, with the LET crisis training taught during the Law Enforcement Basic Academy;
- Gather crisis intervention training performance measures and developing reports;
- Meet regularly with a crisis intervention steering committee to examine ways to strengthen and sustain crisis intervention training statewide.

Specific costs and expenses for this new position are hard to project. The following budget is based off of prior related job and travel expenses. The total budget for mental health training as outlined in HB 1183 is \$215,000. The following is a revised budget projection for this position as well as training expenses:

Personnel Expenses

Salary (\$31.25/hour)	\$65,000.00
Unemployment Ins/Work Comp	<u>\$ 221.00</u>
Total	\$65,221.00

Operating Expenses

Travel	\$17,963.00
Contractual	\$ 2,682.00
Supplies	\$ 2,500.00
Capital Assets (equipment)	<u>\$ 2,517.00</u>
Total	\$25,662.00

Estimated Total \$90,883.00

The following is a detailed breakout of the estimated expenses for one year:

Travel

Out-of-State Travel – estimating one conference/year
 Per Diem – 5 days x \$45.00/day = \$225.00
 Lodging – 4 nights x \$175.00/night = \$700.00
 Estimated Airfare = \$550.00
 Estimated Registration Fee = \$150.00

In-State Travel – estimating travel 2 days/week
Per Diem – 2 days/week = 104 days x \$32.00/day = \$3,328.00
Lodging – 52 nights x \$55.00 = \$2,860.00
Vehicle Miles – 35,000 miles/year x \$.29/mile = \$10,150.00

Contractual Expenses

Communication Costs
BIT Yearly Fees - \$143.50/user/month x 12 months = \$1,722.00
Cell Phone Expenses - \$80/month x 12 months = \$960.00

Supplies

General Office Supplies - \$2,500.00/year

Capital Assets

Desktop Computer w/Accessories (off of state contract) = \$1,264.00
Laptop Computer w/Accessories (off of state contract) = \$ 1,013.00
Printer (off of state contract) = \$100
Cell Phone = \$100
Miscellaneous Software (Adobe Pro) = \$40

Because of the limited resources in many of our law enforcement departments, there will be a focused effort in developing and locating existing online mental health training. Online training allows departments to get much needed advanced training to their officers without a significant amount of travel and time away from their duties.

During the planning stages of this position, SD LET reached out to Michael Peterson, Executive Director of Minnesota CIT. His non-profit agency coordinates and trains many of Minnesota's mental health classes. He spoke very highly of this statewide coordinator concept and explained that Minnesota is currently doing the same thing through his agency. Minnesota currently trains with the Memphis model. They tailor the classes offered to the resources of individual departments. Some departments will receive four-hour mental health response classes and some eight hours while others get trained with the 40-hour CIT course. Mr. Peterson believes the South Dakota CIT Coordinator could liaison with our law enforcement agencies in the same way.

The Minnesota Sheriff's Association, as well as the Minnesota CIT, are actively working on developing online mental health training in different subject areas for their officers. Both agencies have expressed a desire to work with South Dakota to partner in this project. SD LET would propose that our CIT Coordinator would work with Minnesota in the development of the online training classes, and we would request that some of the remaining budget be used to fund this component.

SD Division of Criminal Investigation, LET, is committed to this project. We will supply the SD Mental Health Initiative Oversight Commission progress reports throughout the year.

If you have any questions regarding this information or would like more details in any areas, please do not hesitate to ask.



Representing a Client with Mental Illness

A South Dakota Defense Attorney's Guide

March 1, 2018

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Creating Safe Scenes (SAMHSA)

Creating Safe Scenes Training Course

This free online course helps first responders assist individuals in crisis with mental illness or substance use disorder using safe, positive approaches.

Creating Safe Scenes is a free, Commission on Accreditation for Pre-Hospital Continuing Education (CAPCE)- accredited, online training course that helps first responders—police, fire, and emergency medical services—work with individuals experiencing a mental health and/or substance use crisis.

This course is designed to help first responders understand more about mental health, mental illness, and substance use disorders so they can better assess risks and apply the safest strategies for taking care of themselves and the individuals they are called to serve.

Creating Safe Scenes—which includes first-hand video accounts from responders and mental health consumers, quizzes, resources, and a final exam—will help first responders:

- Understand how individuals come to experience a behavioral health crisis
- Understand how best to make a safe connection with an individual experiencing a crisis
- Learn about de-escalation strategies for working with people in crisis
- Learn strategies for developing community networks and referral resources
- Understand how to improve the safety of both the responder and the individual in crisis

Participants are eligible to receive 1.5 continuing education unit (CEU) credits from the Commission on Accreditation for Pre-Hospital Continuing Education (CAPCE) after successfully completing this course.

