The Virginia Department of Behavioral Health and Developmental Services (DBHDS),

Office of Forensic Services

Policies and Procedures Manuals for Competency to Stand Trial and Sanity at the Time of the Offense Evaluations

Forensic Evaluation Oversight System

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Chapter 1

Definitions

The following words and terms when used in this Manual shall have the following meanings, unless the context clearly indicates otherwise:

"Adult" means individuals 18 years of age or older, or juveniles subject to adult evaluations after transfer to adult court.

"Applicant" means an individual who submitted a completed application with documentation to be considered for inclusion on the Commissioner's appointed list of qualified evaluators.

"Deputy Director" refers to the Deputy Director of Forensic Services for the Department of Behavioral Health and Developmental Services (DBHDS).

"Board" means the Virginia Board of Psychology or the Board of Medicine.

"Clinical Psychologist" means an individual who holds a doctorate in psychology and is licensed as a clinical psychologist by a state's Board of Psychology or equivalent entity.

"Commissioner" refers to the Commissioner for the Virginia Department of Behavioral Health and Developmental Services.

"Competency to Stand Trial" evaluations examine a defendant's competency to stand trial. If competent, a defendant currently must possess a sufficient understanding of the legal proceedings against him (both factual and rational), as well as the ability to consult counsel.

"CST" is short-hand for Competency to Stand Trial.

"Defendant" means an individual who is currently facing criminal charges.

"Department of Behavioral Health and Developmental Services", or DBHDS, is the governmental agency that provides and manages state-run public mental health care. The Office of Forensic Services is within DBHDS and manages the Forensic Evaluation Oversight Program.

"Forensic evaluation" means, in this context, court-ordered Competency to Stand Trial evaluations and Sanity reports. There are other forensic evaluations that are not addressed in this manual.

"ILPPP" and "Institute" means the University of Virginia's Institute of Law, Psychiatry and Public Policy.

"Manager" means Forensic Evaluation Oversight Manager.

"Manual" refers to this document, which is a policies and procedures manual developed by the Virginia DBHDS.

“Sanity at the Time of the Offense” evaluation is a psychological evaluation to determine whether the psycho-legal construct of ‘insanity at the time of the offense’ applies in a defendant’s case. In Virginia, a defendant may be found insane at the time of the crime if he/she had a significant mental disease or defect at the time of the crime(s), which significantly impacted his/her cognitive and/or volitional abilities. These evaluations may be called insanity evaluations, mental state at the time of the offense (MSO) evaluations, or criminal responsibility evaluations.

“MSO” is short-hand for “mental state at the time of the offense” evaluation, also known as an insanity evaluation. In Virginia, the Code of Virginia labels these evaluations Sanity at the Time of the Offense, but many court-orders reference “Mental State at the Time of the Offense” evaluations.

“Psychiatrist” means an individual who has a medical degree, is licensed as a physician by the Board of Medicine, and has completed a psychiatry residency.

“Restoration” refers to specific interventions aimed at restoring a defendant’s competency to stand trial. After a court determines a defendant is incompetent to stand trial, the court typically orders the defendant to receive restoration treatment in the community/jail (outpatient) or at a DBHDS psychiatric hospital (inpatient).

Purpose

The purpose of this manual is to outline the policies and procedures for the Forensic Evaluation Oversight System. This system was established by House Bill 582 of the 2015 General Assembly Session and went into effect July 1, 2016. This Bill modified the statutes for adult evaluations of Competency to Stand Trial (CST) and Sanity at the Time of the Offense, authorizing the Virginia Department of Behavioral Health and Developmental Services (DBHDS) to maintain a list of approved forensic evaluators who may complete these evaluations for the courts in Virginia.

This change in law only applies to adult evaluations and to evaluations of CST and Sanity. Therefore, the policies and procedures outlined in this manual do not apply to juvenile competency to stand trial evaluations (§ 16.1-356), examinations of sexual abnormality prior to sentencing (§ 19.2-300), mental health examinations that occur after a person is found not guilty by reason of insanity and committed to the custody of the Commissioner (§19.2-182.2; § 19.2-182.5, etc.), evaluations of specific intent at the time of the crime (§ 19.2-271.6)or any other psychological evaluations for the court.

Several researchers and evaluators in forensic psychology have identified the need of quality reviews of pretrial evaluations, specifically competency to stand trial and sanity at the time of the alleged offense evaluations (Appelbaum, 1992; Farkas, DeLeon, & Newman, 1997; Frost, de Camara, & Earl, 2006; Gowensmith, Pinals, & Karas, 2015; Skeem & Golding, 1998). A few states have quality assurance systems in place, with others exploring the viability of such programs.[1] Research shows that the opinions forensic evaluators offer the courts have an enormous impact on the trier of fact. For example, researchers found a 99.7% agreement rate between an evaluator's opinion of competency to stand trial and the judge's final ruling (Zapf, Hubbard, Cooper, Wheeles, & Ronan, 2004). Further, in the case of competency to stand trial, judge's decisions are usually made solely on the written report rather than additional testimony (Skeem & Golding, 1998). This means there is an enormous responsibility on evaluators to produce high quality reports in these areas.

Both competency to stand trial and sanity at the time of the offense evaluations impact issues related to justice and liberty. For CST evaluations, providing an opinion that a defendant is competent to stand trial means he or she will proceed to trial, which can lead to the possibility of a guilty verdict and sentencing. An incorrect finding of competency means that someone who may

[1] According to Gowensmith et al., (2015), of the 38 states who responded to their survey about CST evaluations, 17 states require participation in specific training, 7 passing a test, 10 review of work samples, 7 involvement in a mentoring process, and 4 necessitated previous experience. Finally, as of the 2015 review by Gowensmith et al., three states only required licensure with no additional requirements to complete CST evaluations. As of April 2017, The Oversight Manager has been contacted by psychologists in various states who are currently exploring and/or formalizing quality assurance systems.

not fully understand court is proceeding to trial, which does not conform with our ideals of justice.[2] Opinions of incompetency may have implications on perceptions of justice by the families of victims who may take issue with a trial being delayed, and impact liberty interests of individuals found incompetent to stand trial. An incompetent defendant's trial is delayed while receiving restoration treatment, and treatment may result in inpatient hospitalization and medication administration over objection, which further curtails liberty.

For opinions of insanity, research shows that these affirmative defenses are not always successful and when unsuccessful, may result in longer periods of confinement than if the defendant did not attempt the insanity defense (Perlin, 1994). Thus, an opinion of insanity may launch a defense that, in the end, may not turn out in the defendant's best interest. Justice is impacted when there is an opinion of insanity, as victims of violent crimes or their families may feel like the defendant is "getting off" and not being punished adequately if committed to a hospital rather than being subject to prison or even the death penalty. This can cause public outcry as well. When a defendant is found to be insane by the court, the defendant loses significant liberty interests and is involuntarily committed to the custody of the Commissioner of the Department of Behavioral Health and Developmental Services for a period of evaluation called temporary custody.

Although some attorneys may advise their clients that they will only spend 45 days in the hospital, this is not true. At a minimum, the fastest an individual can move through the temporary custody process is 90 days (a 45 day period of evaluation and an additional 45 day extension for development and review of a release plan). In FY20, 32% of acquittees were released after temporary custody..[3] Therefore, the majority are committed to the hospital. Once committed to the hospital, an acquittee spends approximately five years[4] in the hospital, sometimes shorter or longer depending on the individual's clinical status, behaviors, and other factors. Once conditionally released, supervision and limits to liberty continue for years in the form of Conditional Release supervision and treatment requirements, on average 3.8 years post-release[5]. Research shows that in the majority of cases, individuals often remain confined in a hospital far longer than they would have been incarcerated if they had not proceeded with the defense and perhaps considered a plea bargain (Perlin, 1994). Therefore, proffering an opinion of insanity *may* lead to a defendant receiving a harsher sentence if the defense is unsuccessful, or, if the defense is successful, losing liberty for a longer period of time than if the defendant chose a different legal strategy such as accepting a plea bargain.

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[2] Trial of an incompetent defendant is a violation of the Constitution (*Pate v. Robinson*, 383 U.S. 372 (1966)).

[3] This number includes 30.6% of acquitees conditionally released, and 1.4% unconditionally released after temporary custody.

[4] According to DBHDS, for FY10-FY20, the median length of stay was 5.2 years. This average does not include those released during temporary custody.

[5] This is for FY10-20.

On the other side of the coin, thorough evaluations of insanity are needed to provide a much needed legal option for individuals who rightfully qualify for the defense. There are significant justice issues at play when considering the insanity defense. American jurisprudence does not support the punishment of morally-blameless individuals who were unable to control their actions or were unable to understand or appreciate what they were doing at the time of the crime[6], so an insanity defense is an essential legal strategy that the courts have found should be available to defendants in Virginia.

There is also a fiscal impact of treating and housing individuals found incompetent to stand trial or insane. In FY18, the average length of stay for restoration of competency to stand trial across all DBHDS facilities was 61.3 days, with an average cost of $983.67 per day[7]. Therefore, the average defendant with no complicating medical conditions costs the Commonwealth $60,298.97 to restore to competence. Using the more conservative cost of hospitalization[8], the average insanity acquittee's hospitalization of five years costs the Commonwealth $1,795,197.75. Costs continue while the acquittee is on Conditional Release, absorbed by the Community Services Boards/Behavioral Health Authorities who treat and monitor acquittees, and associated court costs. These costs only increase when individuals require expensive medical interventions or lengthier hospitalizations due to clinical and safety needs. Minimizing *unnecessary* hospitalizations can have an enormous fiscal impact on the Commonwealth, while freeing up beds for the most impaired individuals.

Because evaluators' opinions have such an enormous impact on the justice system, the liberty interests of the defendant, and the cost to the Commonwealth, the need for high-quality evaluation procedures and forensic reports is absolutely imperative. Part of this process is thoroughly explaining one's reasoning for his or her opinion; explaining one's reasoning allows the trier of fact to weigh the various pieces of information used by the evaluator to make his or her ultimate decision. Evaluators should remember that they provide an *opinion*, but the court makes the *ruling*. Therefore, evaluators should "show their work" so the judge or jury can determine how much weight to give the opinion in their overall decision making[9]. The reasoning for such opinions should be as transparent as possible.

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[6] Although the insanity defense is not a Constitutional right at this time, most states have the insanity defense. For those states that do not, the lack of a *mens rea*, or guilty mind, can be brought up in trial in order to have charges reduced or to seek an acquittal (*Clark v. Arizona*, 548 U.S. 735 (2006).

[7] On average, a state hospital bed costs $867.50 per day, while forensic beds (due to increased security demands) cost approximately $900 per day. This figure is an average of maximum security and non-maximum security beds to account for differences in facilities.

[8] $835.00 for non-maximum security hospital bed. This number is likely higher as new acquittees typically begin their hospitalization at Central State Hospital in a maximum security forensic bed (approximately $900 per day).

[9] "An expert's simple *ipse dixit* is insufficient to establish a matter; rather, the expert must explain the basis of his statements to link his conclusions to the facts." *Earl v. Ratliff*, 998 S.W. 2d 882, 890 (Tex. 1999). Also noted in *General Electric Co. et. al. v. Joiner, et ux*, 522 U.S. 136 (1997).

The primary goals of the Forensic Evaluation Oversight System are:

1) Improve the overall quality of forensic evaluations so they are of greater utility to the trier of fact;
2) Provide a collegial environment for evaluators to learn, share, and professionally grow through periodic feedback to all evaluators as well as educational opportunities and consultation.
3) Supply a resource to the courts so clerks and other court officials may quickly and efficiently designate orders to qualified evaluators and introduce clerks to new evaluators in the region.
4) Ensure courts are appointing evaluators who have the requisite clinical and educational experiences to perform high quality forensic evaluations.

Disclaimers

The following policies and procedures were developed after review of the literature, examination of existing quality assurance programs, and consultation with experts in the field. Practice guidelines herein represent the *most basic level of competence* to conduct these evaluations. Individual cases can vary widely with respect to their factual and contextual circumstances. Because of this, and because defendants' clinical and individual characteristics are diverse, forensic evaluators appropriately exercise professional judgment with respect to their selection and application of assessment procedures in conducting evaluations under these sections of the Virginia Code. What may be deemed ethically or legally acceptable, and what may be deemed consistent with prevailing standards of practice, may differ according to factors in any individual case. Therefore, these minimally acceptable professional standards alone regarding CST and Sanity evaluations may still not meet ethical guidelines for psychologists or psychiatrists, or specialty guidelines for forensic psychologists[10] or forensic psychiatrists.[11] In addition, some disciplines have practice guidelines for these evaluations that may exceed what is required by DBHDS and should be consulted before performing these evaluations.[12] [13] Because every case is unique, meeting these minimal standards still may not necessarily protect an individual from malpractice litigation or complaints to ethics boards.

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[10] American Psychological Association (2012). Specialty Guidelines in Forensic Psychology. *American Psychologist, 68*(1), 7-19. Retrieved from: https://www.apa.org/pubs/journals/features/forensic-psychology.pdf

[11] American Academy of Psychiatry and the Law (Adopted May, 2005). Ethics Guidelines for the Practice of Forensic Psychiatry. Retrieved from: http://www.aapl.org/ethics-guidelines

[12] Mossman, D., et al. (2007). American Academy of Forensic Psychiatry and the Law Practice Guidelines for the Forensic Psychiatric Evaluation of Competency to Stand Trial. Journal of the American Academy of Forensic Psychiatry and the Law Online, 35 (Supplement 4), S3-S72. Retrieved from: http://jaapl.org/content/35/Supplement_4/S3

[13] American Academy of Psychiatry and the Law (2014). American Academy of Psychiatry and the Law Practice Guidelines for the Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense. Journal of the American Academy of Forensic Psychiatry and the Law Online, 42(4), S3-S76. Retrieved from: http://www.aapl.org/docs/pdf/Insanity%20Defense%20Guidelines.pdf

Chapter 2

Laws and Standards of Practice

The evaluations of Competency to Stand Trial and Sanity at the Time of the Offense are governed by law. Statutory law written in the Code of Virginia, as well as case law decisions in the various courts of Virginia and the nation, outline what is required in each of these evaluations.

In Virginia, the Code authorizes which legal personnel may request the evaluation, the rules of appointing evaluators, time frames limiting hospitalization and submitting reports, who should receive the report, the information that should go to the evaluator, and other procedural issues. Defining the psycho-legal construct of each evaluation is done via case law. For example, the Code is silent as to how to define "understanding the legal proceedings" in CST evaluations and "sanity at the time of the offense, including whether he may have had a significant mental disease or defect which rendered him insane at the time of the offense" in Sanity Evaluations.

The following information is a brief overview of the laws most relevant to the practice of CST and Sanity evaluations in Virginia. It is strongly suggested that all evaluators who perform these evaluations review the cases and laws referenced herein and not rely solely on this document for their education about the legal criteria for competency and insanity findings. Evaluators are strongly encouraged to review the Virginia Code Sections every year after July 1st, to have the most up-to-date version of each Code. You can find this by visiting http://law.lis.virginia.gov. The demands of individual casework may require an evaluator to seek out additional cases to inform practice.

Laws Regarding Competency to Stand Trial

In Virginia, all defendants are presumed to be competent and the burden is on the defense to prove the defendant is incompetent to stand trial by a preponderance of the evidence. Although there are several statues related to competency to stand trial, one statute defines CST in Virginia:

> **§ 19.2-169.1. Raising question of competency to stand trial or plead; evaluation and determination of competency.**
>
> A. Raising competency issue; appointment of evaluators. — If, at any time after the attorney for the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who (i) has performed forensic evaluations; (ii) has successfully completed forensic evaluation training recognized by the Commissioner of

Behavioral Health and Developmental Services; (iii) has demonstrated to the Commissioner competence to perform forensic evaluations; and (iv) is included on a list of approved evaluators maintained by the Commissioner.

B. Location of evaluation. — The evaluation shall be performed on an outpatient basis at a mental health facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator opines that a hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2.

C. Provision of information to evaluators. — The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the evaluation request. The court shall require the attorney for the defendant to provide any available psychiatric records and other information that is deemed relevant. The court shall require that information be provided to the evaluator within 96 hours of the issuance of the court order pursuant to this section.

D. The competency report. — Upon completion of the evaluation, the evaluators shall promptly submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future. If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether inpatient or outpatient treatment (community-based or jail-based) is recommended. Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate community services board or behavioral health authority. In cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition, and where prior medical or educational records are available to support the diagnosis, or if the defendant was previously determined to be unrestorably incompetent in the past two years, the report may recommend that the court find the defendant unrestorably incompetent to stand trial and the court may proceed with the disposition of the case in accordance with § 19.2-169.3. No statements of the defendant relating to the time period of the alleged offense shall be included in the report. The evaluator shall also send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to establish and maintain the list of approved evaluators described in subsection A.

E. The competency determination. — After receiving the report described in subsection D, the court shall promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right to personally participate in and introduce evidence at the hearing.

The fact that the defendant claims to be unable to remember the time period surrounding the alleged offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the charges against him and can assist in his defense. Nor shall the fact that the defendant is under the influence of medication bar a finding of competency if the defendant is able to understand the charges against him and assist in his defense while medicated.

In summary, the Code of Virginia regarding adult competency to stand trial evaluations says:

1) In order to be competent to stand trial, a defendant must currently possess a sufficient understanding of the legal proceedings against him (factual and rational), and the ability to assist counsel.
2) Any party (defense, Commonwealth, or judge) may request the evaluation.
3) A defendant may be found incompetent if he or she "…lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense…"
4) Evaluations should occur on an outpatient basis. Inpatient evaluations are only permitted if the defendant is already in DBHDS custody under certain orders, or if an outpatient attempted to complete a CST evaluation, was unable to come to a conclusion, and recommended inpatient evaluation.
5) Evaluators are entitled by law to receive certain collateral information to assist them in completing a thorough evaluation.
6) Evaluators should not include information about the defendant's statements of the alleged offenses in the report.
7) The defense bears the burden of proving incompetency by preponderance of the evidence. A hearing regarding the defendant's competency to stand trial is required only if it is possible that the individual may be hospitalized for restoration, or if specifically requested by an attorney.
8) If opined to be incompetent to stand trial and requiring restoration, the evaluator *must* recommend either inpatient or outpatient treatment. Outpatient restoration should be considered the "default" option and is most appropriate for defendants with intellectual disabilities, neurocognitive disorders, or those who are taking or willing to take medications. Inpatient restoration should be reserved for those who require an inpatient level of care for medication management.

9) If opined to be incompetent and unlikely to be restored in the future (i.e., unrestorable), the evaluator *must* recommend if the charges should be dismissed (i.e., does not meet civil commitment criteria), civilly committed, certified, or reviewed as a potential SVP. In Virginia, the two most common recommendations are civil commitment, or does not meet civil commitment criteria. Certification is no longer used in Virginia, and the SVP review only applies to specific charges.
10) In cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition, and where prior medical or educational records are available to support the diagnosis, or if the defendant was previously determined to be unrestorably incompetent in the past two years, the report may recommend that the court find the defendant unrestorably incompetent to stand trial and the court may proceed with the disposition.
11) All CST evaluations *shall* be sent to the Department in a redacted format, including removal of the defendant's name and date of birth, court of jurisdiction, and case number(s). Please send reports to forensic.evaluations@dbhds.virginia.gov
12) Amnesia alone does not constitute incompetency to stand trial.
13) Even if competency is "artificial" (i.e., as a result of medications), the defendant may be found competent if he/she understands the proceedings and can assist counsel.

In essence, a defendant is competent to stand trial if s/he currently possesses the capacity to understand the legal proceedings against him and has the ability to assist counsel. The Code, however, is silent on how to define "understanding of the proceedings" or the "ability to assist his attorney". Case law helps explain some of these terms.

Youtsey v. United State, 97 F. 937 (6th Cir., 1899)

- Every adult is presumed competent to stand trial until there is a reason to doubt competency.
- If CST is questioned, the defendant should be evaluated and a hearing should be conducted.

Dusky v. United States, 362 U.S. 402 (1960)

- A defendant is competent to stand trial if he or she "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational as well as factional understanding of the proceedings against him."
    - Present ability (not in the past).
    - Three components:
        - Ability to consult with lawyer in a rational manner;
        - Rational understanding of the legal proceedings; and
        - Factual understanding of the legal proceedings.
    - Conjunctive test, meaning, all three must be present in order to be competent to stand trial.

Medina v. California, 505 U.S. 437 (1992)

- Defendants are presumed to be competent to stand trial, and the standard for proving incompetence is preponderance of the evidence.
    - Preponderance of the evidence is reiterated in *Cooper v. Oklahoma* 517 U.S. 348 (1996)

Drope v. Missouri, 420 U.S. 302 (1975)

- If there is sufficient doubt as to a defendant's competency to stand trial, such as irrational behaviors at any point in the trial process, competency may be examined.
- The defendant must have the capacity to assist counsel in his or her own defense.

Kenner v. United States, 286 F.2d 208 (8th Cir., 1960)

- Mental state can fluctuate over time, so any motion for a CST exam, if made in good faith, must be granted. CST should be evaluated recently.

Godinez v. Moran, 509 U.S. 389 (1993)

- The *Dusky* standard applies to a defendant's ability to plead guilty or right to waive counsel; a higher standard is not required.

United States v. Duhon, 104 F.Supp.2d 663 (2000)

- Rote memorization of factual information is insufficient to be competent to stand trial; the other components of *Dusky*, namely possessing a rational understanding of the legal proceedings and having the ability to consult with counsel, are also needed.

Wilson v. United States, 391 F.2d 460 (D.C. Cir., 1968)

- Amnesia does not automatically make someone incompetent to stand trial.

In summary, relevant case law regarding adult competency to stand trial evaluations says:

- Defendants are presumed to be competent to stand trial.
- The burden is on the defense to prove incompetency by a preponderance of the evidence.
- If there is a bona fide doubt as to the defendant's competency, a motion for an evaluation should be granted.
- Competency to stand trial is about the defendant's current or present abilities.
- Since mental state can fluctuate over time, if there is motion made in good faith for an evaluation at any point in the trial process, it should be granted.
- The *Dusky* standard applies to all aspects of competency, including the ability to plead guilty or waive counsel.
- Having amnesia for the offense alone is insufficient for a finding of incompetency.

Laws Regarding Sanity at the Time of the Offense (AKA insanity)

In Virginia, the primary statutory code that addresses the insanity defense is:

> **§ 19.2-169.5. Evaluation of sanity at the time of the offense; disclosure of evaluation results.**
>
> A. Raising issue of sanity at the time of offense; appointment of evaluators. -- If, at any time before trial, the court finds, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's sanity will be a significant factor in his defense and that the defendant is financially unable to pay for expert assistance, the court shall appoint one or more qualified mental health experts to evaluate the defendant's sanity at the time of the offense and, where appropriate, to assist in the development of an insanity defense. Such mental health expert shall be a psychiatrist or a clinical psychologist who (i) has performed forensic examinations, (ii) has successfully completed forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental Services, (iii) has demonstrated to the Commissioner competence to perform forensic evaluations, and (iv) is included on a list of approved evaluators maintained by the Commissioner. The defendant shall not be entitled to a mental health expert of his own choosing or to funds to employ such expert.
>
> B. Location of evaluation. -- The evaluation shall be performed on an outpatient basis, at a mental health facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator opines that a hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2.
>
> C. Provision of information to evaluator. -- The court shall require the party making the motion for the evaluation, and such other parties as the court deems appropriate, to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant and the judge who appointed the expert; (iii) information pertaining to the alleged crime, including statements by the defendant made to the police and transcripts of preliminary hearings, if any; (iv) a summary of the reasons for the evaluation request; (v) any available psychiatric, psychological, medical or social records that are deemed relevant; and (vi) a copy of the defendant's criminal record, to the extent reasonably available.

D. The evaluators shall prepare a full report concerning the defendant's sanity at the time of the offense, including whether he may have had a significant mental disease or defect which rendered him insane at the time of the offense. The report shall be prepared within the time period designated by the court, said period to include the time necessary to obtain and evaluate the information specified in subsection C.

E. Disclosure of evaluation results. -- The report described in subsection D shall be sent solely to the attorney for the defendant and shall be deemed to be protected by the lawyer-client privilege. However, the Commonwealth shall be given the report in all felony cases, the results of any other evaluation of the defendant's sanity at the time of the offense, and copies of psychiatric, psychological, medical, or other records obtained during the course of any such evaluation, after the attorney for the defendant gives notice of an intent to present psychiatric or psychological evidence pursuant to § 19.2-168. In addition, in all cases, the evaluator shall send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to establish and maintain the list of approved evaluators described in subsection A.
F. In any case where the defendant obtains his own expert to evaluate the defendant's sanity at the time of the offense, the provisions of subsections D and E, relating to the disclosure of the evaluation results, shall apply.

In summary, the Code of Virginia regarding sanity at the time of the offense evaluations says:

1. Defense requests the report.
2. Evaluations should occur on an outpatient basis. Inpatient evaluations are only permitted if the defendant is already in DBHDS custody under certain orders, or if an outpatient attempted to complete a sanity evaluation, was unable to come to a conclusion, and recommended inpatient evaluation.
3. The evaluator is entitled to collateral information for a thorough evaluation.
4. The report goes only to the defense attorney.
5. All MSO/insanity evaluations *shall* be sent to the Department in a redacted format, including removal of the defendant's name and date of birth, court of jurisdiction, and case number(s). Please send reports to forensic.evaluations@dbhds.virginia.gov

Once defense counsel receives the report, the attorney will review the report and decide with his or her client if they will proceed with an insanity defense. If so, they will notify the court and the Commonwealth, and will submit the report to the Commonwealth's attorney (§ 19.2-168). The prosecutor will then decide whether or not s/he wants a second-opinion insanity evaluation. The following is the statute for this second-opinion sanity evaluation:

§ 19.2-168.1. Evaluation on motion of the Commonwealth after notice.

A. If the attorney for the defendant gives notice pursuant to § 19.2-168, and the Commonwealth thereafter seeks an evaluation of the defendant's sanity at the time of the offense, the court shall appoint one or more qualified mental health experts to perform such an evaluation. The court shall order the defendant to submit to such an evaluation and advise the defendant on the record in court that a refusal to cooperate with the Commonwealth's expert could result in exclusion of the defendant's expert evidence. The qualification of the experts shall be governed by subsection A of § 19.2-169.5. The location of the evaluation shall be governed by subsection B of § 19.2-169.5. The attorney for the Commonwealth shall be responsible for providing the experts the information specified in subsection C of § 19.2-169.5. After performing their evaluation, the experts shall report their findings and opinions, and provide copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation to the attorneys for the Commonwealth and the defense. The evaluator shall also send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to establish and maintain the list of approved evaluators described in subsection A of § 19.2-169.5.

B. If the court finds, after hearing evidence presented by the parties, that the defendant has refused to cooperate with an evaluation requested by the Commonwealth, it may admit evidence of such refusal or, in the discretion of the court, bar the defendant from presenting expert psychiatric or psychological evidence at trial on the issue of his sanity at the time of the offense.

In summary, the Code of Virginia regarding second opinions of sanity evaluations says:

1. A second opinion may be requested by the prosecutor.
2. The same legal criteria, procedures, etc. established in § 19.2-169.5 apply in these evaluations.
3. The report goes to the Commonwealth and the Defense attorney.
4. All MSO evaluations *shall* be sent to the Department in a redacted format, including removal of the defendant's name and date of birth, court of jurisdiction, and case number(s). Please send reports to forensic.evaluations@dbhds.virginia.gov
5. If the defendant refuses to participate, he/she may not be able to use the initial report.

Under § 19.2-169.5, "The evaluators shall prepare a full report concerning the defendant's sanity at the time of the offense, including whether he may have had a significant mental disease or defect which rendered him insane at the time of the offense." Other than noting that the mental disease or defect must be "significant", no further explanation is given about how to define insanity.

As to disorders that may be considered "significant", typically this means psychotic or mood disorders that significantly impact a defendant's reality testing (Warren, Murrie, Chauhan, Dietz, & Morris, 2004). Antisocial personality disorder and substance use disorders, as well as less serious disorders that do not impair reality testing or impulse control, are typically excluded as being a sufficient basis for an insanity defense.

Again, case law illuminates key aspects of evaluating insanity:

Queen v. M'Naghten, 10 Clark & F.200, 2 Eng. Rep. 718 (H.L. 1843)

- To be insane, one must be, at the time of the crime "…laboring under such a defect of reason, from disease of the mind, as to not 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."

Boswell v. Commonwealth, 61 Va. 860 (1871)

- Established that the M'Naghten Test is the insanity standard in Virginia.
- Drunkenness is not a sufficient condition to be found insane unless the actions were due to "settled insanity" (see *Morgan v. Commonwealth* below).
- Everyone is presumed sane.

Price v. Commonwealth, 228 Va. 452 (1984)

- The M'Naghten test is disjunctive; meaning, a person may be insane if he or she did not know the nature/character/consequences of his actions, *or* the wrongfulness. Both are not needed for a finding of insanity.

Thompson v. Commonwealth, 193 Va. 704 (1952)

- Added the irresistible impulse test to the M'Naghten Test for insanity in Virginia.
- "Irresistible impulse is defined to be an impulse that is induced by …some mental disease affecting the volitive…powers…is unable to resist the impulse to do it."
- Mere passion or frenzy is not irresistible impulse.
- An irresistible impulse should be considered if there is a significant mental disease or defect and criteria for the insanity defense were not met when the defendant's capacity to understand the nature, character, or consequences of his actions, and the ability to understand wrongfulness were examined.

Dejarnette v. Commonwealth, 75 Va. 867 (1881)

- The court is silent as to the standard that needs to be met for a finding of insanity (i.e., preponderance of the evidence, clear and convincing, etc.), other than the defendant must prove insanity to the juror's satisfaction.

Morgan v. Commonwealth, 646 S.E. 2d 899 (2007)

- Defined "settled insanity" as impairments that can lead to a finding of insanity from chronic alcohol consumption. In *Morgan*, the court found that these impairments must be permanent in order to qualify as settled insanity.

Rollins v. Commonwealth, 207 Va. 575 (1966)

- "Sociopathic personality disturbance" does not qualify for the insanity defense.

Some evaluators find it useful to include a statement such as the following paragraph in MSO reports to orient the reader to the standards being used:

> *A defendant may be considered to have been insane at the time of the offense if, as a result of mental disease or defect, the defendant did not understand the nature, character, or consequences of his actions, or was unable to distinguish right from wrong, or (if neither of the above is true) if he was unable to resist the impulse to commit the act (Boswell v. Commonwealth, 61 VA614 [20 Gratt] 860[1871]; Dejarnette v. Commonwealth, 75 VA 867 [1881]; Price v. Commonwealth, 228 VA 452 [1984]; Thompson v. Commonwealth, 193 VA 704 [1952]).*

In summary, relevant case law regarding sanity at the time of the offense evaluations says:

- In order to be found insane, there must have been a significant mental disease or defect present at the time of the offense. Usually this means a mental illness or symptoms of mental illness that significantly impair reality testing or impulse control.
- The “test” for insanity is that the significant mental disease or defect at the time of the crime resulted in the defendant’s inability to understand the nature, character, or consequences of his actions OR the defendant’s inability to appreciate the wrongfulness of his actions; OR (if neither are true) the defendant’s criminal behavior was a result of an irresistible impulse. The test is disjunctive; that is, after a finding of severe mental illness at the time of the crime, only one prong of the insanity test needs to be met for a positive opinion.
- Alcohol or drug intoxication cannot be the basis for an insanity defense, but permanent damage from substance use can be the basis for an insanity defense.
- Insanity must be proven by the defendant to the satisfaction of the jurors.
- Antisocial personality disorder alone does not qualify for the insanity defense.
- Reports of evaluations requested by defense (§ 19.2-169.5) go to defense counsel, while second opinions requested by the Commonwealth (§ 19.2-168.1) go to the prosecutor as well as the defense attorney.

Additional Code Sections to Know

If a defendant is incompetent to stand trial, he or she will likely be ordered for restoration of competency to stand trial. This should occur on an outpatient basis unless specifically finds that the defendant requires an inpatient level of care. Usually the court follows the recommendation of the evaluator who opined the defendant to be incompetent to stand trial. Restoration on an outpatient basis may occur while the defendant is in the community or in the jail, and is performed by the Community Services Board/Behavioral Health Authority. All CSBs/BHAs are able to provide restoration and are reimbursed for their services. In instances in which the CSB/BHA does not have a qualified psychologist or psychiatrist on staff to perform the outcome competency evaluation, a community outpatient evaluator may be asked to complete the evaluation on their behalf. If you or the CSB/BHA have questions about reimbursement for restoration treatment or the outcome competency to stand trial evaluation, please contact Sarah Davis at Sarah.Davis@dbhds.virginia.gov.

§ 19.2-169.2. Disposition when defendant found incompetent.

A. Upon finding pursuant to subsection E of § 19.2-169.1 that the defendant, including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge. Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate community services board or behavioral health authority. Notwithstanding the provisions of § 19.2-178, if the court orders inpatient hospital treatment, the defendant shall be transferred to and accepted by the hospital designated by the Commissioner as soon as practicable, but no later than 10 days, from the receipt of the court order requiring treatment to restore the defendant's competency. If the 10-day period expires on a Saturday, Sunday, or other legal holiday, the 10 days shall be extended to the next day that is not a Saturday, Sunday, or legal holiday. Any psychiatric records and other information that have been deemed relevant and submitted by the attorney for the defendant pursuant to subsection C of § 19.2-169.1 and any reports submitted pursuant to subsection D of § 19.2-169.1 shall be made available to the director of the community services board or behavioral health authority or his designee or to the director of the treating inpatient facility or his designee within 96 hours of the issuance of the court order requiring treatment to restore the defendant's competency. If the 96-hour period expires on a Saturday, Sunday, or other legal holiday, the 96 hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.

B. If, at any time after the defendant is ordered to undergo treatment under subsection A of this section, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1.

The court shall make a ruling on the defendant's competency according to the procedures specified in subsection E of § 19.2-169.1.

C. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of an order for treatment issued pursuant to subsection A.

For most cases, an order for restoration of competency to stand trial is valid for six months from receipt of order (if outpatient) or admission to hospital. For most misdemeanors, restoration can be renewed, with a new order, for a total of one (1) year of restoration. For felony charges, restoration may be renewed over and over up to five years; this can go on indefinitely in aggravated murder cases. For the charges of Trespassing, Disorderly Conduct, and Petty Larceny, a report about the defendant's restorability is required after 45 days of restoration. The following Code Section addresses these issues, as well as the requirement to make recommendations for a disposition if a defendant is opined to be unrestorable.

§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; aggravated murder charge; sexually violent offense charge.

A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of § 19.2-169.2, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection E of § 19.2-169.1. If the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or (iii) certified pursuant to § 37.2-806. However, if the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future and the defendant has been charged with a sexually violent offense, as defined in § 37.2-900, he shall be screened pursuant to the procedures set forth in §§ 37.2-903 and 37.2-904. If the court finds the defendant incompetent but restorable to competency in the foreseeable future, it may order treatment continued until six months have elapsed from the date of the defendant's initial admission under subsection A of § 19.2-169.2.

B. At the end of six months from the date of the defendant's initial admission under subsection A of § 19.2-169.2 if the defendant remains incompetent in the opinion of the board, authority, or inpatient facility director or his designee, the director or his

designee shall so notify the court and make recommendations concerning disposition of the defendant as described in subsection A. The court shall hold a hearing according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the defendant unrestorably incompetent, shall order one of the dispositions described in subsection A. If the court finds the defendant incompetent but restorable to competency, it may order continued treatment under subsection A of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but restorable to competency in the foreseeable future.

C. If any defendant has been charged with a misdemeanor in violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or Article 5 (§ 18.2-119 et seq.) of Chapter 5 of Title 18.2, other than a misdemeanor charge pursuant to § 18.2-130 or Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, and is being treated pursuant to subsection A of § 19.2-169.2, and after 45 days has not been restored to competency, the director of the community service board, behavioral health authority, or the director of the treating inpatient facility, or any of their designees, shall send a report indicating the defendant's status to the court. The report shall also indicate whether the defendant should be released or committed pursuant to § 37.2-817 or certified pursuant to § 37.2-806. Upon receipt of the report, if the court determines that the defendant is still incompetent, the court shall order that the defendant be released, committed, or certified, and may dismiss the charges against the defendant.

D. Unless an incompetent defendant is charged with aggravated murder or the charges against an incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner.

E. If the court orders an unrestorably incompetent defendant to be screened pursuant to the procedures set forth in §§ 37.2-903 and 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction wherein the defendant was charged and the Commissioner of Behavioral Health and Developmental Services to provide the Director of the Department of Corrections with any information relevant to the review, including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the defendant's criminal record, (iii) information about the alleged crime, (iv) a copy of the competency report completed pursuant to § 19.2-169.1, and (v) a copy of the report prepared by the director of the defendant's community services board, behavioral health authority, or treating inpatient facility or his designee pursuant to this section. The court shall further order that the defendant be held in the custody of the Department of Behavioral Health and Developmental Services for secure confinement and treatment until the Commitment Review Committee's and Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice that the Attorney General has declined to file a petition for the

commitment of an unrestorably incompetent defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or certified pursuant to § 37.2-806.

F. In any case when an incompetent defendant is charged with aggravated murder and has been determined to be unrestorably incompetent, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the aggravated murder case may order that the defendant receive continued treatment under subsection A of § 19.2-169.2 in a secure facility determined by the Commissioner of the Department of Behavioral Health and Developmental Services where the defendant shall remain until further order of the court, provided that (i) a hearing pursuant to subsection E of § 19.2-169.1 is held at yearly intervals for five years and at biennial intervals thereafter, or at any time that the director of the treating facility or his designee submits a competency report to the court in accordance with subsection D of § 19.2-169.1 that the defendant's competency has been restored, (ii) the defendant remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant presents a danger to himself or others. No unrestorably incompetent defendant charged with aggravated murder shall be released except pursuant to a court order.

G. The attorney for the Commonwealth may bring charges that have been dismissed against the defendant when he is restored to competency.

Summary regarding restoration orders:

1. Restoration shall occur on an outpatient basis, unless an inpatient level of care is required.
2. Outpatient restoration is provided by community services boards, while inpatient restoration is provided at DBHDS facilities.
3. Outpatient restoration may occur in the community or in the jail—inpatient or outpatient treatment is not tied to bond status.
4. DBHDS must admit a defendant for restoration within 10 days of receipt of order.
5. Evaluators will be asked by the restoration treatment provider to complete a report once the defendant has attained competence, is thought to be unrestorable, or prior to an expiration of a court order.
6. Competency to stand trial reports are required to resolve a restoration treatment order. We usually refer to them as "outcome evaluations". The same laws and guidelines governing competency to stand trial evaluations apply to CST outcome evaluations.
7. For charges of Trespassing, Disorderly Conduct, and Petty Larceny, a report is required after 45 days of restoration. If the defendant is not restored, in the evaluator's opinion, after 45 days of restoration, the evaluator should provide a recommendation about a disposition (e.g., civil commitment or no civil commitment) if the court finds the defendant unrestorable.
8. If a defendant is found unrestorable for certain sexual charges (see Code), than the defendant *shall* be reviewed for possible commitment as a sexually violent predator.

9. If a defendant is found unrestorable for aggravated murder, the defendant may remain in restoration status indefinitely as long as the defendant remains incompetent and dangerous, and the treatment is medically necessary. Virginia Code Section 19.2-169.3:1 outlines the privileging process for these defendants.

Although mentioned under § 19.2-169.1 that no statements by the defendant regarding the alleged offenses should be included in a competency to stand trial report, § 19.2-169.7 plainly states that no statements made by the defendant during the course of a competency to stand trial evaluation or restoration may be used against him/her to prove his/her guilt.

> **§ 19.2-169.7. Disclosure by defendant during evaluation or treatment; use at guilt phase of trial.**
>
> No statement or disclosure by the defendant concerning the alleged offense made during a competency evaluation ordered pursuant to § 19.2-169.1, a mental state at the time of the offense evaluation ordered pursuant to § 19.2-169.5, or treatment ordered pursuant to § 19.2-169.2 or § 19.2-169.6 may be used against the defendant at trial as evidence or as a basis for such evidence, except on the issue of his mental condition at the time of the offense after he raises the issue pursuant to § 19.2-168.

As of July 1, 2016, clerks are now required to submit a tracking form to the individual evaluator or institution designated to complete a CST evaluation, Sanity evaluation, and restoration order (as well as Emergency Treatment from jail order). The evaluator, in turn, must confirm receipt of the order by completing the form and resubmitting to the clerk.

> **§ 19.2-169.8. Orders for evaluation or treatment; duties of clerk; copies.**
>
> A. Whenever a court orders an evaluation pursuant to § 19.2-168.1, 19.2-169.1, or 19.2-169.5 or orders treatment pursuant to § 19.2-169.2 or 19.2-169.6, the clerk of the court shall provide a copy of the order to the appointed evaluator or to the director of the community services board, behavioral health authority, or hospital named in the order as soon as practicable but no later than the close of business on the next business day following entry of the order. The party requesting the evaluation pursuant to § 19.2-168.1, 19.2-169.1, or 19.2-169.5, the attorney for the Commonwealth if treatment is ordered pursuant to § 19.2-169.2, or the petitioner if treatment is ordered pursuant to § 19.2-169.6 shall be responsible for providing to the court the name, address, and other contact information for the appointed evaluator or the director of the community services board, behavioral health authority, or hospital unless the court or clerk already has this information. The appointed evaluator or the director of the community services board, behavioral

health authority, or hospital shall acknowledge receipt of the order to the clerk of the court on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia as soon as practicable but no later than the close of business on the next business day following receipt of the order.

B. No person shall be liable for any act or omission relating to the performance of any requirement set forth in subsection A unless the person was grossly negligent or engaged in willful misconduct.

Receipt of court-orders

Given the statues reviewed above, as an evaluator you should receive the following documents, at a minimum:

1. Court order that clearly notes the statute, type of evaluation ordered, and the next court date.
2. Contact information for the attorneys involved and the judge.
3. Tracking form with the top portion of the form completed by the clerk.
4. Various collateral sources specifically noted under §19.2-169.1 and §19.2-169.5.
5. Previous evaluations in the case of completing competency to stand trial evaluations after restoration and second opinion sanity evaluations.

Chapter 3

Eligibility Criteria and Application Process

As of July 1, 2016, the Code outlines four requirements to complete CST and Sanity evaluations in Virginia. Both § 19.2-169.1 and § 19.2-169.5 state, "…the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who (i) has performed forensic evaluations; (ii) has successfully completed forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental Services; (iii) has demonstrated to the Commissioner competence to perform forensic evaluations; and (iv) is included on a list of approved evaluators maintained by the Commissioner… The evaluator shall also send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to establish and maintain the list of approved evaluators described in subsection A."

Therefore, to be a qualified evaluator, the following criteria must be met:

1) Must be a psychiatrist or clinical psychologist (i.e., licensed);
2) Must have performed forensic evaluations;
3) Has successfully completed forensic evaluation training recognized by the Commissioner of DBHDS; and
4) Is included on the list of approved evaluators

Requirement #1: Degree & License Requirement

The Code states that in order to complete CST and Sanity evaluations, the evaluator must either be a psychiatrist or a clinical psychologist.

A psychiatrist typically holds either a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) degree. These medical doctors then go on to complete a residency in Psychiatry and Neurology.

Clinical Psychologists hold a doctoral degree in psychology (Ph.D., Psy.D., or Ed.D.) and must be licensed by the Virginia Board of Psychology in clinical psychology (§ 54.1-3600) or other state licensing board (§54.1-3601). Therefore, professionals with doctorates but who are not licensed in clinical psychology cannot perform these evaluations without a supervisor, nor can other clinicians holding other licenses. Postdoctoral fellows or other pre-licensed clinicians may conduct evaluations under the supervision of an approved forensic evaluator, and that evaluator must co-sign any report to the court and be prepared to testify about the opinion. The list of approved evaluators will not include non-licensed individuals. However, applicants may count these pre-licensed reports toward their overall experience in their application once a license is obtained.

Requirement #2: Performance of Forensic Evaluations

In the application, the applicant attests to completing CST and MSO evaluations in the past, and is required to note the estimated number completed. These prior evaluations may be completed in

other states, as a licensed professional prior to the law going into effect, or completed during pre-license or post-license and under the supervision of another forensic evaluator.

For those with no prior completed CST and Sanity evaluations, but have completed the Basic Adult Forensic Evaluation training through the Institute of Law, Psychiatry and Public Policy (ILPPP), successful completion of the peer-reviewed sample report at the end of the training is sufficient to claim "experience" since this involves peer-review. Please note on the application if this is your only completed report. New evaluators who want additional peer review/supervision on their reports prior to submission to the courts/attorneys are encouraged to contact the Forensic Evaluation Oversight Manager.

If you have never completed a CST or Sanity evaluation, but have gone through comparable training through another provider or institution, then contact the Forensic Evaluation Oversight Manager at Angela.Torres@dbhds.virginia.gov about how you may complete the experience requirement.

Requirement #3: Training Requirements

The Department recognizes the week-long Basic Adult Forensic Evaluation training provided by the ILPPP as sufficient to meet this requirement. It is especially relevant to practice in Virginia, as it not only covers national standards but also laws applicable to practice in Virginia. Training dates may be found at the Institute of Law, Psychiatry and Public Policy's website (https://www.ilppp.virginia.edu/).

The Department also recognizes other forms of training outside of what is provided by the ILPPP. Other trainings provided by similar institutes and extensive forensic training didactics in forensic-focused graduate programs, internships, and postdoctoral fellowships/specialized residencies may be sufficient as well. Proof of specific trainings, such as syllabi or program brochures, may be requested by the Department. The American Academy of Forensic Psychology provides several workshops every year. Information may be obtained at http://aafpforensic.org/workshops/. Additional online training options may be found through the CONCEPT organization at http://www.concept-ce.com/best-practices-in-the-evaluation-of-competence-to-stand-trial/ and https://concept.leadpages.co/sti-criminal-responsibility-and-insanity/.

At a minimum, training should cover:

1) Overview of the public mental health delivery system
2) Law, the Court System, and Criminal Justice Processes
   a. Sources of law
   b. Fifth amendment concerns
3) Principles of Forensic Evaluations
   a. Distinction from therapeutic practice
   b. Legal regulations of experts' involvement
4) Competency to Stand Trial Evaluations
   a. Legal standard for competency to stand trial
   b. Disposition of finding of incompetency

c. Case law relevant to competency/incompetency
d. Issues related to confidentiality
e. Specialized assessment tools

5) The Insanity Defense
a. History of the Insanity defense and various insanity tests
b. Disposition of Insanity Acquittees
c. Clinical Assessment of Sanity at the Time of the Offense
d. Ethics related to insanity evaluations
e. Specialized assessment tools

6) Special Clinical Concerns in Forensic Assessment
a. Assessment of Malingering
b. Intellectual Disability and forensic assessment
c. Amnesia: Forensic Assessment Issues

7) Sentencing and Treatment
8) Report Writing
9) Expert Testimony

Individuals who have achieved Board Certification as a forensic psychiatrist, or Board Certification as a forensic psychologist through the American Board of Forensic Psychology, have demonstrated a high level of education, training, and experience in the field of forensic mental health, and therefore have also met training requirements.

Requirement #4: Placement and Retention on the Approved List of Evaluators

Assuming the applicant has the correct degree and license, has completed appropriate training, and has completed prior CST and Sanity reports, the Forensic Evaluation Oversight Manager will approve the evaluator and place him or her on the list. The evaluator will be notified of this via email (if no email address is provided, then through mail), and the list will be updated with the new evaluator's contact information and uploaded to the website. Clerks of court, public defenders, and Commonwealth's attorneys have all been notified about the new website and advised to check the list frequently (ideally before appointment of new evaluators for each order issued), and reminders will be sent periodically for new staff. However, new evaluators should still contact the courts they wish to work with and alert them of their status as an approved evaluator.

To remain on the list, all evaluators must send redacted copies of every adult CST and Sanity reports completed and demonstrate continued professional competency to complete forensic evaluations. This will be explained in the next section.

Application Process

First, complete the application found in Appendix A, the Office of Forensic Services' website, or request an application via email at Angela.Torres@dbhds.virginia.gov. Please note if you attended the Basic Forensic Evaluation training through the Institute of Law, Psychiatry and Public Policy in addition to any other forensic trainings, specialized internships, or postdoctoral fellowships or

residencies. Applications will be reviewed based on the criteria specified above. Applicants will be notified within two weeks of the results of the review and/or if further information is needed to complete the review. Evaluators are reminded that DBDHS does not have any control/influence over which evaluators are appointed to cases, rather such decisions are made by the court (often with input from the Commonwealth Attorney and/or defense counsel). It is the responsibility of the individual evaluators to cultivate referrals and to notify the Manager about any updates to the contact information and limitations to referrals. Once notified you are on the list, please submit future redacted versions of all adult CST and Sanity evaluations.

Out-of-state experience and/or training

For applicants who completed comparable training to the ILPPP training, but did not complete training in Virginia, the applicant must demonstrate knowledge about the laws that govern CST and Sanity evaluations. In such instances, the Evaluation Oversight Manager will provide a summary of the Virginia laws governing these evaluations. The applicant will then be asked to complete a brief quiz and obtain at least 80% passing score.

Chapter 4

Report Submission, Review Process, and Removal from List

Please note that the following chapter outlining this review process may be modified by the Department as the program develops, as we analyze the process over time, and after feedback from evaluators and other stakeholders. If substantive changes are made, this will be immediately communicated to all evaluators.

Report Submission

Both § 19.2-169.1 and § 19.2-169.5 state, "The evaluator shall also send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to establish and maintain the list of approved evaluators described in subsection A."

To remain on the list, every adult CST and MSO evaluation must be sent to the Forensic Evaluation Oversight Manager. Although the Code is silent as to how quickly a redacted copy should be sent to the Department, please attempt to submit reports within 30 days of completion. Most evaluators immediately redact and send the report after completion as to not lose track of complying with Statute. Since private evaluators sometimes recommend inpatient hospitalization, the Forensic Evaluation Oversight Manager is often aware of evaluators completing reports on a routine basis. If you are completing this reports, but not submitting them for peer review in accordance with the statutes, you may be removed from the list of qualified evaluators.

Reports may be sent via multiple methods:

- Emailed to Forensic.Evaluations@dbhds.virginia.gov (saved as a .doc, .docx, .pdf or other comparable format is acceptable. You will be notified if the Manager or designee is unable to open the attachment). *Email is the preferred method of submission*.
- Faxed, attention Forensic Evaluation Oversight Manager/Dr. Torres, to 804-786-9621.
- Mailed, attention to Forensic Evaluation Oversight Manager/Dr. Torres, DBHDS Office of Forensic Services, PO Box 1797, Richmond, VA 23218.

Please note that emailing is the preferred method, as our office is downsizing and the Manager is working remotely indefinitely. Mailing or faxing reports may result in delayed reviews.

Report Redaction

The Code requires evaluators to redact:

- Defendant's name
- Defendant's date of birth
- Case numbers
- Court of jurisdiction

Please ensure all Code-required redactions are made, including in the body, headers, and footers of the evaluation. This can quickly be completed by using the "Find/Replace All" functions in your word processor. If the Forensic Evaluation Oversight Manager discovers something that should be redacted, she will immediately redact the information. You do not need to send in signed copies.

Giving the defendant a code number or using initials is useful in linking feedback to a specific report. If the evaluator chooses to use a pseudonym, please inform the Forensic Evaluation Oversight Manager, otherwise she will believe the name has not been redacted unless the name is obviously a pseudonym. For example, Ms. 004, Mr. JD, Ms. Doe, or Mr. Donald Duck are all acceptable ways of redacting reports.

Panel

The review panel is comprised of approved forensic evaluators, both clinical psychologists and psychiatrists. The panel includes evaluators employed by DBHDS, CSB's/BHA's, and private evaluators.

Although reports will be redacted prior to review by panel members, additional efforts will be made to avoid reviewers from the same hospital or practice from reviewing the reports of close colleagues. However, this may not always be feasible. Panel members will be asked to recuse themselves if they recognize a case and are actively working on the case.

Panel members will be recognized by the The Commissioner for the Virginia Department of Behavioral Health and Developmental Services. They will serve on a volunteer basis and will be given reports for review on a periodic basis. If they cannot accept a review packet to return within two weeks, then they may request that they be skipped. If this happens three times, they may be removed from the panel. Panel members will be asked to keep information private and to not discuss cases, or the panel's recommendations with others and all information should remain confidential. Failure to keep information confidential will result in removal from the panel. Postdoctoral fellows/residents and interns may participate in the review process with an approved panel member for training purposes, but ultimately the review must come from the approved panel member.

The identity of the panel members who provided specific feedback to an evaluator will remain anonymous. That means that when an evaluator receives feedback, he or she will receive feedback in the aggregate. Requests to know the identity of the panel reviewer will be denied by the Manager. Anonymity is important to ensure that feedback is provided honestly and without concern for negative interactions later with the colleague. However, the names of Panel members are not private.

Report Review

The Forensic Evaluation Oversight Manager will receive all submitted reports. She, or her designee, will then randomly choose at least two (2) reports by each evaluator to review each

quarter. Additional reports may be reviewed at the discretion of the Oversight Manager. For evaluators who complete less than two reports per quarter, all reports will be reviewed. The Oversight Manager (or designee) will check that the report is properly redacted. Each evaluator has a randomized number assigned to him or her, so this number will be noted on the evaluation.

Each report pulled for review will be assessed by at least two panel members using the appropriate scoring guidelines to review and rate the evaluation (see Appendices B and C) within two weeks of assignment.[14] Each reviewer will rate the reports as either "Meets Expected Standard" or "Requires Improvement". If the two raters disagree, a third panel member will review the report. The Forensic Evaluation Oversight Manager will then compile the feedback and send it to the evaluator via email or, if no email is available, via letter. If at least two Panel members agree the sample "Meets Expected Standard," then no other remediation or review steps will occur for that report. If two Panel members agree the sample "Requires Improvement", the evaluator will be advised how best to remediate the issues, and be informed that another report will be reviewed by the Panel that is dated at least two (2) weeks from the date of feedback (or in the case of an evaluator who completes relatively few evaluations, the next time an evaluation is received).

If remediation is required, another report that is dated at least two weeks after the date of the feedback will be randomly chosen by the Manager. If the original report that resulted in a remediation plan was a competency to stand trial report, then a CST report will be pulled; if a sanity report, then the next sanity report dated at least two weeks after the date of feedback.

The Panel members will then review the new report using the Guidelines. This may be the same Panel or new Panel members. If both Panel members believe the new report "Meets Expected Standards", the evaluator will be notified and will remain on the two-report-per-quarter cycle. If both evaluators believe the new report continues to require improvement, additional remediation will take place. If at any stage of the review process there is disagreement between the two reviewers, than a third reviewer will be used to break the tie. Specific feedback and guidance, including suggested reading and/or continuing education, may be provided. The Manager may request that a report be re-written with the recommended changes made, and submitted to the Manager for review. The Manager understands that the modified report will not be sent to the court or attorneys; rather, this is a remediation exercise and may require the use of hypothetical data to complete. The revised report will be due 14 days from receipt of written feedback.

An evaluator who continuously receives ratings of "Requires Improvement", despite attempts of remediation may be removed from the list of approved evaluators. As noted above, the Manager has discretion to review additional reports by evaluators. The Manager or other designees may also provide additional feedback to evaluators outside of the formal review process outlined above for professional development and to immediately address important issues. It is possible that extra reviews of reports may lead to additional feedback, remediation requests, or removal from the list.

[14] The Department understands there are rare situations in which an evaluator must deviate from his or her standard procedures and report format. For example, an evaluator may provide a brief update to the court when specifically asked by the court to address a specific issue, or when a hospital requests judicial authorization to medicate over objection via a *Sell* hearing. If a report an unusual case that deviates from the evaluator's usual procedures, please inform the Manager of the reason for this deviation upon submission of the report.

Removal from List

If the Department decides to remove the evaluator from the list, the evaluator will be notified and his or her name and contact information will be removed from list of approved evaluators. It is the individual evaluators' duty to engage in legal and ethical practice, and cease accepting adult CST and MSO orders upon notification that he or she has been removed from the list of approved evaluators. Continuing to engage in evaluations after notification of removal is in violation of the Code of Virginia. Once removed from the list, the evaluator will have a 30 day grace period to complete reports already accepted and in progress. If the evaluator works for DBHDS, a CSB, or the ILPPP, his or her supervisors will be informed of the removal. Failure to comply with requests for remediation will result in removal from the list.

If an evaluator requires remediation three times over the course of 12 months, the Manager will consult with the DeputyDirector or designee about whether or not removal from the list is warranted. "Remediation" in this context means anytime the Evaluation Oversight Manager informs the evaluator that the Panel believes the work product requires improvement and has received sufficient time to address the Panel's concerns (at least two weeks since feedback).

In addition, the Department may remove an evaluator from the approved list if he or she fails to submit redacted copies of the report as dictated by statute in a timely manner or loses or fails to renew his or her license. All evaluators who are removed from the list will be notified by the Oversight Manager. It is the responsibility of the individual evaluator to inform the court of his/her removal from the list if currently completing court-ordered evaluations of competency to stand trial and insanity, and to not accept future appointments from the court.

Appeal Process

If an evaluator is removed from the list of approved evaluators, and wishes to grieve the decision, he or she may do so by writing to the Deputy Director of Forensic Services. Appeal requests should be submitted to the Deputy Director within two weeks of notification of removal from the list. The Deputy Director will discuss the matter with the evaluator and review the remediation attempts and processes conducted by the Manager. If the Deputy Director (or designee) agrees with the finding to remove the evaluator from the list, then the evaluator will remain off the list. If the Deputy Director believes the evaluator's name should return to the list, she will immediately notify the Manager to do so, and the evaluator's information will once again be on the list of approved evaluators.

Re-Application for Inclusion on the List of Approved Evaluators

An evaluator who is removed from the list of approved evaluators may re-apply for inclusion on the list after:

1) Completing additional training/education on forensic issues, the assessment of competency to stand trial and sanity at the time of the offense, and/or forensic report writing. This training may be the Basic Adult Forensic Evaluation training through the ILPPP, certain

workshops offered by the American Academy of Forensic Psychology, or other training as deemed appropriate by the Forensic Evaluation Oversight Manager.

2) Completion and submission of application, with new training referenced.
3) Submission of a CST and MSO report for review. Since the evaluator should not have any recent reports to submit, as he or she was removed from the list for a period of time, a revised report from when he or she was on the list may be submitted. If the Forensic Evaluation Manager believes the reports meets standards of practice, then the evaluator may be returned to the list. The Manager may seek additional input from the Deputy Director or Panel members.
4) Evaluators may request reinstatement on the list of approved evaluators after one-year, if they were removed for poor report ratings.

Suspending Practice

If you wish to suspend your practice in pretrial evaluations, please contact the Manager. She will remove you from the public list. There is no need to re-apply if you choose to be placed back on the active list of approved evaluators.

Chapter 5

Report Writing

Please see the report guidelines in Appendices D through H for report writing suggestions.

The forensic evaluation report serves several purposes. It is the culmination and synthesis of your analysis of collateral sources, clinical interview, and interpretation of this data into the formulation of your opinion. The report acts as an official document, often entered into the court record to be reviewed by judges and attorneys, will be referred to in future evaluations, and perhaps even reviewed in an appeal process. It also provides a reference for the evaluator if asked to testify regarding his or her opinion. The following are some general report-writing suggestions.

First, a report is only as good as the clinical interview and the collateral sources reviewed. If an evaluator does not ask the appropriate questions to answer the psycho-legal question, then the report will suffer. Some evaluators may choose to construct an interview template or guide, while others are able to ask questions solely from memory. The checklists in Appendices D and E provide a good framework for interviews. As noted elsewhere in this manual, collateral sources are essential in forensic evaluations and should be included in all forensic evaluations, if possible.

Suggestions for writing reports

1) Clearly state which psycho-legal issue you are assessing—do not simply state “psychological evaluation”.
2) Some evaluators may choose to refer the reader to previous reports. For example, writing a truncated sanity evaluation and referring the reader to the CST report. Evaluators may wish to consider writing full reports (i.e., including background information included in the CST report in sanity evaluations). Sometimes there may be several months between when a competency issue is examined and when a sanity evaluation is considered by the court. In the interim, the CST report may no longer be available to new attorneys involved in the case and CST reports may not be entered into evidence for easy reference later in the trial process. Also, if the insanity defense is used in trial, jurors may not have access to the Competency to Stand Trial report and will require that information when reviewing the Sanity evaluation.
3) Remember that evaluators are writing for judges and attorneys, not mental health clinicians. Therefore, evaluators should strive to avoid using clinical jargon, or if included it should be explained to the reader.
4) It is important to “show your work”; that is, explaining your logic used to link the clinical data you examined to the inferences and opinions you provide the court.
5) If psychological testing is completed for the purpose of a competency to stand trial or sanity evaluation, testing should be relevant to those two issues. It is suggested that testing results be summarized in a manner understood by non-clinicians.
6) Recall that forensic evaluations are legal documents that may eventually be discussed in open court. Keep this in mind when including information in the report and include only what assists

you in answering the question for the court (i.e., what is probative for providing an opinion of competency or sanity), and leave out anything that does not help you answer this question and is potentially prejudicial. For example, a defendant's history of prostitution may not be relevant to current competency to stand trial. If not relevant, consider leaving that information out of your report. Similarly, irrelevant information about family members should not be included in these reports (i.e., that the defendant's father has Schizophrenia).

7) Only answer the psycho-legal question ordered to you; that is, only provide an opinion about competency to stand trial or an opinion about insanity at the time of the offense. Do not provide additional opinions about other psycho-legal concepts (for example, providing a violence risk opinion at the end of a sanity evaluation), and do no give your own off-the-cuff recommendations to the court (for example, opining a defendant did not meet legal criteria for the insanity defense, but nevertheless recommending inpatient hospitalization rather than incarceration).

Chapter 6

Frequently Asked Questions (FAQ)

Can I be on the Virginia List of Qualified Evaluators if I am licensed in another state?

It is the responsibility of each psychologist or psychiatrist to ensure they are acting within the bounds of laws and/or regulations regulating the practice of psychology in Virginia and your home state. However, Virginia Code Section 54.1-3601(10) states that an individual may be exempt from the requirements of licensure in Virginia when the clinician is "…employed as an expert for the purpose of possibly testifying as an expert witness." Therefore, we include psychologists on the List of Approved Evaluators who have out-of-state licenses. Also, Virginia recently entered into PSYPACT, so this may influence out of state practice. Again, is incumbent on individual psychologists to ensure they are complying with the appropriate laws and regulations.

I am in good standing, receiving all/mostly positive feedback on my reports. Do I still need to send in every report?

Yes, the Code requires that all court-ordered reports be submitted for review, regardless of how well your work-product is rated by the Panel.

I completed a very high profile insanity evaluation. If I submit for review, it is likely the Panel will know the case. Should I still submit the report?

Yes, you should still submit the report to remain in compliance with the Code. However, if you feel uncomfortable about the report being viewed by others, please inform the Forensic Evaluation Oversight Manager. She will input the report data for statistical purposes, but not submit the report for Panel review.

I completed a report to the court that deviated substantially from my standard practice, due to some specific issues related to the case. It does not reflect my usual work product. Should I still submit the report for review?

Yes, you should still submit the report to remain in compliance with the Code. Please contact the Oversight Manager—she will not use that report for Panel review since it does not reflect your usual practice.

I strongly disagree with a reviewer's comments about one of my reports. Do I have any recourse?

If you strongly disagree with a reviewer's comments, you may share your perspective with the Oversight Manager. You will not be provided with the reviewer's name.

Do I also need to submit juvenile competence to stand trial evaluations pursuant to Virginia Code Section 16.1-356?

No, the Oversight System does not apply to juvenile CST evaluations under the juvenile Code. If a juvenile is transferred to adult court and the CST evaluation is ordered under the adult Code, or if an evaluation is ordered in Juvenile & Domestic Relations District Court for an adult under the adult CST Code, then those reports should be submitted.

Do I also need to submit sexual abnormality reports pursuant to Virginia Code Section 19.2-301 for review.

No, you do not.

Do I need to submit specific intent evaluations pursuant to Virginia Code Section 19.2-271.6?

No, at this time there is not a statutory requirement for evaluators to submit these reports for review.

Should I complete separate competency and sanity reports, or submit one combination report?

There is no agreed upon direction on this matter in the field. However, evaluators should consider submitting two distinct reports for the following reasons: (1) CST and MSO reports are released to different people. If two distinct reports are submitted, it makes it clear what the report is, and who the report goes to. There is less of a chance of a sanity report being erroneously released to the prosecution or judge. (2) CST and MSO evaluations typically include different background information. For example, substance use history and legal/criminal history is necessary in a sanity report, but *typically* not relevant in competence to stand trial evaluations. (3) In the report includes both psycho-legal questions, when the sanity report is entered into evidence, the CST will have to be as well, even if not necessary for the judge or jury to view at that time. If you choose to submit

your CST and MSO reports in one report, please consider separating both sections into Section I and Section II after a page break, so the reports are clearly delineated.

Should I submit a sanity evaluation when I think that the defendant is incompetent to stand trial?

Again, there is no agreed upon way of addressing this issue. Some evaluators may wish to complete the sanity report in this situation as to respond to the Court's order. It is possible to complete a report to the defense attorney if the evaluator believes there is enough information, often from collateral sources, to complete the evaluation. On the other hand, some evaluators have concerns about a possibly incompetent defendant participating in an evaluation when they are unable to rationally consider what to share with the evaluator. In the case of defendants very impaired by mental illness at the time of the evaluation, the defendant may be unable to fully participate in the evaluation. Evaluators will need to carefully consider which course to take in these situations. One method to consider is interviewing the incompetent defendant regarding the offense, but not submitting the sanity evaluation until the defendant is restored. At that time, another interview can take place regarding the offenses. If you choose to go this route, inform the court that you are deferring your opinion on sanity, but will submit the report to defense once the defendant is able to more fully participate.

I'm new to private practice and having difficulty getting court orders assigned to my practice. What should I do?

I suggest doing the following:

1) Contact the clerks for the jurisdictions you wish to practice, at the Juvenile & Domestic Relations District Court (some adults in this court), General District Court, and Circuit Court levels. Introduce yourself, let them know you are now on the list of approved evaluators, and are willing to accept appointments.

2) Contact the Commonwealth Attorneys' Offices and defense attorneys (specifically those working for the Public Defender), letting them know you are now accepting orders.

3) Contact the Forensic Coordinator for the Community Services Boards in your area. All CSB's provide outpatient restoration and may need evaluators to complete "outcome" competency to stand trial evaluations.

Double check that your contact information is correct on the List of Approved Evaluators.

Contact List the Department of Behavioral Health and Developmental Services regarding the Forensic Evaluation Oversight Process

Primary Contact:
Angela N. Torres, Ph.D., ABPP
Forensic Evaluation Oversight Manager
Phone: 804-709-7960
Email: Angela.Torres@dbhds.virginia.gov

Secondary Contact:
Diana Becker
Administrative Office Specialist
Phone: (804) 774-4483
Email: Diana.Becker@dbhds.virginia.gov or Forensic.Evaluations@dbhds.virginia.gov

Deputy Director of Forensic Services:
Christine Schein, LCSW
Phone: 804-482-8798
Email: Christine.Schein@dbhds.virginia.gov

Outpatient Restoration of Competency to Stand Trial
Sarah Davis, M.A.
Diversion Coordinator/Forensic Mental Health Consultant
Phone: 804-786-9084
Email: Sarah.Davis@dbhds.virginia.gov

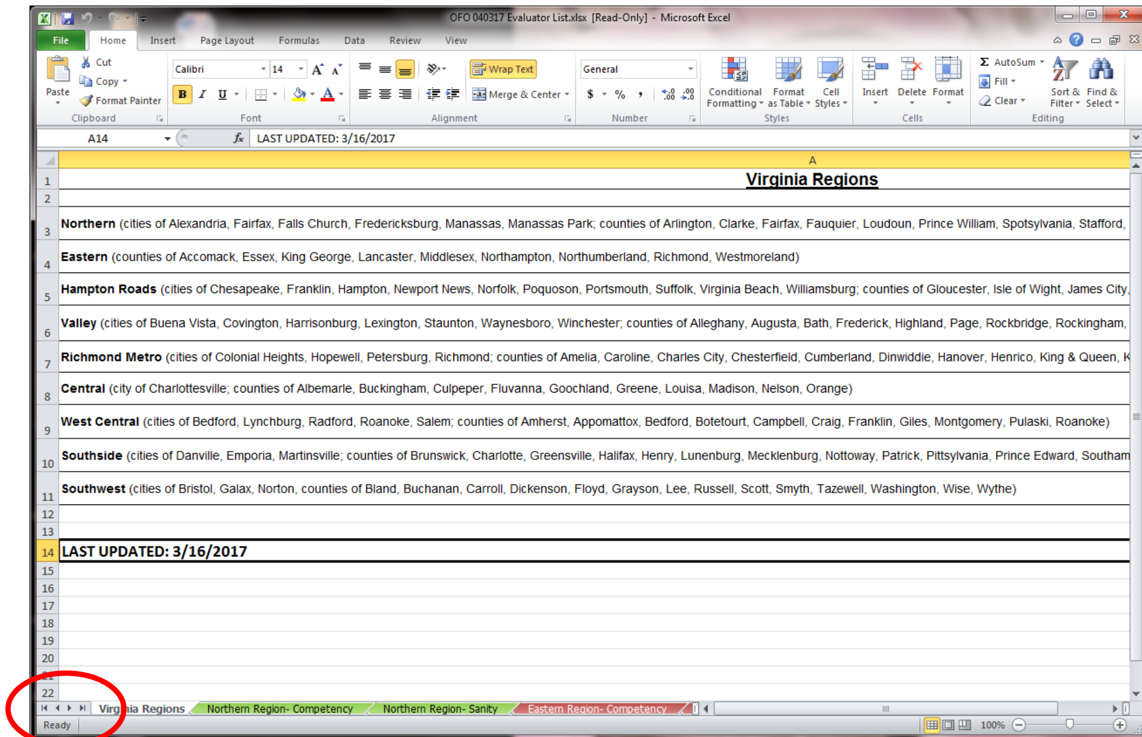
Department of Behavioral Health and Developmental Services (shared by all of the above)
Office of Forensic Services
Street Address: 1220 Bank St. Richmond, VA 23219
Mailing Address: PO Box 1797, Richmond, VA 23218
Fax: 804-786-9621

Directions to Access List of Approved Evaluators

To find a list of evaluators in your area:

1. Go to www.dbhds.virginia.gov/forensic-services
2. If the direct link does not work, go to http://www.dbhds.virginia.gov
   a. At the top, select “Offices”.
   b. Select “Forensic Services”.
3. Click on tab “Commissioner’s List of Qualified Evaluators”.
4. Click on List of “Qualified Forensic Evaluators Maintained by the Commissioner of DBHDS”.

You will then be directed to open an Excel spreadsheet. The spreadsheet is divided into regions and types of evaluations. The bottom has tabs that will bring you to different pages. The first tab/page lists the regions. The region can be found (each in a different color) by scrolling along the bottom of the spreadsheet, located at the bottom left. If you do not see your region, keep scrolling. On the far right of the spreadsheet, there will be information regarding the preferences of the evaluator.



Scroll here using the right direction arrow to find the correct page for the jurisdiction and type of evaluation.

Additional Services

As noted in the Purpose section of this Manual, one of the goals of this system is to provide a collegial environment for evaluators to learn, share, and professionally grow. The Department is exploring ways to do this through webinars, conferences, individual consultation, and data analysis (including professional presentations and publications).

The Forensic Evaluation Oversight Manager is available to all evaluators in Virginia who wish to consult about a case *prior* to submission of a report to the court and/or attorney. Please note the Manager will not co-sign the report and the eventual work product submitted to the court is the evaluator's opinion alone. The availability of this consultative service is dependent on the schedule of the Manager, so please allow a few days to respond prior to a due date. The Manager is also

available to provide more in-depth review and feedback regarding a specific report, after submission to the court, at the request of an evaluator.

If you have any ideas of how the Forensic Evaluation Oversight Manager or the Department may better meet the needs of forensic evaluators, please send suggestions to Angela Torres, PhD, ABPP at angela.torres@dbhds.virginia.gov.

Bibliography of Referenced and Reviewed Sources

American Academy of Psychiatry and the Law (Adopted May, 2005). Ethics Guidelines for the Practice of Forensic Psychiatry. Retrieved from: http://www.aapl.org/ethics-guidelines

American Academy of Psychiatry and the Law (2014). American Academy of Psychiatry and the Law Practice Guidelines for the Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense. Journal of the American Academy of Forensic Psychiatry and the Law Online, 42(4), S3-S76. Retrieved from: http://www.aapl.org/docs/pdf/Insanity%20Defense%20Guidelines.pdf

American Psychological Association (2012). Specialty Guidelines in Forensic Psychology. *American Psychologist, 68*(1), 7-19. Retrieved from: https://www.apa.org/pubs/journals/features/forensic-psychology.pdf

Appelbaum, P. (1992). Forensic psychiatry: The need for self-regulation. *Bulletin of the American Academy of Psychiatry and Law, 20*, 153-162.

Boswell v. Commonwealth, 61 Va. 860 (1871)

Clark v. Arizona, 548 U.S. 735 (2006)

Cooper v. Oklahoma 517 U.S. 348 (1996)

Dejarnette v. Commonwealth, 75 Va. 867 (1881)

Downing v. Commonwealth (1998)

Drope v. Missouri, 420 U.S. 302 (1975)

Earl v. Ratliff, 998 S.W. 2d 882, 890 (Tex. 1999)

Farkas, G., DeLeon, P., & Newman, R. (1997). Sanity examiner certification: An evolving national agenda. *Professional Psychology: Research and Practice, 28*, 73-76.

Frost, L.E., de Camara, R.L., & Earl, T.R. (2006). Training, Certification, and Regulation of Forensic Evaluators. *Journal of Forensic Psychology Practice, 6*(2), 77-91.

Godinez v. Moran, 509 U.S. 389 (1993)

Gowensmith, W.N., Pinals, D.A., & Karas, A.C. (2015). States' Standards for Training and Certifying Evaluators of Competency to Stand Trial. *Journal of Forensic Psychology Practice, 15*, 295-317.

Grisso, T. (2010). Guidance for Improving Forensic Reports: A Review of Common Errors. *Open Access Journal of Forensic Psychology, 2*, 102-115.

Indiana v. Edwards, 128 S.Ct. 2379 (2008).

Lander, T.D., & Heibrun, K. (2009). The Content and Quality of Forensic Mental Health Assessment: Validation of Principles-Based Approach. *International Journal of Forensic Mental Health, 8*, 115-121.

Medina v. California, 505 U.S. 437 (1992)

Morgan v. Commonwealth, 646 S.E. 2d 899 (2007)

Mossman, D., et al. (2007). American Academy of Forensic Psychiatry and the Law Practice Guidelines for the Forensic Psychiatric Evaluation of Competency to Stand Trial. Journal of the American Academy of Forensic Psychiatry and the Law Online, 35 (Supplement 4), S3-S72. Retrieved from: http://jaapl.org/content/35/Supplement_4/S3

Murrie, D.C., Boccaccini, M.T., Zapf, P.A., Warren, J.I., & Henderson, C.E. (2008). Clinician Variation in Findings of Competence to Stand Trial. *Psychology, Public Policy, and Law, 14*(3), 177-193.

Murrie, Daniel, James Wellbeloved-Stone, and Adriana Suarez. "Consumer Satisfaction With Common Forensic Evaluations". 2016. Presentation.

Nicholson, R.A. & Norwood, S. (2000). The Quality of Forensic Psychological Assessments, Reports, and Testimony: Acknowledging the Gap Between Promise and Practice. *Law and Human Behavior, 24*(1), 9-44.

Pate v. Robinson, 383 U.S. 372 (1966)

Perlin, M.L. (1994). *The jurisprudence of the insanity defense*. NC: Carolina Academic Press.

Poythress, N.G., & Feld, D.B. (2002). "Competence Restored"—What Forensic Hospital Reports Should (and Should Not) Say When Returning Defendants to Court. *Journal of Forensic Psychology Practice, 2*(4), 51-58.

Price v. Commonwealth, 228 Va. 452 (1984)

Rollins v. Commonwealth, 207 Va. 575 (1966)

Queen v. M'Naghten, 10 Clark & F.200, 2 Eng. Rep. 718 (H.L. 1843)

Skeem, J.L. & Golding, S.L. (1998). Community Examiners' Evaluations of Competence to Stand Trial: Common Problems and Suggestions for Improvement. *Professional Psychology: Research and Practice*, *29*(4), 357-367.

Stamper v. Commonwealth, 324 S.E.2d 682 (1985)

Thompson v. Commonwealth, 193 Va. 704 (1952)

United States v. Duhon, 104 F.Supp.2d 663 (2000)

United States v. Dusky, 362 U.S. 402 (1960)

Warren, J.I., Murrie, D.C., Chauhan, P., Dietz, P.E., & Morris, J. (2004). Opinion formation in evaluating sanity at the time of the offense: an examination of 5175 pre-trial evaluations. *Behavioral Sciences & the Law, 22*, 171-186.

Wilson v. United States, 391 F.2d 460 (D.C. Cir., 1968)

Zapf, P.A., Hubbard, K.L., Cooper, V.G., Wheeles, M.C., & Ronan, K.A. (2004). Have the courts abdicated their responsibility for determination of competency to stand trial to clinicians. *Journal of Forensic Psychology Practice*, *4*, 27-44.

Appendix A

Application

<u>Request for Inclusion on Commissioner's List of Approved Evaluators</u>
(Competency to Stand Trial (§19.2-169.1) and/or Sanity at the Time of the Offense (§19.2-168.1, §19.2-169.5)

Date:_____

Name:_____

Name of Practice (if applicable): _____

Street Address:_____

City: _____

State and Zip Code: _____

Email Address:_____

Phone #:_____ **FAX #:_____**

<u>EDUCATIONAL HISTORY:</u>

Highest Degree Earned: _____ **Year Earned**: _____

Institution Awarding Degree: _____

Describe any specialized forensic training you received which prepares you to conduct Competency to Stand Trial and/or Sanity at the Time of the Offense Evaluations (add separate pages as needed). Please note if you have completed the Basic Adult CST and MSO Forensic Evaluation training at the ILPPP:

Description of Training	Institution Providing Training	Year of Training	Relevant for Competency, Sanity or Both

<u>LICENSURE/ BOARD CERTIFICATION STATUS:</u>

Are you licensed to practice in the Commonwealth of Virginia: ☐ Yes ☐ No

Agency Awarding License: _____

Licensed to Practice as: _____

Have you been awarded Board Certification/ Diplomat Status in Forensics: ☐ Yes ☐ No

If yes, name of institution/organization awarding this status: _____

<u>FORENSIC EXPERIENCE:</u>

Approximate number of Competency to Stand Trial evaluations completed during your career:

_____

Approximate number of Sanity at the Time of Offense evaluations completed during your career:

_____

<u>TYPE OF REQUEST:</u>

Requesting inclusion on Commissioner's list for the following type of evaluations (check all that apply):

☐ Competency to Stand Trial (§19.2-169.1)

☐ Sanity at the Time of the Offense (§19.2-169.5 / §19.2-168.1)

<u>Geographic Area(s) of Practice:</u>

I am willing and able to accept court appointments from the following regions (Check all that apply - specify if there are limited counties/cities in which you will accept appointments – See attached for description of regions):

☐ Northern (Any Restrictions): _____

☐ Eastern (Any Restrictions): _____

☐ Hampton Roads (Any Restrictions): _____

☐ Valley (Any Restrictions): _____

☐ Richmond Metro (Any Restrictions): _____

☐ Central (Any Restrictions): _____

☐ West Central (Any Restrictions): _____

☐ Southside (Any Restrictions): _____

☐ Southwestern (Any Restrictions): _____

APPOINTMENT PREFERENCES (Check all that apply):

☐ I will accept any/all appointments from the Court(s) designated above

☐ I prefer to be contacted first before being appointed to discuss availability

☐ I prefer that Court Orders name my practice rather than me individually in the order (I understand that anyone completing the evaluation must meet the minimum standards and also be included on the Commissioner's list)

☐ I prefer that Court Orders be emailed to me/my practice

☐ I prefer that Court Orders be FAXED to me/my practice

☐ I prefer that Court Orders be sent via US Mail

☐ I have the following preferences/ limits on my practice: _____

ABILITY TO CONDUCT EVALUATIONS FOR NON-ENGLISH SPEAKERS (if applicable)

☐ I am competent to conduct evaluations for individuals who use the following languages: _____

☐ I am competent to conduct evaluations using American Sign Language

ATTESTATION:

I hereby attest that the above provided information is truthful and accurate. I am licensed to practice as a psychiatrist or clinical psychologist. I am competent to complete the types of evaluations for which I'm requesting inclusion in the Commissioner's list of approved evaluators. I understand and agree to comply with the requirements of the Code of Virginia to include submission of redacted work samples to the Dept. of Behavioral Health & Developmental Services (DBHDS) effective July 1, 2016. I understand that a random sample of evaluations will be subjected to peer review and I will be provided with feedback on my evaluations. I agree to notify DBHDS immediately should my license be suspended or revoked and agree to cease providing court appointed evaluations until such time as my license is in good standing. I further agree to notify DBHDS of any changes of address or other changes to my practice which would affect court appointments. Finally, I agree to notify DBHDS should I close my practice and/or desire to cease receiving court appointments so that I can be removed from the list of approved evaluators.

______________________________________ ___________________________

Signature Date

Appendix B

Guidelines for Reviewing Competency to Stand Trial Evaluations

Guidelines for completing CST work sample review

The following scoring items are to be used as a guideline for raters and should be applicable in most cases. However, there may be situations in which the following guidelines may not apply. For example, in cases in which a defendant's mental status is so impaired or a defendant is so uncooperative that a full evaluation is not possible, the opinion may be obvious without a full explanation of all the critical items. Therefore, the raters have some discretion for how to implement these guidelines.

Critical Items

1) Evaluator excluded defendant statements which could be used in his/her prosecution.

Meets Expected Standard

- Evaluator did not explicitly include the defendant's statements about alleged offense which were made to the evaluator during the interview.

Requires Improvement

- Concluding the defendant is incompetent to stand trial only due to self-reported memory deficits regarding the alleged crime.
- Evaluator provided verbatim account of offense by defendant.
- Evaluator included statements by the defendant or in his/her own summary of the interview that suggests the defendant's guilt.

2) Report provides examples of the defendant's factual understanding of court proceedings and/or examples of impairments in factual understanding.

Meets Expected Standard

- Explained key areas of understanding of court concepts including knowledge of the charges against him/her, roles of courtroom participants, pleas and their consequences, and plea bargaining *at a minimum*.
- Knowledge is calibrated for the current charge. For example, a defendant charged with Trespassing does not need to know about jury trials or have a terribly robust understanding of the legal concepts, while a defendant facing Capital Murder charges will have to have a more robust knowledge as a trial process is more likely to be more complex.

- Ideally, quotes are provided (as long as they do not implicate the defendant).
- In situations in which the defendant did not participate in the evaluation or was unable to adequately participate due to impaired mental status, this should still be addressed in the conclusion even if it means just saying that a formal evaluation was not possible and cannot say the person has a sufficient understanding.

Requires Improvement

- No mention of the defendant's own understanding of factual information.
- Reliance on CST Forensic Assessment Instrument for factual knowledge to the exclusion of any discussion of the defendant's own statements or acknowledgement that a clinical interview was conducted.

Did not Participate

- Defendant was unable to fully participate due to mental health issues or refused to participate for some reason. Inability to fully address components of the competency standard due to the defendant's lack of participation will not be held against the evaluator.

3) Report provides examples of the defendant's rational understanding of court proceedings and/or examples of impairments in rational understanding.

Meets Expected Standard

- Addresses rational understanding of competency to stand trial. This may include discussions regarding:
    - Understanding of allegations and/or potential evidence/witnesses in case.
    - Understanding of the potential for being found guilty and/or accepting a plea bargain.
    - Discuss chosen plea and reasoning for it without divulging what that plea will be.
    - Absence of delusional beliefs that significantly impact legal decision making. Examples of delusions that may impact CST include:
        - Believing it is impossible to be found guilty because not subject man's law but only to God's.
        - Not accepting victim is truly dead but now inhabits another body, and therefore impacting decision to plead not guilty.
        - Refusing to consider a viable NGRI defense because of lack of insight into mental illness and absolute refusal to exert an affirmative defense.
        - Insists that irrational evidence/witnesses be presented to prove innocence and reasoning appears delusional.
- It is okay for this to be vague, as to not reveal trial strategy, but must be noted somewhere that a conversation occurred.

- Hypothetical plea bargains may be used to illustrate capacity to make rational decisions/assess reasoning skills.
- In situations in which the defendant did not participate in the evaluation or was unable to adequately participate due to impaired mental status, this should still be addressed in the conclusion even if it means just saying that a formal evaluation was not possible and cannot say the person has a sufficient understanding.

Requires Improvement

- No mention of any discussion regarding legal decisions including how to plead, understanding of allegations, type of evidence that may be presented, etc.

Did not Participate

- Defendant was unable to fully participate due to mental health issues or refused to participate for some reason. Inability to fully address components of the competency standard due to the defendant's lack of participation will not be held against the evaluator.

4) Report provides examples/ explanation of the defendant's capacity to work with his/her attorney in his/her own defense.

Meets Expected Standard

- Notes if the defendant understands he/she has an attorney who is currently representing him/her.
- Makes a comment about defendant's capacity to work with counsel such as issues with trust, intent to discuss certain issues, understanding of privilege, etc.
- Evaluator does not confuse capacity with willingness to assist counsel.
- Defendant is not overly acquiescent to counsel and understands he/she is the final decision maker in his or her legal case.
- Evaluator comments about the defendant's capacity to attend to court process to assist attorney. If there are impairments or limitations, but the evaluator believes the defendant is competent, then suggestions should be made about how to assist the defendant in court.
- Evaluator may choose to explore previous attorney client relationships, and potential biases for or against type of representation (public vs. private attorney).
- In situations in which the defendant did not participate in the evaluation or was unable to adequately participate due to impaired mental status, this should still be addressed in the

conclusion even if it means just saying that a formal evaluation was not possible and cannot say the person has the capacity to assist counsel.

Requires Improvement

- No mention of capacity to work with counsel.
- If a defendant's behavior is out of control, evaluator does not describe how this may or may not be volitional and the impact this has on capacity to assist counsel.
- If the defendant reports delusional beliefs regarding the alleged offenses or intended defense, the evaluator fails to address this adequately in the report.
- Misinterprets mere cynicism about the legal system and/or public defenders with capacity to work with an attorney.

Did not Participate

- Defendant was unable to fully participate due to mental health issues or refused to participate for some reason. Inability to fully address components of the competency standard due to the defendant's lack of participation will not be held against the evaluator.

5) **Evaluator addressed statutorily required recommendations. For example, if the evaluator opined the defendant was incompetent, yet restorable, a clear recommendation for inpatient or outpatient restoration was indicated. If opined unrestorable, a clear recommendation for a disposition was given (e.g., civil commitment, dismissal, SVP review, or certification).**

Meets Expected Standard

- Explains if the defendant is likely to be restored from psychiatric treatment (medications, medical interventions) or psychological (dealing with amotivation, psychoeducational) without becoming overly prescriptive to future restoration providers.
- *By statute, must state if restoration should occur on an inpatient or outpatient basis.*
- *By statute, if the evaluator opines unrestorable, he/she must recommend one of four dispositions (civil commitment, discharge/dismissal, certification, SVP review).*

Requires Improvement

- No mention of what is needed for restoration for the particular person.
- Fails to recommend either inpatient or outpatient restoration.
- Fails to recommend one of the four dispositions if opined unrestorable.

Not Applicable

- Defendant opined to be competent to stand trial.

6) Conclusion was clear and supported by data; data are linked to the psycho-legal criteria of competency.

Meets Expected Standard

- It is clear whether the opinion is competent, incompetent yet restorable, or incompetent for the foreseeable future/unrestorable.
- Ultimate opinion, penultimate opinion, or other clear conclusion is sufficient since there are differing opinions in the field about this topic.
- Clearly explains reasoning that the defendant is incompetent/competent to stand trial and linking it to the *Dusky* standard (rational and factual understanding; capacity to assist counsel).
- Should be clear to the trier of fact why the person is incompetent or competent to stand trial without the use of jargon. Again, someone may be mentally ill and still competent, so it must go beyond listing symptoms.
- In cases in which a defendant does not participate but the evaluator recommends a finding of incompetency, make it clear that lack of information led to the opinion and/or refer to collateral sources of basis of opinion.

Requires Improvement

- Unclear what the final opinion is.
- Opinion comes out of the blue with no link to the data provided in the report.
- Inadequate data used to support conclusion—declaring a defendant is incompetent or competent without enough data in the body of the body of the report.
- Only states the defendant has a mental health/ID diagnosis but does not link it to the three components of competency to stand trial (factual and rational understanding, capacity to assist counsel).
- Declares the defendant to be incompetent or competent with no explanation for the reason.

Non-Critical Items for Consideration: The points below are indicative of good forensic report writing. Although each item does not require scoring, consider addressing the topic in the narrative feedback, if it requires improvement.

- **Report clearly stated the psycho-legal question addressed in the report.**

- Is clear that the evaluation is a competency to stand trial evaluation.
- Ideally cite statute referred in court order but not necessary (§19.2-169.1, §19.2-169.2).

- **Report included statement regarding limits of confidentiality/privilege (i.e., forensic advisement).**
  - Some mention of the purpose of the evaluations, who will receive the report, what will go into the report, etc.
  - Some comment of the defendant's understanding of the discussed information, although strict informed consent is not needed for a court-ordered evaluation.
  - In some cases when the person refuses to participate or is too agitated or otherwise impaired to accept the advisement, this may be skipped. In these cases, it is good practice to state that such an advisement was not possible due to the defendant's behavior, but not necessary.

- **Report contained sufficient and relevant background information as it pertains to the issue of the defendant's competency to stand trial.**
  - Enough background information to get an idea of the defendant's history, but a lot of information is not needed for most CST evaluations. This is not a general clinical assessment nor is it a violence risk assessment.
  - Should address *at a minimum*:
    - Any IQ/ID/special education issues that may be relevant.
    - Any psychiatric treatment
    - Any medical conditions that may impact current functioning (e.g., head injury, neurological impairment, neurocognitive disorders/dementias, delirium-inducing disorders, etc.)
  - If the assessment is in the community (not jail), it may be worth discussing whether or not substance use may or may not be impacting current competency to stand trial.
  - In cases in which a defendant is uncooperative, a statement regarding past criminal justice involvement may be appropriate; however, detailing past offenses may not be relevant to current CST and instead be prejudicial so this should be handled carefully.
  - Defendant was unable to participate and other sources were unavailable.
  - Background does not include overly prejudicial/pejorative information or information that is gratuitous and irrelevant to competency to stand trial.

- **Report explained defendant's mental status sufficiently.**
  - Report has a mental status section. In cases in which a defendant refuses to participate, and it is not possible to directly observe the defendant, this section may be absent.
  - In cases in which a defendant is too impaired to participate fully in the evaluation, some description of this behavior should be mentioned.

- The report should clearly explain the defendant's presentation and current functioning including, but not limited to, quality of communication, behaviors, thought content/processes, potential psychotic and mood symptoms, attention/concentration, etc.

- **If diagnoses were offered, report substantiated the diagnoses offered.**
  - A diagnosis is not required for a competency to stand trial evaluation. In cases in which a defendant's mental status is impaired, a description of symptoms may be sufficient.
  - If one is provided, an explanation of the symptoms involved in the diagnosis is advisable.
  - Ideally, the source of the diagnosis should be clear (evaluator's own diagnosis vs. diagnosis by another current treatment provider vs. diagnosis based only on past documents) but is not necessary.
  - Ideally, diagnoses are explained to the trier of fact.

- **If psychological testing was completed, it is explained and linked to the current evaluation.**
  - Psychological testing is not required.
  - If completed, it should be relevant to the psycho-legal question. For example, an evaluator may choose to complete an intelligence test, a reading screen, or basic neurological screens to determine if current function may impact competency.
  - Results should be explained in a manner that can be reasonably be understood by the judge and attorneys who may be unfamiliar with psychological testing.
  - Malingering testing or Forensic Assessment Instruments specific to CST may be appropriate.

- **If report is post-restoration, the evaluator explained the treatment provided.**
  - Some acknowledgement that treatment occurred in response to a prior finding of incompetency.
  - *Ideally*, this section should include who the treatment provider was (hospital, CSB), the type of treatment provided (education, medications), frequency of interventions, and response to treatment.

- **If the defendant was opined to have relevant impairments, yet competent, the evaluator provided examples of accommodations which might be necessary to aid the defendant.**
  - Some type of acknowledgment that the person remains mentally ill or has other impairments. The defendant's currently competency may be fragile and/or contingent on various factor such as continued use of medications.
  - Describe how this individual may still exhibit symptoms of mental illness yet be competent to stand trial.

- If something significant is mentioned (like lower intelligence, problems maintaining focus, ongoing anxiety, tendency to ramble), specific recommendations should be made for accommodations by the attorney and/or the court.
- Recommendations may include reviewing specific issues with the defendant, providing additional time, giving frequent breaks, remaining on medications, reading materials to him/her, etc.

- **When applicable, the issue of motivation/ malingering deficits is addressed.**
    - Malingering does not need to mentioned in every CST evaluation as a hypothesis considered.
    - The word "malingering" does not need to be used; other terms may be used. Examples include dissimulation, exaggeration, poor effort, response bias, feigning, faking, etc.
    - Formal malingering testing is not required.
    - If malingering/response style testing is used, it is explained adequately and linked to how testing did or did not impact opinion.
    - Attempt at some collateral information to resolve issue. This may include parallel assessment of functional/decisional capacities. (Parallel Assessment is the process of observing the behaviors of a defendant and deciding if those behaviors are similar, or parallel, to the behaviors required to be considered competent to stand trial. For example, a defendant who learns the names, roles, and functions of his or her treatment team, likely has the capacity to learn the roles and functions of court personnel.)

- **The evaluation conforms to standards of technical forensic report writing.**
    - Limited spelling and grammatical errors.
    - Report is well organized and flows in a manner that makes sense to the reader.
    - Clinical jargon is avoided or explained.

Appendix C

Guidelines for Reviewing Sanity at the Time of the Offense Reports

Guidelines for completing Sanity work sample review

The following scoring items are to be used as a guideline for raters and should be applicable in most cases. However, there may be situations in which the following guidelines may not apply. For example, in cases in which a defendant's mental status is so impaired or a defendant is so uncooperative that a full evaluation is not possible, the opinion may be obvious without a full explanation of all the critical items. Therefore, the raters have some discretion for how to implement these guidelines.

Critical Items

1) **Report provides defendant's account of his/her thinking, perceiving, and behavior in the time preceding the offense, during the time of the offense, and immediately after the offense.**

Meets Expected Standard

- Clear exploration of thinking, behaviors, symptoms, at the time of the offense; specifically, about any hallucinations or delusions that may have been active at the time of the offense.
- Includes defendant's account of whether he/she used psychiatric medications and substances at the time of the crime.

Requires Improvement

- The evaluator made no attempt to obtain self-report of alleged offense.
- Focus on mental status/diagnosis related to other times than time proximal to the alleged offenses.
- Insufficient account of the defendant's recollection of the alleged offense(s).
- If defendant says he/she is unable to remember the alleged offense(s), or the defendant is too psychiatrically compromised to provide an adequate account, the evaluator does not discuss the possible limitations to his/her opinion. In some situations, deferring an opinion until the defendant can fully participate may be appropriate.

2) **Report provides collateral accounts of the defendant's thinking, perceiving, and behavior in at the time of the offense(s) (and ideally during the time preceding the offense and immediately after the offense).**

Meets Expected Standard

- Collateral sources reviewed and compared to self-report.
- Some attempt at obtaining collateral sources was completed. This may include:
    - Documents from the court (warrants to confirm self-report of charges);
    - Police report, criminal complaint, or other records about the alleged offense, typically provided by the prosecution;
    - Interrogation, dash cams, or body camera videos
    - Medical/Psychiatric records;
    - Collateral interviews with family, friends, responding officers, treatment providers, etc.
    - Jail records
- Must include some type of collateral source regarding allegations against defendant.
- If records were requested and not received, it is good practice to inform the defense that lack of collateral reports may limit conclusions and that receipt of requested information may change the opinion in the future. Some evaluators may opt to inform the court that an evaluation is not possible without an official account of the crime given the importance of collateral sources.

Requires Improvement

- No attempt to corroborate defendant's self-report with collateral sources.
- In instances when information was requested and not provided, it should be made clear in the report there are limitations to the conclusion and the opinion may change if additional data is obtained. In some situations, it may be appropriate to defer an opinion until collateral sources are obtained.

If defendant was opined to not meet insanity criteria (i.e., sane), then no other critical items need to be scored. Please skip to non-critical items.

3) If opined to meet criteria for the insanity defense, diagnoses or a description of symptoms were offered to support existence of mental disease/defect/major mental illness (as predicate for NGRI finding) at the time of the offenses and report substantiated the diagnoses offered.

Meets Expected Standard

- Diagnoses comport with DSM-5/ICD-10 standards.
- Diagnoses supported by data from collateral sources in addition to defendant's self-report.

- If a formal diagnosis is not given (like Schizophrenia), it must be clear what category of mental illness was at play (like 'psychotic disorder') and the symptoms present at the time of the offense.
- A qualifying mental illness for the insanity defense should be "severe" such as a psychotic or significant mood disorder. Generally, this includes symptoms that indicate a loss of contact with reality and/or extreme difficulty with impulse control as a result of a serious mental illness.
- Saying the defendant was "psychotic" or had "Schizophrenia" at the time of the offense may be insufficient as people with the same diagnoses manifest their symptoms differently. Therefore, the evaluator should describe the specific symptoms that led to the behaviors.

Requires Improvement

- No mental illness/diagnosis/symptoms are identified at the time of the crime, but the opinion is the defendant meets criteria for the insanity defense.
- No attempts to compare self-report of symptoms at time of the offense against collateral accounts.
- Focus on current mental illness or past psychiatric history and not on evidence of mental illness at time of the offense.
- Mild or inappropriate diagnosis used for 'threshold condition' such as an Adjustment Disorder, mild anxiety disorder, etc.
- Antisocial personality disorder used as 'threshold condition' mental disease or defect.

Not Applicable

- The opinion is the defendant does not meet criteria for the insanity defense.

4) If the opinion is insane, the report provides explicit examples of the defendant's actions/behaviors and how they suggest he or she failed the understand the nature, character, and/or consequences of his/her actions; *or* wrongfulness of actions.

Meets Expected Standard

- Clear linkage of symptoms leading to behaviors that suggest failure to appreciate what he/she was doing, or the consequences of those actions; or distinguish right from wrong (legal or moral).
- Behaviors should not be better accounted for by substance use or personality disorder.
- Evaluator explored other plausible hypothesis for the alleged behavior.

Requires Improvement

- Behaviors better accounted for by substance use or antisocial beliefs/attitudes.
- Fail to link diagnosis/symptoms to aspects of legal insanity.
- Failure to demonstrate how symptoms of mental illness at the time of the crime caused the defendant to commit the offense.
- Failure to explore other plausible hypotheses for behavior.

Not Applicable

- The opinion is the defendant does not meet criteria for the insanity defense.

5) If opined insane, was substance use at the time of the offense considered?

Yes

- Evaluator mentions substance use at the time of the offense.
- Only need to consider this item if 'threshold condition' of a severe mental disease or defect being present at the time of the crime is thought to be met.
- Should include a substance use portion overview in the report, and consideration if the defendant used substances around the time of the offense(s) unless the defendant's use is negligible or in the distant past.

No

- No consideration of the possibility of substance use being present at the time of the offense.

6) If substance use at the time of the offense was indicated in collateral sources or from the defendant's self-report, and the opinion is insane, then the issue is addressed in the opinion to the court.

Meets Expected Standard

- Intoxication at the time of the alleged offenses cannot be the basis of the insanity defense; however, it is possible for a defendant to be insane and intoxicated at the same time but the evaluator should clearly explain his/her rationale for why the mental illness was the driving force behind the behavior and not the intoxication.
- "Settled insanity" may also be considered.
- If substance use at the time was determined to be not relevant (i.e., person does not use substances, minimal use of substances, etc.), then further exploration of this issue is not required.

Requires Improvement

- Ignores the possible influence of substances on behavior.
- Does not even consider substance use at the time of the offense, even when it is reasonable to consider.
- Does not attempt to delineate mental illness-driven behavior from intoxicated behavior, and assumes behavior is due to mental illness when it could have been explained by intoxication.
- Equates angry/impulsive behavior caused by intoxication with insanity.

Not Applicable

- Substance use not a factor.
- Defendant does not have a history of substance use.

7) If insane and the report addresses "irresistible impulse", the report clearly articulates why the actions were/were not the result of irresistible impulse. Report differentiates irresistible impulse from failure to or choice not to resist an impulse.

Meets Expected Standard

- Addresses irresistible impulse if first two prongs of insanity are not met after threshold condition is met (nature/character; wrongfulness).
- Considers role of personality, intoxication, anger management issues in delineating irresistible vs. not resisted.
- Since rare, must be very clear how this is an irresistible impulse. Irresistible impulse must be tied to a serious mental illness which has known symptoms which commonly impair volitional choice.
- An impulse disorder (i.e., kleptomania, compulsive masturbation), typically does not qualify for an irresistible impulse defense.

Requires Improvement

- Anger management issues, merely stating he or she "blacked out" or has no other memory, antisocial beliefs/behaviors, etc. are <u>not</u> considered to be an irresistible impulse. In reports that require improvement, the evaluator may take the defendant's self-report at face value when he/she says they just "blacked out" or couldn't stop behavior, without consideration of alternate hypotheses.
- Does not consider the role of intoxication on disinhibition of behaviors.

Not Applicable

- The opinion is the defendant does not meet criteria for the insanity defense.

- If evaluator does not believe the defendant met criteria for a "threshold condition" mental illness, further exploration of the insanity defense is not required.
- If evaluator believes the defendant meets criteria for the insanity defense based on nature/character/consequences and/or wrongfulness, exploration of irresistible impulse is not required.

8) If evaluator opined the defendant was insane, the evaluator provides a clear linkage between the symptoms of illness and the legal standard of insanity.

Meets Expected Standard

- Evaluator "shows their work": Explains to the trier of fact how the defendant's severe diagnosis manifested at the time of the crime as certain symptoms, which led to certain thinking/behaviors, that led to criminal acts and prongs of insanity.

Requires Improvement

- No link explained; merely saying the defendant had Schizophrenia at the time and was therefore insane is insufficient.

Non-Critical Items for Consideration: The points below are indicative of good forensic report writing. Although each item does not require scoring, consider addressing the topic in the narrative feedback, if it requires improvement.

- **Report clearly stated the psycho-legal question addressed in the report.**
  - States if it is a sanity evaluation/mental state at time of offense/criminal responsibility report.
  - Ideally cites statute referred in court order (§19.2-169.5 vs. §19.2-168.1) but not necessary. However, it is helpful if this is delineated, as it will result in the report going to different people (defense attorney vs. defense and prosecutor).

- **Report included statement regarding limits of confidentiality/privilege (i.e., forensic advisement).**
  - Some mention of the purpose of the evaluations, who will receive the report, what will go into the report, etc.
    - 19.2-169.5: Defense only
    - 19.2-168.1: Defense and Commonwealth only
  - Some comment of the defendant's understanding, although strict informed consent is not needed for a court-ordered evaluation.
  - In some cases when the person refuses to participate or is too agitated or otherwise impaired to accept the advisement, this may be skipped. In these cases, it is good practice

to state that such an advisement was not possible due to the defendant's behavior, but not necessary. For Sanity evaluations, this may trigger the evaluator to recommend a competency evaluation.

- **Report contained sufficient and relevant background information as it pertains to the issue of the defendant's sanity at the time of the offense.**
  - Enough background information to get an idea of the defendant's background, but a lot of information is not needed for most Sanity evaluations. This is not a general clinical assessment nor is it a violence risk assessment.
  - Should address *at a minimum*:
    - Any IQ/ID/special education issues that may be relevant.
    - Any psychiatric treatment.
    - Any medical conditions that may have impacted mental status at the time of the offense (e.g, head injury, neurological impairment, neurocognitive disorders/dementias).
    - Substance use history.

- **Report explained defendant's mental status sufficiently.**
  - Report has a mental status section. In cases in which a defendant refuses to participate, and it is not possible to directly observe the defendant, this section may be absent.
  - In cases in which a defendant is too impaired to participate fully in the evaluation, some description of this behavior should be mentioned.
  - The report should clearly explain the defendant's presentation and current functioning including quality of communication, behaviors, thought content/processes, potential psychotic and mood symptoms, attention/concentration, etc.

- **If psychological testing was completed, it is explained and linked to the current evaluation.**
  - Psychological testing is not required.
  - If completed, it should be relevant to the psycho-legal question. For example, an evaluator may choose to complete a personality assessment for clinical functioning. However, it should be clear that current functioning as assessed at the time of the evaluation may differ from status at the time of the offense, which was in the past.
  - Malingering testing may be appropriate.
  - Testing is explained in a manner that is useful to the trier of fact.

- **The issue of malingering, if applicable, was sufficiently addressed in the evaluation.**

- It is a good idea to consider malingering since the stakes are pretty high in insanity cases, but is not necessary in every case.
- Explained why exaggeration/malingering was considered and ruled in or ruled out.
- If testing is used, then testing is explained and how it impacts current opinion. This may get tricky since it's a current assessment of malingering regarding past behaviors.
- The word "malingering" does not need to be used; other terms may be used. Examples include dissimulation, exaggeration, poor effort, response bias, feigning, faking, etc.

- **The evaluation conforms to standards of technical forensic report writing.**
  - Limited spelling and grammatical errors.
  - Report is well organized and flows in a manner that makes sense to the writer.
  - Clinical jargon is avoided or explained.

Appendix D

Evaluator Checklist for CST Evaluations

____ Defendant's name and date of birth

____ Court of jurisdiction and case number

____ Type of evaluation with statute noted/purpose/referral question

____ Limits of Confidentiality/Forensic Advisement

____ Background Information
- ____ Educational history
- ____ Relevant medical history
- ____ Psychiatric history
- ____ Explanation of request for competency to stand trial evaluation (if provided)
- ____ Explanation of reason for finding of incompetency, restoration treatment provided (if evaluation is post-restoration)

____ Mental Status Examination

____ Competency to Stand Trial Examination
- ____ Factual information (not all-inclusive)
  - ____ Name of charges and if misdemeanor or felony
  - ____ Misdemeanor vs. Felony
  - ____ Roles of judge, jury (if felony), defense attorney, prosecutor, witness
  - ____ Guilty and not guilty plea and their consequences
  - ____ Not Guilty by Reason of Insanity defense and its consequences
  - ____ Plea bargaining
  - ____ Rights of defendant

- ____ Rational information (not all-inclusive)
  - ____ Explanation of allegations; whether understanding is rational or irrational
  - ____ Understanding of potential sentences/consequences if convicted
  - ____ Intended plea and reasoning for it
  - ____ Understanding of potential witnesses and evidence in case; ideas for his/her attorney to present.
  - ____ Thoughts about plea bargaining
  - ____ Thoughts about NGRI defense

- ____ Capacity to Assist Counsel (not all-inclusive)
  - ____ Trust issues regarding attorney (mere cynicism is OK)
  - ____ Thoughts about working with attorney and sharing information
  - ____ Willingness to discuss legal decisions with counsel
  - ____ Attention and Concentration sufficient to attend to legal proceedings

____ The impact of mood or thought disorder on defendant's ability to discuss case rationally with defense attorney

____ Conclusion

- ____ Brief summary of primary issues related to defendant's competency to stand trial, such as past psychiatric/medical/educational history; reason for evaluation; treatment summary if post restoration.
- ____ Brief summary of understanding of factual and rational aspects of his/her legal proceedings.
- ____ Brief summary of defendant's capacity to assist counsel.
- ____ Opinion linking your assessment to the psycho-legal criteria.
- ____ Other (may or may not be relevant)
  - ____ Any recommendations to court regarding accommodations a competent defendant may need to remain competent, or recommendations to attorney on how to relate/interact with defendant to improve collaboration.
  - ____ If incompetent, but restorable, recommendation regarding inpatient or outpatient restoration.
  - ____ If unrestorable, recommend civil commitment, discharge/dismal, or review for SVP.

Appendix E

Evaluator Checklist for Sanity Evaluations

____ Defendant's name and date of birth

____ Court of jurisdiction and case number

____ Type of evaluation with statute noted/purpose/referral question

____ Limits of Confidentiality/Forensic Advisement

____ Background Information
- ____ Educational history
- ____ Relevant medical history
- ____ Psychiatric history
- ____ Relevant social history
- ____ Relevant legal history
- ____ Relevant substance use history

____ Mental Status Examination

____ Sanity at Time of Offense Examination
- ____ Defendant's Account of the Alleged offense
- ____ Police report/other official account of alleged offense
- ____ Other collateral accounts, interviews of witnesses or family, etc.
- ____ Any relevant medical/mental health documentation from around time of the crime

____ Conclusion
- ____ Brief summary of defendant's history including relevant psychiatric conditions.
- ____ Brief summary of the specific allegations as provided by collateral accounts and the defendant's version; explore potential differences between accounts
- ____ Discussion of whether or not the defendant meets the "threshold condition" of the insanity defense; that is, whether at the time of the crime the defendant had a significant mental disease or defect.
  - ____ If a mental disease or defect is present, explain diagnosis, if one is given
  - ____ If a mental disease or defect is present, explain specific symptoms the defendant was experiencing at the time of the alleged offenses
  - ____ If no mental disease or defect present at time of the alleged offense, then the evaluation may end and include opinion the defendant was not insane.
- ____ Discussion of whether or not substance use was relevant at the time of the crime.
- ____ If threshold condition of a mental disease or defect was met:
  - ____ Evaluation if mental illness symptoms significantly impacted the defendant's ability to understand the nature, character, or consequences of his/her actions at the time of the crime.
  - ____ Evaluation if mental illness symptoms impacted the defendant's ability to appreciate the wrongfulness of his/her actions at the time of the crime.
  - ____ If neither of the two above are met, evaluation if mental illness symptoms caused an irresistible impulse to engage in the behavior
- ____ Opinion

____ Specifically explain links between defendant's symptoms (or lack thereof) and specific aspects of insanity.

Appendix F

Sample CST report (annotated in footnotes)

The following evaluation is a sample CST evaluation and is not meant to dictate to independent evaluators a required format for reports. There is no "right" or preferred way to write a report based on letter format vs. formal report format; first person evaluator vs. third person evaluator; or present tense vs. past tense. If an evaluator likes a turn of phrase in this report, he or she is welcome to use it verbatim. The following report is fabricated and the name used is a pseudonym.

Competency to Stand Trial Evaluation
§ 19.2-169.1

Defendant:	John Michael Smith
DOB:	01-17-1979 (37 years old)
Jurisdiction:	Sunnydale General District Court
Charges:	Malicious Wounding (F)
Case Number:	CR00001-00
Date of Report:	12-06-2016

Purpose of Evaluation: Mr. John Michael Smith was ordered by The Honorable Ann T. Emm of the Sunnydale General District Court for evaluation of his competency to stand trial, pursuant to § 19.2-169.1, as well as Sanity at the Time of the Offense, pursuant to § 19.2-169.5. The current report focuses on the defendant's current competency to stand trial. Ms. Hall, Mr. Smith's defense attorney, requested this evaluation because her defendant appeared confused during their most recent meeting and made bizarre comments. [15]Mr. Smith is charged with the aforementioned felony charge, which allegedly occurred on 10-25-2016. The report will be provided to the judge, the Commonwealth's Attorney, and defendant's defense lawyer. [16]

Sources of Data:

1. Clinical interview with the defendant at Happy Days Adult Detention Center on 12-01-2016.
2. Court order for psychological evaluations of competency to stand trial and sanity at the time of the alleged offenses, dated 11-25-2016.
3. Consultation with the defendant's defense attorney, Ms. Kimberly Hall, on 11-29-2016.

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[15] Obtaining information about the defense attorney's concerns about competency can be very useful. Some evaluators obtain this via interview, while others routinely send out a survey.

[16] Make clear where this particular report will go.

4. Warrant of Arrest.
5. Police report narrative completed by Officer McGruff, Sunnydale Police Department. [17]
6. Medical records from Virginia Hospital. [18]
7. Medical records from Sunnydale Area Community Services Board.
8. Records provided by Happy Days Adult Detention Center.
9. Interview with the defendant's sister, Rebecca Martin, on 12-02-16.

Please note: Medical records were requested from Sunnydale Memorial but were not received by the time this report was due to the Court.[19]

Forensic Advisement:[20] Prior to beginning the evaluation, this writer informed Mr. Smith the purpose of the evaluation was to provide an opinion to the court about his ability to understand and participate in the court process and work with his attorney. He was told the normal doctor-patient relationship would not exist, and instead that any relevant information may be included the report. The defendant was told any statements made about the alleged offense will not be included, and that this report cannot be used in trial to prove his guilt. He was informed this report will be submitted to the judge, the defense attorney, and the Commonwealth's attorney. Finally, this writer told the defendant she may be required to testify in court regarding her opinion. After a few reviews, Mr. Smith explained "my lawyer, the other lawyer, and the judge will get this report" and that the report is "…about if I can understand court." He agreed to participate in the interview.

Relevant History: The following background information was provided by the defendant and largely corroborated by his sister and other available sources. Mr. Smith said he was born and raised in Sunnydale, Virginia, raised by his mother and father. He reported no developmental delays or enrollment in special education programming,[21] although he reported some difficulties with mathematics. He graduated high school and worked at a pet store for five years until he quit due to drowsiness associated with his medications, and then received Supplemental Security Disability Income (SSDI). He has never married and at the time of his arrest lived with his sister, Ms. Martin.

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[17] If possible, try to get information about the alleged offense to determine if the defendant has a rational appreciation of the allegations or not. By Code, you are authorized to receive information about the offense.
[18] Medical records are good for corroborating self-report.
[19] It is good practice to note if you attempted to obtain information but it was not available to you.
[20] Reviewing limits of confidentiality is noted in Ethics Codes and the Forensic Psychology Specialty Guidelines. If the defendant does not consent, you may proceed with the evaluation since it is court-ordered, but it is good practice to note it.
[21] Since CST knowledge can be related to educational attainment, noting the defendant's educational background is important.

Mr. Smith denied any significant medical issues, including head injuries or loss of consciousness. [22]He reported he first began to experience increased irritability at age 17, but his symptoms worsened as he aged.[23] At age 19 he was diagnosed with Bipolar Disorder, which is a severe mental illness involving mood instability that can fluctuate from depression to feelings of euphoria and extreme energy (i.e., mania).[24] Mr. Smith explained that when manic he talks quickly and takes on several different projects but rarely finishes them. He noted he has stayed up multiple nights in a row due to increased energy, and has heard voices in the past. [25]He noted three prior psychiatric hospitalizations, two at Virginia Hospital and one at Sunnydale Memorial Hospital. Records from Virginia Hospital note he was diagnosed with Schizoaffective Disorder, which is a severe mental illness comprised of both mood symptoms similar to Bipolar Disorder, as well as psychotic symptoms such as perceptual disturbances (hallucinations) and/or irrational beliefs (i.e., delusions). Records indicate he responded fairly quickly to mood stabilizing and antipsychotic medications. In the community, he received mental health services through Sunnydale Community Services Board; however, he said approximately three months before the alleged offense he stopped taking his medications because he did not like how it made him feel. Records indicate his case was closed after several missed appointments.

Mr. Smith was incarcerated at the Happy Days Adult Detention Center on 10-25-16. Records indicate upon booking his speech was rapid, he made irrational and odd comments about people stealing his thoughts, and acted like he was hearing unseen voices. He was diagnosed with Schizoaffective Disorder. Initially the defendant did not accept medications; however, staff was eventually able to convince him to begin taking the antipsychotic medication Haldol and the mood stabilizer lithium bicarbonate. Notes indicate he has responded well to these medications and is in general population at the time of this evaluation.

Mental Status Examination: Mr. Smith was interviewed at the Happy Days Adult Detention Facility on 12-01-16 in the professional contact visitation area. His hygiene and grooming were appropriate for the jail, his jumpsuit was clean, and his hair was tidy. He showed no overt signs of paranoia or suspicion throughout the interview, readily signed releases of information, and was cooperative with questioning. His speech was normal in rate, tone, and volume. The content of his speech was mostly linear, organized, and free of irrational beliefs (i.e., delusions). At times he went off topic, but was easily redirected to the interview. He was not confused about the date or the reason for the interview. The defendant maintained his attention and concentration during the interview, and neither appeared confused nor made

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[22] Noting any significant medical issues that may or may not be present is important. Head injuries may impact memory and impulse control, and other medical issues can temporarily or permanently impact mental status. Even if not present, it can be helpful to note you considered the impact of such a history.
[23] Obviously, reviewing any psychiatric history is important.
[24] Judges and attorneys are not medical or mental health personnel, so explain diagnoses and symptoms terms you use.
[25] People can manifest the same diagnosis differently, so it is helpful to inform the court how this particular person usually exhibits symptoms of his mental illness.

bizarre comments as his attorney reported. [26]He acknowledged experiencing auditory hallucinations (i.e., hearing voices) in the past, but said he has not heard any voices in two weeks. Mr. Smith said he is eating his meals and sleeping about seven hours a night, which is an improvement from sleeping only two hours a night—he attributed this change to his medications. Since he was in jail at the time of the interview, substance use does not appear to be a factor in his current mental condition. [27]Finally, Mr. Smith denied any current thoughts of wanting to kill or hurt himself or others. [28]

Competency to Stand Trial:[29] Mr. Smith reported his charge is "Malicious Wounding" and was able to explain the allegations against him, as well as his behaviors around the time period of the alleged offense. He explained that a charge of Malicious Wounding means, "They're saying I hurt somebody bad." [30]He understood the charge is a felony, which is more serious than a misdemeanor, and carries a penalty of up to 20 years if convicted. He also discussed other options such as time served and probation.

Mr. Smith acknowledged he is the defendant in the current legal proceedings, and as such is considered innocent until proven guilty, explaining "They are supposed to be open to all the evidence and not just think you're guilty from the start, even though it sometimes feels like it being locked up." When asked about his rights as a defendant, he said he has a right to an attorney and the right to remain silent. He required some prompts and education about a right to a trial and right to an appeal, and was able to recall these additional rights later in the interview. The defendant possessed an adequate understanding of the roles of various courtroom participants. He explained the role of the judge is, "He's the boss, he decides what happens in court and if you're going to be locked up." He said he believes the judge in his case will treat him fairly, and he made no comments suggestive of delusional thinking regarding the fairness of court. When asked if he has a right to a jury, he said he did and explained that a jury is "A group of people who can also decide if you did it or not." He acknowledged there are 12 jurors and that they cannot be his family or friends. He initially thought juries make decisions based on a majority, but learned and retained later in the interview that guilty verdicts must be unanimous.[31] When given various options, he noted judges and juries must be "very sure" someone did the crime before rendering a guilty verdict. When asked the pros

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[26] Linking current observations to concerns of the attorney can be very useful in CST examinations.
[27] Evaluators differ in how they approach substance use in competency evaluations. Some mention a history, others find it potentially prejudicial unless relevant to current competency.
[28] Please note this section is relatively free of clinical jargon or jargon is explained, as it will be reviewed by non-clinicians.
[29] It is easy to discuss the defendant's factual understanding, but competency involves an exploration of rational understanding and capacity to assist counsel as well.
[30] Using direct quotes of the defendant show the court the depth of the defendant's understanding. Providing a quote provides richer detail than just saying, "The defendant knew his charges."
[31] If a defendant does not know a concept, it is OK to educate him or her. Being able to learn and recall information is important in competency and is similar to a defendant's ability to learn and retain information provided to him/her by counsel.

and cons of proceeding with a bench versus a jury trial, he said he did not know he could make such a choice. His subsequent questions indicated he could have a reasoned conversation with his defense attorney about this decision. Regarding the Commonwealth Attorney, Mr. Smith said his or her role is to "Lock you up and prove you did it". He said a witness is someone who can testify about what they know about the case, was able to identify potential witnesses in his case, and said he would immediately tell his attorney by whispering to her if he thought a witness was not telling the truth during trial.

Of the role of the defense attorney, Mr. Smith said, "She is supposed to get you out of jail, prove you innocent." When asked how a defense attorney may help her client if a not guilty plea is not advisable, he reasoned the attorney would seek a favorable "deal" and argue for a lighter sentence. He said he is frustrated he is still in jail and believes his attorney should be more forceful in her arguments to obtain bond, and also is displeased that she has not seen him since the motion for this evaluation occurred.[32] However, he said he is willing to work with her in the future, understands their conversations are private, and explained how being open and honest with his attorney can help him as a defendant.

Mr. Smith had a solid understanding of primary pleas available to him and their consequences. He explained a guilty plea means, "You're saying you did it" and leads to punishment, while a not guilty plea means, "You're saying you didn't do it like they said" and results in a trial. He outlined the trial process adequately. He did not know what a no contest plea is, but recalled it accurately after it was reviewed with him. Mr. Smith explained the not guilty by reason of insanity (NGRI) defense as meaning, "You weren't in your right mind when you did the crime." He knew individuals found NGRI go to a hospital rather than prison. Mr. Smith asked relevant and appropriate questions regarding the ramifications of a NGRI defense, and said he is willing to discuss it further with his attorney. Finally, Mr. Smith explained that a plea bargain means pleading guilty in exchange for a lighter sentence, and said he is willing to discuss this option with counsel along with other legal decisions.

The defendant made no comments suggestive of delusional thinking about his current legal situation or his intended legal strategy. He reasonably explained evidence that may be relevant to his case, and said he would discuss this further with counsel. Mr. Smith provided his reasoning for his current intended plea, which did not appear irrational based on the information available to this writer, and said he also plans to discuss this further with counsel. [33]Mr. Smith understood he should behave appropriately in court and that acting disrespectful could lead to removal from the courtroom and/or a contempt charge. At the time of the interview, his mental illness symptoms were not so prominent as to interfere with his ability to testify, if he chooses to do so.

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[32] CST is about a defendant's *capacity* to work with defense counsel, not willingness. It is normal for many defendants to be cynical about their defense attorneys and about the legal system in general.

[33] Addressing rational understanding is an essential part of CST examinations. You can show the court you addressed various aspects of his/her rational understanding and decisional competence, without including statements by the defendant about the crime.

Summary and Conclusion: Mr. Smith is currently incarcerated at Happy Days Adult Detention Center, held on a Malicious Wounding charge. The Honorable Ann T. Emm of the Sunnydale General District Court ordered a psychological evaluation of his competency to stand trial, after his attorney expressed concerns about her defendant's confusion and bizarre comments. [34]The defendant has a history of treatment for Bipolar Disorder and Schizoaffective Disorders, both of which may include symptoms of mood instability and psychosis. Since his attorney last saw Mr. Smith, he was prescribed psychotropic medications and has responded well to them. [35]When seen by this writer on 12-01-16, he remained calm and focused aside from a few times when he discussed an irrelevant topic, but was always easily redirected to the interview. This issue was not so prominent as to significantly hinder his ability to testify, if he chooses to do so.[36] He showed no significant symptoms consistent with a mood disorder or psychotic disorder that would currently impact his ability to understand the legal proceedings against him, collaborate with counsel, or attend appropriately to court.

During the current evaluation, Mr. Smith demonstrated a factual as well as rational understanding of the legal proceedings against him. [37]He explained the roles of courtroom participants, his rights, the primary pleas available to him and their consequences. He explained plea bargains sufficiently, and rationally outlined his intended plea, his understanding of the allegations against him, and the evidence and witnesses that may be relevant in his case. None of his comments about his understanding of his case appeared to be based on delusional thought content. He expressed some frustration with his defense counsel, but noted his willingness to work with her in the future and discuss his various legal decisions with her, including defense strategy. Mr. Smith's attention and concentration were not significantly impaired, and his behavior during the interview suggests he has the capacity to attend to court and maintain appropriate behavior.

Given the information available at this time, it is my opinion that the defendant Mr. John Smith currently possesses a sufficient factual and rational understanding of the legal proceedings against him, and the capacity to assist counsel. [38]It is recommended that he remain adherent with his medications as non-adherence may result in a return of his

[34] Since some attorneys/judges may flip to the final page, a brief summary is often useful for orienting the reader.
[35] You may wish to provide a hypothesis for why the attorney saw one behavior and you are seeing another if they differ.
[36] Many defendants will continue to have impairments, but it's whether or not they are so severe as to significantly impact the defendant's capacity to go to trial.
[37] Going beyond this general statement is useful for "showing your work" and making the link between the information you provided and your eventual conclusion.
[38] Make your opinion clear. It does not matter if you frame your opinion in ultimate issue language or penultimate language.

more prominent mental illness symptoms. As noted above, at times he may discuss unrelated topics, but defense counsel should be able to redirect him fairly easily. [39]

________________________ ____________________

Christine K. Ringle, PhD DATE

[39] Sometimes it can be helpful to provide recommendations to the court/attorney about ways to maintain competence, just as you would provide recommendations for treatment of incompetence.

Appendix G

Sample Sanity report

The following evaluation is a sample sanity evaluation and is not meant to dictate to independent evaluators how to write up their individual reports. There is no "right" or preferred way to write a report based on letter format vs. formal report format; first person evaluator vs. third person evaluator; or present tense vs. past tense. If an evaluator likes a turn of phrase in this report, he or she is welcome to use it verbatim. The following report is fabricated and the name used is a pseudonym.

Sanity at the Time of the Offense Evaluation
§ 19.2-169.5

Defendant:	John Michael Smith
DOB:	01-17-1979 (37 years old)
Jurisdiction:	Sunnydale General District Court
Charges:	Malicious Wounding (F)
Case Number:	CR00001-00
Date of Report:	12-06-2016

Purpose of Evaluation: Mr. John Michael Smith was ordered by The Honorable Ann T. Emm of the Sunnydale General District Court for evaluation of his competency to stand trial, pursuant to § 19.2-169.1, as well as Sanity at the Time of the Offense, pursuant to § 19.2-169.5. Mr. Smith is charged with the aforementioned felony charge, which allegedly occurred on 10-25-2016. The current report focuses on the defendant's sanity at the time of the alleged offense, and will be sent only to his defense attorney.

Sources of Data:

1. Clinical interview with the defendant at Happy Days Adult Detention Center on 12-01-2016.
2. Court order for psychological evaluations of competency to stand trial and sanity at the time of the alleged offenses, dated 11-25-16.
3. Consultation with the defendant's defense attorney, Ms. Kimberly Hall, on 11-29-2016.
4. Warrant of Arrest.
5. Criminal history.
6. Police report narrative completed by Officer McGruff, Sunnydale Police Department.[40]
7. Interview with the defendant's sister, Rebecca Martin, on 12-02-16.
8. Medical records from Virginia Hospital.
9. Medical records from Sunnydale Area Community Services Board.
10. Records provided by Happy Days Adult Detention Center.

[40] Collateral information about the offense is absolutely essential for a MSO report.

Please note: Medical records were requested from Sunnydale Memorial but were not received by the time this report was due to the Court.[41]

Forensic Advisement: [42]Prior to beginning the evaluation, this writer explained the purpose of the evaluation and limits of confidentiality to Mr. Smith. Specifically, he was informed the purpose of the evaluation was to provide an opinion to his defense attorney about his mental state at the time of the offense. He was told the normal doctor-patient relationship does not exist, and instead that any relevant information may be included the report. He was told the report would go to his defense attorney, and then they would decide whether or not to disclose the report to the Commonwealth attorney. Finally, this writer informed the defendant she may be required to testify in court regarding her opinion. Mr. Smith explained the purpose of this evaluation is “to see if I was crazy when I assaulted that guy.” He agreed to participate in the interview.

Relevant History: The following background information was provided by the defendant and largely corroborated by his sister and other available sources. Mr. Smith said he was born and raised in Sunnydale, Virginia, raised by his mother and father. He reported no developmental delays to his knowledge. He denied enrollment in special education programming, although he reported some difficulties with mathematics. He graduated high school and worked at a pet store for five years until he quit due to drowsiness associated with his medications, and then received Supplemental Security Disability Income (SSDI). The defendant explained he has had several girlfriends during adulthood, and lived with two different women in the last ten years. He has never married and has no children. At the time of his arrest, Mr. Smith lived with his sister, Rebecca Martin, in Sunnydale.

Mr. Smith has a minimal legal history. He denied any delinquency adjudications as a juvenile. His criminal history report shows one DUI conviction in his 20’s and a subsequent charge of Driving with a Suspended license. Finally, he was convicted of Trespassing in 2000 after he returned to the apartment complex of his ex-girlfriend after being told by management he could not visit there anymore. He said he became loud and belligerent and police were called.

The defendant said he first began using alcohol at age 17 and progressively drank more as he aged. Prior to his incarceration, he said he drank about three beers a night and on the weekends drank maybe a six pack of beers with maybe a shot or two of whiskey throughout the night. He said when he was younger he blacked out from drinking, but now can “handle” his alcohol use and does not feel particularly intoxicated when drinking. Since he is unemployed, he said he does not have the money for marijuana, although he smokes it occasionally when associates give it to him. Mr. Smith recalled he used cocaine “two or three” times in his 20’s but it has been several years since he used it. He denied all other drug use

[41] If you attempted to obtain more information but it was not available, please note that you did so.

[42] This is good ethical practice.

and experimentation. The defendant reported he last drank alcohol on 10-24-16, the night before the offenses. He said he had about three beers and was not intoxicated. [43]

Mr. Smith denied any significant medical issues, including head injuries or loss of consciousness. He reported he first began to experience increased irritability at age 17, but his symptoms worsened as he aged. At age 19 he was diagnosed with Bipolar Disorder, which is a severe mental illness involving mood instability that can fluctuate from depression to feelings of euphoria and extreme energy (i.e., mania). [44]Mr. Smith explained that when manic he talks quickly and takes on several different projects but rarely finishes them. He noted he has stayed up multiple nights in a row due to increased energy, and has heard voices in the past. He noted three prior psychiatric hospitalizations, two at Virginia Hospital and one at Sunnydale Memorial Hospital. Records from Virginia Hospital note he was diagnosed with Schizoaffective Disorder, which is a severe mental illness comprised of both mood symptoms similar to Bipolar Disorder, as well as psychotic symptoms such as perceptual disturbances (hallucinations) and/or irrational beliefs (i.e., delusions). Records indicate he responded fairly quickly to mood stabilizing and antipsychotic medications. In the community, he received mental health services through Sunnydale Community Services Board; however, he said approximately three months before the alleged offense he stopped taking his medications because he did not like how it made him feel. Records indicate his case was closed after several missed appointments.

Mr. Smith was incarcerated at the Happy Days Adult Detention Center on 10-25-16. Records indicate upon booking his speech was rapid, he made irrational and odd comments about people stealing his thoughts, and acting like he was hearing unseen voices. He was diagnosed with Schizoaffective Disorder. Initially the defendant did not accept medications; however, staff was eventually able to convince him to begin taking the antipsychotic medication Haldol and the mood stabilizer lithium bicarbonate. Notes indicate he has responded well to these medications and is in general population.

Mental Status Examination: Mr. Smith was interviewed at the Happy Days Adult Detention Facility on 12-01-16 in the professional contact visitation area. His hygiene and grooming were appropriate for the jail, his jumpsuit was clean, and his hair was tidy. He showed no overt signs of paranoia or suspicion throughout the interview, readily signed releases of information, and was cooperative with questioning. His speech was normal in rate, tone, and volume. The content of his speech was mostly linear, organized, and free of irrational beliefs (i.e., delusions). At times he went off topic, but was easily redirected to the interview. He was not confused about the date or the reason for the interview. The defendant maintained his attention and concentration, and neither appeared confused nor made bizarre comments as his attorney reported. He acknowledged experiencing auditory hallucinations (i.e., hearing voices) in the past, but said he has not heard any voices in two weeks. Mr. Smith said he is eating his meals and sleeping about seven hours a night, which is an improvement from sleeping only two hours a night—he attributed this change to his medications. Since he was

[43] Including information about substance use is essential for addressing this later when looking at whether substances were involved at the time of the offense.
[44] Explain any mental health jargon to non-medical/mental health professionals.

jail at the time of the interview, substance use does not appear to be a factor in his current mental condition. Finally, Mr. Smith denied any current thoughts of wanting to kill or hurt himself or others.

Sanity at the Time of the Offense

Defendant's Account: Mr. Smith said he received mental health treatment for Schizoaffective Disorder through Sunnydale Community Services Board but stopped going to appointments and taking his medications approximately three months prior to the offense. He said he was tired of feeling bad all the time and feeling drowsy, and although he received SSDI, hoped to get an under-the-table job to make more money but thought the way he felt on medications precluded working.

At first, Mr. Smith said that he did not feel any different but then progressively got more energy and slept less; he saw this as proof he was better off without his medications. Looking back on that time period now, Mr. Smith said he now recognizes he was suffering from symptoms of mental illness during the time period leading to the crime. He said as he gained more energy, he spent most days and nights watching television and YouTube videos. He reported he began to see special meaning in the recommendations Netflix made him, as well as the next YouTube videos that popped up; it was like someone was able to read his mind. Mr. Smith said he became more concerned that someone had access to his media and had somehow tapped into his brain as well, as the two were interconnected. Approximately three weeks before the offense, Mr. Smith said he was leaving to go to the store when he interacted with his neighbor, Mr. Cruz, who is the alleged victim in this case. The defendant stated Mr. Cruz asked him if he had seen Westworld, the HBO show involving robots that are largely indistinguishable from humans. Mr. Smith said that Mr. Cruz had a "funny" look on his face, as if "he was trying to tell me, without fully saying, that he was one of these cyborg things." That was the turning point for Mr. Smith and he felt everything made sense—his neighbor was a highly developed robot and that as this "being" was right next door, could tap into his computers and other electronic devices as a means of eventually taking control of his brain and turning him into a robot as well.

As the days passed, Mr. Smith said he became increasingly paranoid and performed "tests" to see if he was still human. These tests involved skipping meals to see if he became hungry. He also felt like he was trapped—he was afraid to use computers, television, phones, etc. as he thought that was the mechanism by which the robot could take over his mind; however, he still needed access to media to do his research into how to protect himself from the robots and to monitor if Mr. Cruz still had control over parts of his mind via the recommendations and next videos displayed on various websites. He began taking screen shots of these websites to compile "evidence". Approximately ten days before the offense, he brought the printed screen shots to the police to file a report, but the police did not take him seriously and told him to go home and rest. Mr. Smith said, "At first I was pissed they just blew me off like I was crazy or something. But then, the more I thought about it, the more I thought they probably already knew about the robot since they didn't seem that surprised by what I had to say. So if they already knew about the robot, then the police probably are part of it too. So I knew then I couldn't trust them." He said this belief became even more intense after the police accompanied the CSB to see if he qualified for an Emergency Custody Order. Mr. Smith

noted, "The police didn't say much, they just let the psych lady talk. Again, he [the officer] seemed bored, like he knew what I was going to say, what the story really was before I told it. They knew what was going on."

Mr. Smith stated that except when he was doing "active research" he unplugged all electronic devices—televisions, computers, even toasters—for fear that they were a conduit for the robot (Mr. Cruz) to infiltrate his brain and overtake him. The defendant said, "I felt trapped, like a caged animal. I wasn't safe in my own home. The police wouldn't protect me. My sister didn't believe me. But I knew this guy was not real, I knew he was one of these cyborg things and that he was already controlling my thoughts and knew what I was thinking. He was always a step ahead of me since I couldn't block my thoughts; instead, they were just racing. Once in a while I thought I heard him try to insert something in my brain. I would hear a voice say, 'Watch' or 'You did that.' It didn't make sense what the voices said and it was obvious it was him injecting those voices into my brain. I had no other place to turn—it was either me or him. I had to take him out so he wouldn't fully take over my brain, kill me, and turn me into a robot as well."

The defendant came to believe that there was a port on the victim's left shoulder that allowed him to download information. Mr. Smith said he thought that if he could stab into that port, it would be ruined and therefore he wouldn't be able to download anything and continue on with his attacks against him. The defendant stated he finally drew up the courage to confront the "robot", grabbed his pocket knife, and went to the house around 9:00 AM. He knocked on the door, and Mr. Cruz answered after a few minutes. Mr. Smith said, "He [Mr. Cruz] opened the door, and I looked at his shoulder and just stabbed. I think I just got it in there once real good, hoped that I got the port. He started screaming and grabbed at his shoulder. I just walked off and went back inside my house. I needed to get back on the computer to see if he was still monitoring me. I'm not sure what would have happened if I found additional evidence he was monitoring me. I was on the computer for maybe 15 minutes and then the police were there. [What did you think when the police arrived?] I thought they may have questions for me so they could close the case. I didn't think they would arrest me, since there's no laws against stabbing robots, or if they took me in, I didn't think I would be in jail too long since they knew what was up."

When asked why he chose to stab the victim, Mr. Smith said it was the most efficient way to get to the port, and was too afraid to get close to him by other means to disable the port. When asked who he thought he was stabbing he said, "Well now I know it's that Cruz guy, my neighbor. But at the time I thought he was a robot, like he wasn't a real person, that I was destroying a port. That there may be blood and he may cry out as if he was in pain, but that it was all a show, that he was programmed to do all that to try to convince others he is real." The defendant was asked if he thought it was wrong to stab Mr. Cruz, to which he replied, "Well, if I had just stabbed the neighbor guy because I didn't like him, then that would have been wrong and I would get lots of time in jail. But I thought I was stabbing a robot in its port. I thought that if I didn't get him right then and there, I would die. So I felt it was self-defense, totally justified. I thought the police would come, clean it up, and maybe move on to another target since I wasn't successful."

Mr. Smith denied being intoxicated at the time. He said he had about two or three beers the night before, but had not been drinking as much as he used to as he wanted to keep his mind "sharp" to determine which thoughts were his and which were being inserted into his brain. He also denied using other substances at the time of the offense.

Collateral Accounts[45]

Police report narrative completed by Officer McGruff, Sunnydale Police Department, dated 10-25-16:

> I RESPONDED TO [ADDRESS REDACTED] on 10-25-2016 at 0743 TO A REPORT OF A STABBING. UPON REACHING THE RESIDENCE, I OBSERVED V1 [Richard Cruz] SITTING ON HIS COUCH WITH A TOWEL BUNCHED UP AROUND HIS LEFT SHOULDER; HE APPEARED TO BE BLEEDING. THE RESCUE SQUAD WAS THERE, AND BEGAN TO DRESS HIS WOUND AND CHECK VITALS. A FEMALE WAS THERE TOO, REBECCA MARTIN, WHO SAID SHE LIVED NEXT DOOR.
>
> V1 ADVISED HE WAS EATING BREAKFAST WHEN THE DOOR RANG AND IT WAS HIS NEIGHBOR, JOHN SMITH. HE SAID SMITH SAID NOTHING, JUST STABBED HIS SHOULDER AND WENT BACK HOME. HE SAID THEY NEVER HAD ANY PROBLEMS, HE JUST SEEMED LIKE A "WEIRD" GUY. HE DENIED ANY ONGOING ISSUES BETWEEN THEM AND DOES NOT KNOW WHY SMITH STABBED HIM. MS. MARTIN SAID JOHN SMITH IS HER BROTHER AND THAT HE HAS "MENTAL PROBLEMS". SHE IS THE ONE WHO CALLED THE POLICE AFTER SHE NOTICED HER BROTHER SITTING IN HIS ROOM ON THE COMPUTER WITH THE DOOR OPEN, AND BLOOD ON HIS SHIRT. SHE SAID WHEN SHE ASKED HIM IF HE WAS OKAY, HE SAID "IT ISN'T MINE" AND THEN SHUT THE DOOR. SHE WENT INTO THE FRONT ROOM AND HEARD YELLING AND FOUND MR. CRUZ. SHE SAID CRUZ TOLD HER HER BROTHER STABBED HIM AND SHE CALLED 9-11.
>
> I WAITED FOR BACK UP, AND OFFICER STEVENS AND I WENT TO SMITH'S HOUSE. HE WAS IN HIS ROOM ON THE COMPUTER. THE KNIFE WAS IN PLAIN SIGHT AND I REMOVED IT FROM THE SUSPECT'S REACH. HE DIDN'T SEEM AGITATED AND HE RESPONDED TO OUR QUESTIONS. HE SAID HE DID STAB "IT" AND ASKED US IF WE WERE GOING TO HAVE "IT" REMOVED. HE SAID HE THINKS HE CAN FINALLY RELAX. I TOLD HIM HE WAS UNDER ARREST FOR MALICIOUS WOUNDING. SMITH APPEARED STARTLED BY THAT, BUT CAME WITH US WITH NO ISSUES.

Interview with his sister: Ms. Rebecca Martin, Mr. Smith's sister, was interviewed via telephone on 12-02-2016. She was informed the purpose of the interview, that her

[45] It is extremely important to go beyond just the defendant's account of the alleged offenses. All literature on sanity evaluations note the importance of collateral accounts of offenses to compare to the defendant's self-report.

statements could be included in a report that would go to her brother's defense attorney and then possibly admitted into evidence if they choose to do so, that this evaluator is a neutral party and is neither an advocate nor an adversary against her brother, and that her participation is fully voluntary. Ms. Martin said she understood and agreed to participate in the interview. [46]

Ms. Martin said her brother lived with her for about a year. She said her brother usually stays to himself, increasingly so in the last few months. She said that about three or four months ago, her brother went off medications and refused to go to the CSB for appointments; his case was closed. She said she called his case manager about her concerns about him discontinuing medications, but the case manager said the CSB could not force medications, and advised her to call the CSB or the police if she became concerned about his safety or the safety of others.

Around the beginning of October, Ms. Martin said she noticed all the appliances and electronic devices were unplugged. When she asked him about it, Mr. Smith said it was for their "protection". She thought it very odd, but did not think it would hurt any of them, so she did not press the issue. Ms. Martin said her brother did increasingly odd things, like ask her the same questions throughout the day, almost like he was "testing" her. She called the CSB and one of the emergency workers came out with the police. They asked her questions and her brother questions as well; she noted that the worker said she could not recommend a detention order since he was not threatening to hurt himself or others. After that, Ms. Martin said the defendant spent more time in his room and less time in common areas like the living room or kitchen. She said he continued to engage in odd behaviors like unplugging devices, staying up at night, asking her "test" questions, and also appeared distracted when she tried to talk to him.

On the day of the offense, she said she was about to leave for work and saw her brother at the computer. She asked him if everything was fine and when he turned toward her she saw what she thought was blood on his shirt. She became concerned he had harmed himself, and asked if he was hurt. He responded, "It's not mine", walked over to the door, and closed it. She went into the kitchen area and heard yelling coming from the yard. She investigated and found her neighbor bleeding on his front porch. Ms. Martin said Mr. Cruz told her that her brother had stabbed him. She called the police and waited for them and the rescue squad and tried to keep Mr. Cruz calm, while she profusely apologized on behalf of her brother.

Happy Days Adult Detention Center Records: Records from the jail indicate Mr. Smith was screened and referred for a mental health assessment and seen the next day by Tameka Jones, LCSW. Her notes said, "Inmate is agitated and delusional, saying he shouldn't be in jail since it was a robot. He was very concerned about me inputting information into the computer, saying 'they will know that I'm here and it will start again'. When asked to elaborate he said something about someone stealing his thoughts, but he became guarded. At times he appeared to be responding to internal stimuli, his comments were irrational, and speech pressured. He denied auditory and visual hallucinations, but appeared to be

[46] It is good practice to review your role and limits of confidentiality with collateral interview subjects.

responding to internal stimuli. Due to the inmate's psychosis, I will place him in medical housing until he can be evaluated by the psychiatrist. Probable diagnosis of Schizophrenia." Later notes indicate the psychiatrist diagnosed him with Schizoaffective Disorder, and the staff eventually convinced him to take the antipsychotic medication Haldol and the mood stabilizer lithium bicarbonate. The defendant's mental status stabilized to the point he could be transferred to general population.

Summary and Conclusion: Mr. Smith is currently incarcerated at Happy Days Adult Detention Center, held on a Malicious Wounding charge. The Honorable Ann T. Emm of the Sunnydale General District Court ordered a psychological evaluation of his competency to stand trial and sanity at the time of the alleged offense, which allegedly occurred on 10-25-2016. This report addresses the defendant's sanity at the time of the offense, and will be sent to the defendant's attorney.

> *A defendant may be considered to have been insane at the time of the offense if, as a result of mental disease or defect, the defendant did not understand the nature, character, or consequences of his actions, or was unable to distinguish right from wrong, or (if neither of the above is true) if he was unable to resist the impulse to commit the act (Boswell v. Commonwealth, 61 VA614 [20 Gratt] 860[1871]; Dejarnette v. Commonwealth, 75 VA 867 [1881]; Price v. Commonwealth, 228 VA 452 [1984]; Thompson v. Commonwealth, 193 VA 704 [1952]).*[47]

The first thing to consider when assessing for the insanity defense is whether the defendant suffered from a significant mental disease or defect at the time of the alleged offense.[48] Mr. Smith has a history of diagnoses of severe psychotic and mood disorders including Bipolar Disorder and Schizoaffective Disorder. When ill, Mr. Smith's symptoms typically include pressured speech, increased energy, and symptoms of psychosis such as hearing voices and having delusional beliefs. This has resulted in inpatient and outpatient treatment. Unfortunately, three months prior to the alleged offense, Mr. Smith discontinued his medications, as he did not like the side-effects, and thought he no longer needed them.

Mr. Smith's self-report and collateral accounts from his sister, the police report, and psychiatric evaluation soon after his arrest all consistent.[49] Mr. Smith and his sister, Ms. Martin, both reported that he began to experience symptoms around the time of the alleged

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[47] Some evaluators like to orient the reader as to the legal criteria for the insanity defense since it is not reflected in the Code.

[48] The first step is establishing whether there was a severe mental illness at the time of the alleged offense. Some evaluators refer to this as the "threshold condition" for the insanity defense. Again, it is important to explain the specific symptoms the defendant was experiencing at the time the crime. Just reporting a diagnosis does not explain how this particular defendant was thinking/feeling/behaving at the time of the crime. If there is not a significant mental disease or defect at the time of the offense, then the report can end here with an opinion the defendant was sane at the time of the offense.

[49] Underscore the importance of collateral sources.

offense consistent with a major mental illness. These symptoms included increased energy, finding special meaning in innocuous things such as Netflix recommendations, believing others could control his mind or insert information into his brain, and he became increasingly paranoid that his neighbor was a robot and the police were colluding with him. Mr. Smith said he believed at the time the victim was a robot who was attempting to control his brain and eventually turn him into a robot as well, all delusional beliefs. He also reported hearing voices. Police reports also indicate he made bizarre statements. Immediately after the offense, he was evaluated by mental health in the jail and he exhibited symptoms consistent with psychosis, reporting that others were stealing his thoughts and expressing concerns about robots. These symptoms are consistent with a psychotic disorder, most likely Schizoaffective Disorder. Collateral accounts from his sister, the police report, and psychiatric evaluation soon after his arrest all corroborate his self-report of these symptoms. Therefore, it is the opinion of this evaluator that at the time of the alleged offense, Mr. Smith meets the threshold condition for the insanity defense, having had a severe mental illness at the time of the crime.

Although Mr. Smith reported drinking a few beers the night before, this was not an abnormal amount of alcohol for him to consume and it was consumed several hours prior to the offense. He denied all other drug and alcohol use at the time of the crime, and collateral evidence does not refute his claim. Therefore, intoxication does not appear to be a factor in the offense. [50]

Regarding his ability to know the nature, character, or consequences of his actions,[51] Mr. Smith knew he stabbed someone, but did not fully appreciate the consequences of his actions. He did not believe he was hurting a person, but instead believed he was disabling a port on a robot. Therefore, it is the opinion of this writer that his mental illness impaired his ability to appreciate what he was truly doing when he stabbed Mr. Cruz. Regarding his ability to understand the wrongfulness of his actions,[52] Mr. Smith said that he believed he had to act or the robot would turn him into a robot as well. He felt his actions were morally justified, akin to an act of self-defense. He was also surprised he was arrested, believing the police were aware the neighbor was robot and therefore not subject to the same legal protections as a human. It does not appear that he understood what he did was wrong. These beliefs are reflected not only in his self-report, but in the observations of his sister, comments he reportedly made to police, and statements made to mental health professionals immediately after the offense.

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[50] Since voluntary intoxication cannot be used as a basis for the insanity defense, addressing potential intoxication at the time of the crime shows the attorney/court you at least considered this hypothesis.

[51] Address prong 1 of the insanity defense.

[52] Although you could technically stop the report at a finding of insanity due to prong 1 (above), the case law says OR and it is fine to address prong 2 (wrongfulness) as well.

Therefore,[53] based on the information available, it is the opinion of this evaluator that Mr. Michael Smith, at the time of the offense was experiencing symptoms consistent with a significant mental illness, and that these symptoms significantly and negatively impacted his ability to understand the nature, character, and consequences of his actions, as well as impacted his ability to understand the wrongfulness of his actions. Therefore, it is my opinion he meets criteria for the insanity defense.[54]

___________________________	______________________
Christine K. Ringle, PhD	DATE

[53] Case law dictates that an evaluator only needs to address irresistible impulse if there is a mental illness at the time of the crime, but the other two legal criteria of insanity are not met. Since it is my opinion that he meets criteria for the insanity defense under nature/consequences and wrongfulness, there is no legal reason to address irresistible impulse.

[54] Make sure your opinion is clear, whether that is done in a penultimate or ultimate opinion fashion.

Appendix H

Sanity report writing checklist by Daniel Murrie, Ph.D. of the University of Virginia's Institute of Law, Psychiatry & Public Policy

Report Writing Checklist:

Criminal Responsibility/Mental State at the Time of the Offense

I. **Defendant's Identifying Information**

Identifying information may be conveyed in narrative, paragraph form or through a list.

a. Name
b. Date of Birth
c. Age at Time of Evaluation
d. Ethnicity (potentially relevant if defendant does not speak English as primary language or comes from a culture outside the U.S., with less exposure to U.S., justice system)
e. Referral Source and/or Court
f. Charge(s)
g. Date(s) of the Alleged Offense(s)
h. Date of Arrest
i. Place of interview (and date of admission, if inpatient facility)
j. Duration of interview
k. Nature of evaluation: i.e., Mental State at the Time of the Offense (MSO) evaluation ordered under § 19.2-169.5 or§ 19.2-168.1 (including the legal standard)
l. Statement regarding who requested/ordered the evaluation
m. Statement regarding the defendant's behavior/history that prompted referral

II. Sources of Information

MSO and most other forensic reports should include a list of all records reviewed and collateral interviews conducted. These should be arranged in easily understood format, such as chronological or topical, so that the reader can quickly determine whether or not a particular source was included.

III. Limits of Confidentiality/Privilege[55]

[55] The Specialty Guidelines for Forensic Psychologists state: "Forensic practitioners inform examinees about the nature and purpose of the examination. Such information may include the purpose, nature, and anticipated use of the examination; who will have access to the information; associated limitations on privacy, confidentiality, and privilege including who is authorized to release or access the information contained in the forensic practitioner's

One paragraph should document that the evaluator has conveyed to the defendant the context of the evaluation and limits of confidentiality.

a. Evaluator informed defendant of evaluation purpose (i.e., MSO) and evaluator's role
b. Evaluator informed defendant of limits of confidentiality/privilege, including what will be included in report and who will have access to the report
c. Description of the extent to which defendant understood these concepts

IV. Relevant Background or History

MSO reports must provide the type of brief, general background that helps shed light on the defendant's overall history and life functioning. Reports should also include much more specific, detailed information regarding the issues most likely related to their mental state at the time of the alleged offense, such as psychiatric history, or/history of cognitive deficits, recent stressors, and significant life changes.

a. Developmental and Familial Background (use caution in including the medical, legal, and substance abuse histories of family members. Family psychiatric history may be particularly relevant, but avoid disclosing more information about family members than is relevant to the legal question at hand.)
b. Educational history (will require substantial detail in cases wherein cognitive/intellectual problems appears to impact criminal responsibility)
c. Employment (including military history)
d. Social history (will be particularly important for cases with alleged sexual offenses or intimate partner violence)
e. Medical history (particularly accidents or medical conditions that may influence cognition, mood, etc.)
f. Psychiatric illness, treatment, and response to treatment (will require substantial detail in cases wherein psychiatric illness appears to relate to criminal responsibility)
g. Religious history (when relevant; specifically related to possible religious delusions or unusual beliefs)
h. Substance abuse (especially important to disentangle the relationship between mental illness and substance use as related to criminal responsibility)
i. Criminal justice involvement (especially important if there is a history of crime similar to the current offense)
j. Adjustment in jail after arrest (if arrest shortly follows the alleged offense, jail adjustment may help provide information about a defendant's functioning proximal to the alleged offense)

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records; the voluntary or involuntary nature of the participation, including potential consequences of participation or non-participation, if known; and if the cost of the services is the responsibility of the examinee, the anticipated cost."

V. Mental status

Sanity reports should thoroughly describe the defendant's mental status using specific behavioral examples, rather than clinical jargon. When clinical terminology is essential, terms should be clearly defined and/or followed by clear examples.

Evaluators should attribute the defendant's statements to the defendant, and identify their own inferences or observations as such.

a. Appearance, general behavior, orientation
b. Physical functioning (e.g., motor retardation/agitation)
c. Quality of communication and interpersonal style
d. Mood and affect
e. Thought content and processes (acknowledging that evaluators never truly know thought process/content, but only make inferences based on defendant's statements)
f. Unusual perception experiences
g. Cognitive functioning (e.g., memory, attention/concentration)
h. Estimate of intellectual functioning
i. Insight into mental illness (if applicable)
j. Ample detail regarding the symptoms or behaviors most relevant to their mental status at the time of the offense (if applicable)
k. Current medications, including purpose and dosage (the goal is to help reader gauge whether the mental status that the evaluator described is influenced by medication)

VI. Psychological Testing (if applicable)

Psychological testing may be helpful in some cases where cognitive deficits or psychopathology are unclear and may be related to mental state at the time of the offense. Response style may also be important to assess in some cases. But remember that Sanity evaluations are about a defendant's functioning <u>at the time of the alleged offense</u>, so <u>current</u> test results may not be directly relevant.

a. Short description of test purpose (e.g., psychopathology, response style)
b. Relevance, or rationale, for including test in MSO evaluation
c. Test results
d. Limitations of test results

VII. Assessment of Criminal Responsibility/MSO

a. Police report of alleged offense (include transcription, or summary of report)
b. Report(s) of the defendant's behaviors leading up to and including the alleged offense from collateral sources (e.g., witnesses, victims, family, friends, arresting/interrogating officers, psychiatric/medical professionals)

c. Defendant's report of alleged offense, including:
    i. Description of daily life leading up to the alleged offense
        1. Living circumstances
        2. School/employment
        3. Interpersonal relationships, particularly with alleged victim
        4. Substance use immediately prior and during the alleged offense
        5. Psychiatric symptoms, including symptoms directly prior, during, and following the alleged offense
        6. If applicable, medication compliance leading up to and at the time of the alleged offense.
        7. Physical health status (include sleeping, eating, energy, etc), Medical or Neurological (e.g., seizures), particularly as relevant o potential insanity defense.
        8. Recent stressors (e.g., loss of loved one, unemployment, etc.)
    ii. Circumstances (e.g., where, when) of the alleged offense
    iii. Defendant's behaviors, including alleged criminal acts
    iv. Defendant's behaviors immediately after the alleged criminal acts
    v. Defendant's behaviors at time of apprehension
    vi. Defendant's reported thoughts, emotions, experiences, and motivations
        1. What did defendant think would happen if he/she engaged in reported behavior?
        2. What did defendant think would happen if he/she did not act?
        3. Were there other times when the defendant has similar thoughts/beliefs but did not act in this manner? If so, why was this time different?
        4. What alternatives did defendant consider?
        5. What did defendant think when the police arrived?
        6. Did he/she know the action was illegal?

VIII. **Rationale and conclusions regarding defendant's criminal responsibility, based on data**

a. Presence of mental illness/defect and related symptoms
    i. Relationship between current mental status and mental state at the time of the offense
b. Linking specific deficits/symptoms to impaired capacity to know the nature and quality of the alleged act
    i. Relationship between mental health symptoms/cognitive deficits and alleged behaviors
    ii. Relationship between substance use and alleged behaviors (if no substance use was indicated, mention this too)
c. Linkage of specific deficits/symptoms to impaired capacity to appreciate the wrongfulness (both legal and moral) of the act
    i. Relationship between mental health symptoms/cognitive deficits and alleged behaviors
    ii. Relationship between substance use and alleged behaviors (if no substance use was indicated, mention this too)

d. Linkage of specific deficits to impaired capacity to conform behavior to the law
    i. Relationship between mental health symptoms/cognitive deficits and alleged behaviors
    ii. Relationship between substance use and alleged behaviors (if no substance use was indicated, mention this too)
e. Effects of defendant's use of substances and/or medications, if any
f. Evidence (or lack thereof) of any inability to control impulse or behavior

Additional Broad Guidelines:

After completing the report, evaluators should review the report in an effort to reduce error and make the report clearer for the court. When reviewing, be particularly attuned to the following:

- ***Consider multiple hypotheses***. Evaluators should test multiple hypotheses and then seek out and present data that both supports and disproves these hypotheses. Inconsistencies should be presented and collateral evidence can be weighed against a defendant's self-report.

- ***All opinions should be clearly linked to data***. Evaluators should carefully articulate the link between data or observations and subsequent opinions. Evaluators should provide detail about the defendant's clinical symptoms and/or diagnosis and the relationship between those symptoms and the subsequent behaviors leading up to and including the alleged crime. The evaluator should indicate whether the symptoms had a direct or indirect impact on the behavior. Relate the symptoms to the specific cognitive and volitional prongs of the standard.

- ***Address multiple charges separately***. If a defendant is facing multiple charges, particularly for different behaviors or incidents, evaluators should address the relationship between symptoms and the elements of each charge individually.

- ***Define technical terms in the report to make them more understandable to people outside psychology.***

- ***Carefully proofread the entire report***.

Appendix I

Recommending inpatient or outpatient restoration

Consider Recommending Inpatient Restoration	Consider Recommending Outpatient Restoration
Incompetency due to a psychiatric condition that is untreated or undertreated in the community/jail.	Incompetency due to current substance use.
Suspected feigning and around-the-clock observation is required to make the determination. Recommend after attempts to resolve this issue on an outpatient basis.	Incompetency due to intellectual or developmental disability.
	Incompetency due to psychiatric symptoms and the defendant is accepting medications or is willing to accept medications in the community or at the jail.
	Incompetency due to a condition with a poor prognosis for treatment such as dementia.
	Incompetency due to naiveté or ignorance about the legal system.

Appendix J

Charges that require recommendation for further review as a possible Sexually Violent Predator when opining a defendant is unrestorable.

Please review § 19.2-169.3 and § 37.2-900 to confirm these charges prior to submission of your report.

Virginia Code Section	Charge
§ 18.2-31	Capital Murder
§ 18.2-61	Rape
§ 18.2-67.1	Forcible Sodomy
§ 18.2-67.2	Object Sexual Penetration
§ 18.2-48 (ii)	Abduction for immoral purpose
§ 18.2-48 (iii)	Abduction with Intent to Defile Any Child Under 16 for the purpose of prostitution
§ 18.2-63	Carnal knowledge of a child between 13 and 15
§ 18.2-64.1	Carnal knowledge of certain minors
§ 18.2-67.3	Aggravated Sexual Battery
§ 18.2-32	First or Second Degree Murder during the commission of rape, forcible sodomy, inanimate or animate object penetration