TENNESSEE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

FORENSIC EVALUATION TRAINING MANUAL

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SECTION I - INTRODUCTION TO FORENSIC EVALUATION AND THE TENNESSEE FORENSIC MENTAL HEALTH SYSTEM

FORENSIC TRAINING AND CERTIFICATION

Training and certification is required by the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) for mental health professionals employed by regional mental health institutes or other contracted providers of inpatient services in order to provide juvenile or adult court-ordered forensic evaluations. Certified professionals are required to renew their certification every two years. Professional qualifications for those participating in the certification process are described in the Rules of the Tennessee Department of Mental Health and Substance Abuse Services (0940-3-3-.01 through 0940-3-3-.03).

Requirements for Forensic Certification

The following information is an extract from the Tennessee Department of Mental Health and Substance Abuse Services, Mental Health Services Division, Chapter 0940-3-3-Forensics.

0940-03-03-.01 Scope

(1) These rules specify certification criteria for forensic evaluators who are employees of the Department of Mental Health and Developmental Disabilities (TDMHDD); or, who are under contract with TDMHDD through an agency or as a private practitioner.

Authority: T.C.A. §§ 4-4-103; 33-1-201; 33-1-202; 33-1-203; 33-1-204; 33-1-302; 33-1-305; and Title 33, Chapter 7.

0940-03-03-.02 Forensic Certification.

(1) Forensic evaluator certification is awarded at the discretion of TDMHDD to a professional who meets education and licensure requirements and who satisfactorily completes forensic training offered by TDMHDD.

(2) Forensic evaluator certification is valid for two full fiscal years and shall be renewed by attending a TDMHDD forensic recertification training session. A forensic training session approved by TDMHDD may be substituted for the recertification training.

Authority: T.C.A. §§ 4-4-103; 33-1-201; 33-1-202; 33-1-203; 33-1-204; 33-1-302; 33-1-305; and Title 33, Chapter 7.

0940-03-03-.03 Evaluation of and Expert Testimony on Competence to Stand Trial under T.C.A. Title 33, Chapter 7, Part 3.

(1) Persons performing mental health evaluations and/or providing expert witness testimony to determine competence to stand trial under T.C.A. Title 33, Chapter 7, Part 3 shall:

(a) Meet the qualification requirements specified in Rule 0940-03-03-.03(2)(a)-(h);

(b) Be certified as a forensic evaluator as described in Rule 0940-03-03-.02; and

(c) Participate in the assessment of the defendant.

(2) A person with any of the following qualifications may seek certification to determine competence to stand trial:

(a) A physician licensed in the State of Tennessee with expertise in psychiatry as determined by training, education, or experience;

(b) A psychologist licensed in Tennessee with health service provider designation;

(c) A psychological examiner licensed in Tennessee with health service provider designation;

(d) A master's social worker licensed in Tennessee under the supervision of a clinical social worker licensed in Tennessee;

(e) A clinical social worker licensed in Tennessee;

(f) A nurse clinical specialist licensed to practice nursing in Tennessee who has earned a master's degree in psychiatric nursing;

(g) A professional counselor licensed in Tennessee;

(h) A person who has received a master's degree or its equivalent, in a human service or behavioral science related field, and who has completed at least one year of practical forensic experience under the supervision of a certified forensic evaluator subject to review and approval by the Director of the Office of Forensic Services of TDMHDD.

(3) A licensed physician with expertise in psychiatry as determined by training, education, or experience shall participate in the evaluation of and/or provide expert witness testimony about a person charged with first degree murder, as defined by T.C.A. § 39-13-202.

(4) All notices of recommendations to the court for an inpatient evaluation under T.C.A. § 33-7-301(a) shall be signed by either a physician licensed in the State of Tennessee with expertise in psychiatry as determined by training, education, or experience or a psychologist licensed in Tennessee with health service provider designation. The physician or psychologist signing the notice of recommendations to the court shall have participated in the assessment of the defendant.

Authority: T.C.A. §§ 4-4-103; 33-1-201; 33-1-202; 33-1-203; 33-1-204; 33-1-302; 33-1-305; and Title 33, Chapter 7.

0940-03-03-.04 Evaluation of and Expert Testimony on Mental Condition at the Time of the Offense under T.C.A. Title 33, Chapter 7, Part 3.

(1) Persons performing mental health evaluations and/or providing expert witness testimony regarding mental condition at the time of the offense under T.C.A. Title 33, Chapter 7, Part 3 shall:

(a) Meet the qualification requirements specified in Rule 0940-03-03-.04(2);
(b) Be certified as a forensic evaluator as described in Rule 0940-03-03-.02; and
(c) Participate in the assessment of the defendant.

(2) Mental health evaluations and expert testimony regarding mental condition at the time of the offense may be provided only by persons who meet the following minimum qualifications:

(a) A physician licensed in the State of Tennessee with expertise in psychiatry as determined by training, education, or experience; or

(b) A psychologist licensed in Tennessee with health service provider designation.

(3) A licensed physician with expertise in psychiatry as determined by training, education, or experience shall participate in the evaluation of and/or provide expert witness testimony about a person charged with first degree murder, as defined by T.C.A. § 39-13-202.

Authority: T.C.A. §§ 4-4-103; 33-1-201; 33-1-202; 33-1-203; 33-1-204; 33-1-302; 33-1-305; and Title 33, Chapter 7.

Training for Certification

Eligible mental health professionals are required to attend an initial certification training session by TDMHSAS' Division of Planning, Research & Forensics. Participation in the entire session is necessary for forensic certification. Initial forensic certification training is scheduled no less than once each fiscal year (there are typically three sessions).

Topics covered during training include:
(1) an historical perspective of Forensic Services (including the evolution of the TDMHSAS' present role in this area);
(2) an explanation of the training and certification process;
(3) the process for assessing competency to stand trial and mental condition at time of the crime;
(4) an overview of the criminal and juvenile justice system;
(5) a discussion of forensic law and rules of the Department of Mental Health and Substance Abuse Services; and
(6) expert witness testimony.

Further discussion will focus on more sophisticated and less clear-cut problems in the evaluation process such as forensic evaluator requests for intellectual disability evaluations; substance abuse assessment, diagnosis and treatment options; and the use of psychotropic medications. Also, videotaped recordings are used to assist in the training process. Participants must successfully complete a study guide for forensic evaluator certification.

Renewal of Certification

Certification to perform forensic evaluations is valid for two (fiscal) years. Certification to perform forensic evaluations must be renewed by participation in the forensic renewal training program sponsored by TDMHSAS' Office of Planning, Research & Forensics and continued participation in the performance of forensic evaluations. Notification of the forensic renewal training is made to the forensic coordinator at each facility or agency as sessions are scheduled. On an annual basis, the calendar for initial forensic evaluator training is sent to the forensic coordinators for use in advance planning for forensic staff training.

Certification expires at the end of the second fiscal year following the fiscal year of initial certification or renewal. For example, certification of an individual certified between July 1, 2014 and June 30, 2015 will expire on June 30, 2017. If an evaluator allows certification to expire, the TDMHSAS will no longer recognize that individual as eligible to be designated by the Commissioner to perform court-ordered evaluations. The evaluator is required to participate in initial forensic training in order to become certified to perform forensic evaluations again.

Certification of evaluators is also a mechanism to ensure the courts that evaluations are of high quality and performed consistently statewide.

Institute Ward Staff Training

Ward staffs are not eligible for certification to perform competency evaluations nor are they required to receive special training in the area of forensics. However, since these individuals are involved in the ongoing observation, treatment, and care of forensic clients, TDMHSAS' Division of Planning, Research & Forensics does offer basic forensic training if requested to do so by the inpatient facility. The training program is designed to expose the staff to forensic issues relevant to their specific job responsibilities and to the importance of the work they perform.

FUNDAMENTAL CONCEPTS AND PRINCIPLES: CONDUCTING MENTAL HEALTH EVALUATIONS FOR THE COURTS

So, you want to be a forensic evaluator . . . .

- The Expert Consultation Model: The evaluator is considered to have specialized knowledge which could assist the trier of fact; the evaluator's opinion is on mental health issues, not the outcome of the judicial proceeding.

- The Importance of Professional Relationships: You are not the subject's therapist. It is crucial to make the distinction between treating professionals and yourself as an evaluator, a distinction important for the subject and for you. Your client is the Court, not the defendant. This is different from "informed consent;" the defendant should be informed but does not have to consent or even have the capacity to consent. The Statement of Purpose documents that the defendant was informed and is included in the record for all evaluations.

- The Importance of Professional Role: The forensic evaluator has a strictly defined role. The scope of the evaluation is defined by the court order. The evaluator addresses only those issues, does not conduct evaluations on issues or populations outside his/her area of expertise and approaches all evaluations from an impartial stance. While your opinion is ultimately your own, you do represent the TDMHSAS in all presentations to the courts.

- Forensic Evaluation as Investigation: The conclusions in a forensic evaluation are based on data which is described earlier in the evaluation; all conclusions can be traced to the data in the evaluation. Multiple sources of data are necessary (e.g. subject's report, previous treatment records, victim/witness/police accounts, criminal history) with collateral sources of information being crucial. When introducing the defendant's self-report, you must address the response style (Faking good? Faking bad?) which itself must be assessed with multiple sources of information (e.g. testing, collateral accounts).

- Basics of Communicating with the Court: Remember your audience is not mental health professionals; avoid jargon and draw clear lines from the data you collected to your conclusions. Cite your sources of information in your report. Do not offer an opinion on the ultimate legal question. You may speak to attorneys with follow-up questions about your evaluation, but include both sides and do not release additional records without a court order.

See also:

Heilbrun, K. (2001). Principles of forensic mental health assessment. New York: Kluwer Academic/Plenum Publishers.

Melton, G. B., Petrila, J., Poythress, N. G., & Slobogin, C. (2007). Psychological evaluations for the courts: A handbook for mental health professionals and lawyers (3rd ed.). New York: Guilford Press.

DESCRIPTION OF FORENSIC MENTAL HEALTH SERVICES IN TENNESSEE

TDMHSAS defines forensic mental health services to include:

- T.C.A.§ 33-7-301(a) pre-trial evaluation of any adult defendant, whether mentally ill or intellectually disabled, for competency to stand trial and/or for mental condition at the time of the alleged crime,
- T.C.A.§ 33-7-301(b) treatment of defendants found incompetent to stand trial and committable because of mental illness or treatment of defendants who are found competent, but committable,
- Title 33, Chapter 7, Part 4 Mandatory Outpatient Treatment of incompetent defendants who do not meet commitment criteria under T.C.A. § 33-7-301(b),
- T.C.A.§ 33-7-303(a) evaluation of committability of persons who are found not guilty by reason of insanity,
- T.C.A.§ 33-7-303(c) treatment of those persons found committable to an inpatient facility after having been found not guilty by reason of insanity
- treatment of persons who are committed to the Department of Correction and who cannot receive appropriate treatment within the Department of Correction,
- treatment of civilly committed adult patients who have been transferred by the TDMHSAS Commissioner to FSP, for maximum security, from a regional mental health institute (RMHI) after a determination that the individual is mentally ill and substantially likely to injure himself or others if not treated in a secure unit; and
- T.C.A.§ 37-1-128, evaluation of juvenile defendants in the areas of competency to stand trial, mental condition at the time of the alleged crime, diagnosis and treatment needs and/or recommendations for specific services.

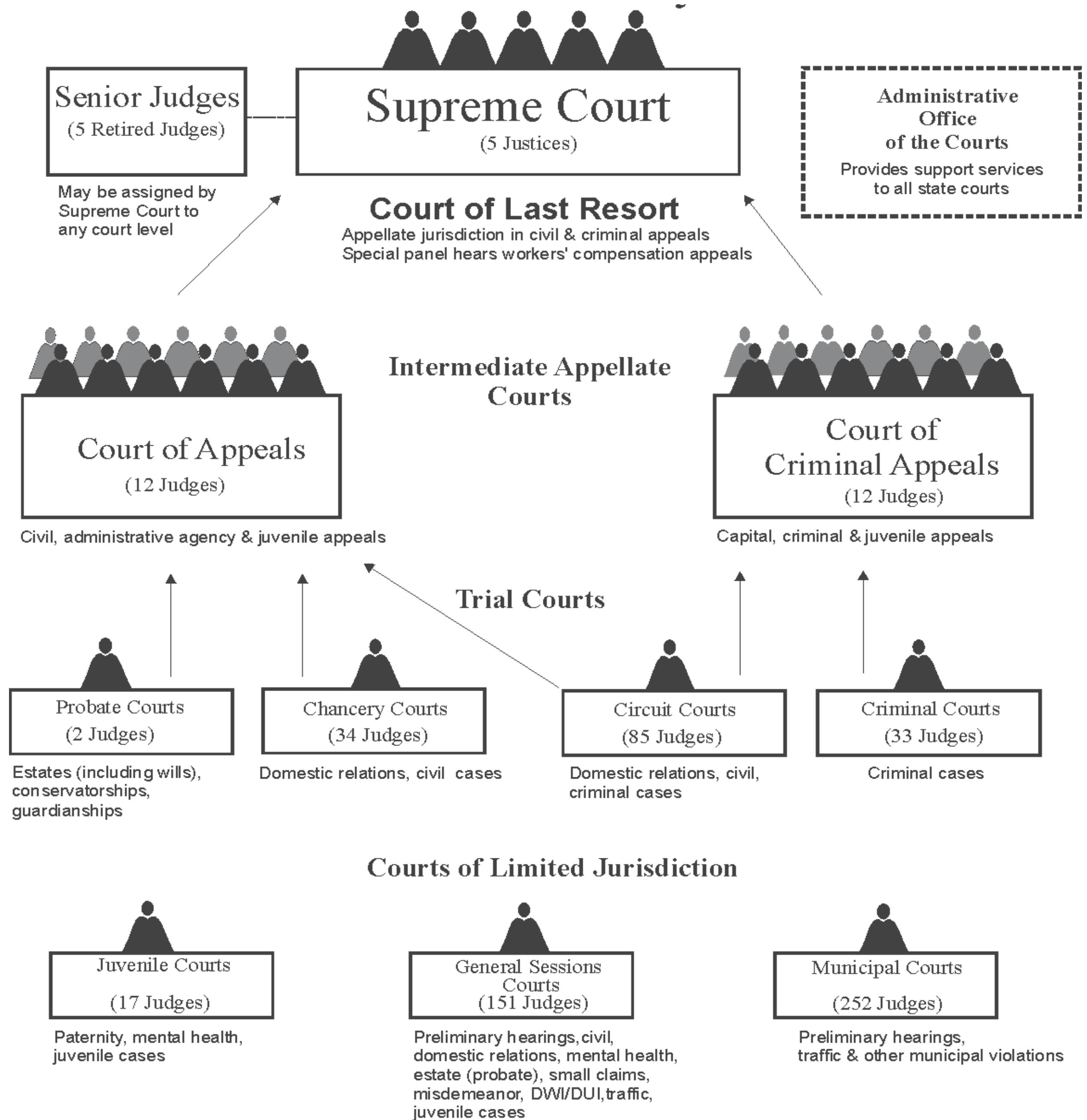
FORENSIC SERVICES PROGRAM AT MTMHI

The Forensic Services Program (FSP), located on the grounds of MTMHI, is the only facility in Tennessee designated as a maximum security facility of the TDMHSAS which provides pre-trial evaluations and treats those defendants who are diagnosed with a mental illness, who are judicially committed, and whose behavior requires maximum security. Although this unit is part of the MTMHI campus, it is a free-standing unit that provides services to the entire state. Admission to this unit is dictated by statute or authorization by the Commissioner for transfer.

There are only three methods by which individuals may be admitted to FSP. These include: court orders from courts with criminal jurisdiction as defined in Title 33, Chapter 7; or authorization by the Commissioner of TDMHSAS for transfers from RMHIs; or transfers from the Department of Correction (DOC) authorized through the proper procedures as defined by law.

Placement in FSP's maximum security unit or in an RMHI is based on the defendant's behavior, treatment needs and escape risk. Patients who do not require the maximum security are referred to the RMHI even if charged with a violent felony. Defendants requiring maximum security, regardless of their charges, are referred to FSP. It is the responsibility of the referring community mental health center to recommend the level of security needed by those they evaluate, under T.C.A. § 33-7-301(a), in their letters to the court.

TENNESSEE JUDICIAL SYSTEM [DIAGRAM]



SOURCE: 2005-2006 Annual Report of the Tennessee Judiciary

SECTION II – PRETRIAL FORENSIC SERVICES

PRE-TRIAL FORENSIC STATUTES

NOTE: Sample court orders for forensic evaluation and treatment services available at the Department's website. Go to: Tennessee.gov/Mental, click Sitemap, click Forensic and Juvenile Court (under Division of Planning, Research & Forensics), click Forms

Please note that the following text is verbatim and in the exact format of Title 33.

33-7-301. Evaluation of accused believed incompetent to stand trial — Judicial hospitalization proceedings — Recovery report. —

(a) (1) When a defendant charged with a criminal offense is believed to be incompetent to stand trial, or there is a question about the defendant's mental capacity at the time of the commission of the crime, the criminal, circuit, or general sessions court judge may, upon the judge's own motion or upon petition by the district attorney general or by the attorney for the defendant and after hearing, order the defendant to be evaluated on an outpatient basis. The evaluation shall be done by the community mental health center or licensed private practitioner designated by the commissioner to serve the court or, if the evaluation cannot be made by the center or the private practitioner, on an outpatient basis by the state hospital or the state-supported hospital designated by the commissioner to serve the court. If, and only if, the outpatient evaluator concludes that further evaluation and treatment are needed, the court may order the defendant hospitalized, and if in a department facility, in the custody of the commissioner for not more than thirty (30) days for further evaluation and treatment for competence to stand trial subject to the availability of suitable accommodations.

(2) At any stage of a felony criminal proceeding, including a pre-trial hearing, trial, sentencing, or post-conviction proceeding, the state may move or petition the court to authorize the district attorney general to designate a qualified expert to examine the defendant if the defendant gives notice that the defendant intends to offer testimony about the defendant's mental condition, whether in support of a defense of insanity or for any other purpose. The court may authorize the district attorney general to designate a qualified expert, who is willing to be appointed, to examine the defendant, if:

(A) An inpatient evaluator under subdivision (a)(1) notifies the court in a pre-trial proceeding that the type or extent of assessment required exceeds the expertise or resources available to the evaluator or exceeds the scope of analysis of the defendant's competence to stand trial, satisfaction of criteria for the insanity defense, or for commitment under chapter 6, part 5, of this title; or

(B) In any other type of felony criminal proceeding, the court determines that examination of the defendant by a qualified expert for the state is necessary to adjudicate fairly the matter before it.

(3) The amount and payment of expert fees shall be determined and paid by the state district attorneys general conference.

(4) (A) Except as provided in subdivision (a)(4)(B), during the post-conviction stage of a criminal proceeding, if it is believed that a defendant is incompetent to assist counsel in preparation

for, or otherwise participate in, the post-conviction proceeding, the court may, upon its own motion, order that the defendant be evaluated on either an outpatient or inpatient basis, as may be appropriate. If the defendant is indigent, the amount and payment of the costs for the evaluation shall be determined and paid for by the administrative office of the courts. If the defendant is not indigent, the cost of the evaluation shall be charged as court costs. If the evaluation cannot be done on an outpatient basis and if it is necessary to hospitalize the defendant in a department facility, hospitalization shall not be for more than thirty (30) days and shall be subject to available suitable accommodations. Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available suitable accommodations. Any costs incurred by the administrative office of the courts shall be absorbed within the current appropriation for the indigent defense fund.

(B) In a post-conviction proceeding in a capital case, if there is a question on the defendant's mental condition at the time of the commission of the crime when there has been no such prior evaluation or a question as to whether the defendant is intellectually disabled, the court may, upon its own motion or upon petition by the district attorney general or by the attorney for the defendant, and, if the matter is contested, after a hearing, order that the defendant be evaluated on an outpatient basis. If and only if the outpatient evaluator concludes that an inpatient evaluation is necessary, the court may order the defendant to be hospitalized for not more than thirty (30) days.

(5) Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available suitable accommodations.

(b) (1) If the court determines on the basis of the mental health evaluation and other relevant evidence:

(A) That the defendant is incompetent to stand trial because of mental illness; or

(B) (i) That the defendant is competent to stand trial but that the failure to hospitalize would create a likelihood to cause the defendant serious harm by reason of mental illness; and

(ii) The defense attorney agrees with those findings, the district attorney general or the attorney for the defense may petition the criminal court before which the case is pending or that would hear the case, if the defendant were bound over to the grand jury to conduct proceedings for judicial hospitalization under chapter 6, part 5, of this title.

(2) Either party may demand a jury trial on the issues.

(3) The court is vested with jurisdiction to conduct the proceedings.

(4) In the proceedings the court shall determine, in addition to the findings required by chapter 6, part 5 of this title, whether the defendant is substantially likely to injure the defendant or others if the defendant is not treated in a forensic services unit and whether treatment is in the defendant's best interest.

(5) If the court enters an order of judicial hospitalization, the defendant shall be transferred to the custody of the commissioner, and if the court finds in addition that the defendant is substantially likely to injure the defendant or others if the defendant is not treated in a forensic services unit and that treatment in the unit is in the defendant's best interests, the defendant shall be transferred to the custody of the commissioner at a forensic services unit designated by the commissioner. If the court commits a person under this subsection (b), the person comes into the commissioner's custody only if the forensic services unit has available suitable accommodations; provided, that, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state-owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Prior to transporting a defendant for such commitment, the sheriff or other transportation agent shall determine that the receiving facility has available suitable accommodations.

(c) When a defendant admitted under subsection (b) has been hospitalized for six (6) months, and at six-month intervals thereafter, the chief officer of the hospital shall file a written report with the clerk of the court by whose order the defendant was confined and shall give a copy of the report to the defendant, the defendant's attorney, the defendant's legal guardian or conservator, if any, and to the district attorney general. The chief officer shall also send a copy of the report to the defendant's parent, adult child, or spouse, whichever is appropriate, but at least one (1) of the three (3). The report shall detail the chief officer's best judgment as to the defendant's prospects for recovery, the defendant's present condition, the time required for relevant kinds of recovery, and whether there is substantial probability that the defendant will become competent to stand trial in the foreseeable future. This reporting obligation shall cease at the point that misdemeanor charges are retired for defendants with no other charges in accordance with subsection (d).

(d) If a defendant is found to be incompetent to stand trial, any misdemeanor charges pending at the time of the incompetency determination shall be retired no later than eleven (11) months and twenty-nine (29) days after the date of arrest when the misdemeanor charge or charges have not otherwise been disposed of except that no misdemeanor charges shall be retired pursuant to this subsection (d) if the defendant is restored to competency prior to the date on which the misdemeanor charge or charges would have otherwise been retired under this subsection (d).

HISTORY: Acts 1974, ch. 464, § 1; 1975, ch. 248, § 26; 1977, ch. 386, § 1; 1982, ch. 862, § 12; T.C.A., § 33-708; Acts 1985, ch. 437, § 26; 1987, ch. 143, § 4; 1998, ch. 978, §§ 1, 2; 2000, ch. 947, § 1; 2002, ch. 730, § 51; 2005, ch. 260, § 1; 2009, ch. 419, § 1; 2009, ch. 531, §§ 44, 46, 47; 2010, ch. 734, § 1; 2013, ch. 100, §§ 1, 2.

33-7-302. Determination and notice of restored competence to stand trial. —

When the chief officer determines that a defendant in a state hospital or treatment resource who is charged with a crime is restored to competence to stand trial, the chief officer shall give notice of that fact to the clerk of the court by whose order the defendant was confined and deliver the defendant to the sheriff of the county from which the defendant was admitted.
[Acts 1974, ch. 464, § 1; T.C.A. § 33-712; Acts 2000, ch. 947, § 1.]

(see 33-7-303 for statute concerning individuals found Not Guilty by Reason of Insanity)

Title 33, Chapter 7, Part 4 Tennessee Code Annotated
Mandatory Community Based Services

T.C.A. § 33-7-401

IF AND ONLY IF

(1) A court with criminal jurisdiction holds a hearing to commit an adult with mental illness under § 33-7-301, AND

(2) The court finds on proof by clear and convincing evidence that the person is:
   (A) Charged with a felony,
   (B) Incompetent to stand trial,
   (C) Not committable under § 33-6-502, and
   (D) At risk of becoming committable, AND

(3) The department certifies to the court that there are funds available within the limits of the department's line item appropriation for services under this section for service to the person,

THEN

(4) The court may order the person to participate in community-based services under a plan approved and developed by the department to attain and maintain competence to stand trial and reduce the risk of becoming committable.

T.C.A. § 33-7-402

If upon completion of an evaluation of a person under §33-7-301, the department determines that the person meets the standards in §33-7-401, subdivisions (2)(B), (C), and (D), and (3), the department shall attempt to develop a community-based services plan for the person for the purpose stated. The plan shall be for a maximum of two (2) years, and no person shall participate in such a plan for more than two (2) years.

T.C.A. § 33-7-403

If a defendant contests a plan by the department under §33-7-401, the court shall hold a hearing within seven (7) days of receipt of the request to determine whether the plan is programmatically appropriate and legally permissible. The court shall either approve the plan or approve the plan as modified by the department to correct deficiencies found by the court.

T.C.A. § 33-7-404

A service provider for a person under § 33-7-401 shall assess the person's needs at least every six months and shall report to the court every six months on the person's progress toward the goal of the plan, prospects for recovery, and whether there is substantial probability that the person will become competent to stand trial in the foreseeable future. A service provider may request the court to release the person from the plan at any time.

T.C.A. § 33-7-405

If after two years of intensive services for competence to stand trial under § 33-7-401, the person has not made substantial progress to attain competence to stand trial, the service provider shall assess the person's needs and may terminate the service plan and recommend to the court that the person be referred to other mental health services as deemed appropriate. The service provider shall report its conclusion to the court before terminating services.

COMPETENCY TO STAND TRIAL

Constitutional Basis

"Due process" rights are guaranteed by the Fifth Amendment of the U.S. Constitution, and specific rights of criminal defendants are guaranteed by the Sixth Amendment (e.g. speedy trial, right to confront witnesses, right to assistance of counsel). Competency to Stand Trial is considered implicit among these rights: "It is not 'due process of law' to subject an insane person to trial upon an indictment involving liberty or life." (Youtsey v. United States, 97 F. 937, 940-41 [6th Cir. 1899])

Tennessee Historical Note:
From *Jordan v. State*, 124 Tennessee 81 (1910): "It may therefore be said that if a person arraigned for crime is capable of understanding the nature and object of the proceedings going on against him, if he rightly comprehends his own condition in reference to such proceedings, and can conduct his defense rationally, he is, for the purpose of being tried, to be deemed sane, although on some other subjects his mind may be deranged or unsound."

Definitions of Competency

The common law criteria for competency are defined as 1) an ability to cooperate with one's attorney in one's own defense; 2) awareness and understanding of the nature and object of the proceedings; and 3) an understanding of the consequences of the proceedings.

From *Dusky v. United States*, 362 U.S. 402 (1960), 4 L.Ed. 2d 824, 80 S. Ct 788: "Whether the accused has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding whether he has a rational as well as factual understanding of the proceedings against him."

Tennessee adopted the *Dusky* standard in a 1984 Court of Criminal Appeals decision: **"The test for determining if a defendant is competent to stand trial is whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him."** (*State v. Johnson*, 673 S.W.2d 877, Tenn. Crim. App. 1984)

Defendants who have amnesia, or who claim to have amnesia for the events at the time of the crime are not considered incompetent simply because they cannot provide an account of their behavior to counsel (*Wilson v. U.S.,* 391 F.2d 460 [1968]). This opinion also confirms that competency is contextual: it depends upon the nature and complexity of this specific case.

The *Dusky* standard also applies to defendants who are going to represent themselves and plead guilty with no trial (*Godinez v. Moran,* 509 U.S. 389[1993]).

Indiana v. Edwards, 128 S. Ct. 2379 (2008) held that the ability for a defendant to actually represent himself and conduct his own trial is a different standard than being competent to stand trial or waive representation and plead guilty with no trial. That is, a trial court may determine that a defendant is competent to stand trial but not competent to represent himself and therefore require the

defendant to accept representation. This decision held that the standard to represent oneself would be determined by the trial judge in each particular case. We therefore no longer refer to defendants being "capable of defending themselves in court" when conducting evaluations under T.C.A. § 33-7-301(a) or -301(b).

Tennessee statistics on frequency of recommendation as competent to stand trial:

Fiscal Year	Outpatient -301(a)	Inpatient -301(a)
FY 19	68%	67%
FY 18	67%	70%
FY 17	68%	67%
FY 16	72%	75%
FY 15	71%	71%
FY 14	71%	71%
FY 13	72%	66%
FY 12	72%	73%
FY 11	72%	74%
FY 10	73%	72%
FY 09	72%	69%

Competency Assessment

A number of instruments or tools are available to assist with the evaluation process. The Competency Assessment Instrument (CAI) is most frequently used in Tennessee as a structured interview guide (without scoring items). Evaluators with expertise in use of other competency assessment instruments should feel free to use those, keeping in mind the necessity of correlating the results from any instrument to the competency criteria specific to the case. See Psychological Evaluations for the Courts (3rd Edition, 2007, Guilford Press) pp. 145-155 for a discussion of a range of instruments.

Competency Assessment Instrument (CAI)

The Center for Studies of Crime and Delinquency, National Institute of Mental Health, funded a five-year study by Dr. Louis McGarry, then associated with the Laboratory of Community Psychiatry, Harvard Medical School, to develop, validate, and demonstrate quantifiable clinical criteria for competency to stand trial. The study, published in 1973, was an attempt to alleviate confusion both in courts and the mental health profession.

The Competency Assessment Instrument was developed as part of this study. It is recommended for use as one of several tools for assessing competency. The CAI is described in Psychological Evaluations for the Courts (3rd Edition, 2007, Guilford Press) as playing "an important role in competency evaluations by providing and organized format for guiding the interview." (p. 148). The CAI and the initial study are extensively discussed in the monograph Laboratory of Community Psychiatry, Competency to Stand Trial and Mental Illness (1974).

Developed by A. L. McGarry, M.D., 1992 under NIMH Grant Project No. 7R01-MH-18112-01: DHEW Publication No. (ADM) 74-103 (FOR SCREENING ONLY)

Competency To Stand Trial Assessment Instrument*

		Evaluator's Comments
1.	Appraisal of available legal defenses	
2.	Unmanageable behavior	
3.	Quality of relating to attorney	
4.	Planning of legal strategy, including guilty plea to lesser charges where pertinent	
5.	Appraisal of role of: a) Defense counsel b) Prosecuting attorney c) Judge d) Jury e) Defendant f) Witnesses	______ ______ ______ ______ ______ ______
6.	Understanding of court procedure	
7.	Appreciation of charges	
8.	Appreciation of range and nature of possible penalties	
9.	Appraisal of likely outcome	
10.	Capacity to disclose to attorney available pertinent facts surrounding the offense including the defendant's movements, timing, mental state, actions at the time of the offense	
11.	Capacity to realistically challenge prosecution witnesses	
12.	Capacity to testify relevantly	
13.	Self-defeating v. self-serving motivation (legal sense)	

Examinee: ______________________________

Examiner: ______________________________

Date:

*Modified by TDMHSAS

Sample Interview Questions

1. Appraisal of available legal defenses
   a. How do you think you can be defended against these charges?
   b. How can you explain your way out of these charges?
   c. What do you think you lawyer should concentrate on in order to best defend you?

2. Unmanageable behavior
   a. Do you realize that you would have to control yourself in the courtroom and not interrupt these proceedings?
   b. When is the only time you can speak out in the courtroom?
   c. What do you think would happen if you spoke out or moved around in the courtroom without permission?

3. Quality of relating to attorney
   a. Do you have confidence in your lawyer?
   b. Do you think he/she is trying to do a good job for you?
   c. Do you agree with the way he/she has handled or plans to handle your case?

4. Planning of legal strategy including guilty pleas to lesser charges where pertinent
   a. If your lawyer can get the District Attorney to accept a guilty plea to (manslaughter) instead of trying you for (Murder – use examples relevant to the actual case, e.g., trespassing in place of breaking and entry, etc.), would you agree to it?
   b. If your lawyer decided not to have you testify, would you go along with him?
   c. Is there anything that you disagree with in the way your lawyer is going to handle your case, and if so, what do you plan to do about it?
5. Appraisal of role of: (In the courtroom during a trial, what is the job of the defense counsel?)
   a. Defense Counsel
   b. Prosecuting attorney
   c. Judge
   d. Jury
   e. Defendant
   f. Witnesses

6. Understanding of court procedure
   a. Who is the only one at your trial who can call on you to testify?
   b. After your lawyer is finished asking you questions on the stand, who then can ask you questions?
   c. If the District Attorney (prosecutor) asks you questions, what is he trying to accomplish?

7. Appreciation of charges
   a. What are you charged with?
   b. Is that a major or a minor charge?
   c. Do you think people-in-general would regard you with some fear on the basis of such a charge?

8. Appreciation of range and nature of possible penalties
    a. If you are found guilty as charged, what are the possible sentences the judge could give you?
    b. Where would you have to serve such a sentence?
    c. If you are put on probation, what does that mean?

9. Appraisal of likely outcome
    a. What do you think your chances are to be found not guilty?
    b. Does the court you are going to be tried in have authority over you?
    c. How strong a case do they have against you?

10. Capacity to disclose to attorney available pertinent facts surrounding the offense, including the defendant's movement, timing, mental state and actions at the time of the offense:
    a. Tell us what allegedly happened, what you saw and did and heard and thought before, during and after you are supposed to have committed this offense.
    b. When and where did all this allegedly take place?
    c. What led the police to arrest you and what did you say to them?

11. Capacity to realistically challenge prosecution witnesses
    a. Suppose a witness against you told a lie in the courtroom. What would you do?
    b. Is there anybody who is likely to tell lies about you in this case? Why?

12. Capacity to testify relevantly
    a. This item calls for an assessment of the accused's ability to testify with coherence, relevance and independence of judgment.

13. Self-defeating v. self-serving motivation (legal sense):
    a. We know how badly you feel about what happened – suppose your lawyer is successful in getting you off – would you accept that?
    b. Suppose the D.A. made some legal errors and your lawyer wants to appeal a guilty finding in your case – would you accept that?
    c. We know that you want to plead guilty to your charge – but what if your lawyer could get the D.A. to agree to a plea of guilty to a lesser charge – would you accept that?

Evaluation And Treatment Of Incompetent Defendants

- Adults are initially evaluated on an outpatient basis (whether at the jail or at the clinic, or in rare circumstances at a Department of Corrections facility when the defendant is there for safekeeping or is an inmate serving time for prior charges is facing trial on new charges)

- Persons seen for an outpatient evaluation who do not initially appear to be competent but could be rendered competent with some treatment or training on an outpatient basis should receive those services during the outpatient evaluation period, so that a recommendation of "competent" may be forwarded to the court.

- "If and only if the outpatient evaluator concludes that further evaluation and treatment are needed, the court may order the defendant hospitalized . . . for not more than thirty (30) days for further evaluation and treatment for competence to stand trial subject to the availability of suitable accommodations." T.C.A. Section 33-7-301(a)

- Many defendants who received a recommendation of "incompetent" or "deferred" on an outpatient basis are treated and "restored" to competency during the inpatient -301(a) period.

- Individuals who are considered incompetent at the completion of the -301(a) period may be committed to the hospital if they meet commitment criteria pursuant to Tennessee Code Annotated Title 33 Chapter 6 Part 5. Intellectually disabled defendants may be committed to DIDD under Title 33 Chapter 5 Part 4.

- Those found incompetent who are not committable or no longer committable may receive treatment on an outpatient basis for restoration to competency if they are charged with a felony and would be at risk for becoming committable if not treated (pursuant to T.C.A. Section 33-7-401 if mentally ill or T.C.A. Section 33-5-501 if intellectually disabled). They are subject to such a plan for no more than two years.

- Individuals who are committable may be hospitalized pursuant to T.C.A. Section 33-7-301(b) and receive treatment and restoration services until they are no longer committable. A report is submitted to the court pursuant to T.C.A. § 33-7-301(c) six months later and at six-month intervals thereafter detailing the defendant's prospects for recovery, present condition, the time required for recovery, and the probability of the defendant becoming competent in the foreseeable future.

- If an individual becomes competent to stand trial but remains committable, the court is notified and he stays at the hospital and continues to receive treatment to render them no longer committable. Court proceedings can continue.

- If an individual's condition improves so that they are no longer committable but remain incompetent, the individual will be discharged in consultation with the court.

INSANITY DEFENSE

The Law assumes that individuals have free will and shall be held accountable for their actions. The Insanity Defense is intended to protect individuals from prosecution who are robbed of their free will in significant ways because of a condition visited upon them, and are therefore legally and morally blameless. The Insanity Defense is also referred to as criminal responsibility or mental status at the time of the offense (MSO).

In the *Kahler v Kansas* (589 U.S. ___ 2020) opinion, the U.S. Supreme Court gave wide latitude to the states to determine how evidence of mental illness at the time of the crime would affect criminal responsibility, and included mitigation at sentencing, diminished capacity to form specific culpable mental states (e.g. intent), and findings of Guilty but Mentally Ill as forms of an insanity defense. The most common form of the insanity defense, however, results in a full acquittal: a finding of Not Guilty by Reason of Insanity (NGRI).

Sample Defenses:

Alibi/Failure of Government to Prove Case (you got the wrong guy)
Self-Defense (I had to do it)
Duress (I did it but only because of external circumstances; T.C.A. § 39-11-504)
Insanity (I did it but I was not criminally responsible): <u>affirmative & complete</u>

History and Foundation

There is evidence as far back as ancient Greek and Hebrew societies of traditions for excusing some citizens from prosecution for otherwise criminal acts because they were not considered responsible for their actions due to something we would think of as mental illness. Fundamental principles of criminal punishment **deterrence** and **retribution** would not apply to those who at the time of the offense either were not aware of what they were doing, or, in some jurisdictions, could not control themselves.

English common law has numerous examples of defendants being shielded from prosecution because of problems with their mental faculties, most often around the question of whether a defendant had been robbed of his ability to know good from evil or right from wrong. One standard suggested that a defendant should not be prosecuted if his reasoning was so impaired that he functioned at no higher a level than that of a "wild beast." (See Melton, et al, 2007, for additional detail).

Prompted by Daniel M'Naughten's attempted assassination of the British Prime Minister, the House of Lords announced in 1843 a formal standard for the insanity defense which is widely known as the M'Naughten rule(s):

To establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.

Although there have been subsequent changes in the form of the insanity defense since 1843, the M'Naughten rule(s) established:

1. The requirement of a threshold condition (mental disease or defect)
2. Specific "prongs" of impairment, such as the "cognitive prongs" of not knowing the nature of one's actions or the wrongfulness of one's actions
3. A direct link between the threshold condition and impairment on one of the "prongs" (the impairment must be due to the threshold condition)
4. The requirement that this impairment occurred specifically at the time of the offense

Some jurisdictions have subsequently added an "irresistible impulse" prong (a.k.a. the "volitional prong:" that due to a threshold condition the defendant was unable to resist the impulse to commit the crime, or a more general "unable to conform one's conduct to the requirements of the law").

In the 1950s the U. S. District Court in Washington, D.C. adopted the "product test" (originally proposed by New Hampshire in 1870) in the case of *Durham v. United States* (henceforth known as the Durham rule): the defendant was not criminally responsible if the act was the product of a mental illness. This was largely abandoned by the early 1970s due primarily to difficulty in defining what was or was not the "product" of mental illness.

Also in the mid-1950s, the American Law Institute (ALI) published a model penal code including a recommended standard for the insanity defense. This standard was adopted by the Supreme Court of Tennessee in *Graham v. State* in 1977(sometimes referred to as the "Graham standard") to replace the M'Naughten Rule(s) specifically because the M'Naughten Rule(s) applied to too few defendants and did not include a "volitional" prong. The standard in Tennessee from the 1977 publication of *Graham v. State* until July 1, 1995 was:

Insanity is a defense to prosecution if at the time of such conduct, as a result of mental disease or defect, the person lacked substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform that conduct to the requirements of the law. As used in this section, the terms "mental disease or defect" do not include any abnormality manifested only by repeated criminal or otherwise antisocial conduct.

- This standard still applies to cases in which the offense occurred between 1977 and July 1, 1995.
- Standard of "lacked substantial capacity" is lower than total lack of capacity.
- Prong of "appreciate" wrongfulness is more complex than "know" or "is aware of."
- "Wrongfulness" in *Graham* standard specifically to include moral/social wrongfulness and not just criminality.
- An exclusion of psychopathy as a threshold condition is introduced.

Backlash against the insanity defense beginning with the *United States v. John Hinckley, Jr.* case in the early 1980s resulted in a narrowing of the Tennessee standard after July 1, 1995, which is currently governed by T.C.A. Section 39-11-501:

Title 39 Definition of the Insanity Defense

Mental Status at Time of Alleged Offense

1. Insanity Defense Definition from Tennessee Code Annotated

T.C.A. § 39-11-501. Insanity

(a) It is an affirmative defense to prosecution that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature or wrongfulness of such defendant's acts. Mental disease or defect does not otherwise constitute a defense. The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

(b) As used in this section, "mental disease or defect" does not include any abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) No expert witness may testify as to whether the defendant was or was not insane as set forth in subsection (a). Such ultimate issue is a matter for the trier of fact alone.

[Acts 1989, ch. 591, § 1; 1995, ch. 494, § 1.]

- "Affirmative defense to prosecution" moves burden of proof to defense, by clear and convincing standard (not directly relevant to evaluator's task, but does make NGRI finding more difficult).
- Volitional prong removed: the question of the defendant's ability to control their behavior is no longer a proper issue for the insanity defense.
- The threshold condition must be a severe mental disease or defect.
- "Wrongfulness" is commonly understood to encompass both moral and legal wrongfulness (*Kelley v. State*, 2005 Tenn. Crim. App.). An inability to appreciate the moral wrongfulness of the acts constituting the offense, even if the defendant was able to appreciate the legal wrongfulness, would still be grounds for the insanity defense.
- Cognitive prongs are still disjunctive; inability to appreciate either nature or wrongfulness of act as a result of a threshold condition is grounds for acquittal (*State v. Arriola, 2009* Tenn. Crim. App.).
- Evaluator should not state a conclusion as to the "ultimate question" of whether a defendant was/was not legally insane at the time of the offense(s), but should speak only to the elements (presence/absence of threshold condition & any impairment on the "prongs" of the test) and allow the judge/jury to "connect the dots" and reach the ultimate conclusion.

Evaluation Process

Collateral information, such as independent accounts of the alleged offense(s) (e.g. police reports, victim/witness statements, 911 tapes) and background information (e.g. psychosocial history, previous treatment records, school/employment records), are very important elements of an evaluation of Mental Condition at the Time of the Offense (MCO), particularly in contrast to an assessment for diagnosis and treatment in which the subject's self-report may be the primary or even the only source of information. The background information is necessary for attempts to establish whether or not a threshold condition exists, and the collateral information is necessary to determine what if any effect a threshold condition had on the person's behavior at the time of the offense. Conclusions in an MCO evaluation must be prepared to withstand cross-examination, and so multiple sources of information are necessary. It is more clinically and professionally appropriate to respectfully decline to formulate a recommendation for the court when there is inadequate information available than to attempt to complete a report based on insufficient information.

Remember that defense attorneys and district attorneys general, as well as sheriffs and police, may not be familiar with what sort of documents are necessary for the completion of an MCO and may need to be pointed in the right direction for this information. Also, you should be making attempts to access these records directly using requests accompanied by releases of information.

- Does this person suffer from a severe mental disease or defect?
- Was this person suffering from a severe mental disease or defect at the time of the offense?
- Was the person unable to appreciate what it was they were doing when committing the acts which constituted the offense because of severe mental disease or defect, or was the person unable to appreciate that the acts constituting the offense were wrong because of severe mental disease or defect?

Myths About The Insanity Defense

- The insanity defense is overused by criminal defendants
- It is most frequently used in murder trials
- The trial is a battle of the expert witnesses
- There is little risk to the defendant-why not try it?

Facts About The Insanity Defense

- A number of studies involving several states have shown that the insanity defense is raised in less than 1% of all criminal cases. Acquittal rates vary from state to state, but on average the defense is successful in only 25% of those attempts.
- Insanity defense is used in cases of all types of charges, from misdemeanors to murder charges
- 90+% of NGRI findings are stipulated by both sides without a trial (the Tennessee Supreme Court noted that 97% of all criminal cases are resolved through plea bargains)
- Insanity acquittees spend on average more time in the hospital than they would have spent incarcerated if they had been convicted (see *Melton*. et al., 1997, for more detail)

Frequency of Recommendations and Adjudications of NGRI in Tennessee

Fiscal Year	Outpatient	Inpatient	Adjudicated NGRIs
FY 19	2%	14%	31
FY 18	2%	14%	32
FY 17	2%	21%	23
FY 16	2%	16%	25
FY 15	2%	18%	30
FY 14	3%	14%	29
FY 13	3%	15%	36
FY 12	2%	19%	39
FY 11	2%	16%	29
FY 10	2%	16%	33

Ch. 36 Insanity 36.06
T.P.I.-CRIM. 36.06

INSANITY AT TIME OF COMMISSION OF OFFENSE
(For Offenses Committed on or before June 30, 1995)

Included in the defendant's plea of not guilty is his plea that he was insane at the time of the commission of the offense. You are not to consider this defense unless you have found that the state has proven beyond a reasonable doubt that the existence of each essential element of the crime charged.[1]

A person is not responsible for criminal conduct if, at the time of such conduct as a result of mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.[2] A "mental disease or defect" is defined as any abnormal condition of the mind which substantially affects mental or emotional processes and impairs behavior controls. Behavior controls refer to the processes and capacity of a person to regulate and control his conduct.[3] The terms "mental disease or defect" do not include any abnormality manifested only by repeated criminal or otherwise antisocial conduct.[4]

The questions for your consideration are as follows:

1. Was the defendant suffering from a mental illness at the time of the commission of the crime?
2. Was the illness such as to prevent his knowing the wrongfulness of his act?
3. Was the mental illness such as to render him substantially incapable of conforming his conduct to the requirements of the law he is charged with violating?[5]

An affirmative finding as to the first question, plus an affirmative finding to either the second or third question would require a jury verdict of "not guilty" because of defendant's lack of criminal responsibility.

[Lay witnesses have testified with respect to their observations of defendant's appearance, behavior, speech and actions. Such persons are permitted to testify as to their own observations and other facts known to them. In weighing the testimony of such lay witnesses, you may consider the circumstances of each witness, his opportunity to observe the defendant and to know the facts to which he has testified, his willingness and capacity to expound freely as to his observations and knowledge, the basis for his opinion and

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[1] *United States v. Brawner*, 471 F.2d.969 (D.C. Cir. 1972)
[2] *Graham v. State*, 547 S.W.2d 531 (Tenn. 1977) ALI Model Penal Code §4.01 (1961)/
[3] *United States v Brawner*, 471 F2d 969 (D.C. Cir. 1972)
[4] *Graham v. State*, 547 S.W. 2d 531 (Tenn. 1977); ALI Model Penal Code§4.01 (1962)
[5] *Graham v. State*, 547 S.W. 2c 531 (Tenn. 1977)

conclusions, and the nearness or remoteness of is observations of the defendant in point of time to the commission of the offense charged.[6]

You may also consider whether the witness observed extraordinary or bizarre acts performed by the defendant. In evaluating such testimony, you should take into account the extent of the witness' observation of the defendant and the nature and length of time of the witness' contact with the defendant. You should bear in mind that an untrained person may not be readily able to detect mental disease or defect. Also, the failure of a lay witness to observe abnormal acts by the defendant may be significant only if the witness had prolonged and intimate contact with the defendant.[7]

You are not bound by the opinions of either expert or lay witnesses. You should not arbitrarily or capriciously reject the testimony of any witness, but you should consider the testimony of each witness in connection with the other evidence in the case and give it such weight as you believe it is entitled.[8]

In determining the defendant's mental status at the time of the alleged crime, the jury is entitled to look to evidence of his actions and words before, at, and immediately after the commission of the alleged crime.[9]

The law allows you to infer that the defendant is sane,[10] therefore, in the first instance, the state need not introduce any proof of the defendant's sanity. However, if the evidence adduced either by the defendant or the state raises a reasonable doubt as to the defendant's sanity, then the burden is upon the state to establish the defendant's sanity beyond a reasonable doubt.[11]

It is the exclusive province of the jury to determine whether the facts and circumstances shown by all the evidence in the case warrant the inference which the law permits the jury to draw. The inference may be rebutted by direct or circumstantial evidence or both, whether offered by the defendant or such exists in the evidence of the state and the burden of proof remains as always upon the state to prove beyond a reasonable doubt each and every element that constitutes the offense before the defendant can be convicted. Although not required by law to do so, when the defendant offers proof of an explanation to rebut the inference thus raised, you should consider such proof along with all the evidence to determine not only the correctness of the inference but the reasonableness of the defendant's explanation. You are not bound to accept either and, as aforesaid, the burden of proving guilt of the offense charged beyond a reasonable doubt is upon the state.

For the defendant to be held legally responsible for his conduct, the state must have proven beyond a reasonable doubt either that he was not suffering from a mental disease or defect, or that he

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[6] *United States v. Brawner*, 471 F. 2d 969 (D.C. 1972)

[7] *Id.*

[8] *United States v. Brawner*, 471 F.2d.969 (D.C. Cir. 1972) See also Edwards V. State, 540 S.W.2d. 641(Tenn. 1976); *Pyburn v. State*, 539 S.W.2d 835 (Tenn. Crim. App. 1975)

[9] *Mullendore v. State*, 183 Tenn. 53. 191 S.W.2d 149 (1945) Humphreys v. State, 531 S.W.2d. 127 (Tenn. Crim. App. 1975)

[10] *Spurlock v. State*, 212 Tenn. 132. 368 S.W.2c 299 (1963). Pyburn v. State, 539 S.W.2d 835 (Tenn. Crim. App. 1976.

[11] *Graham v. State*, 547 S.W. 2d. 531 (Tenn. 1977)

nevertheless had substantial capacity both to conform his conduct to the requirements of the law and to appreciate the wrongfulness of his conduct.[12]

If the state has not established these things beyond a reasonable doubt, or if you have a reasonable doubt as to whether, at the time of the commission of the offense, the defendant, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law, then you must find the defendant not guilty by reason of insanity.

If you find the defendant not guilty by reason of insanity, the form of your verdict shall be: "We find the defendant not guilty by reason of insanity."[13]

A verdict of not guilty by reason of insanity shall result in the automatic detention of the defendant in a mental hospital or treatment center, pending further medical and legal findings. [14]

COMMENT

The Model Penal Code test combines the essential elements of cognition, volition and capacity to control behavior. The test refines and restates the McNaughton rule. *Graham v. State*, 547 S.W.2d 531 (Tenn. 1977).

The actions of a defendant before and immediately after a homicide can justify a jury in disbelieving a psychiatrist's testimony. *Mullendore v. State*, 183 Tenn. 53, 191 S.W.2d 149 (1945).

The second to last paragraph is required in all criminal cases where the judge instructed the jury on the law relating to the defense of insanity.

The last paragraph can be deleted from the instructions at the judge's discretion. *Edwards v. State*, 540 S.W.2d 641 (Tenn. 1976); Tenn. Code Ann. § 33-7-303 (1985).

In determining whether defendant had a mental disease or defect when committing the crime, the whole personality of the defendant must be examined. *State v. Cherry*, 639 S.W.2d 683 (Tenn. Crim. App. 1982). The Court balanced the testimony of those who observed the defendant before the crime and psychiatrists, against the defendant's actions during the commission of the crime. In *State v. Green*, 643 S.W.2d 902 (Tenn. Crim. App. 1982) the Court focused on whether defendant had symptoms consistent with schizophrenia. The Court concluded the defendant was suffering from a mental disease or defect if he/she could not conform his/her behavior to the dictates of the law.

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[12] United States v. Brawner, 471 F.2d 969 (D.C. Cir. 1972). Graham v. State, 547 S.W.2d 531 (Tenn. 1977)

[13] Tenn. Code Ann. § 40-15-117 (1982)

[14] Tenn. Code Ann. § 33-6-303 (1985)

T.P.I. -CRIM. 40.16(b)
AFFIRMATIVE DEFENSE: INSANITY
(For Offenses Committed on or after July 1, 1995)

The defendant has raised the defense that [he][she] was insane at the time of the commission of the offense.

A person is not responsible for criminal conduct, if, at the time of the commission of the acts constituting the offense, the person, as a result of a severe mental disease or defect, was unable to appreciate the wrongfulness of such person's acts. A mental disease or defect by itself is not a defense. The terms" mental disease or defect" do not include any abnormality manifested only by repeated criminal or otherwise antisocial behavior.

The defendant has the burden of proving the defense of insanity. For you to return a verdict of not guilty by reason of insanity, the defendant must prove both of the following things by clear and convincing evidence:

(1) [he][she] had a severe mental disease or defect at the time that the acts constituting the crime were committed; and
(2) that as a result of this severe mental disease or defect, [he][she] was not able to understand what [he][she] was doing, or to understand that what [he] [she] was doing was wrong.

"Clear and convincing evidence" means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.

[Lay witnesses have testified with respect to their observations of defendant's appearance, behavior, speech, and actions. Such persons are permitted to testify as to their own observations and other facts known to them. Lay witnesses may express an opinion based upon those observations and facts known to them. In weighing the testimony of such lay witnesses, you may consider: the circumstances of each witness, his or her opportunity to observe the defendant and to know the facts to which he or she has testified, his or her observations and knowledge, the basis for his or her opinion and conclusion, and the nearness or remoteness of his or her observations of the defendant in point of time to the commission of the offense charged.

You may also consider whether the witness observed extraordinary or bizarre acts performed by the defendant. In evaluating such testimony, you should take into account the extent of the witness' observation of the defendant and the nature and length of the witness' contact with the defendant. You should bear in mind that an untrained person may not be readily able to detect mental disease or defect. Also, the failure of a lay witness to observe abnormal acts by the defendant may be significant only if the witness had prolonged and intimate contact with the defendant.]

Whether the defendant was insane as defined in these instructions is a question for you alone to decide.

In determining the defendant's mental status at the time of the alleged crime, the jury is entitled to look to evidence of [his][her] actions and words before, at, and immediately after the commission of the alleged crime.

If you find the defendant not guilty by reason of insanity, the form of your verdict shall be: "We find the defendant not guilty by reason of insanity."

A verdict of not guilty by reason of insanity shall result in the automatic detention of the defendant in a mental hospital or treatment center, pending further medical and legal findings.

INTOXICATION AND THE INSANITY DEFENSE

From the Tennessee Code Annotated:

T.C.A. § 39-11-503. Intoxication.

(a) Except as provided in subsection (c), intoxication itself is not a defense to prosecution for an offense. However, intoxication, whether voluntary or involuntary, is admissible in evidence if it is relevant to negate a culpable mental state.

(b) If recklessness establishes an element of an offense and the person is unaware of a risk because of voluntary intoxication; the person's unawareness is immaterial in a prosecution for that offense.

(c) Intoxication itself does not constitute a mental disease or defect within the meaning of § 39-11-501. However, involuntary intoxication is a defense to prosecution if, as a result of the involuntary intoxication, the person lacked substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform that conduct to the requirements of the law allegedly violated.

(d) The following definitions apply in this part, unless the context clearly requires otherwise:

(1) "Intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body

(2) "Involuntary intoxication" means intoxication that is not voluntary; and

(3) "Voluntary intoxication" means intoxication caused by a substance that the person knowingly introduced into the person's body, the tendency of which to cause intoxication was known or ought to have been known.

[Acts 1989,ch. 591, §1.]

Sentencing Commission Comments. Under prior Tennessee law, intoxication was not a defense unless it was so extreme as to negate a finding of the specific intent which was an essential element of the offense charged. See *State v. Adkins*, 653 S.W.2d 708 (Tenn. 1983). Subsection (a) retains this rule, permitting intoxication to be considered whenever the intoxication prevents the defendant from forming the required mental state.

Subsection (b) makes it clear that voluntary intoxication can never negate awareness of a risk where recklessness is sufficient to establish a culpable mental state of an offense.

Involuntary intoxication may suffice to negate any essential element of a defense including recklessness. The commission recognizes that a defendant who is not responsible for his or her intoxicated condition and either cannot control his or her conduct or is or is unable to appreciate its wrongfulness because of the intoxicated condition should be excused from criminal responsibility. Subsection (c) also preserves the rule that intoxication does not in and of itself constitute a mental disease or defect, sufficient to constitute insanity, unless the intoxication is found to be involuntary.

The definition of intoxication is sufficiently broad to include all substances which alter mental or physical capacity, including alcohol, marijuana, glue sniffing, and heroin. Cited: *State v. McPherson*, 882 S.W.2d 365 (Tenn. Crim. App. 1994); *State v. Brooks*, 909 S.W. 2d 854 (Tenn. Crim. App. 1995).

<u>Co-Occurrence And The Insanity Defense</u>

The onset of serious and persistent mental illnesses is often in early adulthood/late adolescence when substance abuse is also most common. Substance abuse can act as a trigger to episodes of mental illness, exacerbate existing symptoms, or impair treatment adherence leading to relapses of previously treated mental illness. When conducting an evaluation of mental status at the time of the offense when it appears that active symptoms of a mental illness and symptoms of voluntary intoxication were both present, consider these factors:

- Voluntary intoxication is not sufficient for a threshold condition for the insanity defense, but it does not *preclude* the insanity defense if a threshold condition of a mental illness existed in addition to voluntary intoxication.
- Look for (but don't hope for) a clear indication in the defendant's history that the onset of a mental illness preceded any substance abuse.
- Look for patterns in the defendant's course in which symptoms of mental illness were observed in the absence of intoxication (e.g. during extended hospitalizations).
- Look for a pattern following the index offense in which during incarceration and/or hospitalization, the relevant symptoms persisted long after detoxification from the substance abuse.
- Adhere closely to the standards and prongs of the insanity defense for the defendant's actions specifically at the time of the offense.
- Don't be afraid to say "I don't know:" to conclude that the defendant's impairment on either of the "prongs" of the insanity defense could be attributed to either voluntary intoxication or a threshold condition of mental illness but that they were too confounded to sort out reliably.

See also:

Carter-Yamauchi, C. (1998). Drugs, alcohol and the insanity defense: The debate over "settled" insanity. *Legislative Reference Bureau, Report 7.* Available at http://state.hi.us/lrb/rpts98/settled.pdf

Feix, J. & Wolber, G. (2007). Intoxication and settled insanity: A finding of not guilty by reason of insanity. *Journal of the American Academy of Psychiatry and Law, 35,* 172-182. Available at http://www.jaapl.org/ Search author Feix.

Meloy, J. (1992). Voluntary intoxication and the insanity defense. *Bulletin of the American Academy of Psychiatry and Law, 20,* 439-440.

DIMINISHED CAPACITY[15]

In order for a defendant to be found guilty of an offense, there must be a guilty act and a guilty mental state (*mens rea)*. Many offenses require specific mental states such as "intentional" or "knowing" or "premeditated." Evaluations of diminished capacity are based on the expert opinion that a defendant, because of mental impairment or disease, is incapable of possessing the specific mental state required to be guilty of a certain crime, and so may instead be culpable for some lesser offense. **The question for the expert evaluating diminished capacity is whether the defendant, at the time of the act constituting the offense, had the *capacity* to form the culpable mental state required for the alleged offense, and not whether the defendant *actually* did form this mental state.**

"(D)iminished capacity is not a defense that absolves the accused from culpability; rather, it is a rule of evidence which allows the introduction of evidence to negate the existence of specific intent when a defendant is charged with a specific-intent crime. . . . While the law presumes sanity it does not presume *mens rea*." (*State v. Phipps*, 883 S.W. 2d 143) The question under the insanity evaluation is whether a defendant should be held responsible for the crime. The question under the "diminished capacity" evaluation is what crime the defendant can be held responsible for.

Insanity	**Diminished Capacity**
Defense	Rule of Evidence
Sanity is presumed and insanity must be proven	State must prove *mens rea* beyond a reasonable doubt
Justification/Excuse from Punishment	Not a Justification/Excuse from Punishment
Not Responsible for Crime	Responsible for Lesser Crime
Acquittal	Conviction of Lesser Charge
Cannot use Voluntary Intoxication	Can use Voluntary Intoxication

Diminished capacity is a legal principle referring to the defendant's incapacity to form the "requisite specific intent" to commit a particular offense; that is the state of mind required for specific crime. Some crimes, by definition, do not require specific intent as an element of the crime (e.g. D.U.I.) and in those cases the concept is not (or should not) be used. Diminished capacity can be argued due to a specific mental condition or to drug or alcohol intoxication, for example. Criminal Responsibility Evaluations: A Manual for Practice. Shapiro, David. Professional Resource Publications, Sarasota, Florida, 1999.

T.C.A. § 39-11-302: Definitions of Culpable Mental State

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[15] Special thanks to Pamela Auble, Ph.D., ABPP and Kimberly P. Brown, Ph.D., ABPP for additions, comments, and edits.

(a) "Intentional"- Refers to a person who acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.

(b) "Knowing"- Refers to a person who acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly when the person is aware that the conduct is reasonably certain to cause the result.

(c) "Reckless"- Refers to a person who acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.

(d) "Criminal Negligence"- Refers to a person who acts with criminal negligence with respect to the circumstances surrounding that person's conduct or the result of that conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.

[Acts 1989, ch. 591, § 1.]

Tennessee case law (e.g., State v. Hall, 958 S.W.2d at 679–90 - 1997; State v. Wilson, 2015 WL 5170970), requires that testimony regarding the defendant's inability to form the requisite culpable mental state be caused by a mental disease or defect, not "just a particular emotional state or mental condition" at the time of the crime. T.C.A. §39-11-503(a) indicates that voluntary intoxication may be a condition which negates a culpable mental state. In addition, Tennessee case law requires that an expert's testimony is admissible only if the expert opines that the defendant had an "incapacity" to form the required mental state and not that this required mental state was impaired, reduced, or "diminished," thus making the term "diminished capacity" a misnomer. In other words, mental health evidence about diminished capacity is not admissible in Tennessee unless the evaluator can state that the defendant *completely lacked* the capacity to form the requisite intent.

The required culpable mental state for first degree murder is even more specific than simple "intent" as described above (see Title 39, Chapter 13, Part 2). Which culpable mental state is required can depend upon which part of the statute the defendant is being charged under. There are three types of first degree murder, for example, defined in T.C.A.§39-13-202(a); (a)(1), (a)(2), and (a)(3). In T.C.A.§39-13-202(a)(2), the offense of first degree murder is the killing of someone during the perpetration of another crime. In T.C.A.§39-13-202(a)(3), the alleged killing was the result of a bomb or destructive device. Both of these crimes require intentional acts, but do not require premeditation. Only first degree murder (premeditated killing) (T.C.A. §39-13-202(a)(1)) requires that the defendant engaged in premeditation, which is defined in subdivision (d) of that statute:

"Premeditation" is an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary

that the purpose to kill preexist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation. (Tennessee Code Annotated)

From the Tennessee Pattern Jury instructions, if the design to kill was formed with premeditation prior to the crime, but the defendant was in a state of excitement or passion when the design was carried out, then the defendant would still be found to have killed with premeditation. Alternatively, premeditation can be found if the decision to kill is first formed during a state of passion, but the accused commits the crime after the passion has subsided.

If an evaluator determines that "excitement and passion" associated with symptoms of a mental illness, or with intoxication, were present at the time of the alleged offense and/or that a mental illness or intoxication caused the individual to not be able to exercise reflection and judgment prior to the act, then the defendant may have diminished capacity to have formed the culpable mental state of "premeditation." First degree murder under §39-13-202(a)(2) or (a)(3), or second degree murder (§39-13-210) do not require premeditation.

Second degree murder requires that the defendant acted knowingly in killing a person . For second degree murder, the requirement of knowingly is also established if it is shown that the defendant acted intentionally (Tennessee Pattern Jury Instructions). Second degree murder does not require provocation from the alleged victim as is required in voluntary manslaughter.

A finding of diminished capacity does not absolve from culpability – it is not a defense to the crime. Rather, the results are most frequently used as either a plea bargaining tool, or a mitigating circumstance in setting the penalty, if convicted. The results of a diminished capacity evaluation can also be used at trial as support for the defense's argument that the defendant is guilty of a lesser crime than the one charged (for instance second degree murder instead of premeditated first degree murder). In order to perform a diminished capacity evaluation, you must be specifically ordered by the court to do so. Letters to the court reporting evaluation results should identify the crime, the culpable mental state and whether there was a mental condition at the time of the offense which caused the defendant to be incapable of forming the mental state necessary for that specific crime.

When conducting an evaluation of diminished capacity, the evaluator must first determine under what statute the defendant is being charged, and in some cases, under which *part* of the statute in order determine what the required culpable mental states are. If the charging documents in the collateral information are not clear, the evaluator will need to contact the prosecutor and/or defense attorney directly for clarification.

Questions in Diminished Capacity Evaluations

1. Was the defendant suffering from a mental disorder/intoxication at the time of the act?
2. If yes, which signs or symptoms of the disorder(s) was the defendant experiencing at the time?
3. Which mental abilities (e.g., perceptual, psychomotor, attention, reasoning, planning, judgment, decision making, initiation, etc.) were affected and to what extent?
4. How did those impaired mental abilities impact the mental element of the crime?

Examples:

1. Defendant is charged with aggravated burglary (unlawful entry into habitation with intent to commit a felony, assault, or theft) and aggravated assault after he kicked in the door of his

ex-girlfriend's apartment while she was sleeping, assaulted her causing significant bruising, and yelling at her to leave him alone. The defendant has a known history of mental illness and substance abuse and later reports that he had been hearing a female voice insulting him for some time and decided it was his ex-girlfriend sending him messages directly to his brain and he wanted to make her stop. He said he just wanted to talk to her, not assault her, but lost control. Evidence indicates the defendant had been drinking. He had not had contact with the ex-girlfriend for over a year prior to the offense. His report of auditory hallucinations insulting him is consistent with previous psychiatric records when he was not facing criminal charges.

Discussion: the fact that the defendant was able to travel specifically to his ex-girlfriend's apartment having decided she was harassing him is sufficient by itself to indicate that the defendant had the *capacity* to form the culpable mental state of intent. Whether his intention was to commit a felony (the aggravated assault) or just talk to her is not relevant to the evaluation of diminished capacity. The defendant may have support for the insanity defense if he had the delusional belief that is ex-girlfriend was sending messages to his brain and the only way to make her stop was to break in and confront her.

2. Defendant is charged with aggravated burglary (unlawful entry into habitation with intent to commit a felony, assault, or theft) when a homeowner finds the defendant in his house having forced his way in. The defendant, obviously intoxicated, at first yells at the homeowner asking him what he is doing here, then asks the homeowner "Where am I?" Evidence indicates that the defendant was at a party next door. He was observed trying to get into a locked closet and when asked what he was doing, said he wanted to go to the bathroom. A friend pointed him toward the actual bathroom but the defendant walked right past and toward the front door. Asked again what he was doing, the defendant said he was going home. Home security video from the victim's residence show the defendant urinating in the yard and then climbing the steps and forcing his was into the house.

Discussion: in this case, the defendant has made some statements of his intent to do something, but his subsequent actions were unrelated to the stated intent (he intends to go to the bathroom and then walks out of the house saying he was going home) and his behavior suggests severe intoxication. Whether the defendant intended to commit a felony upon entering the victim's house is a question for the judge or jury and not the expert. The expert evaluating diminished capacity may reach the opinion that the defendant's intoxicated behavior indicates the defendant did not have the capacity to form the culpable mental state of intent associated with the alleged offense. His behavior appears disorganized due to intoxication and unrelated to stated intentions.

3. Defendant is charged with first degree murder after stabbing her mother to death in the kitchen of the house they shared during a verbal altercation overheard by the defendant's sister from another room. The defendant has a known history of mental illness and substance abuse and reported that she was hearing the voice of God telling her that she should "just kill" her mother to stop her yelling. The defendant has reported hearing the voice of God during previous psychotic episodes unrelated to criminal behavior. Evidence shows that the defendant had made several calls to potential sources of drugs and was able to acquire crack cocaine (blood/urine analysis results were not available at the time of the evaluation). The defendant's report that her mother was yelling at her about her drug use is consistent with the sister's report. The defendant acknowledged that she stabbed her mother on purpose.

Discussion: There is evidence that the defendant was experiencing auditory hallucinations and was intoxicated following voluntary use of cocaine. The defendant's behavior and self-report of using a kitchen knife to stab her mother repeatedly indicates she had the capacity to form the culpable mental state of intent. Premeditation requires that the defendant be sufficiently free of "excitement and passion" to engage in reflection and judgment. An expert might conclude that the auditory hallucinations, cocaine intoxication, and verbal altercation with the victim rendered the defendant unable to engage in reflection and judgment necessary for premeditation. (NOTE: additional inquiry into the defendant's understanding of the auditory hallucinations did not reveal any associated delusional thinking which might have impaired the defendant's appreciation of the nature or wrongfulness of her actions, and therefore there was not support for the insanity defense.)

CULPABLE MENTAL STATES FOR SELECTED OFFENSES FOUND IN THE CRIMINAL SENTENCING REFORM ACT OF 1989

T.C.A. Section			
39-13-101	Assault	Part A	Intentionally, Knowingly or Recklessly
		Part B	Intentionally or Knowingly
		Part C	Intentionally or Knowingly
39-13-102	Aggravated Assault	Part A	Intentionally or Knowingly
		Part B	Intentionally or Knowingly
		Part C	Intentionally or Knowingly
		Part D	Intentionally or Knowingly
39-13-103	Reckless Endangerment		Intentionally, Knowingly or Recklessly
39-13-109	Criminal Exposure to HIV		Intentionally or Knowingly
39-13-202	First Degree Murder		Intentionally and with Premeditation (unless charged with Felony Murder)
39-13-210	Second Degree Murder		Intentionally or Knowingly
39-13-211	Voluntary Manslaughter		Intentionally or Knowingly
39-13-212	Criminally Negligent Homicide		Intentionally, Knowingly Recklessly or Criminally Negligent
39-13-213	Vehicular Homicide		Intentionally, Knowingly or Recklessly
39-13-215	Reckless Homicide		Intentionally, Knowingly or Recklessly
39-13-303	Kidnapping		Intentionally or Knowingly
39-13-304	Aggravated Kidnapping		Intentionally or Knowingly
39-13-305	Especially Aggravated Kidnapping		Intentionally or Knowingly
39-13-401	Robbery		Intentionally or Knowingly
39-13-402	Aggravated Robbery		Intentionally or Knowingly
39-13-403	Especially Aggravated Robbery		Intentionally or Knowingly
39-13-502	Aggravated Rape		Intentionally, Knowingly or Recklessly
39-13-503	Rape		Intentionally, Knowingly or Recklessly
39-13-504	Aggravated Sexual Battery		Intentionally
39-13-505	Sexual Battery		Intentionally
39-13-506	Statutory Rape		Intentionally, Knowingly or Recklessly
39-13-511	Indecent Exposure		Intentionally

39-13-522	Rape of a Child	Intentionally, Knowingly or Recklessly
39-14-103	Theft of Property	Intentionally or Knowingly
39-14-114	Forgery	Intentionally
39-14-121	Worthless Checks	Intentionally or Knowingly
39-14-205	Intentional Killing of an Animal	Intentionally or Knowingly
39-14-301	Arson	Intentionally or Knowingly
39-14-302	Aggravated Arson	Intentionally or Knowingly
39-15-302	Incest	Intentionally, Knowingly or Recklessly
39-15-402	Aggravated Child Abuse	Intentionally or Knowingly
39-15-401	Child Abuse and Neglect	Intentionally or Knowingly
39-16-605	Escape	Intentionally, Knowingly or Recklessly
39-16-609	Failure to Appear	Knowingly
39-17-101	Snake or Reptile Handling	Intentionally, Knowingly or Recklessly
39-17-309	Civil Rights Intimidation	Intentionally, Knowingly or Recklessly
39-17-308	Harassment	Intentionally
39-17-315	Stalking	Intentionally
39-17-417	Felony Drug Violation	Intentionally or Knowingly
39-17-418	Simple Possession or Casual Exchange	Intentionally, Knowingly or Recklessly

DEFENDANTS WITH INTELLECTUAL DISABILITY

Intellectually disabled defendants with no co-occurring mental illness should not be referred for inpatient evaluation and treatment under T.C.A. § 33-7-301(a) by the outpatient forensic evaluator. Under certain circumstances, the TDMHSAS forensic evaluator may requests assistance from the Department of Intellectual and Developmental Disabilities (DIDD) via the ID Assist process:

- If the defendant is competent despite there being evidence of an intellectual disability, the evaluator should simply report to the court that the defendant appears to have sufficient present ability to have a rational and factual understanding of the proceedings against him and the ability to consult with his attorney. No ID Assist is requested.
- If the defendant is incompetent and would not appear to benefit from training, the evaluator should report this finding to the court and note that the defendant may seek services at the DIDD regional office for that area. No ID Assist is requested.
- If the defendant is charged with at least one felony and appears to be incompetent to stand trial but might be trained to competence to stand trial (most mildly intellectually disabled defendants can achieve competence under the *Dusky* standard), the forensic evaluator should recommend that the court order training under Title 33, Chapter 5, Part 5. An ID Assist request should also be initiated by the forensic coordinator through the TDMHSAS Office of Forensic Services at the same time. The outpatient agency should request school records from the school board where the defendant attended school and should conduct some intellectual assessment unless results from a previous assessment are in the record.
- If the defendant is charged only with misdemeanors and appears to be incompetent, the court does not have the authority to order competency training. Therefore the outpatient evaluator will simply report this finding to the court and note that the defendant may seek services at the DIDD regional office for that area. No ID Assist is requested.
- If the defendant appears to meet commitment criteria under T.C.A. § 33-5-403, the evaluator should initiate an ID Assist request for committability *before* making any report to the court and await the recommendation of the DIDD expert. Meanwhile, the outpatient agency should request school records from the school board where the defendant attended school and should conduct some intellectual assessment unless results from a previous assessment are in the record. The Office of Forensic and Juvenile Court Services will communicate with DIDD to identify the service provider that will evaluate the defendant and determine if the

defendant meets commitment criteria under T.C.A. § 33-5-403. If the DIDD expert agrees the defendant meets commitment criteria, he/she will complete a certificate of need in accordance with T.C.A. § 33-5-404 and a second certificate should be completed by a licensed physician or licensed psychologist with health service provider designation at the outpatient agency who has examined the defendant.

T.C.A. § 33-5-404 requires two certificates of need be completed by licensed physicians or licensed psychologists with health service provider designation and that the two professionals be designated by the Commissioner of DIDD. Therefore it is necessary for the DIDD expert to be of the opinion that the defendant meets commitment criteria under T.C.A. § 33-5-403 for the commitment to proceed, regardless of the opinion of the community agency or RMHI staff. If the DIDD expert does opine that commitment criteria are met, the DIDD expert will complete one certificate of need and accept a second certificate of need from any properly licensed physician or psychologist as having been completed by a professional designated by DIDD to complete the second certification. DIDD could provide both certificates of need, but typically one will be provided by DIDD and one by a psychologist from the community agency or the RMHI (for inpatient evaluations). Please also note that for commitment under this statute, both certificates of need may be completed by licensed psychologists with health service provider designation. Unlike commitment under the mental health statutes in Title 33, Chapter 6, Part 5, it is not necessary for one of the certificates of need to be completed by a licensed physician.

Defendants with both an intellectual disability and a mental illness may require treatment of the mental illness before the actual level of intellectual functioning can be determined. Those cases may be referred for inpatient evaluation and treatment at an RMHI under T.C.A. § 33-7-301(a). Once the mental illness is stabilized, the same steps are taken as described above. If an ID Assist for committability under T.C.A. § 33-5-403 has been requested, it may be necessary to discharge the defendant before the ID Assist consultation can be completed since there is a 30-day limit for an inpatient evaluation under T.C.A. § 33-7-301(a). In this case, the court should be notified that a consultation from DIDD has been requested and that the court will be notified of results when they are available.

PURPOSE STATEMENT

The certified mental health professional conducting the forensic evaluation shall, prior to beginning the evaluation, inform the defendant of the reason for the evaluation and how the information is to be used. The defendant must be advised that the court has ordered the assessment and that the examiner will report his/her findings to the court.

An example of the language for documentation is as follows:

STATEMENT INFORMING DEFENDANT OF PURPOSE OF EVALUATION

Statement Informing Defendant of Purpose of Evaluation

A pre-trial forensic evaluation was ordered by the ________________________________ Court for ____ on ___________________________ and the purpose of this evaluation was discussed. I explained that the court ordered this (competency/insanity defense) evaluation to take place with the knowledge of the defendant's attorney. I further explained that when the evaluation is completed, a letter will be sent to the court conveying the results of the evaluation and that copies will be sent to the defendant's attorney as well as the district attorney general. ____________________________________ was given an opportunity to ask questions about the procedures before the interview started.

____
Evaluator

____
Date

SAMPLE - REPORT OUTLINE

FORENSIC EVALUATION FOR COMPETENCY AND MENTAL CONDITION

Date

Demographic Data
- Judge's name
- Statute Number and specific requests of the court
- Charges
- When and where the evaluation was conducted

Confidentiality Statement

1. Inform the defendant of the following:

- Purpose of the evaluation
- Evaluation pursuant to court order
- Report will be prepared for the court
- Examination is not confidential

2. Indicate that the defendant understood/did not understand.

Sources of Information

1. Cite all collateral information obtained:

- For personal or telephone contacts, include name of person, their professional title/affiliation and date of contact
- List all records reviewed with facility name, address, telephone number and always include police report
- List any correspondence with others with names, affiliations and dates

2. Note that defendant signed appropriate releases of information

Legal Situation/Statement of Facts
- State current charges and date of charges
- Detailed description of incident from reports submitted if evaluating insanity defense
- Indication of defendant’s ability/inability to provide coherent account of offense
- Incarcerated, on bond

Background Information

The following information will be a combination of information from the defendant and collateral sources previously listed. The goal is to include enough information for a coherent picture of the defendant while minimizing irrelevant and unnecessary information.
- Place of birth born and current residence, brief description of family origin including siblings
- School and last grade completed, quality of adjustment, academic achievement, behavior problems, special vs. regular classes, military experience, vocational training, etc.
- Employment history
- Marriage, children

- Current source of income, including entitlements; if defendant receives SSI or SSDI, specify reason
- Arrest history (if relevant) including charges, convictions, probation, incarceration
- Other unusual circumstances, if relevant

Medical/Substance Use/Psychiatric History

- Medical history, current symptoms and/or diagnosis, current medication(s), compliance with treatment, cite source of this information,
- Substance use history (specific substance, age of onset, pattern of use, route of administration, treatment history, current use, etc.),
- Past and current psychiatric treatment history, symptoms and/or diagnosis, current medication(s), compliance with treatment, name of provider if currently in treatment.

Mental Status Examination

- How defendant presented for examination
- Orientation
- General estimate of level of intellectual functioning
- Quality of speech
- Form of thinking (i.e., coherent, disorganized)
- Content of thinking (i.e., delusions, hallucinations)
- Memory
- Mood/affect (include symptoms of depression, suicidal ideation, homicide ideation)
- Attention/Concentration
- Ability to abstract
- Fund of knowledge
- Homicidal/Suicidal thoughts (presence of either requires further inquiry into imminence of risk: has defendant formulated a plan, or identified a victim, etc.)

Competency Issues

Mental Condition at the Time of the Alleged Crime

Conclusion

- State opinion
- Summarize basis for opinion
- Recommendations and basis for recommendations
- Identify any case law that would assist in supporting your decision. (optional)

Signature/Credentials

Outpatient T.C.A. § 33-7-301 (a); Competent, Does/Does Not have Insanity Defense

(Date)

Judge (Name)
(County Criminal/Circuit/General Sessions Court)
(Address)
(City), Tennessee (Zip Code)

RE: State of Tennessee vs. (Name)
Case # (######)

Dear Judge (Name):

Patient's Name was referred to this agency by order of your court to determine his/her competency to stand trial and his/her mental condition at the time of the alleged offense(s) of list charges.

After completion of the competency evaluation, we have concluded that (he/she) has sufficient present ability to consult with (his/her) lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against (him/her). In making this determination, it was concluded that (he/she) does understand the charges pending against (him/her) and the consequences that may follow, and is able to advise counsel and participate in (his/her) own defense.

With regard to (Name)'s mental condition at the time of the alleged offense, it is the opinion of the staff that at the time of the commission of the acts constituting the alleged offense(s), severe mental disease or defect did/did not prevent the defendant from appreciating the nature or wrongfulness of such acts pursuant to T.C.A. § 39-11-501.

If you have any questions about this case, please do not hesitate to contact me at (###) ###-####.

Sincerely,

(Name)
(Title)

cc: (Name), District Attorney General's Office
(Name), Defense Attorney
(Name), TDMHSAS Forensic Specialist

Outpatient T.C.A. § 33-7-301 (a) Sample – Refer for Inpatient Evaluation

(Date)

The Honorable ____________________
(County, Criminal/Circuit, General Sessions Court)
(Address)
(City), Tennessee (Zip Code)

RE: State of Tennessee v. (Name of Defendant)
Docket # ______________

Dear Judge _____________:

Patient's Name was referred to CMHC by order of your court to determine his/her competency to stand trial and his/her mental condition at the time of the alleged offense(s) of list charges.

It is our opinion that a more comprehensive evaluation is needed in order to make a determination of competency to stand trial and/or mental condition at the time of the alleged offense. It will be necessary for the Court to issue an order for an inpatient evaluation to _______________ Mental Health Institute for a more comprehensive evaluation. The contact person at that facility is _______________ , Forensic Coordinator at (###) ###-####.

If you have any question do not hesitate to call ______________, Forensic Coordinator, at phone number.

Sincerely,

Name of referring Ph.D./M.D.

cc: District Attorney (Name)
Defense Attorney (Name)
(Name) RMHI Forensic Coordinator
(Name) TDMHSAS Forensic Specialist

Outpatient T.C.A. § 33-7-301(a) recommending DIDD competency training

Date

The Honorable ___________
Judge, (County, Criminal/Circuit, General Sessions Court)
(Address)
(City), Tennessee (Zip Code)

RE: State of Tennessee v. (Name of Defendant)
Docket # ______________

Dear Judge Last Name:

Patient's Name was referred to agency by order of your court to determine his/her competency to stand trial and his/her mental condition at the time of the alleged offense(s) of list charges.

After completion of the competency evaluation, we have determined that due to intellectual disability, the defendant does not have sufficient present ability to consult with his/her lawyer with a reasonable degree of rational understanding and/or a rational as well as factual understanding of the proceedings against him/her. In making this determination, it is found that the defendant does not understand the nature of the legal process, the charges against him/her and/or the consequences that may follow, and cannot advise counsel and/or participate in his/her own defense.

With regard to (Name)'s mental condition at the time of the alleged offense, it is our opinion that at the time of the commission of the acts constituting the alleged offense(s), severe mental disease or defect did/did not prevent the defendant from appreciating the nature or wrongfulness of such acts pursuant to T.C.A. § 39-11-501.

In regard to involuntary commitment, we have determined that patient's name does not meet the standards for commitment to the custody of the Commissioner of the Department of Intellectual & Developmental Disabilities (DIDD). We recommend the court consider ordering the defendant to participate in outpatient treatment under T.C.A. § 33-5-501 to be provided by DIDD. The order may be forwarded to (DIDD Regional Office).

If you have any questions do not hesitate to call (Forensic Coordinator) at phone number.

Sincerely,

Name
Title

cc: District Attorney (Name)
Defense Attorney (Name)
(Name) DIDD Central Office
(Name) TDMHSAS Forensic Specialist

Outpatient T.C.A. § 33-7-301(a) recommending commitment to DIDD

Date

The Honorable ___________
Judge, (County, Criminal/Circuit, General Sessions Court)
(Address)
(City), Tennessee (Zip Code)

RE: State of Tennessee v. (Name of Defendant)
Docket # ______________

Dear Judge Last Name:

Patient's Name was referred to agency by order of your court to determine his/her competency to stand trial and his/her mental condition at the time of the alleged offense(s) of list charges.

After completion of the competency evaluation, we have determined that due to intellectual disability, the defendant does not have sufficient present ability to consult with his/her lawyer with a reasonable degree of rational understanding and/or a rational as well as factual understanding of the proceedings against him/her. In making this determination, it is found that the defendant does not understand the nature of the legal process, the charges against him/her and/or the consequences that may follow, and cannot advise counsel and/or participate in his/her own defense.

We have also determined that the defendant meets criteria under T.C.A. § 33-5-403 for commitment to the custody of the Commissioner of the Department of Intellectual and Developmental Disabilities (DIDD). Please find attached two certificates of need completed in accordance with T.C.A. § 33-5-404.

(NOTE: If case is still in General Sessions Court, include statement) If the court desires to have *(him/her)* committed under T.C.A. § 33-5-403, then *(his/her)* case will need to be transferred to the jurisdiction of a criminal or circuit court.

Opinions on the questions of mental capacity at the time of the crime have been deferred pending commitment to and habilitation by DIDD. If you have any questions do not hesitate to call (Forensic Coordinator) at phone number.

Sincerely,

Name
Title

cc: District Attorney (Name)
Defense Attorney (Name)
(Name) DIDD Central Office
(Name) TDMHSAS Forensic Specialist

Inpatient T.C.A. § 33-7-301(a); Competent; Yes/No Insanity Defense; Not Committable

(Date)

Judge *(Name)*
(County Criminal/Circuit/General Court)
(Address)
(City), TN (Zip Code)

RE: State of Tennessee vs. (*Name)*
Case # *(######)*

Dear Judge *(Name)*:

(Name) was admitted to *(RMHI)* on *(Date)*, by order of your Court. *(He/She)* was sent here for an evaluation of *(his/her)* ability to stand trial on the charge(s) of *(Charges)*.

After completion of the competency evaluation, we have concluded that (*he/she)* has sufficient present ability to consult with (*his/her)* lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against (*him/her)*. In making this determination, it was concluded that *(he/she)* does understand the charges pending against *(him/her)* and the consequences that may follow, and is able to advise counsel and participate in *(his/her)* own defense.

With regard to (Name)'s mental condition at the time of the alleged offense, it is the opinion of the staff that at the time of the commission of the acts constituting the alleged offense(s), severe mental disease or defect did/did not prevent the defendant from appreciating the nature or wrongfulness of such acts pursuant to T.C.A. § 39-11-501.

(Mr./Ms.) (Name) was discharged and returned to the custody of the *(County)* Sheriff's Department.

We have informed *(Name)*, Forensic Coordinator at *(CMHC)*, of our evaluation recommendations. We have recommended that that outpatient provider provide follow-up forensic services.

If you have any questions about this case, please do not hesitate to contact me at *(###) ###-####*.

Sincerely,

(Name)
(Title)

cc: *(Name)*, District Attorney General's Office
(Name), Defense Attorney
(Name), (CMHC)
(*Name),* TDMHSAS Forensic Specialist

Inpatient T.C.A. § 33-7-301(a); Incompetent, Does/Does Not have Insanity Defense, Committable

(Date)

Judge (Name)
(County Criminal/Circuit/General Court)
(Address)
(City), Tennessee (Zip Code)

RE: State of Tennessee vs. (Name)
Case # (######)

Dear Judge (Name):

(Name) was admitted to (RMHI) on (Date), by order of your Court. (He/She) was sent here for an evaluation of (his/her) ability to stand trial and an assessment of (his/her) mental status at the time of the offense of (Charges).

After completion of the competency evaluation, the staff is of the opinion that *(Name)*'s condition is such that *(he/she)* is not capable of adequately assisting in *(his/her)* defense in a court of law. In making this determination, it was concluded that *(he/she)* does not understand the charges pending against *(him/her)* and the consequences which may follow, and is not able to advise counsel and participate in *(his/her)* own defense.

With regard to (Name)'s mental condition at the time of the alleged offense, it is the opinion of the staff that at the time of the commission of the acts constituting the alleged offense(s), severe mental disease or defect did/did not prevent the defendant from appreciating the nature or wrongfulness of such acts pursuant to T.C.A. § 39-11-501. (Note: Opinion on insanity defense may be *deferred* for further evaluation following commitment.)

The staff are further of the opinion that (Name) does meet the standards of judicial commitment to a mental health institute pursuant to the provisions of T.C.A. § 33-7-301 (b) and Title 33, Chapter 6, Part 5, Tenn. Code Ann. The staff recommends that (Name) be committed to (RMHI). The facility contact individual at this institute is (Name), Forensic Coordinator, who may be contacted at (###) ###-####. The staff of (RMHI) is willing to assist with the judicial commitment procedures. Please notify us as to what action is desired. Enclosed you will find two certificates of need for commitment. (NOTE: If case is still in General Sessions Court, include statement) If the court desires to have *(him/her)* committed under T.C.A. § 33-5-403, then *(his/her)* case will need to be transferred to the jurisdiction of a criminal or circuit court.

(Mr./Ms.) (Name) was discharged from inpatient status and returned to the custody of the (County) Sheriff's Department. We have informed (Name), Forensic Coordinator at (CMHC), of our evaluation recommendations.

Honorable Judge (Name)
(Date)
Page (#)

Should there be a future need for mental health services for this defendant, then contact should be made with the forensic coordinator or the local crisis stabilization team.

If you have any questions about this case, please do not hesitate to contact me at (###) ###-####.

Sincerely,

(Name)
(Title)

cc: (Name), District Attorney General's Office
(Name), Defense Attorney
(Name), (CMHC)
(Name), TDMHSAS Forensic Specialist

Inpatient T.C.A. § 33-7-301(a);
Incompetent due to Intellectual Disability, No Insanity Defense, Not Committable, Trainable

(Date)

Judge *(Name)*
(County Criminal/Circuit/General Court)
(Address)
(City), Tennessee (Zip Code)

RE: State of Tennessee vs. (*Name)*
Case # *(######)*

Dear Judge *(Name)*:

(Name) was admitted to *(RMHI)* on *(Date)*, by order of your Court. *(He/She)* was sent here for an evaluation of *(his/her)* ability to stand trial on the charge(s) of *(Charges)*, and an assessment of *(his/her)* mental status at the time of the alleged offense.

It is our opinion that *(Name)* is currently incompetent to stand trial as a result of intellectual disability. After completion of the competency evaluation, the staff is of the opinion that *(Name)*'s condition is such that *(he/she)* is not capable of adequately assisting in *(his/her)* defense in a court of law. In making this determination, it was concluded that *(he/she)* does not understand the charges pending against *(him/her)* and the consequences which may follow, and is not able to advise counsel and participate in *(his/her)* own defense.

With regard to (Name)'s mental condition at the time of the alleged offense, it is the opinion of the staff that at the time of the commission of the acts constituting the alleged offense(s), severe mental disease or defect did/did not prevent the defendant from appreciating the nature or wrongfulness of such acts pursuant to T.C.A. § 39-11-501.

It is also the opinion of the clinicians that the standards for commitment to a secure facility for the intellectually disabled have not been met pursuant to the provisions of T.C.A. § 33-5-403.

It is recommended that the court issue an order for mandatory outpatient treatment for training in competency to stand trial under T.C.A. § 33-5-501 to the Department of Intellectual and Developmental Disabilities. A completed order may be forwarded to (*Name of DIDD contact with contact information).* We have notified *(Name)*, at *(CMHC)*, of our recommendations. We have made a referral for aftercare services during this interim period in the jail. If there is a need for any emergency mental health services in jail, then it is suggested that the local mobile crisis team be contacted.

Please feel free to contact me at *(###) ###-####* if you have questions about this matter.

Sincerely,

(Name)
(Title)

cc: *(Name)*, District Attorney General's Office
(Name), Defense Attorney
(Name), Dept. of Intellectual & Developmental Disabilities
(*Name),* Outpatient Evaluation Provider
(Name), TDMHSAS Forensic Specialist

Inpatient T.C.A. § 33-7-301(a);
Incompetent due to Intellectual Disability, No Insanity Defense, Not Committable, Not Trainable

(Date)

Judge *(Name)*
(County Criminal/Circuit/General Court)
(Address)
(City), Tennessee (Zip Code)

RE: State of Tennessee vs. (*Name)*
Case # *(######)*

Dear Judge *(Name)*:

(Name) was admitted to *(RMHI)* on *(Date)*, by order of your Court. *(He/She)* was sent here for an evaluation of *(his/her)* ability to stand trial on the charge(s) of *(Charges)*, and an assessment of *(his/her)* mental status at the time of the alleged offense.

It is our opinion that *(Name)* is currently incompetent to stand trial as a result of intellectual disability and is unlikely to be able to attain competence through training or habilitation. We are deferring our opinion on the defendant's ability to appreciate the nature or wrongfulness of the acts constituting the offense (or It is also our opinion that *(Name)*'s condition was such that he/she was able/unable to appreciate the nature or wrongfulness of the acts constituting the offense as a result of intellectual disability (i.e. mental defect)) pursuant to the provisions of T.C.A. § 39-11-501.

It is also the opinion of the clinicians that the standards for commitment to a secure intellectual facility have not been met pursuant to the provisions of T.C.A. § 33-5-403.

(Name) may seek services through the Regional Office of the Department of Intellectual and Developmental Disabilities *(Regional Office contact information)*. Please feel free to contact me at *(###) ###-####* if you have questions about this matter.

Sincerely,

(Name)
(Title)

cc: *(Name)*, District Attorney General's Office
(Name), Defense Attorney
(Name), Dept. of Intellectual & Developmental Disabilities
(*Name),* Outpatient Evaluation Provider
(Name), TDMHSAS Forensic Specialist

RMHI Six-Month Report on T.C.A. § 33-7-301(b)

(Date)

Judge ___________
(County Criminal/Circuit/General Court)
(Address)
(City), Tennessee (Zip Code)

RE: State of Tennessee vs. (Name)
Docket # (######)
Report on Competency

Dear Judge (Name):

(Name) was committed as competent/not competent to stand trial and in need of inpatient hospitalization by order of your court on (Date), under T.C.A. § 33-7-301(b) and Title 33 Chapter 6, Part 5, Tenn. Code Ann.

Regarding the matter of the defendant's competency to stand trial, it is the opinion of the staff that (Name) remains incompetent to stand trial and unable to assist (his/her) attorney in matters related to (his/her) trial. The prospects for the defendant's recovery are good/guarded/poor within the next six months, and we believe there is/is not a substantial probability that the defendant will become competent to stand trial.

It also continues to be the clinical staff's opinion that (Name) remains committable and in need of continued hospitalization in accordance with the current order pursuant to T.C.A.§ 33-7-301(b) and Title 33, Chapter 6, Part 5, Tenn. Code Ann.

Please contact me at (###) ###-#### if you have any questions or wish to discuss this matter.

Sincerely,

(Name)
(Title)

cc: (County Criminal/Circuit/General Court Clerk)
(Name), District Attorney General's
(Name), Defense Attorney
(Name), (CMHC)
(Patient Name)
(Name Nearest Relative/Conservator as applicable)
(Name TDMHSAS Forensic Specialist)

T.C.A. § 33-7-301(b); Competent, Remains Committable

(Date)

Judge *(Name)*
(County General/Circuit/Criminal Court)
(Address)
(City), TN (Zip Code)

RE: State of Tennessee vs. (*Name)*
Case # *(######)*

Dear Judge *(Name)*:

(Name) was admitted to *(RMHI)* on *(Date)*, by order of your Court. *(He/She)* was sent here for treatment and ongoing evaluation of *(his/her)* ability to stand trial for the charge(s) of *(Charges). (Mr./Ms.) (Name)* was committed as not competent to stand trial, but in need of inpatient hospitalization by order of your Court on *(date)*, pursuant to the provisions of T.C.A. § 33-7-301(b) and Title 33, Chapter 6, Part 5, Tenn. Code Ann.

The staff are of the opinion that *(Name)*'s condition has improved such that *(he/she)* now has sufficient present ability to consult with (*his/her)* lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against (*him/her)*. In making this determination, it was concluded that *(he/she)* is able to advise counsel and participate in *(his/her)* own defense.

It is also the opinion of the staff that *(Name)* continues to meet the standards for commitment to this regional mental health institute pursuant to T.C.A. § 33-7-301(b) and Title 33, Chapter 6, Part 5, Tenn. Code Ann. This continuing commitment, however, in no way precludes the setting of a date for a resolution of the pending criminal charges.

If you have any further questions about this case, please do not hesitate to contact me at
(###) ###-####.

Sincerely,

(Name)
(Title)

cc: *(Name)*, District Attorney General's Office
(Name), Defense Attorney
(Name), (CMHC)
(Patient Name)
*Name (*Nearest Relative/Guardian as applicable*)*
TDMHSAS, Forensic Specialist

T.C.A. § 33-7-301(b); Now Competent, No Longer Committable

(Date)

Judge *(Name)*
(County Criminal/Circuit/General Court)
(Address)
(City), TN (Zip Code)

RE: State of Tennessee vs. (*Name)*
Case # *(######)*

Dear Judge *(Name)*:

(Name) was admitted to *(RMHI)* on *(Date)*, by order of your Court. *(He/She)* was sent here for treatment and an evaluation of *(his/her)* ability to stand trial on the charge(s) of *(Charges). (Mr./Ms.) (Name)* was committed as not competent to stand trial, but in need of inpatient hospitalization by order of your Court on *(date)*, pursuant to the provisions of T.C.A. § 33-7-301(b).

The staff is of the opinion that *(Name)*'s condition has improved such that *(he/she)* now has sufficient present ability to consult with (*his/her)* lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against (*him/her)*. In making this determination, it was concluded that *(he/she)* is able to advise counsel and participate in *(his/her)* own defense.

It is also the opinion of the staff that *(Name)* no longer meets the standards for commitment pursuant to T.C.A. § 33-7-301(b) and Title 33, Chapter 6, Part 5, Tenn. Code Ann. We will be releasing him to the custody of the *(County Name)* County Sheriff's Department as soon as arrangements can be made for *(him/her)* to return to jail.

We have notified *(name)*, Forensic Coordinator at *(CMHC)*, of our recommendations, and have made a referral for follow-up forensic aftercare services while the defendant is in jail pending a resolution of the charges.

If you have any further questions, please feel free to contact me at *(###) ###-####.*

Sincerely,

(Name)
(Title)

cc: *(Name)*, District Attorney General's Office
(Name), Defense Attorney
(Name), (CMHC)
(Name), TDMHSAS Forensic Specialist
(Patient Name)
Name (Nearest Relative/Guardian as applicable)

Sample RMHI Recommending Mandatory Community Based Services

RMHI LETTERHEAD

The Honorable _________
Judge, (County, Criminal/Circuit/General Court)
Address
City, State Zip

RE: State of Tennessee v. (Name of defendant)
Docket # __________

Dear Judge ________:

____________ was admitted to _____________ Mental Health Institute on _______________, by order of your court. *He/she* was *evaluated/committed* pursuant to the provisions of T.C.A. § 33-7-301(a) or T.C.A. § 33-7-301(b) and Title 33, Chapter 6, Part 5 Tenn. Code Ann. on the charge of _________________.

After completion of the most recent period of evaluation and/or treatment, we have concluded that (*he/she)* does not have sufficient present ability to consult with (*his/her)* lawyer with a reasonable degree of rational understanding nor a rational as well as factual understanding of the proceedings against (*him/her)*. In making this determination, it was concluded that *he/she* lacks the ability to cooperate with *his/her* attorney in *his/her* own defense, that *he/she* lacks an awareness and understanding of the nature and object of the proceedings, and lacks an understanding of the consequences of the proceedings. It has been determined that *Mr./Mrs.* ______________ may possess the ability to gain competence if further training is provided.

The staff further determined that *Mr./Mrs.* __________________ does not meet the standards for judicial commitment to a mental health institute pursuant to Title 33, Chapter 6, Part 5, Tenn. Code Ann., but is at risk of becoming committable if community services are not provided.

Therefore, the treatment team recommends that ________________ be discharged under the provisions of Mandatory Community Based Services in accordance with the statutory guidelines presented in Title 33, Chapter 7, Part 4, Tenn. Code Ann.

A Mandatory Community Based Services Plan has been developed in conjunction with _________________ Mental Health Center. Attached is a copy of the plan developed for *Mr./Mrs.* _______________, who has agreed to participate in the plan developed. Enclosed is a sample court order for Mandatory Community Based Services determination by the court in accordance with the provisions of Title 33, Chapter 7, Part 4, Tenn. Code Ann.

Sample RMHI Recommending Mandatory Community Based Services (cont.)

Mr./Mrs. ________________ has been released back to _______________. Please feel free to call if you have any further questions or concerns.

Sincerely,

(Name)
(Title)

cc: (Name), District Attorney General's Office
(Name), Defense Attorney
(Name), (CMHC)
(Name), TDMHSAS Forensic Specialist

SECTION III - FORENSIC EVALUATIONS FOR JUVENILE COURTS

JUVENILE COURT ORDERED EVALUATIONS UNDER T.C.A. § 37-1-128

NOTE: Sample court orders for forensic evaluation and treatment services available at the Department's website. Go to: Tennessee.gov/Mental, click Sitemap, click Forensic and Juvenile Court (under Division of Planning, Research & Forensics), click Forms

T.C.A. § 37-1-128. Investigations -- Emergency temporary care and custody -- Physical and mental examinations -- Evaluation and commitment for mental illness or developmental disability.
(A) (1) when a child alleged to be delinquent or unruly is brought before the court, the court may notify a probation officer attached to the court or any such person, persons or agencies available to the court, or to the department of children's services, and it shall be their duty to:

(a) make an investigation of the case;

(b) be present in court to report when the case is heard;

(c) furnish such information and assistance as the court may require; and

(d) take charge of any child before or after the hearing as may be directed by the court.

(2) a probation officer shall have, as to any child committed to such officer's care, the powers of a law enforcement officer. At any time, the probation officer may bring such child before the court committing the child to the officer's care for further action as the court may deem fit and proper.

(b) (1) when a petition is filed in the juvenile court alleging a child to be either an abandoned child or a dependent and neglected child, it is the function of the juvenile court, when necessary, to give the child emergency temporary care, and the court shall forthwith refer the case to the county director of public welfare to investigate the social conditions of the child and to report the findings to the court to aid the court in its disposition of the child. The director shall submit such director's findings pursuant to an order from the court. If the child who is the subject of the petition is in the custody of a licensed child-placing agency, or, if the petition is filed by a licensed child-placing agency, the referral may be made to the licensed child-placing agency having custody of the child or filing the petition in lieu of a referral to the director. The court may make informal adjustment of such cases as is provided by § 37-1-110.

(2) when the court finds, based upon a sworn petition or sworn testimony containing specific factual allegations, that there is probable cause to believe that the conditions specified in § 37-1-114(a)(2) exist and the child is in need of the immediate protection of the court, the court may order that the child be removed from the custody of the child's parent, guardian, legal custodian or the person who physically possesses or controls the child, pending further investigation and hearing for a period not to exceed three (3) days, excluding saturdays, sundays and legal holidays. In no case shall such order remain in effect for more than two (2) days, excluding saturdays, sundays and legal holidays, unless a petition is filed within the two-day period. If the child is not returned to the parent, guardian or legal custodian within such three-day period, a hearing shall be conducted pursuant to § 37-1-117(c). The provisions of the preceding sentence may be waived by express and knowing waiver, by the parties to an action, including the parents, guardian or legal custodian, and the child or guardian ad litem for the child, if the child is of tender years. Any such waiver may be revoked at

any time, at which time the provisions of this section shall apply. In lieu of any disposition of the child authorized by the preceding sentence, the court may, in its discretion, authorize a representative of the department to remain in the child's home with the child until a parent, legal guardian or relative of the child enters the home and expresses a willingness and apparent ability to resume permanent charge of the child, or, in the case of a relative, to assume charge of the child until a parent or legal guardian enters the home and expresses such willingness and apparent ability.

(c) (1) at any time prior to a child being adjudicated unruly or dependent and neglected, or before the disposition of a child who has been adjudicated delinquent, unruly or dependent and neglected, the court may order that the department make an assessment of the child and report the findings and recommendations to the court. Such order of referral shall confer authority to the department or its designees to transport the child and to obtain any necessary evaluations of the child without further consent of the parent(s), legal custodian or guardian.

(2) if, during the evaluation or assessment, the department determines that there is a need for treatment for either the mental or physical well being of the child, consent of the parent(s), guardian or current legal custodian shall be obtained. If such consent cannot be obtained, the department may apply to the court for authorization to provide consent on behalf of the child. If a child is suspected of being in need of or is eligible for special education services, then state and federal laws governing evaluation and placement must be followed.

(3) a report to the court of the department's recommendations shall be made within fifteen (15) days, which may be extended up to thirty (30) days for good cause following the court's order of referral. The department shall include in the report a review of the child's previous records including, but not limited to, health and education records, a review of the child's family history and current family status, and a written recommendation concerning the child's status.

(4) any order of the court that places custody of a child with the department shall empower the department to select any specific residential or treatment placements or programs for the child according to the determination made by the department, its employees, agents or contractors.

(d) during the pendency of any proceeding, the court may order the child examined at a suitable place by a physician regarding the child's medical condition, and may order medical or surgical treatment of a child who is suffering from a serious physical condition or illness that requires prompt treatment, even if the parent, guardian or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of such person's refusal to consent to treatment.

(e) (1) (a) if, during the pendency of any proceeding under this chapter, there is reason to believe that the child may be suffering from mental illness, the court may order the child to be evaluated on an outpatient basis by a mental health agency or a licensed private practitioner designated by the commissioner of mental health and substance abuse services to serve the court. If, during the pendency of any proceeding under this chapter, there is reason to believe that the child may be suffering from a developmental disability, the court may order the child to be evaluated on an outpatient basis by a mental health agency, developmental center or a licensed private practitioner designated by the commissioner of mental health and substance abuse services to serve the court. The outpatient evaluation shall be completed no more than thirty (30) days after receipt of the order by the examining professional.

(b) if, and only if, in either of the circumstances described in subdivision (e)(1)(a) the outpatient evaluator concludes that further evaluation and treatment are needed, the court may order the child hospitalized. If the court orders the child to be hospitalized in a department of mental health and substance abuse services facility, hospital or treatment resource, the child shall be placed into the custody of the commissioner of mental health and substance abuse services at the expense of the county for not more than thirty (30) days at a facility, hospital or treatment resource with available, suitable accommodations. Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available, suitable accommodations.

(2) if an evaluation is ordered under this subsection (e), the evaluator shall file a complete report with the court, which shall include:

(a) whether the child is mentally ill or developmentally disabled;

(b) identification of the care, training or treatment required to address conditions of mental illness or developmental disability that are found, and recommendations as to resources that may be able to provide such services;

(c) whether the child is subject to voluntary or involuntary admission or commitment for inpatient or residential services or for commitment to the custody of the department of mental health and substance abuse services for such conditions under title 33; and

(d) any other information requested by the court that is within the competence of the evaluator.

(3) if it appears from the evaluation report and other information before the court that the child is in need of care, training or treatment for mental illness or developmental disability, the court may proceed in accordance with other provisions of this chapter or may order that proceedings be initiated before the court under § 37-1-175, § 33-5-402 or title 33, chapter 6, part 5.

(4) when transportation of the child is necessary to obtain evaluations under this subsection (e), the court may order the child transported with the cost of the transportation borne by the county from which the child is sent.

(5) if a community mental health center receives grants or contracts from the department of mental health and substance abuse services for services for mental illness or developmental disability and the commissioner has not designated another provider of outpatient evaluation for the court, the department shall contract with the center for evaluation services under this subsection (e), and the center shall provide such services ordered under this subsection (e) by courts in the center's catchment area.

(6) if a child who is alleged to be delinquent or unruly is brought before the court, and if the court determines that there is reason to believe that the child is experiencing a behavioral health emergency, then the court may request the services of a crisis response provider designated by the commissioner of mental health and substance abuse services to perform such services under title 33. For purposes of this subdivision (e)(6), "behavioral health emergency" means an acute onset of a behavioral health condition that manifests itself by an immediate substantial likelihood of serious harm as defined in § 33-6-501. If the crisis provider is unable to respond within two (2) hours of contact by the court, the crisis provider shall immediately notify the court and provide instructions for examination of the child under title 33, chapter 6, part 1.

(f) after adjudication, but prior to the disposition of a child found to be dependent and neglected, delinquent, unruly or in need of services under § 37-1-175, the court may place the child in custody of the department of children's services for the purpose of evaluation and assessment if the department has a suitable placement available for such purpose. If the department determines that there is no suitable placement available, the court shall not order the department to take custody of the child for the purpose of evaluation and assessment. Such pre-disposition custody shall last for a maximum of thirty (30) days and the court shall have a hearing to determine the appropriate disposition before the expiration of the thirty (30) days.

History: acts 1970, ch. 600, § 28; 1972, ch. 487, § 1; impl. Am. 1975, ch. 219, § 1; 1975, ch. 248, § 35; 1980, ch. 639, § 1; 1981, ch. 224, § 29; 1981, ch. 247, § 1; t.c.a., § 37-228; acts 1986, ch. 836, § 1; 1986, ch. 837, § 1; 1987, ch. 240, § 1; 1989, ch. 277, § 1; 1989, ch. 278, § 35; 1996, ch. 1079, §§ 73, 74, 86-88, 183; 2000, ch. 947, §§ 6, 8c, 8g, 8h; 2009, ch. 549, §§ 1, 2; 2010, ch. 1100, §§ 47-51; 2012, ch. 575, §§ 1, 2.; 2013, ch. 255, § 2.

TENNESSEE SUPREME COURT RULE 29
RULES OF JUVENILE PROCEDURE

Although the specific issues of Competency to Stand Trial and Mental Condition at the Time of the Offense are not mentioned explicitly in the statute, evaluation of these issues may be ordered as "Any other information that is requested by the court that is within the expertise of the evaluator" (T.C.A. § 37-1-128 (e) (2) (D). **Rule 29** of the Tennessee Supreme Court's Rules of Juvenile Procedure (effective July 1, 1984). The complete rules are available at www.tsc.state.tn.us; scroll over "Court Rules" and click on "Current Rules," then select "Rules of Juvenile Procedure."

Rule 29. Procedure When Child Believed to Be Mentally Incompetent. — (a) At Time of Adjudicatory Hearing.

(1) If at any time prior to or during the adjudicatory hearing in a delinquent or unruly case, the court has reasonable grounds to believe the child named in the petition may be incompetent to proceed with an adjudicatory hearing, the court may stay the proceedings pending a determination of the child's mental condition.

(2) During the pendency of any such proceeding in which a child is believed to be suffering from mental illness or mental retardation the court may order the child to be evaluated as provided in Tennessee Code Annotated, Title 37.

(3) If the child is found to be incompetent to proceed with the adjudicatory hearing, proceedings shall be commenced for the involuntary hospitalization of the child as provided by law, or the court may inform the parties as to procedures for voluntary admission to public and private mental health facilities in lieu of judicial commitment. If the child does not meet the standards for involuntary hospitalization, but remains incompetent to stand trial, the child shall be released to the appropriate guardian or custodian pending further hearings in juvenile court.

(4) If the child is not hospitalized, or upon the child's release from the hospital, any interested party or the court on its own motion may call the matter up for the purpose of setting an adjudicatory hearing.

(5) If the child is found to be competent to proceed with an adjudicatory hearing, the court shall proceed therewith.

(b) **At Time of the Offense.**

(1) If the child named in the petition intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether the child shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the court in writing of such intention and file a copy of such notice with the clerk. Upon filing of the notice, upon motion of the state, or on its own motion, the court may cause the child to be examined in accordance with the procedures set forth in this rule.

(2) The court, upon good cause shown and in its discretion, may waive the requirements herein set forth and permit the introduction of such defense, or may continue the hearing for the purpose of an examination in accordance with the procedures set forth in this rule. A continuance granted for this purpose will toll the times specified in Rule 17 regarding the time limits for adjudicatory hearings.

(c) **Appointment of Expert Witnesses; Detention of Child for Examination.**

(1) Where the child's sanity or competency is at issue and the court has set the matter for an adjudicatory hearing or a hearing to determine the mental condition of the child, the court may appoint as many as three (3) disinterested qualified experts to examine the child and testify at the hearing. If not performed by private practitioners, such examinations shall be performed at facilities designated by the Commissioner of Mental Health and Mental Retardation. Other competent evidence may be introduced at the hearing. The appointment of experts by the court shall not preclude the state or the child from calling other expert witnesses to testify at the adjudicatory hearing or at the hearing to determine the mental condition of the child.

(2) The court, in its discretion and pursuant to the procedures set forth in Rule 15, may order the child held in detention pending such examination and hearing. [As amended by order entered January 31, 1984, effective July 1, 1984.]

Advisory Commission Comments. There are no reported cases in Tennessee addressing the question of whether or under what circumstances an insanity defense is available in juvenile court proceedings. Application of this defense in juvenile proceedings has been recognized in various jurisdictions. *See, e.g.* In re Two Minor Children, 592 P.2d 166 (Nev. 1979); State ex rel. Causey, 363 So. 2d 472 (La. 1978); Winburn v. State, 32 Wis. 2d 152, 145 N.W.2d 178 (1966); *see also* In re Ramon M., 22 Cal. 3d 419, 584 P.2d 524, 149 Cal. Rptr. 387 (1978); State v. Ferrell, 209 S.W.2d 642 (Tex. Civ. App. 1948). The leading case holding the insanity defense inapplicable to delinquency proceedings, In re H.C., 106 N.Y. Super. 583, 256 A.2d 125 (1969), was subsequently held to be overridden by modifications of the New Jersey Juvenile Court Act. In re R.G.W., 135 N.J. Super. 125, 342 A.2d 869 (1975), aff'd, 70 N.J. 185, 358 A.2d 473 (1976). However, at least one jurisdiction continues to preclude the insanity defense from being asserted at the adjudicatory hearing (although recognizing the claim of incompetence to stand trial). See, In re C.W.M., 407 A.2d 617 (D.C. 1979). [1984.]

This rule is not intended to alter the substantive law respecting the applicability of the insanity defense to juvenile court proceedings in Tennessee or to delineate those circumstances under which such a defense may be available. Rather, it provides procedures for those cases in which “the child intends to introduce expert testimony relating to mental disease, defect or other condition bearing upon the issue of whether the child had the mental state required for the offense charged.”[1984.]

FORENSIC EVALUATION OF JUVENILES

Who is a Juvenile?

The Tennessee Code Annotated uses the term "child" and defines child as anyone under the age of 18.

What is a Juvenile Forensic Evaluation?

By "Juvenile Forensic Evaluation" we mean evaluations ordered by a court with juvenile jurisdiction pursuant to T.C.A. Section 37-1-128(e) (the text is in your Manual).

Who is subject to having a Juvenile Forensic Evaluation?

Any person charged with a crime in a Juvenile Court may be the subject of a Juvenile Forensic Evaluation. Individuals are charged with crimes in Juvenile Courts *if they were under the age of 18 at the time of the alleged offense.* If an individual is 23 but is charged with a crime which he or she is alleged to have committed six years earlier, before they turned 18, the case would be in Juvenile Court. If the judge wants to order a psychological evaluation, the defendant would be subject to a Juvenile Forensic Evaluation pursuant to T.C.A. Section 37-1-128(e). It is of course far more common for individuals to be arrested at the scene of the crime or shortly thereafter, so the majority of individuals being evaluated pursuant to T.C.A. Section 37-1-128(e) are in fact juveniles under the age of 18.

Where are Juvenile Forensic Evaluations conducted and who does them?

Evaluations must first be conducted on an outpatient basis; inpatient evaluations may only be ordered if recommended by the outpatient evaluator. As of 2010, the last TDMHSAS inpatient unit for juveniles was closed (the census was too low to justify the expense of operations). Therefore there are no options for inpatient juvenile forensic evaluations. Inpatient services for treatment may be obtained through private and non-profit facilities. Outpatient evaluations are conducted by Certified Forensic Evaluators as described in the first section of your Manual at Community Mental Health Agencies contracted by the TDMHSAS. The evaluation itself may occur at a detention center if the juvenile is incarcerated, or in a community setting (e.g. the CMHA offices or a residential facility) if the juvenile is on bond.

What are the elements of a Juvenile Forensic Evaluation?

Like all forensic evaluations, the elements of any particular Juvenile Forensic Evaluation are determined by the specific language of the court order. The language of the statute (T.C.A. Section 37-1-128(e)) is primarily concerned with diagnosis and treatment recommendations. The elements of competency to stand trial and mental status at the time of the offense have been introduced by the Tennessee Supreme Court's Rules of Juvenile Procedure-Rule 29. A Juvenile Forensic Evaluation may have several components, including any combination of the following:

- Diagnosis & Treatment recommendations (including whether the subject meets criteria for involuntary commitment, and any agencies or services to which the subject should be referred)
- Competency to Stand Trial
- Mental Status at the Time of the Offense
- Alcohol and Drug Assessment
- Psychosexual
- Intellectual Disability Assessment

How is a Juvenile Forensic Evaluation Different from an Adult Forensic Evaluation?

Juvenile Forensic Evaluations are different from Adult Forensic Evaluations in terms of 1) the Nature of the Juvenile Court, 2) the scope of the statute, and 3) the characteristics of the population.

1) Juvenile Courts were originally established with the aim of rehabilitating wayward youth to redirect their development in more positive directions. The courts were beneficent, not punitive or retributive. They acted in a parental way, with little interest in punishing offenders but also with few protections of juveniles' rights to due process. There have been movements to "crack down" on increasingly violent crimes committed by juveniles, and movements to insure protections of the rights of juveniles facing criminal charges. These movements have made juvenile courts (and juvenile justice systems in general) more like adult courts, but the scope of juvenile courts still remains broader than adult courts. Juvenile court judges are very often interested in addressing the development of the defendant as a whole, rather than simply adjudicating the case before them. It is not unusual for a Juvenile Court judge to expect concrete action on referral to other agencies and services as needed for a juvenile.

2) The language of Tennessee Code Annotated Section 37-1-128(e) reflects the broad scope. This makes a full range of issues affecting a juvenile's development the proper concern for a juvenile forensic evaluation. Evaluations should not introduce assessments which are not included in the court order, but orders for Juvenile Forensic Evaluations are typically much broader than orders for Adult Forensic Evaluations. In addition to a multi-dimensional (bio-psychosocial) assessment of the juvenile, the evaluator must also attend to the environmental factors affecting the juvenile: educational/vocational factors, family and peer influences.

3) As noted above, the majority of Juvenile Forensic Evaluations are conducted on individuals who are in fact under the age of 18 (during the Fiscal Years 2005, 2006 & 2007, approximately 48% of evaluations were on individuals age 16 and above, approximately 42% were on individuals ages 13-15, leaving only approximately 2% of evaluations being conducted on juveniles under the age of 13). Evaluating children and adolescents is significantly different than evaluating adults because of the developmental issues involved. For adults, incompetence to stand trial is related almost exclusively to symptoms of psychosis and/or intellectual disability. For children and adolescents, there is a broader range of issues. Mental health issues are less likely to concern psychosis and more likely to concern affective disorders (especially suicidal thinking), Attention Deficit Disorders, and impulse-control disorders. Age and intelligence have been found to be strong indicators of impairments in competence to proceed in court. The "reasonable degree of rational understanding" prong of the *Dusky* standard is especially affected by developmental and social issues in adolescents. Developmental issues include abstract reasoning/concept formation, risk-taking, impulsiveness, time perspective, and attitude toward authority. Social issues include tendency to please authorities, loyalty to peers and family dynamics. Research has shown that defendants approximately age 15 and up tend to function in a manner consistent with young adults and are found competent at about the same rate (80-90%). Defendants below the age of 15 show a broader range of complicating factors and are found incompetent at a much higher rate (as often as 50-75% in some studies). Remember also that children mature at different rates, resulting in a great deal of variability in the 14-16 year old age range.

Juvenile Forensic Evaluations require expertise in the developmental and clinical issues associated with the child/adolescent population. Forensic evaluators whose clinical expertise is exclusively with adults should not conduct Juvenile Forensic Evaluation on defendants who are chronologically juveniles without consulting with a clinician with expertise in that population.

Further Reading:

Baerger, D. R., Griffin, E. F., Lyons, J. S., & Simmons, R. (2003). Competency to stand trial in preadjudicated and petitioned juvenile defendants. *Journal of the American Academy of Psychiatry & Law, 31,* 314-320.

Warren, J. I., Aaron, J., Ryan, E., Chauhan, P., & DuVal, J. (2003). Correlates of adjudicative competency among psychiatrically impaired juveniles. *Journal of the American Academy of Psychiatry & Law, 31,* 299-309.

SAMPLE – REQUEST FOR INFORMATION

Date: _______________

TO: _________________, District Attorney General
_________________, Defense Attorney
_________________, Detention Medical Staff

RE: __________________

Dear Sir,

The (Name of Provider _______________) has been ordered to provide a mental health evaluation pursuant to T.C.A. Section 37-1-128(e) for _________________ Court.

In order to complete an appropriate evaluation, we are requesting any information that you may be able to provide on the above referenced individual. The requested evaluation will be pending receipt of this information. Please see a list of the needed information below.

1. Information regarding the arrest and nature of charges which are pending against the individual and particularly any information surrounding the alleged offense and the behavior of the individual around that time;

2. Information regarding the individual's interaction with family and friends (social history);

3. Any record of past hospitalizations, both psychiatric and medical;

4. A description of the individual's behavior while in detention;

5. A description of the individual's behavior while in the community.

Thank you for your prompt attention to this matter. If you have any questions, please do not hesitate to contact ____________________ at (area code) ________________.

Sincerely,

____
Signature

PURPOSE STATEMENT

The certified mental health professional conducting the forensic evaluation shall, prior to beginning the evaluation, inform the defendant of the reason for the evaluation and how the information is to be used. The defendant must be advised that the court has ordered the assessment and that the examiner will report his/her findings to the court.

An example of the language for documentation is as follows:

STATEMENT INFORMING DEFENDANT OF PURPOSE OF EVALUATION

Statement Informing Defendant of Purpose of Evaluation

A pre-trial forensic evaluation was ordered by the ________________________________ Court for

____ on ____________________________and the purpose of this evaluation was discussed. I explained that the court ordered this (competency/insanity defense) evaluation to take place with the knowledge of the defendant's attorney. I further explained that when the evaluation is completed, a letter will be sent to the court conveying the results of the evaluation and that copies will be sent to the defendant's attorney as well as the district attorney general. _____________________________________ was given an opportunity to ask questions about the procedures before the interview started.

____
Evaluator

____
Date

SAMPLE - JUVENILE EVALUATION REPORT OUTLINE

I. Identifying Information

• ***Juvenile's Name**	Date of Admission
• Date of Birth	***Date of Report**
• *Social Security Number	Admitting M.D.
• Age/Sex	County of Charges
• Legal Guardian	Charges

[*Please include juvenile's name, SSN and report date on *each page* of the evaluation]

II. Brief statement of alleged offenses and Purpose of the Evaluation (Requests per court order)

- Evaluation (Diagnosis, treatment, service recommendations)
- Mental Retardation/Intellectual Disability
- Committability
- Competency
- Mental Condition at the time of the alleged offense (Insanity)
- Specialized evaluations i.e. (A&D assessment, psychosexuals, etc.)

III. Limits of Confidentiality Statement indicating Defendant was Informed of:

- Evaluation being conducted by court order
- Purpose of Evaluation (as above)
- Report to be prepared for court and available to both attorneys
- Examination not therapy and does not have therapist-patient confidentiality

V. Sources of Information

- Court Order/Petitions
- Victim/Witness/Police reports
- Criminal History
- School records
- Treatment records
- Collateral contacts (including telephone calls and face-to-face contacts)
- Current medical/clinic records
- Psychological/Medical testing
- Clinical Interviews

VI. Background Information/History

- Circumstances leading to hospitalization (for inpatient evaluations)
- Previous treatment, services
- Previous medical/labs, mental health, education, legal, etc.
- Social, Familial and Educational History
- Other, when applicable

VII. Assessment and Treatment

- Behavioral Observations
- Current Mental Status
- Evaluation Instruments and techniques

- Medications prescribed
- Use of Seclusion/Restraint (for inpatient)
- Medical and Physical
- Educational assessment
- Psychologicals, or any specialized testing
- Any consultation results (e.g. MR Assist, Psychosexual)
- Discussion of areas specified by court order (e.g. Competency to Stand Trial issues).

VIII. Summary/Findings
- Address all specific requests from Court (e.g. CST, A & D)

IX. Diagnostic Impressions (DSM Diagnoses)

X. Treatment Team Recommendations

XI. Discharge (inpatient) or Follow-Up (outpatient) Plan
- Discharge Medications
- Medical Issues/Education Issues
- Follow-up services
- Case management
- Mental Health Services/Appointments

XII. Signatures/Dates
Attending Physician/Evaluator and date of signature
Report Preparer and date report was completed

SAMPLE LETTERS TO THE JUVENILE COURT

SAMPLE #1 Mental Illness, Intellectual Disability, Commitability Treatment and Service Recommendations (Other assessments per court order requests)

(Letterhead of Outpatient Provider)

(Date)

The Honorable __________________
Judge, _________ County Juvenile Court
(Mailing Address)
(City), (State) (Zip)

Re: State of Tennessee v. (Name of Juvenile)
Report of Outpatient Evaluation pursuant to T.C.A. § 37-1-128(e) (1)

Dear Judge ___________________

_______________________ was referred to **name of community mental health center** on **date of referral** by order of your court for psychiatric/psychological evaluation to include diagnosis, committability, treatment and service recommendations. The court also requested an IQ, A&D assessment, or psychosexual evaluation. **Name of juvenile** was evaluated on the charge(s) of ____.

The **IQ assessment** resulted in a (normal/average/below average) range of intellectual functioning.

Staff has determined that **name of juvenile** is mentally ill/is not mentally ill or is intellectually disabled/is not intellectually disabled. He/She is committable/is not committable under **Title 33, Chapter 6, Part 5, Tenn. Code Ann.** He/She is committable/is not committable under **T.C.A. Section 33-5-403.**

We recommend **name of juvenile** be returned to **name of county** juvenile court for the adjudication of his/her charges. The treatment team recommends the following: _____________

If you have any further questions regarding this evaluation, please contact **name of CMHC forensic coordinator** at **telephone number.**

Sincerely,

____
(Name and title of the certified forensic evaluator who is a licensed physician or a licensed doctoral level psychologist with a Health Service Provider designation)
Attachments: (psychological/psychiatric evaluation, psychosexual, etc.)

SAMPLE #2 Competency and Mental Condition
(Other assessments per court order requests)

(Letterhead of Outpatient Provider)

(Date)

The Honorable __________________
Judge, _________________ County Juvenile Court
(Mailing Address)
(City), (State) (Zip)

Re: State of Tennessee v. (Name of Juvenile)
Report of Outpatient Evaluation pursuant to T.C.A. § 37-1-128(e) (1)

Dear Judge ___________________

________________________ was referred to **name of community mental health center** on **date of referral** by order of your court for a forensic evaluation of his competency to stand trial and/or mental condition at the time of the alleged offense(s). **Name of juvenile** was evaluated on the charge(s) of ____.

After completion of the competency evaluation, we have concluded that (*he/she)* has sufficient present ability to consult with (*his/her)* lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against (*him/her)*. In making this determination, we found that the juvenile understands the nature of the legal process; that he/she understands the charges pending against him/her and the consequences that can follow; and can advise counsel and participate in his/her own defense.

It is the staff's determination after completion of the evaluation based on T.C.A. Section 39-11-501, that a defense of insanity cannot be supported. This opinion is based on the determination that at the time of the alleged commission of the act constituting the offense, **Name of juvenile** was able to appreciate the nature or wrongfulness of such acts.

We recommend **name of juvenile** be returned to **name of county** juvenile court for the adjudication of his/her charges.

If you have any further questions regarding this evaluation, please contact **name of CMHC forensic coordinator** at **telephone number.**

Sincerely,

____
(Name and title of the certified forensic evaluator who is a licensed physician or a licensed doctoral level psychologist with a Health Service Provider designation)
Attachment (psychological/psychiatric evaluation)

SAMPLE #3 Competency and Mental Condition
(Referring to RMHI/Inpatient Provider)

(Letterhead of Outpatient Provider)

(Date)

The Honorable ___________________
Judge, ________________ County Juvenile Court
(Mailing Address)
(City), (State) (Zip)

Re: State of Tennessee v. (Name of Juvenile)
Report of Outpatient Evaluation pursuant to T.C.A. § 37-1-128(e) (1)

Dear Judge ____________________

________________________ was referred to **name of community mental health center** on **date of referral** by order of your court for determination of his/her ability to stand trial and/or his/her mental condition at the time o f the alleged offense(s). **Name of** juvenile was evaluated on the charge(s) of ____.

After completion of the outpatient evaluation, we cannot make a determination regarding his/her competency to stand trial and/or mental condition at the time of the alleged offense. Therefore, we must refer **Name of juvenile** to **Name of RMHI/inpatient provider** for an inpatient evaluation. Please contact **Name of Juvenile/Forensic Coordinator,** of **Name of RMHI/inpatient provider** to schedule an appointment for the evaluation. Mr./Ms can be reached at ____.

If you have any further questions regarding this evaluation, please contact **name of CMHC forensic coordinator** at **telephone number.**

Sincerely,

____
(Name and title of the certified forensic evaluator who is a licensed physician or a licensed doctoral level psychologist with a Health Service Provider designation)

SAMPLE #1 Mental Illness, Intellectual Disability, Commitability Treatment and Service Recommendations (Other assessments per court order requests)

(Letterhead of Outpatient Provider)

(Date)

The Honorable ___________________
Judge, _________ County Juvenile Court
(Mailing Address)
(City), (State) (Zip)

Re: State of Tennessee v. (Name of Juvenile)
Report of Outpatient Evaluation pursuant to T.C.A. Section 37-1-128(e) (1)

Dear Judge ____________________

________________________ was referred to **name of community mental health center** on **date of referral** by order of your court for psychiatric/psychological evaluation to include diagnosis, committability, treatment and service recommendations. The court also requested an IQ, A&D assessment, or psychosexual evaluation. **Name of juvenile** was evaluated on the charge(s) of ____.

The **IQ assessment** resulted in a (normal/average/below average) range of intellectual functioning.

Staff has determined that **name of juvenile** is mentally ill/is not mentally ill or is intellectually disabled or is not intellectually disabled. He/She is committable/is not committable under **Title 33, Chapter 6, Part 5, Tenn.Code Ann.** He/She is committable/is not committable under **T.C.A. Section 33-5-403.**

We recommend **name of juvenile** be returned to **name of county** juvenile court for the adjudication of his/her charges. The treatment team recommends the following:

If you have any further questions regarding this evaluation, please contact **name of CMHC forensic coordinator** at **telephone number.**

Sincerely,

____
(Name and title of the certified forensic evaluator who is a licensed physician or a licensed doctoral level psychologist with a Health Service Provider designation)
Attachments (psychological/psychiatric evaluation, psychosexual, etc.)

SAMPLE #2 Competency and Mental Condition
(Other assessments per court order requests)

(Letterhead of Outpatient Provider)

(Date)

The Honorable ___________________
Judge, __________________ County Juvenile Court
(Mailing Address)
(City), (State) (Zip)

Re: State of Tennessee v. (Name of Juvenile)
Report of Outpatient Evaluation pursuant to T.C.A. § 37-1-128(e) (1)

Dear Judge ____________________

_________________________ was referred to **name of community mental health center** on **date of referral** by order of your court for a forensic evaluation of his competency to stand trial and/or mental condition at the time of the alleged offense(s). **Name of juvenile** was evaluated on the charge(s) of ____.

After completion of the competency evaluation, we have concluded that (*he/she)* has sufficient present ability to consult with (*his/her)* lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against (*him/her)*. In making this determination, we found that the juvenile understands the nature of the legal process; that he/she understands the charges pending against him/her and the consequences that can follow; and can advise counsel and participate in his/her own defense.

It is the staff's determination after completion of the evaluation based on T.C.A. Section 39-11-501, that a defense of insanity cannot be supported. This opinion is based on the determination that at the time of the alleged commission of the act constituting the offense, **Name of juvenile** was able to appreciate the nature or wrongfulness of such acts.

We recommend **name of juvenile** be returned to **name of county** juvenile court for the adjudication of his/her charges.

If you have any further questions regarding this evaluation, please contact **name of CMHC forensic coordinator** at **telephone number.**

Sincerely,

(Name and title of the certified forensic evaluator who is a licensed physician or a licensed doctoral level psychologist with a Health Service Provider designation)
Attachment (psychological/psychiatric evaluation)

SAMPLE #3 Competency and Mental Condition (Referring to RMHI/Inpatient Provider)

(Letterhead of Outpatient Provider)

(Date)

The Honorable ___________________
Judge, _________________ County Juvenile Court
(Mailing Address)
(City), (State) (Zip)

Re: State of Tennessee v. (Name of Juvenile)
Report of Outpatient Evaluation pursuant to T.C.A. § 37-1-128(e) (1)

Dear Judge ____________________

_________________________ was referred to **name of community mental health center** on **date of referral** by order of your court for determination of his/her ability to stand trial and/or his/her mental condition at the time o f the alleged offense(s). **Name of** juvenile was evaluated on the charge(s) of ____.

After completion of the outpatient evaluation, we cannot make a determination regarding his/her competency to stand trial and/or mental condition at the time of the alleged offense. Therefore, we must refer **Name of juvenile** to **Name of RMHI/inpatient provider** for an inpatient evaluation. Please contact **Name of Juvenile/Forensic Coordinator,** of **Name of RMHI/inpatient provider** to schedule an appointment for the evaluation. Mr./Ms can be reached at _______________________________________.

If you have any further questions regarding this evaluation, please contact **name of CMHC forensic coordinator** at **telephone number.**

Sincerely,

____
(Name and title of the certified forensic evaluator who is a licensed physician or a licensed doctoral level psychologist with a Health Service Provider designation)

SECTION IV - SPECIAL ISSUES IN FORENSIC MENTAL HEALTH EVALUATIONS

CONFIDENTIALITY AND PRIVILEGED COMMUNICATION

Confidentiality relates to the responsibility of the agency and mental health professional to keep information, correspondence and records confidential and to allow access to those records only under certain circumstances. Unless otherwise indicated in the court order the results of forensic evaluations must be reported to the judge, the district attorney general and to the defense attorney. However, the information in the record concerning the evaluation may be released only with written consent of the defendant or upon order of the court.

Privileged Communication specifically relates to the relationship of a particular professional to a client and provides protection of the information obtained from the client as a result of this relationship. Under Tennessee law, psychiatrists have limited privilege and psychologists have absolute privilege. However, privilege is not an issue in forensic evaluations since a therapist-client relationship is not established.

T.C.A. § 33-3-103

All applications, certificates, records, reports, legal documents, and pleadings made and all information provided or received in connection with services applied for, provided under, or regulated under this title and directly or indirectly identifying a service recipient or former service recipient shall be kept confidential and shall not be disclosed by any person except in compliance with this part.

T.C.A. § 33-3-104

Information about a service recipient that is confidential under T.C.A. § 33-3-103 may be disclosed with the consent of:

(1) The service recipient who is sixteen (16) years of age or over;

(2) The conservator of the service recipient;

(3) The attorney in fact under a power of attorney who has the right to make disclosures under the power;

(4) The parent, legal guardian, or legal custodian of a service recipient who is a child;

(5) The service recipient's guardian ad litem for the purposes of the litigation in which the guardian ad litem serves;

(6) The treatment review committee for a service recipient who has been involuntarily committed; or

(7) The executor, administrator or personal representative on behalf of a deceased service recipient.

T.C.A. § 33-3-105

Information that is confidential under § 33-3-103 may be disclosed without consent of the service recipient if:

(1) Disclosure is necessary to carry out duties under this title;

(2) Disclosure may be necessary to assure service or care to the service recipient by the least drastic means that are suitable to the service recipient's liberty and interests;

(3) As a court orders, after a hearing, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to public interest or to the detriment of a party to the proceedings;

(4) It is solely information as to the residential service recipient's overall medical condition without clinical details and is sought by the service recipient's family members, relatives, conservator, legal guardian, legal custodian, guardian ad litem, foster parents , or friends;

(5) A service recipient moves from one service provider to another and exchange of information is necessary for continuity of service, but the transferring service provider may provide information only as to the service recipient's current medication, allergies, diagnosis, and serious medical conditions to the receiving provider; or

(6) A custodial agent for another state agency that has legal custody of the service recipient cannot perform the agent's duties properly without the information.

EXPERT WITNESS TESTIMONY

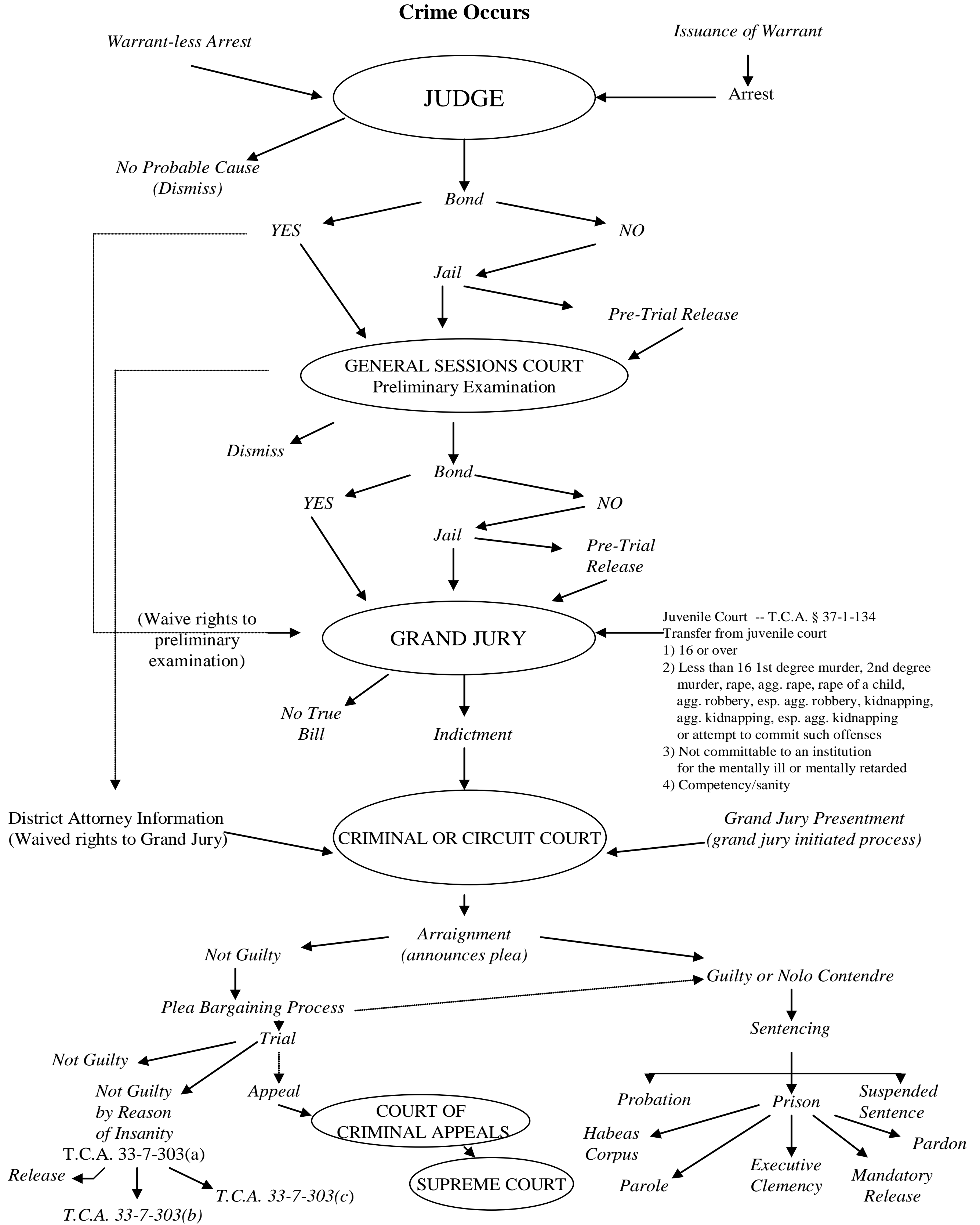
Certified Forensic evaluators provide expert witness testimony only when subpoenaed or court-ordered to appear. RMHI staff are required to notify the attorney in the RMHI Office of Legal Counsel of the subpoena or court order. The RMHI attorney will provide advice on how to proceed.

Upon receipt of a subpoena or court order, it is recommended that the evaluator contact whomever the subpoena or court order was issued on behalf of to determine what issues the party intends to cover and clarify for the party what the staff member can and cannot testify on. For instance, if the defense attorney issued a subpoena and then indicated that he/she was looking for testimony on whether the defendant was competent to waive Miranda rights when questioned by police, the evaluator should inform the attorney that this issue is outside the scope of the evaluation that was conducted and the evaluator would not be able to offer any testimony on the issue. This consultation can also help clarify that testimony which the staff member could provide may not be necessary, as when a prosecutor intends to stipulate to the opinion that the defendant has support for the insanity defense (that is, offer no argument against the opinion that the defendant has support for the insanity defense).

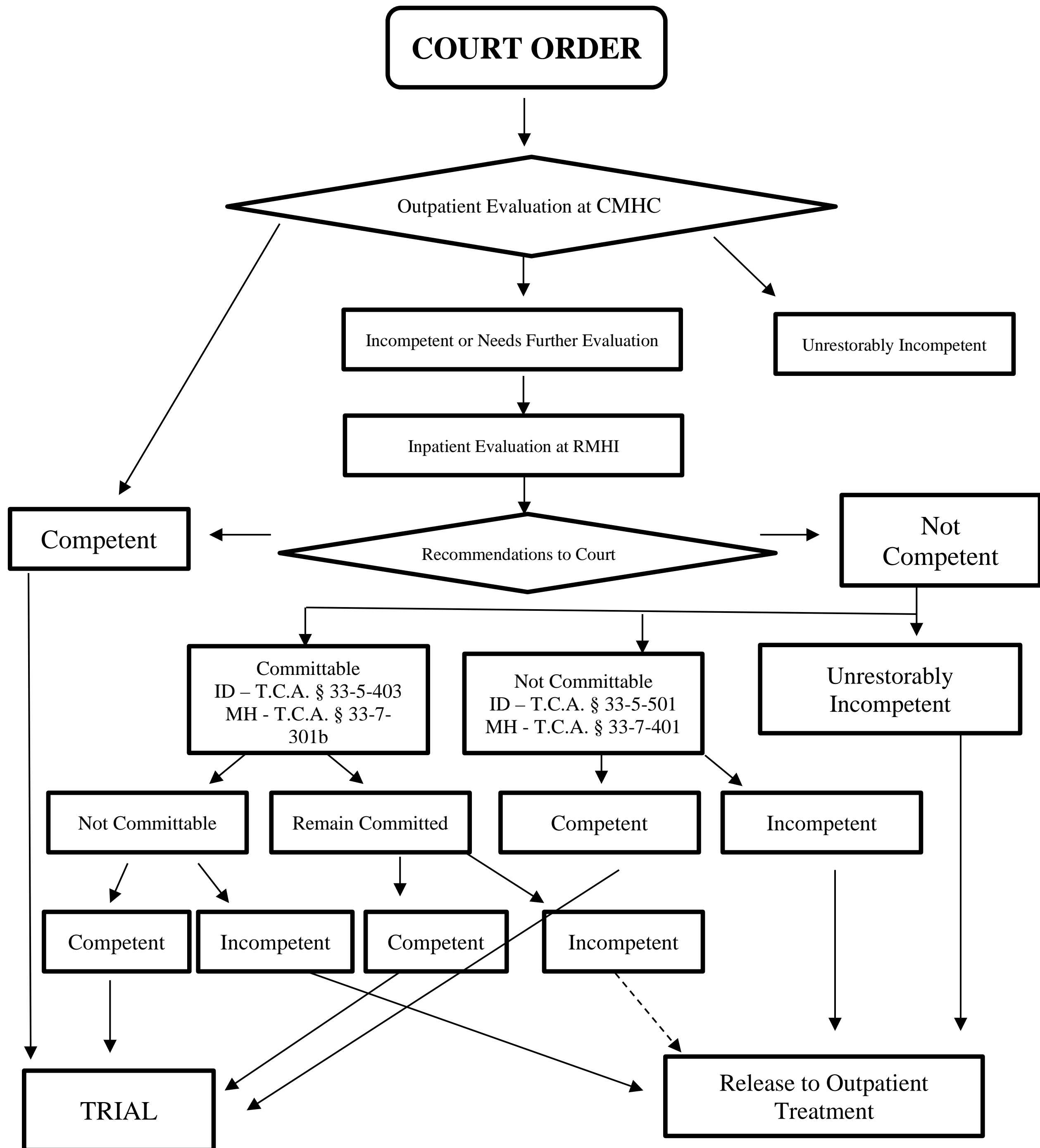
When it is clear that a certified forensic evaluator has a legal obligation to appear and provide testimony on issues relevant to the evaluation and treatment services provided under a valid court order, the evaluator should appear in court promptly, allow time for security procedures at the courthouse, and dress professionally. The evaluator should bring three copies of a summary curriculum vita (one for the defense, one for the prosecution and one for the court) and be prepared to answer questions about his/her professional background and the forensic certification process as part of being seated by the court as an expert witness.

The evaluator should be aware that any materials he/she brings to the court may be entered as evidence and reviewed by the judge and the attorneys. It is recommended that the evaluator does not bring the defendant's entire medical record or agency file, but only the material necessary for testimony on the forensic issues, such as the forensic evaluation.

CRIMINAL PROCESS IN TENNESSEE



PRE-TRIAL EVALUATION FLOW CHART



STAFF CONFERENCE REPORT OUTLINE - ADULT FORENSICS

I. Identifying Information

- Name
- Date of Birth
- Social Security Number
- Age/Sex
- Date of Admission
- Legal Status
- Admitting Physician
- County of Charges
- Date of Conference

II. Purpose of the Evaluation-The requests of the court Evaluation(s) requested by the court, reason for admission:

- Mental condition at the time of the alleged offense
- Committability
- Competency
- Mental Retardation/Intellectual Disability
- Diminished Capacity or other specialty evaluation.

III. Nature of the charges

- Defendants description of the alleged offense
    - Information from relevant sources, as arrest report, information from sheriff/jail staff, etc.

IV. Sources of Information

V. Background information/History

- Previous medical/psychiatric/legal concerns
- Information obtained from previous service providers (hospitals, outpatient agencies, therapists, etc.)
- Educational background
- Family History
- Other pertinent information

VI. Assessment and Treatment

- Behavioral Observations at the time of admission
- Problems identified at the time of admission
- Clinical interview findings
- Evaluations done including testing, and the results
- Medication(s) prescribed
- Use of seclusion/restraint
- Medical and Physical examination results

- Other testing/assessments, such as Mental Retardation/Intellectual Disability, Alcohol and Drug assessment, etc. and the results

VII. Defendant's participation in treatment/behavior on the unit
- Family involvement
- Response to medication(s)
- Current mental status
- Other pertinent information

VIII. Summary/Findings
- Committability under T.C.A. § 33-7-301(b) and § 33-6-104
- Mental Condition, with reasons to support the conclusion
- Competency, with reasons to support the conclusion

IX. Treatment Team Recommendations
- If defendant is to return to jail, specify any need for follow-up forensic services, as competency maintenance
- Competency training required
- Mental retardation/intellectual disability services required or recommended
- Other recommendations

X. Discharge Plan
- Discharge medication(s)
- Medical Issues
- Follow-up services needed
- Appointment(s) set

XI. Signatures and dates of those participating in the conference and the author of the report.

33-6-501. “Substantial likelihood of serious harm” defined. —

IF AND ONLY IF

(1) (A) a person has threatened or attempted suicide or to inflict serious bodily harm on the person, OR

(B) the person has threatened or attempted homicide or other violent behavior, OR

(C) the person has placed others in reasonable fear of violent behavior and serious physical harm to them, OR

(D) the person is unable to avoid severe impairment or injury from specific risks, AND

(2) there is a substantial likelihood that the harm will occur unless the person is placed under involuntary treatment,

THEN

(3) the person poses a “substantial likelihood of serious harm” for purposes of this title. [Acts 2000, ch. 947, § 1.]

33-6-502. Prerequisites to judicial commitment for involuntary care and treatment. —

IF AND ONLY IF

(1) a person has a mental illness or serious emotional disturbance, AND

(2) the person poses a substantial likelihood of serious harm because of the mental illness or serious emotional disturbance, AND

(3) the person needs care, training, or treatment because of the mental illness or serious emotional disturbance, AND

(4) all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person,

THEN

(5) the person may be judicially committed to involuntary care and treatment in a hospital or treatment resource in proceedings conducted in conformity with chapter 3, part 6, of this title. [Acts 2000, ch. 947, § 1.]

33-6-503. Two (2) certificates of need required — Defendants under sixteen (16) years of age. —

No defendant may be judicially committed under this part, unless two (2) licensed physicians, or one (1) licensed physician and one (1) licensed psychologist qualified as provided in § 33-6-427(a), file in the commitment proceeding certificates of need for care and treatment certifying that the defendant satisfies the requirements of § 33-6-502(1)-(4) and showing the factual foundation for the conclusions on each item. No defendant who is a child under sixteen (16) years of age may be judicially committed under this part unless one (1) of the certificates is by a physician or psychologist with experience with children.
[Acts 2000, ch. 947, § 1; 2004, ch. 565, § 8.]

33-6-504. Persons who may file complaint for commitment under this part. —

The parent, legal guardian, legal custodian, conservator, spouse, or a responsible relative of the person alleged to be in need of care and treatment, a licensed physician, a licensed psychologist who meets the requirements of § 33-6-427(a), a health or public welfare officer, an officer authorized to make arrests in the state, or the chief officer of a facility that the person is in, may file a complaint to require involuntary care and treatment of a person with mental illness or serious emotional disturbance under this part.
[Acts 2000, ch. 947, § 1; 2004, ch. 565, § 8.]

33-6-505. Commitment to state facility. —

If the court commits a person under this section, the person comes into the commissioner's custody only if the state-owned or operated facility or treatment resource has available suitable accommodations; provided, that, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state-owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Prior to transporting a person for such commitment, the sheriff or other transportation agent shall determine that the receiving state-owned or operated facility or treatment resource has available suitable accommodations.
[Acts 2000, ch. 947, § 1; 2009, ch. 531, § 42.]

33-6-506. Commitment to other public or private facility. —

If a licensed public hospital or treatment resource other than a state facility has available suitable accommodations, the court may commit the defendant to the public hospital or treatment resource.
[Acts 2000, ch. 947, § 1.]

33-6-507. Commitment to contract facility — Conformance with contract. —

If a licensed private or local public hospital or treatment resource has contracted with the department to serve defendants in the region and has available suitable accommodations, the court shall commit the defendant to the facility, and the facility shall admit and detain the defendant in conformity with its obligations under its contract with the department.
[Acts 2000, ch. 947, § 1.]

33-6-508. Commitment to non-state facility where third-party payment has been arranged. —

IF

(1) (A) a parent, legal guardian, legal custodian, conservator, spouse, or an adult relative of the defendant, or any other person has made arrangements to pay the cost of care and treatment in a licensed private hospital or treatment resources, OR

(B) the facility chooses to accept the defendant when no third person has made arrangements to pay the cost, AND

(2) placement in the facility is more appropriate to the needs of the defendant than placement in a state facility,

THEN

(3) the court may commit the defendant to the facility.
[Acts 2000, ch. 947, § 1.]

33-6-509. Suitable accommodations required. —

The chief officer of a facility to which a person is committed under this part shall not admit the person until the facility has available suitable accommodations. If a person is committed to a state facility under this part, the person does not come into the custody of the commissioner until the facility has available suitable accommodations.
[Acts 2000, ch. 947, § 1.]

33-6-510. Person eligible for care as armed forces veteran. —

If a person ordered to be hospitalized under this part is eligible for hospital care or treatment by the veterans' administration of the United States within this state, the court, upon receipt of a certificate from the veterans' administration showing that facilities are available and that the person is eligible for care or treatment there, may order the person to be placed in the custody of the agency for hospitalization within this state. With respect to those persons the appropriate provisions of § 34-5-118, being a part of the Uniform Veterans' Guardianship Law, shall apply.
[Acts 1965, ch. 38, § 43; T.C.A., §§ 33-606, 33-6-105; Acts 2000, ch. 947, § 1.]

SECTION V - TDMHSAS STANDARDS FOR FORENSIC SERVICES

OUTPATIENT ADULT FORENSIC STANDARDS

REVISED AUGUST 2014

Standard 1. A forensic evaluation is initiated only after receipt of a valid court order.

- A judge sitting in a criminal, circuit or general sessions court signs the court order.
- If an order for an evaluation under T.C.A. § 33-7-303(a) originates from a general sessions court, the charges must be misdemeanors and there must be documentation that the defendant waived his or her right to a jury trial.
- The court order specifies the legal code and/or identifies the specific issues to be evaluated.
- The type of court and county is included on the order.

Standard 2. The court order (original copy) is date-stamped or dated upon receipt at the mental health center (MHC) and is made a part of the forensic record.

Standard 3. There is a separate file opened on each forensic defendant and all information related to the evaluation is contained within the forensic record. A file opened for an individual for an evaluation conducted under T.C.A. § 33-7-301(a) should be used for documentation of an evaluation conducted under T.C.A. § 33-7-303(a) for the same case (Note: some specifics of the charges may change between these evaluations, such as some charges dropped or reduced): one case, one file for that individual across all court-ordered activity.

Standard 4. Staff completing a forensic evaluation are properly licensed and certified.

- A licensed physician with expertise in psychiatry and with current forensic certification participates in the evaluation of a defendant charged with a capital offense (death penalty).
- Staff completing competency evaluations meet the criteria set forth in Departmental Rule 0940-03-03.03 and are currently certified.
- Staff completing evaluations of mental condition at the time of the crime, including diminished capacity, meet the criteria set forth by Departmental Rule 0940-03-03.04 and are currently certified.
- Staff completing evaluations under T.C.A. § 33-7-303(a) meet the criteria set forth by Departmental Rule 0940-3-3-.09 and are currently certified.

Standard 5. Information relevant to the evaluation is requested by the mental health center, including information from:

- district attorney,
- defense attorney,
- jail staff or medical staff of jail, and
- all other relevant sources, such as past/current medical records, school records, arrest reports, military records, etc. upon receipt of a signed release of information.
- A court order that contains language authorizing the release of protected medical information can be used in place of a signed consent form from the defendant, if necessary.

- Note that information collected during the -301(a) evaluation and/or competency restoration or maintenance may also be used for a -303(a) evaluation (all previous evaluations and the sources of information for those evaluations are standard sources for -303(a) evaluations).

Standard 6. There is documentation that the defendant was informed of the purpose of the evaluation and the limits of confidentiality.

Standard 7. Evaluations under T.C.A. § 33-7-301(a) are completed within thirty (30) business days of receipt of the court order, based on the length of time from the dated receipt of the court order to the date on the letter to the court. Evaluations under T.C.A. § 33-7-303(a) are completed within 60 business days of receipt of the court order, based on the length of time from the dated receipt of the court order to the date on the letter to the court.

- Exceptions may be made in cases that require more than one appointment to complete the evaluation.
- Exceptions may be made in cases that require an intellectual disability assessment.
- Exceptions may be made if attempting to get information to complete the evaluation.
- Exceptions may be made if there is a requirement for an interpreter.
- All exceptions in the time-frame for completion must be documented in the forensic record.
- There is documentation that the court is informed of the reason for any delay.
- If the evaluation is completed without information that has been requested, it must be indicated in the forensic evaluation.

Standard 8. If it appears that a defendant being evaluated under T.C.A. § 33-7-301(a) may be incompetent due to intellectual disability but may respond to training for competence, and the defendant is charged with a felony, OR if the defendant may meet commitment criteria under T.C.A. §33-5-403 then the CMHC forensic record must contain:

- A written request for an ID Assist to the Administrative Assistant at the Office of Forensic Services, with a copy to the designated forensic specialist;
- A request for the defendant's school records and other treatment records prior to age 18.
- A request for assistance from the Department of Intellectual & Developmental Disabilities as soon as it is determined that an ID assist is needed.
- A copy of the completed intellectual disability consultation; and
- A copy of the Certificates of Need (CON), if the defendant is committable to an ID facility. The ID Assist Psychologist must prepare one of the CONs and an M.D./Ph.D. at the CMHC must complete the second.

Standard 9. If interpreter services are required, the CMHC shall request an order for interpreter services from the court ordering the forensic evaluation and this is documented.

Standard 10. If a referral for inpatient evaluation of a defendant being evaluated under T.C.A. § 33-7-301(a) could be prevented with the use of supplemental community-based services, then the CMHC must:

- Document that a request was made to the Office of Forensic Services for pre-authorization before providing the service,
- Document the effectiveness of each intervention used, and
- Document the clinical findings to support the decision to refer to an inpatient facility if the interventions were ineffective.

Standard 11. The forensic evaluation, at a minimum:

- Contains a current psychosocial history,
- Addresses the specific issues ordered by the court,
- Lists the sources of information used in the evaluation process,
- Contains a summary statement and justification for the outcome/findings of the evaluation, and
- Includes recommendations for follow-up care to maintain competency that are specific to the needs of the defendant being evaluated under T.C.A. § 33-7-301(a).
- Contains support for any recommendation in a T.C.A. § 33-7-303(a) evaluation of commitment to an RMHI under T.C.A. § 33-7-303(c) that the acquittee meets commitment criteria of Title 33, Chapter 6, Part 5, and contains support for the recommendation that an inpatient evaluation requires a maximum security setting if the evaluator recommends admission to the Forensic Services Program, or
- If outpatient treatment is recommended, the evaluation contains specific recommendations for treatment and treatment plan developed (either by the agency conducting the evaluation or with another community agency),
- Contains support for any recommendation of Mandatory Outpatient Treatment under T.C.A. § 33-7-303(b) that the person's condition resulting from mental illness is likely to deteriorate rapidly to the point that the person would pose a substantial likelihood of serious harm under T.C.A. § 33-6-501 unless treatment is continued, or
- Contains support for a recommendation of what if any outpatient treatment is needed.

Standard 12. There is documentation of the reasons for all referrals for inpatient evaluation and treatment under T.C.A. § 33-7-301(a).

- If the evaluator cannot make a determination on competency and/or mental condition, then the defendant must be referred to the appropriate inpatient provider.
- If the evaluator determines that the defendant meets the criteria for referral to Forensic Services Program (FSP) there is documentation in the forensic record to support this recommendation for maximum security and the recommendation is included in the letter to the court.

Standard 13. There is documentation of the pre-admission contact with the inpatient forensic coordinator or his/her designee when an outpatient T.C.A. § 33-7-301(a) evaluation recommends an inpatient evaluation or when an evaluation under T.C.A. § 33-7-303(a) recommends commitment to an RMHI under T.C.A. § 33-7-303(c) (unless the defendant is already in the hospital under another legal section).

- There must be evidence in the chart that the current forensic evaluation, along with other pertinent information was sent to either FSP or the RMHI, for those defendants referred inpatient.

- The inpatient referral form must be placed in the forensic record.

Standard 14. The letter to the court contains the appropriate information.

- The letter to the court responds to all issues requested in the court order.
- The letter to the court includes the name and phone number of the outpatient forensic coordinator.
- An M.D. or Ph.D. must sign the letter to the court if the service recipient is being referred to inpatient for an inpatient evaluation or when an evaluation under T.C.A. § 33-7-303(a) recommends commitment to an RMHI under T.C.A. § 33-7-303(c).
- The letter to the court recommending an inpatient evaluation under T.C.A. § 33-7-301(a) includes the rationale for a referral to inpatient.
- A model order for an inpatient evaluation under T.C.A. § 33-7-301(a) at the RMHI or FSP is attached.
- The letter to the court addresses the need for follow-up services to maintain competency.
- If an evaluator conducting an evaluation under T.C.A. § 33-7-303(a) recommends commitment under T.C.A. § 33-7-303(c), the letter to the court should contain a recommendation to the court that the acquittee meets commitment criteria of Title 33, Chapter 6, Part 5, and so should be committed to an RMHI under T.C.A. § 33-7-303(c), and should have attached a sample order and two Certificates of Need (either both completed by physicians or one completed by a physician and one completed by a licensed psychologist);
- If the evaluator recommends admission to the Forensic Services Program, additional support for this recommendation should be included in the letter to the court.
- If the T.C.A. § 33-7-303(a) evaluator recommends outpatient treatment rather than commitment, the letter to the court should include a recommendation for mandatory outpatient treatment (MOT) if the acquittee meets criteria described in T.C.A. § 33-7-303(b) that the person's condition resulting from mental illness is likely to deteriorate rapidly to the point that the person would pose a substantial likelihood of serious harm under T.C.A. § 33-6-501 unless treatment is continued, and should attach a sample order and the Mandatory Outpatient Treatment Plan signed by the provider, or
- If MOT is not recommended, outpatient services are briefly described in the letter to the court if outpatient services are indicated.

Standard 15. Unless specifically restricted by the court order, the letter to the court is sent to the judge and copied to the following:

- District attorney,
- Defense attorney,
- The RMHI Forensic Coordinator, if the defendant is referred to inpatient, and
- The RMHI Forensic Coordinator, if, in a T.C.A. § 33-7-301(a) evaluation, the defendant is not referred inpatient but the outpatient evaluator does find support for the insanity defense on an outpatient basis.
- The outpatient treatment provider(s) if, in an evaluation under T.C.A. § 33-7-303(a), outpatient treatment is recommended and will be provided by another agency

Standard 16. There is, as indicated, documentation of follow-up services that are provided post-hospitalization to maintain competency for defendants evaluated under T.C.A. § 33-7-301(a) and awaiting trial.

- The initial contact with the defendant requiring competency maintenance is scheduled using the forensic discharge summary's priority scale provided by the RMHI,
- There is documentation of a plan for competency maintenance in the forensic record,
- There is documentation that the outpatient provider followed the plan for maintenance of competency, and
- There is documentation of the outcome of each scheduled contact.

Standard 17. There is appropriate documentation for defendants who are charged with a misdemeanor and are referred by the RMHI or FSP for competency training following inpatient evaluation under T.C.A. § 33-7-301(a).

- Pre-authorization from TDMH is obtained before competency training is provided (training limited to twelve sessions per year for a maximum of two (2) years) from the date of the initial competency training.
- There is written documentation of each training session with the defendant.
- Every six months or when competency is obtained there is a letter sent to the court that reports the competency status.

Standard 18. There is appropriate documentation for those defendants charged with a felony who are found incompetent, but who are not committable after an inpatient evaluation under T.C.A. § 33-7-301(a) and are referred for competency training under T.C.A. § 33-7-401.

- There is a court order directing the CMHC to perform competency training sessions,
- There is a court-approved community based services plan signed by all involved parties pursuant to T.C.A. § 33-7-401 in the forensic record (training limited to twelve sessions per year for a maximum of two (2) years),
- A certified evaluator provides and/or supervises staff assigned to perform competency training sessions and assesses the defendant at least once every three (3) months,
- There is written documentation of each training session with the defendant, and
- A letter is sent to the court that reports competency status at least every six months, or immediately when it is determined either that the defendant is competent to stand trial or that the defendant is unrestorably incompetent.

Standard 19. There is documentation that a court order was requested when the evaluator was asked to provide expert witness testimony.

Standard 20. Evaluations of defendants being housed in the Department of Corrections may be performed by the community mental health center serving the county in which the defendant is housed.

Standard 21. Post-conviction evaluations are conducted in accordance with all outpatient adult forensic standards.

Standard 22. The referral rate to inpatient does not exceed 25%.

Standard 23. The center has policies and procedures specific to forensic services, including, but not limited to:

- The process for scheduling and completing a forensic evaluation,
- The process for obtaining assistance from the Department of Intellectual & Developmental Disabilities,
- The process for making a referral to the appropriate inpatient facility or FSP,
- The specific staff involved in the forensic evaluation process and their responsibilities,
- The process for the submission of billing/claims and other required documentation, and
- The process for obtaining interpreter services.

Standard 24. There is evidence that the Policy and Procedure Manual is reviewed and updated on an annual basis, or more frequently as needed.

Standard 25. There is a designated staff person who has completed the TDMHSAS Forensic Training to coordinate forensic services, as well as a designated staff person to provide back-up coverage in the event of an absence.

Standard 26. If, during a forensic evaluation, it is determined that the defendant is obligated to the terms of a mandatory outpatient treatment plan (MOT), documentation should include:

- That notification was provided to the MOT qualified mental health provider regarding the whereabouts of the defendant (jail or bond), and
- The type of MOT: T.C.A. § 33-6-602 or T.C.A. § 33-7-303(b).

Standard 27. Release of Full Evaluation

- The judge may receive a copy of the full evaluation with a written court order under T.C.A. § 33-3-105(3).
- The defendant or family member of the defendant may receive a copy of the full evaluation upon request with an authorization to release information signed by the defendant unless the evaluation provider determines that release of the report would result in a substantial risk of serious harm to the defendant or another person.
- The defense attorney may receive a copy of the full evaluation upon request with an authorization for release of information signed by the defendant or with a court order under T.C.A. § 33-3-105(3).
- The district (prosecuting) attorney may only receive a copy of the full evaluation when ordered by the court under T.C.A. § 33-3-105(3).
- The evaluation is not released to any party not identified in the court order if the order indicates that the report is to remain "sealed" without further order from the court.

INPATIENT ADULT FORENSIC STANDARDS

REVISED AUGUST 2014

I. For All Inpatient Forensic Work

Standard 1: There must be a designated professional who has completed the TDMHSAS Forensic Training to coordinate the forensic services within the facility.

Standard 2: The facility has policies and procedures specific to forensic services, including but not limited to, the process for:

- Scheduling and completing a forensic evaluation (including forensic certification requirements);
- Obtaining assistance from the Division of Intellectual Disabilities Services;
- Recommending passes, privileges and/or furloughs;
- Reporting elopements;
- Submitting billing/claims and other required documentation;
- Obtaining interpreter services;
- Documenting changes in legal status;
- Submitting proposals for furlough and/or discharge to the Risk Management Review Committee for patients committed under T.C.A. § 33-7-303(c);
- Recommending release with a judicial right of review imposed;
- Completing an evaluation on an outpatient basis; and
- Recommending release with Mandatory Outpatient Treatment in accordance with T.C.A. § 33-6-602 or T.C.A. § 33-7-303(b).

Standard 3: There must be documentation that all staff completing a forensic evaluation are properly licensed and certified:

- A licensed physician with an expertise in psychiatry and with current forensic certification participates in the evaluation of a defendant charged with a capital offense (death penalty);
- Staff completing competency evaluations meet the criteria set forth in Departmental Rules 0940-03-03-.02 and -.03 and are currently certified by the TDMHSAS;
- Staff completing evaluations of mental condition at the time of the crime, including diminished capacity, meet the criteria set forth by Departmental Rules 0940-03-03-.02 and -.04 and are currently certified by the TDMHSAS.

Standard 4: A copy of a valid court order is maintained in the record upon the initiation of a forensic evaluation:

- A judge sitting in a criminal, circuit or general sessions court has signed the court order;
- The court order specifies the legal code and/or identifies the specific issues to be evaluated;
- The type of court and county is included on the order;
- The court order is date stamped or hand dated upon receipt by the facility (the date the court order is received by the facility is the effective date for the purpose

of scheduling the admission and for transferring from one legal status to another); and

- There must be a court order reflecting any change in legal status. If charges are dropped, TDMHSAS must be notified in writing.

Standard 5: When the defendant requires an interpreter;

- If interpreter services are required, the RMHI shall request an order for interpreter services from the court ordering the forensic evaluation and this is documented.
- There is documentation in the record of each interaction provided by the interpreter.

Standard 6: There must be documentation in the forensic record that the defendant was told the purpose of the evaluation and/or treatment and the limits of confidentiality.

Standard 7: The staff conference progress reports must address the forensic issues requested in the court order.

Standard 8: The treatment plan must address the forensic issues ordered by the court and reflect the defendant's current legal status.

Standard 9: There is documentation that a court order was requested when the evaluator was asked to provide expert witness testimony.

- There must be documentation of the court attendance in the defendant's forensic record.

Standard 10. A copy of the data report form submitted to TDMHSAS within two (2) business days of a discharge or legal status change is maintained in the forensic record.

Standard 11. When the RMHI performs an outpatient evaluation, there must be documentation that the evaluator/RMHI complies with the outpatient evaluation standards.

Standard 12. There must be documentation that defendants admitted to the Forensic Services Program at MTMHI meet specific criteria:

- Identified need for security due to specific risks of harm to self or others identified by the outpatient evaluator; and/or
- High risk for elopement.

II. T.C.A. § 33-7-301(a) Specific Standards

Standard 1: There must be a signed consent in the record for release of information requested from other treatment providers.

Standard 2: There is documentation that Information is requested from:

- defense attorney;
- district attorney;
- Jail medical staff (if the defendant is in jail);
- other treatment providers or any other relevant sources of information.

Standard 3: If indicated, ID Assist must be requested within five (5) days of the defendant's admission.

Standard 4: The interim staff conference report, completed within 15 days, must address the court-ordered issues and the status of the evaluation process and must be signed or co-signed by staff certified to conduct evaluations on the relevant forensic issues.

Standard 5: There must be progress notes that address the forensic issues and committability written by staff forensically certified to address those issues at a minimum of two (2) times per week, with no more than four (4) days between MD /PhD visits /progress notes. Notes concerning committability and mental condition at the time of the offense must be written by a physician with specialty in psychiatry or licensed psychologist with HSP designation.

Standard 6: There must be documentation that appropriate personnel are present at staff conferences, including, but not limited to:

- a doctoral-level psychologist, licensed in Tennessee with health service provider designation and with forensic certification; and/or
- a physician licensed in the state of Tennessee with expertise in psychiatry and with forensic certification.

Standard 7: There must be documentation that the treatment plan addresses all of the court ordered forensic issues.

Standard 8: Documentation in the forensic evaluation report must include, but not limited to:

- A list of all the sources of information used in the evaluation;
- information obtained from pre-admission contact with the referring agency;
- information obtained from the jail, the defense attorney, and the district attorney and other treatment providers;
- evaluation of the defendant's competency to stand trial, if ordered;
- evaluation of the defendant's mental condition at the time of the alleged crime, if ordered;
- evaluation of diminished capacity, if ordered;
- evaluation of committability under T.C.A. §33- 7-301(b) and Title 33, Chapter 6, Part 5, Tenn. Code Ann. and the need for security;
- ID assist, report findings;
- a summary of the findings/outcome of the evaluation, along with follow-up recommendations to the court; and
- a summary of the recommendations for the community mental health center that will be providing services after discharge.

Standard 9. There must be documentation that the final staff conference was held within thirty (30) calendar days of admission and addresses all of the court-ordered issues.

Standard 10. Defendants hospitalized under T.C.A. § 33-7-301(a) must be released on or before the thirtieth (30th) day following admission. Documentation reflects:

- Defendants are discharged upon completion of the evaluation;
- Defendants that do not meet commitment criteria are referred back to jail, or community, if on bond; and/or

- Defendants that require continued hospitalization must meet the required Title 33, Chapter 6, Part 5, Tenn. Code. Ann. criteria and cannot be managed safely in jail prior to return to the hospital if the court finds they meet criteria for commitment under T.C.A. § 33-7-301[b].

Standard 11. Letters to the court contain the information ordered by the court, including:

- competency to stand trial (if ordered);
- mental condition at the time of the crime (if ordered),
- committability under T.C.A. § 33-7-301(b) or Title 33, Chapter 6, Part 5, Tenn. Code Ann., and, if committable, the need for maximum security;
- the need for follow-up services from the appropriate outpatient mental health provider;
- the need for mental retardation/intellectual disability services (if indicated), including competency training and,
- the need for competency training for defendants who are incompetent and not committable.

Standard 12. Letters to the court must be sent to the judge and copied to the following people, unless otherwise indicated by the court;

- the defense attorney;
- the district attorney; and
- the outpatient provider.

Standard 13. Release of Full Evaluation and/or other Clinical Information

- The judge or referee may receive a copy of the full evaluation and/or other information from the medical record with a written court order under T.C.A. § 33-3-105(3).
- The defendant or family member of the defendant may receive a copy of the full evaluation and/or other information from the medical record upon request with an authorization to release information signed by the defendant unless the evaluation provider determines that release of the report or other information would result in a substantial risk of serious harm to the defendant or another person.
- The defense attorney may receive a copy of the full evaluation and/or other information from the medical record upon request with an authorization for release of information signed by the defendant or with a court order under T.C.A. § 33-3-105(3).
- The district (prosecuting) attorney may only receive a copy of the full evaluation and/or other information from the medical record when ordered by the court under T.C.A. § 33-3-105(3).

Standard 14. There is evidence that two certificates of need for commitment accompanied the letter to the court recommending hospitalization under T.C.A. § 33-7-301(b).

Standard 15. There must be documentation that the jail is informed of the prescribed medication, the supplies given and any special precautions for defendants returning to jail.

Standard 16. There must be documentation that the notice to the outpatient forensic provider includes the specific need for follow-up services, including, but not limited to:

- competency training and/or maintenance that identifies the specific competency deficits or concerns;
- need for physician consultation with the jail staff or the defendant;
- medication management and the need for monitoring of compliance;
- time frame for initial contact with the defendant, using the agreed upon Discharge Plan Form and priority codes.

Standard 17. There must be documentation that defendants being considered for release under T.C.A Title 33, Chapter 7, Part 4, (Mandatory Community Based Services), meet the following criteria:

- Charged with a felony;
- Incompetent to stand trial;
- Not committable under T.C.A. Title 33, Chapter 6, Part 5; and
- At risk of becoming committable.

Standard 18. Letters to the court recommending release under Title 33, Chapter 7, Part 4, Tenn. Code Ann. must indicate the following:

- The defendant's name, legal status, date of admission, alleged crime, reason for admission, competency status;
- That the defendant does not meet commitment criteria;
- The reasons for release under Title 33, Chapter7, Part 4, Tenn. Code Ann.; and
- the community-based services plan developed in cooperation with the outpatient provider.
-

III. T.C.A. §33-7-301(b) Specific Forensic Standards

Standard 1. A copy of a valid court order is maintained in the forensic record and reflects that the defendant committed under T.C.A. § 33-7-301(b) meets the following criteria:

- The defendant is incompetent to stand trial and committable; or
- The defendant is competent to stand trial and committable; and
- The court order for T.C.A. § 33-7-301(b) finds the need for treatment in the Forensic Services Program (FSP), if indicated.

Standard 2. The medical record contains the following documentation:

- a social history completed within the prior six months with an addendum completed within 48 hours of admission;
- a psychiatric evaluation, if readmitted; and
- a physical examination completed within the prior six months with an addendum completed within 24 hours of admission.

Standard 3. There must be documentation of regularly scheduled treatment team meetings that is sent to the assigned forensic specialist in the Office of Forensic Services in the following time frames:

a. every month for the first 3 months, (progress note may be substituted for the staff conference report if the information is comparable); then,
b. every 3 months thereafter, (with the completion of a staff conference report and risk assessment);

c. at any time there is a change in status that warrants an update; or
d. if requested by TDMHSAS.

Standard 4. A risk assessment completed every ninety (90) days from the date of admission and/or prior to discharge or furlough is maintained in the forensic record.

Standard 5. The VRAG/SORAG completed by the 60th day of hospitalization is maintained in the forensic record.

Standard 6. Documentation includes:

- the staff's evaluation of competency and the reasons for the need for continued commitment;
- documentation of competency training groups or individual sessions at a minimum of once weekly reflecting competency status (there must be documentation for exclusion if the service recipient is too delusional or unable to attend); or
- documentation of the status of the defendant's competency at a minimum of once monthly for long-term service recipients that are unlikely to become competent;
- progress notes and treatment plan that reflect the issues of the current legal status, and any change in legal status;
- documentation by the M.D. or Ph.D., certified in forensics, at a minimum of two (2) times per week for the first week of hospitalization, then a minimum of one (1) time per week thereafter. If certified by TDMHSAS, a nurse practitioner may document on competency to stand trial issues; however, the M.D. or Ph.D. must still document the need for committability; and,
- documentation in the medical record of any transfer from FSP/RMHI and a letter from the Commissioner of TDMHSAS authorizing the transfer.

Standard 7. All passes, privileges, and furloughs comply with TDMHSAS policy and procedures and are documented in the medical record.

Standard 8. The forensic record contains a letter to the court that is sent every six months, during the course of hospitalization, and addresses the defendant's current condition, current competency status, his/her likelihood of regaining competency, and the specific reasons for the need for continued commitment.

Standard 9. The documentation in the medical record must be complete when the defendant who was hospitalized under T.C.A. § 33-7-301(b) is returned to jail or community. Treatment team recommendations must include:

a. a written assessment of readiness for release by the attending physician, including rationale for the decision;
b. documentation that the staff considered issues relative to findings of the T.C.A. § 33-7-301(a) evaluation (as well as any issues that were deferred in the T.C.A. § 33-7–301(a) evaluation);
c. documentation of consideration of the defendant's returning to jail or community (if on bond) while awaiting trial;

d. documentation from the physician to the chief officer, or his/her designee, regarding the release; and documentation from the chief officer, or his/her designee, to the committing court regarding the defendant's release;
e. documentation of the need for follow-up services; and
f. if needed, competency maintenance or training for defendants that are incompetent and no longer committable.

Standard 10. There must be appropriate documentation when the defendant admitted under T.C.A. § 33-7-301(b) is to be released under Title 33, Chapter 7, Part 4, Tenn. Code Ann. (Mandatory Community Based Services), including documentation that the defendant meets the following criteria;

- is charged with a felony;
- is incompetent to stand trial;
- not committable under T.C.A. § 33-6-502; and
- is at risk of becoming committable.

Standard 11. The letter to the court regarding the release of the defendant pursuant to Title 33, Chapter 7, Part 4, Tenn. Code Ann. (Mandatory Community Based Services) includes the following;

- a statement that the defendant meets the criteria for mandatory community based services (as outlined in the previous standard),
- the request for an order for competency training under Title 33, Chapter 7, Part 4, Tenn. Code Ann.,
- a copy of the treatment plan that is signed by the participating outpatient provider (including the contact person and the address), and agreed upon by the defendant, or
- the request for a hearing on the community based competency treatment plan that has been contested by the defendant.

Standard 12. Letters to the court recommending the release of a defendant hospitalized under T.C.A. § 33-7-301(b) are copied to the following people, unless otherwise indicated by the court:

- the defendant,
- the district attorney,
- the defense attorney,
- the conservator/closest relative, and,
- TDMHSAS, Forensic Services.

Standard 13. There must be documentation of consideration of the criteria for release under Title 33, Chapter 6, Part 6, Tenn. Code Ann. (Mandatory Outpatient Treatment; MOT) including.

- The person is mentally ill or is suffering from mental illness in remission; and
- The person's condition resulting from mental illness is likely to deteriorate rapidly to the point that he/she will pose a likelihood of serious harm as defined under Title 33, Chapter 6, Part 5, Tenn. Code Ann. unless treatment is continued; and
- The person is likely to participate in outpatient treatment with a legal obligation to do so; and
- The person is unlikely to participate in outpatient treatment unless legally obligated to do so; and

- Mandatory outpatient treatment is a suitable less drastic alternative to commitment.

Standard 14. There must be appropriate documentation when the defendant admitted under T.C.A. § 33-7-301(b) is released under Title 33, Chapter 6, Part 6, Tenn. Code Ann. (MOT), including:

- review and recommendation by the attending physician;
- development of a mandatory outpatient treatment plan, with the written agreement from the outpatient provider,
- consideration of the defendant residing in the community (if on bond) while awaiting trial;
- written recommendation to the chief officer or his/her designee concerning the release;
- the chief officer's or his/her designee's authorization to release the defendant under Title 33, Chapter 6, Part 6, Tenn. Code Ann. (MOT); and
- chief officer's notice of release to the committing court.

Standard 15. Letters to the court recommending release under Title 33, Chapter 6, Part 6, Tenn. Code Ann. (MOT) must include the following:

- defendant's name, legal status, date of admission, alleged crime, reason for admission, current competency status;
- a note that the defendant no longer meets involuntary commitment standards under Title 33, Chapter 6, Part 5, Tenn. Code Ann.;
- reasons for release under Title 33, Chapter 6, Part 6, Tenn. Code Ann.;
- a copy of the mandatory outpatient treatment plan signed by the outpatient provider; and,
- The letter to the court must be copied to the defendant, the district attorney, the defense attorney, the defendant's closest relative, conservator, if any, and the TDMHSAS.

Standard 16. If the defendant requests judicial review of the mandatory treatment plan, there must be documentation that the facility provided notice to the court and of the court's response to the requirement to hold a hearing within seven (7) days of receipt of the request for review.

Standard 17. The release of the defendant committed under T.C.A. § 33-7-301(b), having a judicial review of release under T.C.A. § 33-6-708, must include the following documentation:

- an assessment by the treatment team that the defendant is ready for release,
- a review and recommendation from the attending physician,
- a letter to the chief officer from the attending physician regarding the release,
- the notice of intent to release sent to the court by certified mail (including a statement that the defendant will be released within fifteen (15) days if the court does not set a hearing and notify the chief officer), and
- that the outpatient provider has agreed to the treatment plan, if applicable.

IV. T.C.A. § 33-7-303(c) Specific Forensic Standards

Standard 1. There is a valid court order committing the service recipient under T.C.A. § 33-7-303(c) maintained in the forensic record.

Standard 2. There must be documentation of regularly scheduled treatment team meetings sent to Forensic Services within the following time frames:

a. every month for the first three (3) months, (forensic progress note may be substituted for the staff conference report if the information is comparable); then,
b. every three (3) months thereafter, (with the completion of a staff conference report and risk assessment);
c. at any time there is a change in status that warrants an update; or
d. if requested by TDMHSAS.

Standard 3. The treatment plan identifies the specific reasons for the need for commitment and other treatment needs.

Standard 4. There is documentation during treatment team reviews of the need for continued commitment, progress toward discharge, tentative discharge plans and aftercare needs identified during treatment team meetings (staff conferences).

Standard 5. The Risk Assessment Checklist is completed within ninety (90) days of admission and every ninety (90) days thereafter, and/or, just prior to discharge, pass and/or furlough and is maintained in the forensic record.

Standard 6. Documentation in the forensic record includes:

- the staff's evaluation of the specific reasons for the need for continued commitment; and
- documentation by the M.D. and/or Ph.D. addressing the specific reasons for the need for continued commitment at a minimum of one(1) time per week for sixty (60) days then monthly until discharge.

Standard 7. If there has been a transfer, there must be a letter in the chart from the Commissioner of the TDMHSAS directing the transfer.

Standard 8. When there is recommendation for release, documentation in the medical record must include:

- evidence that the treatment team, including a physician, has assessed the service recipients clinical status, including committability;
- review of the need for follow-up services;
- review of the circumstances of the crime for which the person was acquitted;
- a written assessment of readiness for release by the attending physician, and another physician including rationale for their decision;
- if applicable, documentation that the service recipient meets the criteria for mandatory outpatient services under Title 33, Chapter 6, Part 6, Tenn. Code Ann. (MOT);
- if applicable, a copy of the outpatient treatment plan developed in cooperation with and signed by the outpatient provider; and
- evidence that the request for release has been referred to the chief officer for review and recommendation.

- Results of a review of proposed furlough or release by the Risk Management Review Committee.

Standard 9. If the chief officer does not concur with the recommendation for release, a notice must be sent to the service recipient and the physicians stating that hospitalization is to continue under T.C.A. § 33-7-303(c), and a copy placed in the chart.

Standard 10. If the chief officer concurs with the recommendation for release, prior to release, there must be a copy of the chief officer's notice of the intent to release that has been sent to:

- the committing court
- the service recipient,
- the district attorney of the committing court,
- the defense attorney,
- the closest relative or conservator (by certified mail with return receipt requested),
- the physicians who recommended the release, and
- the outpatient treatment provider.

Standard 11. The notice to the court must contain the following:

- the service recipient's name, legal status, date of admission, the crime for which the person was adjudicated NGRI, reason for admission, a statement that he/she no longer meets judicial commitment standards, and a statement that the service recipient will be referred to an outpatient provider for follow-up mental health services,
- a copy of the outpatient treatment plan, if there is an MOT, and
- a statement making the court aware of the right of the victim (if felony charges) to receive notification of the service recipient's proposed discharge.

Standard 12. If a judicial review of release under T.C.A. § 33-6-708 has been imposed, there must be a letter, sent by certified mail, of the intent to release sent to the court in the record at least 15 days in advance of the planned date of discharge. If the court does not respond within 15 days of receipt of this letter, then the service recipient may be released.

OUTPATIENT JUVENILE FORENSIC STANDARDS

FOR EVALUATIONS UNDER T.C.A. § 37-1-128(e)
REVISED AUGUST 2014

Standard 1. Evaluations are performed only when there is a valid court order:

- Evaluations are performed by order of a juvenile court judge or magistrate under T.C.A. § 37-1-128(e);
- Court orders and/or accompanying petitions must clearly identify and list the charge(s);
- Court orders must be signed and dated by the juvenile judge/magistrate;
- Any specialized assessments or evaluations must be listed in the court order.

Standard 2. Juvenile Court orders for an evaluation must be date stamped or hand dated by the mental health center staff upon receipt and included as part of the juvenile forensic record.

Standard 3. There is documentation in the court order and/or the court petition that the juvenile is charged with an offense that would be a felony if committed by an adult, in order for the Office of Forensic Services to authorize the evaluation for reimbursement.

Standard 4. Information relevant to the evaluation shall be requested by the mental health center, including information from:

- Juvenile Court;
- District Attorney;
- DCS/CSA;
- Defense attorney and/or guardian ad litem;
- Academic records.
- Previous treatment providers, and any other sources who may have information relevant to the evaluation.

Standard 5. There must be a signed consent for release of information obtained from the juvenile, if age sixteen or over, or the legal guardian, to obtain records from other providers and resources, unless the release of information is ordered by the court.

Standard 6. There must be documentation in the juvenile forensic record that the juvenile and/or legal guardian was informed about the purpose of the evaluation and/or treatment and the limits of confidentiality.

Standard 7. If interpreter services are required, the CMHC must request a court order for the interpreter services and this must be documented in the record.

Standard 8. The juvenile evaluation shall include, but not be limited to, documentation of the following:

- A current psychosocial history;
- An indication of whether the child is mentally ill or developmentally disabled (with recommended diagnoses);
- Recommendations as to what, if any, treatment or training is needed and resources for those services;

- An indication as to whether the child is committable under Title 33;
- Specific forensic issues (i.e. competency to stand trial, mental condition at the time of the offense, psychosexual);
- A list of the resources used to develop the evaluation;
- A summary statement with justification for the outcome/findings of the evaluation.

Standard 9: If the juvenile is thought to have intellectual disability, a request may be made for assistance from the Department of Intellectual & Developmental Disabilities (DIDD):

- School records must be requested for documentation of the diagnosis.
- A written request must be sent to the designated staff person at the Office of Forensic Services within five (5) business days of the initial assessment;
- The letter to the court, which must include findings from both the mental health evaluator and the intellectual disability evaluator, is the responsibility of the mental health provider;
- A copy of the complete DIDD evaluation is maintained in the clinical record.

Standard 10. The summary letter of the evaluation must be sent to the court and the evaluation must be completed within thirty (30) business days of the receipt of the court order by statute (based on the length of time from the dated receipt of the court order to the date of the letter to the court). The court shall be immediately notified in writing of any occurrence outside the control of the evaluator which results in a delay. All effort should be made to have some result to the court within 30 days.

Standard 11. The letter to the court must:

- Address the issues requested by the court order, within the scope of the statute (e.g., psychosexual, competency);
- Include summary findings concerning diagnosis, treatment recommendations and committability;
- Include the name and phone number of the forensic coordinator;
- Be copied to the district attorney, the defense attorney and, if referred inpatient, to the forensic coordinator of the inpatient facility unless the court order restricts the release of the results of the evaluation.
- Be copied to the designated person at the Office of Forensic Services.

Standard 12. The center must have a policies and procedures manual specific to forensics that includes, but is not limited to:

- The process for scheduling and completing a juvenile court ordered evaluation;
- The process for obtaining DIDD assistance for juveniles thought to have intellectual disability;
- The process for obtaining interpreter services;
- The process for obtaining a psychosexual evaluation;
- The specific staff involved in the forensic evaluation process and their responsibilities;
- The process for maintaining certification to perform forensic evaluations;
- The process for the submission of billing/claims and other required documentation;

- The Policy and Procedure manual must be reviewed at least annually and updated as needed.

Standard 13. Staff performing juvenile forensic evaluations must be properly licensed and certified:

- Staff performing competency evaluations must meet the criteria listed in TDMHSAS Departmental Rule 0940-03-03.02 and .03;
- Staff performing mental condition evaluations must meet the criteria listed in TDMHSAS Departmental Rule 0940-03-03.02 and .04;
- Staff performing committability evaluations must be Tennessee licensed physicians or Tennessee licensed psychologists with designation as a health services provider;
- Staff performing psychosexual evaluations must meet the guidelines set forth by the Tennessee Department of Correction Sex Offender Treatment Board.

Standard 14. There is documentation that a court order was requested when the evaluator was asked to provide expert witness testimony:

- The request must be included in the juvenile's forensic record;
- There is documentation in the forensic chart that court testimony was given.

Standard 15. All juvenile forensic files are clearly labeled and separate from other clinical files.

Standard 16. Release of information

- Evaluations are sent to the Judge or Magistrate who ordered the evaluation, the attorney for the defense and the district attorney along with the letter summarizing the results of the evaluation unless otherwise specified in the court order.
- The evaluation is not released to any party not identified in the court order if the order indicates that the report is to remain sealed, without further order from the court.
- DCS may receive a copy of the evaluation if the court order directs DCS and the evaluation provider to share information, or if the child is in DCS custody at the time of the evaluation, or if DCS presents an authorization for release of information properly signed by the child 16 or older or by the parent or legal guardian of a child under 16.
- The child's family may receive a copy of the evaluation with a signed release from the child if 16 or older, or from the parent or legal guardian of the child if the child is under 16 unless the parent or legal guardian is implicated in abuse of the child or if release of the report would result in a substantial risk of serious harm to the child or another person.

SUGGESTED READING: Forensic Evaluation
Selected Bibliography

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Rogers, R. (Ed.) (2008). *Clinical Assessment of Malingering and Deception (*3rd ed.). New York: Guilford Press.

Shapiro, D. L. (1999). *Criminal Responsibility Evaluations: A Manual For Practice.* Sarasota, FL: Professional Resources Press.

APPENDIX OF SELECTED FORMS

ALL FORMS AVAILABLE AT WEBSITE:
http://www.tn.gov/behavioral-health/topic/sample-court-orders
http://www.tn.gov/behavioral-health/topic/forms

1. MH5266 – Order Directing Forensic Evaluation by the CMHC Under T.C.A. § 33-7-301(a)

2. MH5428 – Order For Outpatient Evaluation of a Child Under T.C.A. § 37-1-128(e)(1)

3. MH5267 - Order Directing Forensic Evaluation by the RMHI Under T.C.A. § 33-7-301(a)

4. MH5270 – Order Directing Judicial Forensic Hospitalization at an RMHI Under T.C.A. § 33-7-301(b)

5. MH5272 - Order Directing Judicial Forensic Hospitalization at the Forensic Services Unit of MTMHI Under T.C.A. § 33-7-301(b) and Title 33, Chapter 6, Part 5

6. MH5032 – Certificate of Need -- **AVAILABLE AT WEBSITE:** http://www.tn.gov/assets/entities/behavioral-health/attachments/MH-5032R3.pdf

7. MH5275 – Order Directing Community Based Services to Be Provided by the Mental Health Center Under T.C.A. § 33-7-401

8. MH5263 – TDMHSAS Outpatient Forensic Data Report (Rev. 8/13)

9. MH5282 – Pre-authorization Request for Forensic Community Services

10. MH5253 – Referral for Inpatient Forensic Evaluation

11. MH5281 – RMHI Forensic Intake Report

12. MH5284 – Inpatient Forensic Data Report

13. MH5280 – RMHI Forensic Team Meeting Progress Note

14. MH5265 – Level III and Level IV Competency Training / Maintenance Progress Report