

## **Competency to Stand Trial Assessment Instructions**

### **I. Preliminary Steps**

The assessment template includes a list of documents that the evaluator should obtain or consider obtaining.

The evaluator should review the court order and determine what evaluation(s) is requested before proceeding any further.

In **all** cases, it is critical to obtain documents related to the offense(s) such as the arrest warrant, indictment (if available), charging documents, defendant's statements and police report, as these will be important in evaluating whether the defendant has a rational appreciation of the charges against him or her.

The evaluator should also consider obtaining past evaluations of competency to stand trial in the current case, as these will be important in assessing the defendant's current mental status and in evaluating the defendant's restorability. Educational records may be important if there is a concern about the defendant's cognitive functioning. Medical records may be important if the defendant has an underlying medical condition (e.g. stroke) or medical history (e.g. history of head trauma) that may affect his competence. Finally, mental health treatment records (past and current) should be obtained as they will be helpful in corroborating self-report.

The evaluator should also identify collateral source interviews to be conducted. At a minimum, the defense counsel should be interviewed to determine if counsel has concerns about the defendant's competence. Through this interview the evaluator should attempt to elicit specific examples of behaviors or statements that underlie the counsel's concern. The evaluator may choose when to conduct this interview, although in many cases it would be appropriate to complete the interview prior to the evaluator's initial interview with the defendant. In the event a follow up interview with the counsel is needed, it may occur after the evaluator's initial interview(s) with the defendant.

Finally, as a preliminary matter, the evaluator should determine whether formal assessment instruments should be used for the interview, or whether psychological or other testing may be needed. The use of such formal instruments or testing should be reconsidered as necessary as the evaluation proceeds.

You should note if information through records or other sources was sought but not made available to you, and this should be included in the report.

### **II. Clinical Interview**

#### **A. Forensic Advisement/Limits of confidentiality**

The evaluator should begin each interview of the defendant advising the defendant of *each* of the following:

- That you are a court-ordered evaluator;
- That you are performing a court-ordered evaluation;
- That the evaluation was ordered to assist the court in determining the defendant's competency to stand trial;
- That, (if the court has in fact so ordered), in the event the evaluator is of the opinion that the defendant is not competent, the evaluation was also ordered to assist the court in determining whether, with treatment, the defendant could be restored to competence and may include recommendations for treatment;
- That the information from the interview will be revealed to the court through a court report and possible testimony, and thus will not be confidential to that extent;
- That in the event the defendant refuses to participate in the interview, information will still be provided to the court based upon the evaluator's observations and other sources of information and the evaluator will note the defendant's refusal to participate in a report.

Dates, times, duration and locations of all interviews with the defendant should be noted.

A similar notice should be provided to all collateral sources being interviewed and the dates, times, duration and location of those interviews should also be noted.

## B. ! Relevant History

This section of the interview is used to obtain background information from the defendant, which may then be reviewed against information from collateral sources such as family members or records for corroboration. Efforts to obtain relevant history should be focused on obtaining information that is relevant to reaching opinions of the presence or absence of mental illness, your diagnostic impression, and the issue(s) underlying the evaluation.

Childhood history, social development and educational history may be important in evaluating competence. Prior criminal history should be obtained and referenced. Similarly, it is important to obtain from the defendant information that may reflect the *presence or absence* of any significant medical history or event, either of which should then be noted in the report. Prior psychiatric history is important to obtain from the defendant if possible, which then can be reviewed against other sources of information. Important prior psychiatric history includes prior diagnoses, substance use history, hospitalizations and treatment including defendant's response to treatment. The evaluator should note the defendant's level of cooperation as well as ability to cooperate during this portion of the interview.

### C. Mental Status Examination

The evaluator should conduct a mental status examination of the defendant addressing the components specified in the template. It should include an assessment of his current mental functioning and include specific behavioral examples. This should include rendering a diagnosis as required by 50 P.S. 7402 (g).

### D. Competency to Stand Trial Evaluation

The assessment template includes prompts which should be assessed in evaluating the three prongs required to determine defendant's competence.

#### 1. Consideration of Factors related to Factual Understanding

The evaluator should explore with the defendant his factual understanding of the proceedings as referenced in the assessment template. In conducting this part of the competency evaluation, the evaluator should note the specific answers to the questions posed so that they may be included in the report. If the defendant manifests poor or confused understanding of the issues, the evaluator should attempt to teach the defendant and then later question him or her to determine if this teaching improved his or her understanding. The defendant's ability or inability to learn concepts is important in determining competence.

#### 2. Consideration of Factors related to Rational Understanding of the Proceedings

There is substantial overlap in assessing the defendant's rational understanding of the proceedings against him and his capacity to assist counsel with a reasonable degree of rational understanding. In assessing whether a defendant has a rational understanding you should be careful not to disclose defendant's statements about the alleged crime while still showing that you evaluated various aspects of his rational understanding and decisional competence. One effective way to do this is to use hypothetical scenarios that are close to the factual allegations of the case, and report on this defendant's responses to the hypothetical scenarios. Further, you should address the defendant's responses to questions on how he/she will make decisions and the defendant's understanding of the implications of those decisions, and record the defendant's responses and reasoning for the responses. You should note defendant's specific responses that are relevant to assessing a rational understanding of the proceedings **but not** report statements that could be used in his/her prosecution.

#### 3. Consideration of Factors related to Ability to Consult with Counsel and decision-making ability.

As noted above there is considerable overlap between this factor and the previous one. In addition to noting defendant's responses relating to his working with counsel and to questions or hypotheticals designed to assess his decision-making ability, the evaluator should also

observe and note any behavioral or other issues that may impact the defendant's ability to sit through or participate in the proceedings.

#### 4. Synthesis of the information

The evaluator should form his or her clinical opinion regarding competence to stand trial after reviewing and considering 1) the results of the interview[s] and the mental status examination of the defendant; 2) interviews of collateral sources and 3) the written documents and medical records reviewed. The conclusion should be clearly supported by data linked to the criteria for determining competence which should be clearly articulated in the report. It is important for evaluators to recognize that while many defendants may have mental health symptoms, the issue is whether the defendant's symptoms, if any, are so severe that the defendant is unable to understand the nature and object of the proceeding against him or to assist in his defense.

In reaching an opinion as to the defendant's competence, the factual knowledge required should be calibrated to the charge (e.g. if no jury trial is provided for, the defendant does not need to understand role of the jury). The evaluator should consider the defendant's responses to questions and hypotheticals as well as the information obtained from the mental status examination and collateral sources. The evaluator should identify those areas in which the defendant evidenced adequate factual and rational understanding and those areas in which the defendant lacked adequate factual or rational understanding. The evaluator should also consider information from collateral sources that relate to the defendant's capacity to work with his attorney or aid in his defense.

If the defendant refused to participate in the evaluation or was unable to do so due to an impaired mental state, this should be considered and addressed in the report even if it is just to conclude that a formal evaluation was not possible and/or no opinion was reached. The evaluator should also consider if the defendant is competent but has impairments or limitations that may require accommodations through the legal process, and identify any needed accommodations.

Using the data collected throughout the assessment, the evaluator should determine whether the defendant has the present ability to consult with counsel with a reasonable degree of rational understanding and has a factual and rational understanding of the charges against him and include the defendant's diagnoses, if any. In the event the evaluator determines that the defendant is not competent, the evaluator should assess and render an opinion as to whether the defendant is restorable, and if so, what treatment or services are necessary to restore competence unless the order specifically provides to the contrary and the appropriate setting for any treatment. If the evaluation occurred post restoration efforts, the evaluator should determine if the restoration efforts were successful, and if not, whether further or different treatment would render the defendant substantially likely to regain competence in the foreseeable future.

## **Competency to Stand Trial \***

### **Assessment Template**

This template is designed to be used as a template for completing an evaluation of a defendant's competency to stand trial. However, it is expected that the evaluator will use his or her clinical judgment based upon the defendant's presentation in determining how to conduct the evaluation.

#### **I. Preliminary steps**

A. ! Review court order for the evaluation to ensure scope and purpose of the evaluation is clear.

B. ! Collect (or attempt to collect) the following documents:

- Copy of the arrest warrant and/or indictment
- Copy of the police report
- Copy of charging documents, if available
- Defendant's statements, if any
- Jail records
- Reports from prior evaluations (especially if the defendant has been evaluated previously in the same case)
- Medical records from prior mental health treatment and current treatment (if under treatment)
- Medical records (if there may be a relevant medical issue)
- Educational records (if there may be a relevant issue concerning developmental disorders)

C. ! Identify and complete appropriate collateral interviews (i.e. defense counsel, relatives of defendant) after advising on limits of confidentiality (see II.A below). The evaluator should decide the timing of the collateral interviews.

D. Consider whether forensic assessment instruments (e.g., ECST-R, MacCAT-CA, FIT-R, ILK), and/or psychological testing (e.g., MMPI-2-RF, WAIS-IV, WMS-IV, TOMM) may be needed as part of the evaluation.

#### **II. Conduct of the interview(s)**

A. ! Forensic Advisement/Limits of confidentiality

B. ! Relevant history/background information

The following background information should be sought during the forensic interview. Interviews with collateral sources or review of records should be used to corroborate the information provided:

- Childhood, social development and educational history
- Work and marital history
- Relevant medical history
- Prior criminal history (or absence)
- Substance abuse history
- Psychiatric history including past diagnoses, hospitalizations and treatments
- Course of hospitalization if the defendant is currently hospitalized (particularly relevant if malingering is suspected)

C. ! Mental status examination

- Defendant's appearance
- Behavior
- Affect
- Mood
- Quality of communication
- Thought Processes
- Perception (hallucinations)
- Thought content (delusions)
- Presence or absence of suicidal or homicidal ideation or intention
- Orientation
- Concentration
- Memory
- Intellectual functioning
- Insight
- Judgment
- Diagnostic impressions

D. Competency to stand trial examination

1. ! Assessment of factual understanding (not all-inclusive)

- Name of charges
- Misdemeanor v. felony
- Roles of judge, jury (if felony), defense attorney, prosecutor, witness
- Understanding of the essential procedures in the matter (prosecution goes first and present evidence and witnesses, defense presents a defense with witnesses and evidence, etc)
- Verdicts and their meaning

- Guilty and not guilty pleas and their consequences
- Not guilty by reason of insanity defense and its consequences
- Plea bargaining
- Rights of defendant (e.g., right to a trial, choice to testify or not)

2. ! Assessment of rational information (not all-inclusive)

- Defendant's explanation of allegations, whether understanding is rational or irrational
- Understanding of potential sentences/consequences if convicted
- Intended plea and reasoning for it
- Understanding potential witnesses and evidence in the case; ideas for attorney to present on his/her behalf
- Thoughts about plea bargaining
- Thoughts about possible not guilty by reason of insanity defense

3. Capacity to assist counsel and decision-making ability (not all-inclusive)

- Trust issues regarding attorney (mere cynicism okay)
- Thoughts about working with attorney and sharing information in rational manner
- Willingness to discuss legal decisions with counsel and ability to consider counsel's advice in a rational manner
- Ability to appraise the quality and quantity of evidence against the defendant
- Attention and concentration sufficient to attend legal proceedings
- Impact of mood or thought disorder on defendant's ability to discuss case rationally with defense attorney or make decisions rationally

4. ! Synthesis of the information

- Consideration of the primary issues related to defendant's competency to stand trial such as past psychiatric/medical/educational history, reason for evaluation, treatment summary if post restoration
- Consideration of defendant's responses relating to his understanding of factual and rational aspects of his/her legal proceedings
- Consideration of defendant's responses regarding capacity to assist counsel
- Opinion linking your assessment to psycho-legal criteria
- Other (may or not be relevant)

1. ! Any recommendations to court regarding accommodations a competent defendant may need to remain competent, or recommendation to attorney on how to relate/interact with the defendant to improve collaboration

2. ! If incompetent, but restorable, recommendation regarding inpatient or outpatient restoration
3. ! If unrestorable, recommend civil commitment, discharge or other