Virginia Department of Behavioral Health & Developmental Services

Adult Outpatient Competency Restoration Manual

for Community Services Boards & Behavioral Health Authorities

Developed by Virginia's Department of Behavioral Health and Developmental Services

Office of Forensic Services

February 2018

Introduction

If a criminal court finds that a defendant is incompetent to stand trial pursuant to Virginia Code section § 19.2-169.1, the court will order that the defendant receive treatment to restore their trial competence. The Code requires that the court first consider ordering restoration services on an outpatient basis unless the court specifically finds that the defendant requires inpatient hospital treatment. "Outpatient" and "community-based" are terms used interchangeably to describe restoration services that take place in a setting other than an inpatient hospital, including both the jail and larger community setting. With the addition of this language regarding the court's consideration of the "least restrictive" setting for competency restoration, came the need for a system for the provision of restoration services in the community.

The Department of Behavioral Health and Developmental Services (DBHDS), in partnership with Community Services Boards (CSBs)/Behavioral Health Authorities (BHAs), created a mechanism for courts to refer appropriate restoration cases to the local CSB/BHA for outpatient restoration. As a result of this new process, DBHDS has also developed a training course for CSB/BHA staff who will be assigned to provide restoration services in their locality.

This manual is provided to the CSB/BHA staff as a tool for working with defendants who have been ordered to participate in outpatient competency restoration. We encourage you to take advantage of the forensic expertise available at the DBHDS Forensic Services Office and in each of our DBHDS facilities. A list of these individuals is provided in this reference manual.

The Office of Forensic Services will be offering Adult Outpatient Competency Restoration Training for CSB/BHA staff in conjunction with the dissemination of this manual. Please contact Sarah Shrum (804-786-9084 or sarah.shrum@dbhds.virginia.gov) at the DBHDS Forensic Services Office if you are interested in training or a copy of this training manual.

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Section 1:

Restoration Training Presentations

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Adult Outpatient Restoration Training 2018

Training for CSB Outpatient Restoration Coordinators and Counselors

Trainers

Competency to Stand Trial (CST): History, Law, and Practice

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COMPETENCY TO STAND TRIAL: HISTORY, LAW AND PRACTICE

Session 1 Learning Objectives:

- Understand the basic legal process
- Learn how these legal concepts developed in our courts and in our constitution
- Review major court cases that helped to define the concepts
- Understand the Virginia standard for Competency to Stand Trial
- Learn *when* the issue of competency is raised, *who* raises the issue, *what* the court does once the question of competency is raised, and *how* competency is evaluated
- Define restoration services and your role in providing them
- Understand the goals of restoration services and expected outcomes

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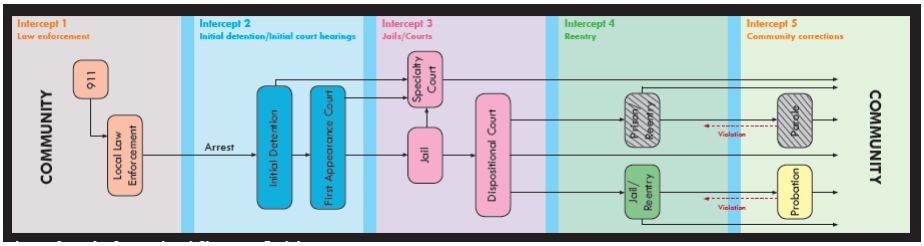
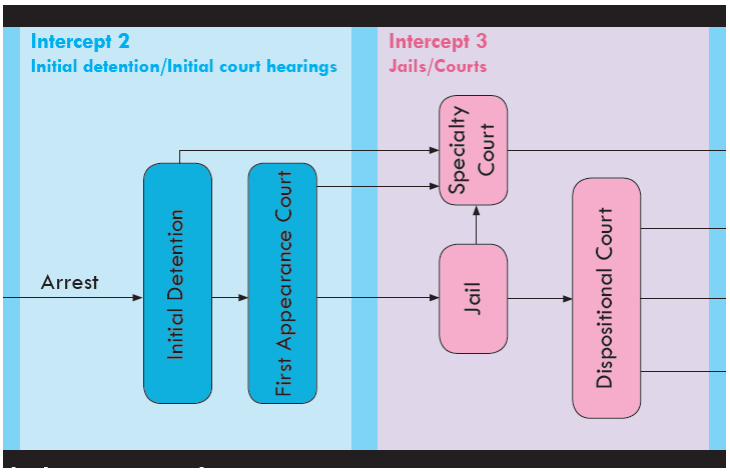
THE CRIMINAL JUSTICE PROCESS OVERVIEW

Sequential Intercept Model



THE CRIMINAL JUSTICE PROCESS OVERVIEW



THE CRIMINAL JUSTICE PROCESS OVERVIEW

- Defendants are presumed to be competent to stand trial, unless someone questions the defendant's competency
- A person MUST be competent to stand trial in order for the trial to be fair
- It can be raised at ANY TIME during the trial process – at arraignment, at a status hearing, at the trial, before sentencing, etc.
- It is the ethical responsibility of the defense, Commonwealth's Attorney, or even the judge to raise the issue if they have doubts about the defendant's competency
- Competency to stand trail IS NOT the same thing as Insanity at the time of the offense.
- Insanity = at the time of the alleged crime; Competency = here and now

HISTORY OF THE LAW

- Concept dates back to 1600's in English Common Law
  - Frustrations arose when defendants would refuse to speak instead of pleading to a charge, delaying trial
  - Led to a distinction between "Mute of Malice" vs. "Mute by visitation of God"
  - If "mute of malice" defendants would be tortured until they spoke
  - If "mute by visitation of God" a defendant could not be tried until they regained their ability to assist in their own defense
- Frith's Case (1790) was the first time a written law was established
  - Frith was charged with treason when he threw a stone at King George III's coach as it travelled to the State Opening of Parliament
  - He was declared unfit to plead by reason of insanity. He was discharged on the condition that he be committed to an asylum
  - Competency is considered morally necessary for a fair trial

HISTORY OF THE LAW

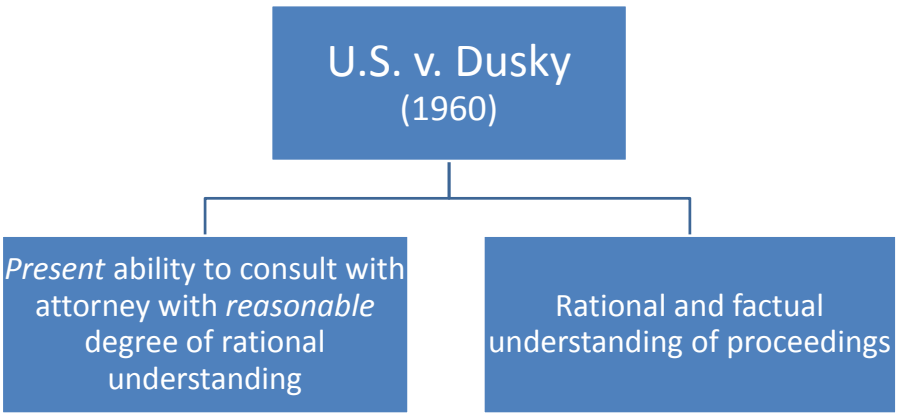
- *Youtsey v. U.S.* (1899) is the first case that gave competency "constitutional status" as a matter of due process
  - Had been tried and convicted of embezzlement after an initial delay of several months, during which he had been physically and mentally unable to appear, due to epilepsy
  - Original court denied the defense's attempts to delay trial due to concerns over the impact of the epilepsy on his memory
  - Supreme Court found "…It is not 'due process of law' to subject an insane [incompetent] person to trial upon an indictment involving liberty or life"
  - Supports Sixth Amendment rights
- *U.S. v. Chisolm* (1906) expanded the standard from a focus primarily to cognitive capacity to one that also included communicative abilities

HISTORY OF THE LAW – DEFINING THE STANDARD

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

- Milton Dusky, a 33 year old man was charged with assistance in the rape and kidnapping of an underage girl. He was diagnosed with Schizophrenia but was found competent to stand trial. After a finding of guilt, he was sentenced to 45 years.
- Supreme Court says: "it it is not enough for the district judge to find that 'the defendant [is] oriented to time and place and [has] some recollection of events,' but that instead the: **"Test must be whether he has *sufficient present* ability to consult with his lawyer with a *reasonable* degree of *rational* understanding -- and whether he has a *rational* as well as *factual* understanding of the proceedings against him. "**
  - Dusky did not define all of the terms used; some were defined in later decisions

HISTORY OF THE LAW – DEFINING THE STANDARD



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HISTORY OF THE LAW - WHAT MUST A DEFENDANT KNOW?

Wieter v. Settle, U.S. District Court for Western Missouri (1961)

- After being found incompetent, he was ultimately confined in a hospital for a longer period of time than any possible sentence he could have received for his offense
- The Court held that an individual could not be indefinitely confined in federal criminal custody simply because the defendant was found incompetent
- The Court found that a mental illness does not equal incompetency and while the psychiatrist can offer an opinion, it is up to the fact finder to determine competency. The court outlined eight functional criteria in order to determine competence to stand trial:
  - That he is in a Court of justice, charged with a criminal offense
  - That there is a Judge on the bench
  - That a Prosecutor is present who will try to convict him of a criminal charge
  - That he has a lawyer who will undertake to defend him on that charge
  - That he will be expected to tell his lawyer the circumstances, to the best of his mental ability and the facts surrounding him at the time and place
  - That there is or will be a jury present to decide his guilty or innocence of such charges
  - That he has memory sufficient to relate those things in his own personal manner

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HISTORY OF THE LAW - LIMITS TO LENGTH OF CONFINEMENT

Jackson v. Indiana, 406, U.S. (1972)

- Theon Jackson, a deaf mute who could not read or write or communicate in other ways, and was charged with two counts of petty theft
- A CST evaluation was conducted and the psychiatrist opined that his intelligence was too low for him to understand the charges against him and that the probability of him being restored to competency were "rather dim" even if he was not hearing and verbally impaired.
- Nevertheless, he was committed to a psychiatric facility for treatment but later petitioned the Supreme Court asserting that this commitment was paramount to a life sentence
- The Court agreed, ruling that a defendant could not be held longer than the ***reasonable period of time necessary to determine whether there is a substantial probability that he would attain competency in the foreseeable future***.

HISTORY OF THE LAW - OTHER COURT CASES

- Competency is raised when there is a "bona fide doubt" about the defendant's competency (*Pate v. Robinson, 1966*) or sufficient doubt is raised due to behaviors by the defendant (*Drope v. Missouri*, 1975)
- The defense, prosecution, or the court may raise the issue at any point in the process (*Pate; Drope*)
- All defendants are presumed competent to stand trial (*Medina v. California, 1992*)
- The State requires a defendant claiming incompetence prove it by the preponderance of the evidence (*Medina; Cooper v. Oklahoma, 1996*)

VIRGINIA STANDARD
FOR COMPETENCY TO STAND TRIAL (CST)

Virginia Code § 19.2-169.1

In Virginia, a defendant is not competent if he/she is:

- Lacking ***substantial capacity***
  - To understand the proceedings against him

- Or -

  - To assist his attorney in his own defense

COMPETENCY TO STAND TRIAL IS:

- A *present* ability
- A sufficient understanding; not a perfect understanding
- A layperson's understanding
- A capacity to understand or to learn, involving both factual and rational understanding

COMPETENCY TO STAND TRIAL IS *NOT*:

- The mental state at the time the offense occurred
- Passing a vocabulary test
- Passing a knowledge test
- Being a legal expert
- Being a rights expert

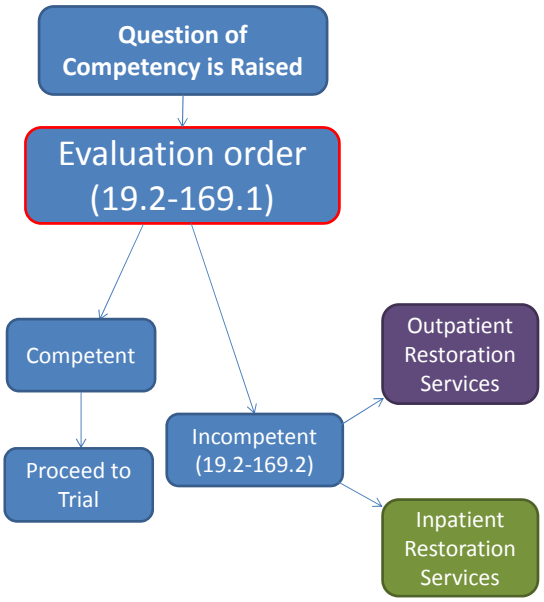
THE PROCESS IN VIRGINIA DEFINED BY CODE

- §**19.2-169.1**: Raising question of competency to stand trial or plead; evaluation and determination of competency
  - Initial CST Evaluation is ordered
- §**19.2-169.2**: Disposition when defendant is found incompetent
  - Initial order for restoration of competency to stand trial services is issued
- §**19.2-169.3**: Disposition of unrestorably incompetent defendants
  - In addition to the dispositions, also allows for subsequent restoration orders when defendant is incompetent but restorable to competency

RAISING THE QUESTION OF COMPETENCY

- A defendant is presumed to be competent to stand trial, unless someone raises the question
- Competence questions are usually raised by defense attorney, but can be raised by the judge or CWA
- Ethically, a defense attorney or other member of court is obligated to raise the issue if there are any doubts about the issue of competence
- Issue can be raised at any point during the trial process; once it is raised the trial process stops until the question of competence is resolved

COMPETENCY TO STAND TRIAL PROCESS – THE INITIAL COMPETENCY EVALUATION



DATA ABOUT CST EVALUATIONS

- Most evaluations are completed in the community or in the jail vs. in a DBHDS hospital
- DBHDS has averaged about 122 inpatient admissions per year since FY 11 for pre-trial evaluations, mostly for competency to stand trial (that equates to 11.4% of all forensic admissions)
- The State Supreme Court paid for 2,691 competency evaluations in FY 17 performed on an outpatient basis. 52% were competency evaluations alone and 48% were combined competency and sanity evaluations.
- There is usually a high level of agreement between evaluators, and between the evaluator's opinion and the decision by the judge

WHO COMPLETES THE INITIAL COMPETENCY EVALUATION?

- The Court must appoint an evaluator who is listed on the DBHDS Commissioner-Approved List of Forensic Evaluators (located at www.dbhds.virginia.gov)
- To be included on the list, evaluators must apply to DBHDS and are required to have the following qualifications:
  - "a 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;
    - (iv) is included on a list of approved evaluators maintained by the Commissioner."

NOTE: These qualifications apply to the evaluator for the initial and any subsequent (outcome) competency evaluations.

WHERE IS THE INITIAL COMPETENCY EVALUATION PERFORMED?

- It "Shall be performed on an outpatient basis at a mental health facility or in jail unless the court specifically finds that outpatient services are unavailable or unless the results of outpatient evaluation indicate that hospitalization of the defendant for evaluation on competency is necessary."
- As mentioned earlier, DBHDS averages only 122 admissions for evaluations each year – most defendants do not get admitted for the purpose of evaluation.

WHAT IS ASSESSED DURING THE INITIAL COMPETENCY EVALUATION?

- The CST evaluation must address:
  - "(i) the defendant's capacity to understand the proceedings against him;
  - (ii) his ability to assist his attorney;
  - (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 is recommended**."

SAMPLE EVALUATION

BE A CRITICAL CONSUMER OF THE INITIAL COMPETENCY EVALUATION REPORT – WHAT SHOULD YOU SEE?

- The evaluator clearly describes *relevant symptoms, deficits, and strengths* that clearly **link to the issue of trial competence**. The *should not* emphasize (or proffer) a diagnosis, as diagnosis is irrelevant to the issue of competency
- The evaluator clearly articulates their opinion and underlying reasoning to back up their opinion on the defendant's competence
- The evaluator is "transparent," meaning you can follow evaluator's procedures, reasoning, and conclusions
- The evaluator has considered third party information rather than relying solely on the defendant's self-report (i.e., medical or psychiatric records, interviews with family or providers, etc.)
- The evaluation is clear and comprehensible. The evaluator should not include unnecessary mental health jargon or acronyms, but if it is necessary for the evaluation it should be clearly defined
- "No statements of the defendant relating to the time period of the alleged offenses shall be included in the report" – this is intended to prevent any evidence that could be used against the defendant at trial from being shared with the prosecutor or the Judge

RECOMMENDATIONS THE CST EVALUATOR CAN MAKE TO THE COURT

The 3 defined options in the Code are:

- The defendant is Competent to stand trial – OR –
- The defendant is Incompetent to stand trial but restorable – OR –
- The defendant is Incompetent to stand trial for the foreseeable future with recommendations for:
  - Release
  - Commitment pursuant to § 37.2-814 (psychiatric hospital)
  - Certification pursuant to § 37.2-806 (training center)
  - Screened pursuant to § 37.2-903 and § 37.2-904 if they have qualifying sex charges

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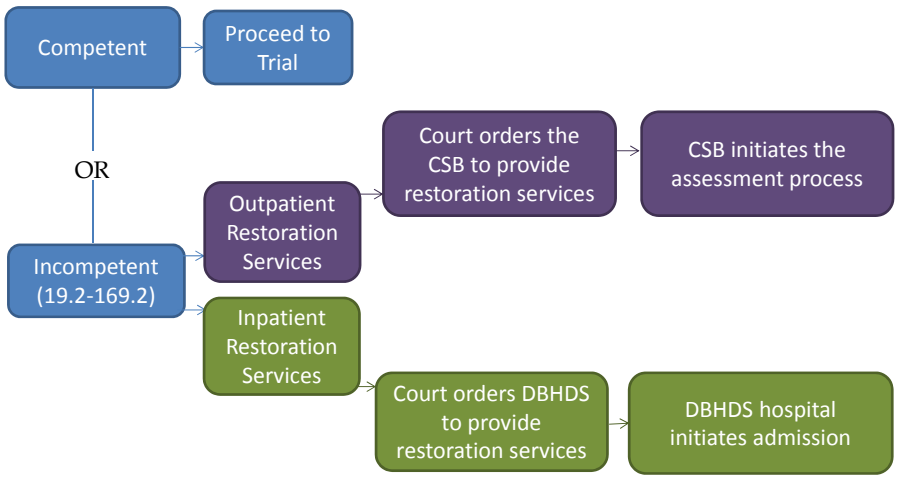
AFTER THE EVALUATION: NEXT STEPS



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AFTER THE EVALUATION: NEXT STEPS

- After receiving the CST evaluation, the Court shall promptly determine whether the defendant is competent to stand trial
- The CST evaluator provides an opinion; the presiding judge makes a determination of competency to stand trial
- If the judge finds the defendant incompetent to stand trial, he/she will issue a new order for Competency Restoration Services (Code Section § 19.2-169.2) and will specify if they should be performed on an inpatient or outpatient basis.

IF THE DEFENDANT IS FOUND INCOMPETENT (§ 19.2-169.2)

"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 hospitalization, at a hospital designated by the Commissioner…"

OUTPATIENT COMPETENCY RESTORATION IS IMPORTANT

- The Code (§ 19.2-169.2) sets outpatient restoration as the default – outpatient is presumed unless the judge makes a special finding for inpatient
- Outpatient = in jail or the community at large
- Outpatient restoration is considered "less restrictive" than inpatient restoration
- Availability of outpatient restoration may facilitate an individual being granted bond
- Outpatient restoration allows defendants to remain closer to home and access care through existing resources
- Availability of outpatient restoration helps preserve inpatient beds for those in the most acute need for restoration

DEFINING COMPETENCY RESTORATION SERVICES

At their most basic, competency restoration services are:

- Educational and training services, and
- Restoration case management services, including:
  - Identifying the obstacles or barriers to a defendant's trial competence;
  - Linking the defendant to appropriate service providers in the community to address the barriers to their trial competence; and
  - Coordinating the care provided to the defendant by service providers, when necessary

GOALS OF RESTORATION SERVICES AND EXPECTED OUTCOMES

When providing restoration services, always keep in mind the following goals:

- **Preventing unnecessary delays to the defendant's trial** through:
  - Swift response upon receipt of the order to gather documentation initiate contact with the defendant
  - Setting restoration sessions weekly at a minimum, more often if tolerated
  - Assisting in the linkage to appropriate service providers in the community to address barriers to trial competence (i.e., psychiatrist, social services)
  - Updating the court prior to any scheduled hearing, and obtaining outcome competency evaluation as soon as you feel that you've reached the end
- **Providing education but not providing legal advice**:
  - While you will assess the defendant's understanding of legal concepts and ability to apply them to their case, steer clear of giving them pros/cons of legal options or suggesting legal strategies.

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GOALS OF RESTORATION SERVICES AND EXPECTED OUTCOMES

- **Perfection is not required, a basic factual understanding and the *ability to learn and apply* concepts is the goal of restoration**
  - They don't have to be legal experts or know every concept to be competent – if they demonstrate the ability to learn new concepts and apply them, they may be competent
- **Remain neutral and report only the facts**
  - Leave your opinions out of any correspondence or communication with the court, state only what you have observed – opinions related to the defendant's competency should be offered only by the trained evaluator, which you will pass along to the court
- **Continually assess the defendant's mental status and safety – take action when needed**
  - If at any point the defendant needs emergency hospitalization, take action
  - Emergency mental health needs should be prioritized above restoration services when they arise – you can inform the court later if your ability to provide restoration services is impacted by these events

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GOALS OF RESTORATION SERVICES AND EXPECTED OUTCOMES

- **There is no good or bad outcome from your restoration services:**
  - While you should strive to help the defendant reach trial competence, this will not always be possible and it may have nothing to do with your skills at restoration
  - Even if the court ultimately finds the defendant unrestorable, your work has helped the court achieve the most fair outcome for the defendant's case, hopefully with as little delay as possible
  - If you are able to restore the defendant to trial competence, you should feel no sense of guilt that they will now go on to trial and potentially found guilty or be sentenced to jail – restoration to competency allows the defendant to be fairly tried, to have the ability to work with their defense attorney and to understand what is happening. This process ultimately prevents unfair convictions of individuals who were unable to defend themselves against their charges

NEXT STEPS – THE CSB BEGINS ITS WORK!

Take a 15 minute break!

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Beginning Outpatient Restoration Services: *Initial Assessment and Restoration Case Management*

BEGINNING OUTPATIENT RESTORATION SERVICES

Session 2 Learning Objectives:

- Understanding how to identify and interpret a court order for outpatient competency restoration, and identify important dates
- Learn which documents are needed to begin outpatient restoration services and how to obtain them
- Learn how to identify essential elements of the initial competency assessment
- Review the case management services that will potentially be performed while providing restoration services
- Learn how to initiate first meeting with the defendant and how to address barriers to initiating outpatient restoration services

IMPORTANT THINGS TO KNOW ABOUT YOUR CSB'S PROCESS

- Each CSB has identified an Adult Outpatient Restoration Coordinator – if you don't know who that is, find out and get their contact information.
- Where are court orders sent (to someone's email or to a specific fax #?) and who receives them at your CSB? How will the court orders make it to you?
- Who is responsible for gathering the collateral information from the court and other providers to help inform your restoration services plan?

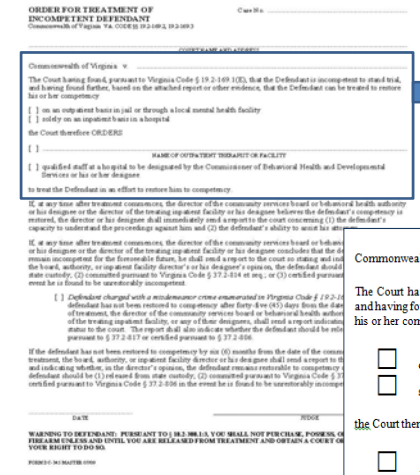
IDENTIFYING AND INTERPRETING THE COURT ORDER

- **Step 1 – Examine the court order and note the following:**
  - Date it was signed by the judge
  - Date it was received by CSB (**date stamp as soon as it arrives**)
  - Confirm that the court ordered OUTPATIENT vs. INPATIENT services
  - Confirm that your CSB is listed as the provider of restoration services
  - Look for any court dates that have been set for review of the case in the future. **(If not noted on the order, look up the defendant on the Court website to determine the next hearing. http://www.courts.state.va.us/)**
  - Remember that the court order is valid **for up to six (6) months from the date that the defendant is "admitted" to the CSB** – meaning the date you receive the order and initiate the process of restoration services (unless otherwise specified on the order)

IDENTIFYING AND INTERPRETING THE COURT ORDER

- **Step 2 – Check for accuracy:**
  - Is it an outpatient order (vs. an inpatient order)?
  - Is it pursuant to § 19.2-169.2, the correct adult code and not 16.1-357, the juvenile restoration code?
  - Note: A juvenile can be ordered under 19.2-169.2, only if the juvenile has been certified to circuit court and is being tried as an adult.
  - Note: The Juvenile & Domestic Relations Courts can try adults, so you may receive valid orders from JDR – just check the defendant's age before beginning
- **Step 3 – If there are errors on the court order:**
  - Contact the clerk's office immediately to seek amended order
  - If your CSB is not going to be the provider, ensure the clerk revises the order and sends to the correct provider (and sends a copy to you for your records)
  - If your CSB is in fact the provider, initiate process of scheduling your first visit with the defendant but follow up with the clerk until revised order is in your hands

IDENTIFYING AND INTERPRETING THE COURT ORDER


ORDER FOR TREATMENT OF INCOMPETENT DEFENDANT

Commonwealth of Virginia v.

The Court having found, pursuant to Virginia Code § 19.2-169.1(E), that the Defendant is incompetent to stand trial, and having found further, based on the attached report or other evidence, that the Defendant can be treated to restore his or her competency

[ ] on an outpatient basis in jail or through a local mental health facility
[ ] solely on an inpatient basis in a hospital

the Court therefore ORDERS

[ ] _____
NAME OF OUTPATIENT THERAPIST OR FACILITY

[ ] qualified staff at a hospital to be designated by the Commissioner of Behavioral Health and Developmental Services or his or her designee

to treat the Defendant in an effort to restore him to competency.

Know how to identify the adult outpatient restoration court order.

Commonwealth of Virginia vs. .....

The Court having found, pursuant to Virginia Code 19.2-169.1(E), that the Defendant is incompetent to stand trial, and having found further, based on the attached report or other evidence, that the defendant can be treated to restore his or her competency.

☐ on an outpatient basis in jail or through a local mental health facility

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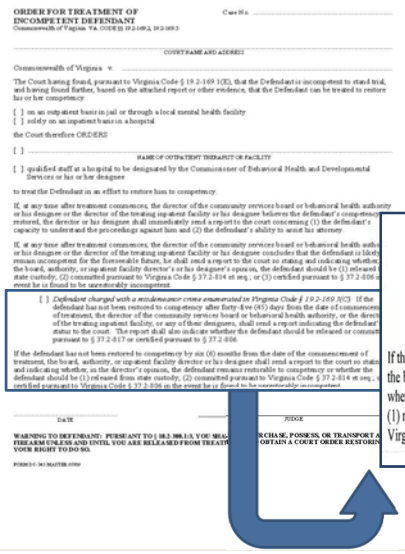
the Court therefore ORDERS

☐ .....
NAME OF OUTPATIENT THERAPIST OR FACILITY

☐ Qualified staff at a hospital to be designated by the Commissioner of the Department of Behavioral Health and Departmental Services or his or her designee to treat the Defendant in an effort to restore him to competency.

IDENTIFYING AND INTERPRETING THE COURT ORDER



ORDER FOR TREATMENT OF INCOMPETENT DEFENDANT

Commonwealth of Virginia Va. CODE §§ 19.2-169.2, 19.2-169.3

COURT NAME AND ADDRESS

Commonwealth of Virginia v.

The Court having found, pursuant to Virginia Code § 19.2-169.1(E), that the Defendant is incompetent to stand trial, and having found further, based on the attached report or other evidence, that the Defendant can be treated to restore his or her competency

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[ ] NAME OF OUTPATIENT THERAPIST OR FACILITY

[ ] qualified staff at a hospital to be designated by the Commissioner of Behavioral Health and Developmental Services or his or her designee

to treat the Defendant in an effort to restore him to competency.

If, at any time after treatment commences, 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 concerning (1) the defendant's capacity to understand the proceedings against him and (2) the defendant's ability to assist his attorney.

If, at any time after treatment commences, 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 and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody, (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent.

[ ] *Defendant charged with a misdemeanor crime enumerated in Virginia Code § 19.2-169.3(C).* If the defendant has not been restored to competency after forty-five (45) days from the date of commencement of treatment, the director of the community services board or 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.

If the defendant has not been restored to competency by six (6) months from the date of the commencement of treatment, the board, authority, or inpatient facility director or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to Virginia Code § 37.2-806 in the event he is found to be unrestorably incompetent.

DATE JUDGE

WARNING TO DEFENDANT: PURSUANT TO § 18.2-308.1:3, YOU SHALL NOT PURCHASE, POSSESS, OR TRANSPORT A FIREARM UNLESS AND UNTIL YOU ARE RELEASED FROM TREATMENT OR OBTAIN A COURT ORDER RESTORING YOUR RIGHT TO DO SO.

FORM CC-365 MASTER 0709

Know how to identify the expiration date.

Note: Not all restoration orders look like this example, see next slide for a different version of a restoration order.

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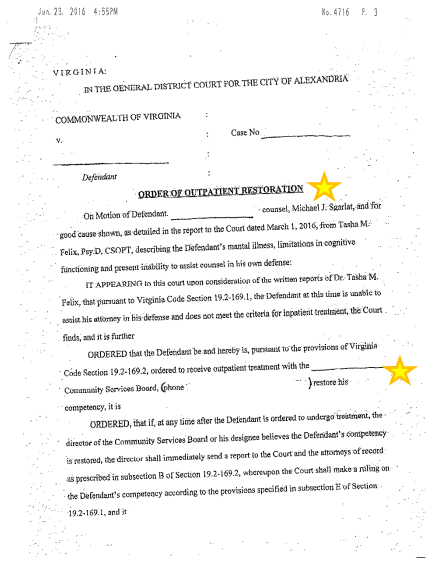
If the defendant has not been restored to competency by six (6) months from the date of the commencement of treatment, the board, authority, or inpatient facility director or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to Virginia Code § 37.2-806 in the event he is found to be unrestorably incompetent.

IDENTIFYING AND INTERPRETING THE COURT ORDER



Jun. 23. 2016 4:55PM No. 4716 P. 3

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

COMMONWEALTH OF VIRGINIA

v. Case No. _____

_____

Defendant

ORDER OF OUTPATIENT RESTORATION

On Motion of Defendant, _____ counsel, Michael J. Sgarlat, and for good cause shown, as detailed in the report to the Court dated March 1, 2016, from Tasha M. Felix, Psy.D, CSOPT, describing the Defendant's mental illness, limitations in cognitive functioning and present inability to assist counsel in his own defense:

IT APPEARING to this court upon consideration of the written reports of Dr. Tasha M. Felix, that pursuant to Virginia Code Section 19.2-169.1, the Defendant at this time is unable to assist his attorney in his defense and does not meet the criteria for inpatient treatment, the Court finds, and it is further

ORDERED that the Defendant be and hereby is, pursuant to the provisions of Virginia Code Section 19.2-169.2, ordered to receive outpatient treatment with the _____ Community Services Board, (phone _____) to restore his competency, it is

ORDERED, that if, at any time after the Defendant is ordered to undergo treatment, the director of the Community Services Board or his designee believes the Defendant's competency is restored, the director shall immediately send a report to the Court and the attorneys of record as prescribed in subsection B of Section 19.2-169.2, whereupon the Court shall make a ruling on the Defendant's competency according to the provisions specified in subsection E of Section 19.2-169.1, and it

Jun. 23. 2016 4:55PM No. 4716 P. 4

FURTHER ORDERED thatif the Defendant has not been restored to competency by six months from the date of commencement of treatment, the director of the Community Services Board or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorabolle to copmpetency or whether the Defendant should be released, committed pursuant to Article 5 (§37.2-814 et seq.) of chapter 9 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, and it is

FURTHER ORDERED that this case is continued for review of the Defendant's competence on June 8, 2016, at 11:00 AM

ENTERED this 4th Day of March, 2016

JUDGE

I ASK FOR THIS:

Michael J. Sgarlat, Esq.
Counsel for Defendant
801 N. Pitt Street, Suite 109
Alexandria, Virginia 22314
(703) 549-2000, 703-549-3748

SEEN AND no objection

Jessica Best Smith
Assistant Commonwealth's Attorney
520 King Street, Rm. 301
Alexandria, Virginia 22314

COURT ORDER TRACKING REQUIREMENTS

- As of July 1, 2016, the Code requires that clerks send a **tracking document** with all court orders for inpatient/outpatient restoration, emergency detention and treatment from the jail, or for competency/sanity evolutions.
- This document is often forgotten – if it does not come with the order you can ask the clerk to complete it and send it.
- The oneness for sending these tracking documents is on the clerk, however, so you are not obligated to send one if you have not first received it with the order.
- Many CSBs like to ask for one if it doesn't come with the order, as documentation of when the order was sent by the clerk. Regardless, you should **always date stamp the order upon receipt**.
- This form is called the **DC343 form** and if you receive one you must take certain steps immediately

COURT ORDER TRACKING REQUIREMENTS

The Clerk completes the top portion of the Form.

TRACKING DOCUMENT FOR SENDING OR RECEIVING EVALUATION OR TREATMENT ORDER UPON ENTRY
Commonwealth of Virginia VA. CODE § 19.2-169.8

Case No. .....

[ ] General District Court [ ] Circuit Court
[ ] Juvenile and Domestic Relations District Court

CITY OR COUNTY

MAILING ADDRESS OF COURT FACSIMILE NUMBER

[ ] Commonwealth of Virginia .....
NAME OF DEFENDANT

[ ] In re ..... (§ 19.2-169.6)
NAME OF INMATE

CURRENT LOCATION OF DEFENDANT/INMATE RESIDENCE ADDRESS OF DEFENDANT/INMATE

APPOINTED EVALUATOR OR DIRECTOR CITY STATE ZIP CODE

ADDRESS OF APPOINTED EVALUATOR, COMMUNITY SERVICES BOARD, BEHAVIORAL HEALTH AUTHORITY OR HOSPITAL NAME OF COMMUNITY SERVICES BOARD, BEHAVIORAL HEALTH AUTHORITY OR HOSPITAL (IF APPLICABLE)

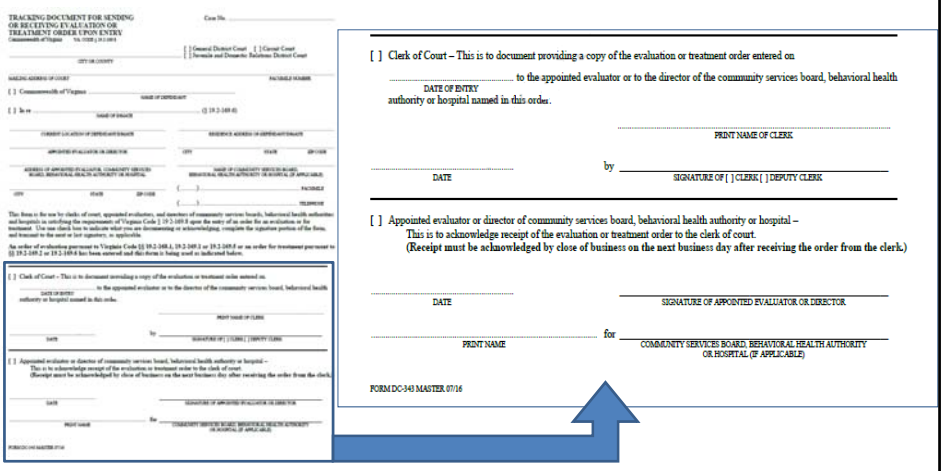
CITY STATE ZIP CODE (.....) ..... FACSIMILE

(.....) ..... TELEPHONE

This form is for use by clerks of court, appointed evaluators, and directors of community services boards, behavioral health authorities and hospitals in satisfying the requirements of Virginia Code § 19 2-169.8 upon the entry of an order for an evaluation or for treatment. Use one check box to indicate what you are documenting or acknowledging, complete the signature portion of the form, and transmit to the next or last signatory, as applicable.

An order of evaluation pursuant to Virginia Code §§ 19.2-168.1, 19.2-169.1 or 19.2-169.5 or an order for treatment pursuant to §§ 19.2-169.2 or 19.2-169.6 has been entered and this form is being used as indicated below.

COURT ORDER TRACKING REQUIREMENTS



TRACKING DOCUMENT FOR SENDING OR RECEIVING EVALUATION OR TREATMENT ORDER UPON ENTRY

[ ] Clerk of Court – This is to document providing a copy of the evaluation or treatment order entered on ..... to the appointed evaluator or to the director of the community services board, behavioral health authority or hospital named in this order.

DATE OF ENTRY

PRINT NAME OF CLERK

DATE

by _____ SIGNATURE OF [ ] CLERK [ ] DEPUTY CLERK

[ ] Appointed evaluator or director of community services board, behavioral health authority or hospital –
This is to acknowledge receipt of the evaluation or treatment order to the clerk of court.
(Receipt must be acknowledged by close of business on the next business day after receiving the order from the clerk.)

DATE

SIGNATURE OF APPOINTED EVALUATOR OR DIRECTOR

PRINT NAME

for _____ COMMUNITY SERVICES BOARD, BEHAVIORAL HEALTH AUTHORITY OR HOSPITAL (IF APPLICABLE)

FORM DC-343 MASTER 07/16

Both the Clerk (Sender) and the CSB (Receiver) will sign and both will maintain signed copies of the document.

GATHERING RELEVANT INFORMATION

- **Step 1 – Determine the charges and case number:**
  - You will need to reference the case number on all correspondence
  - You can find all charges and case numbers for their current court case at http://www.courts.state.va.us/. Most Circuit and General District courts participate in this website, but not J&DR Courts
  - Targeted misdemeanor charges – 3 charges have a different expiration date
    - There are forty-five (45) day limits placed on restoration orders for Trespassing, Petit Larceny, and Disorderly Conduct charges. These are the only charges that qualify for the 45-day limit
    - There is a separate box on the court order for these qualifying charges. Look for the box on the court order. NOTE: Courts have been known to apply the 45 day limit to other charges as well

GATHERING RELEVANT INFORMATION

- **Step 2 – Gather collateral information (in addition to the court order):**
  - A copy of the Initial Competency Evaluation
  - Copies of charging documents (i.e., warrants or indictments)
  - Current location of the defendant (i.e., jail, on bond) and contact information
  - Names and contact information of the judge, Commonwealth's Attorney, and defense attorney (they will all be copied on every correspondence)
  - Determine the extent of additional records needed once restoration services have been initiated. Examples include: Police report, Criminal complaint, Witness/victim statements

GATHERING RELEVANT INFORMATION

- The Code says that the defense attorney is responsible to provide relevant information to the CSB within 96 hours of issuance of the restoration order.
- Have defendant's name and case number available when you call.
- In the event that the defense attorney has not responded, contact the clerk of the court and request the information, at the very least the arrest warrant/indictment and Initial CST evaluation.
- If the lack of information persists, write to the judge and copy the Commonwealth Attorney and Defense Attorney and explain the problem.

OBTAINING AND REVIEWING THE CST EVALUATION

- **Step 1 - Do not start restoration services without a copy of CST evaluation:**
  - While you can initiate locating the defendant and scheduling your first visit, you should not start actually providing services until this is in hand
  - Without it you will have no way to know why the person was found incompetent and have limited insight into what areas to address
  - Obtaining the evaluation should be easy – as stated in previous slides the defense attorney should provide this, but the clerk is also an option

OBTAINING AND REVIEWING THE CST EVALUATION

- **Step 2 – Look for the essential elements of the CST evaluation:**
  - Background information about the defendant
  - Information about the charges
  - Prior psychiatric problems and possibly long-standing cognitive limitations
  - What significant symptoms of mental illness were noted to be present?
    - Hallucinations
    - Delusions
    - Disorientation/confusion
    - Pressured speech, racing thoughts, flight of ideas
    - Concrete thinking
  - It should also provide a description of the defendant's areas of impairment:
    - Specific deficit(s) that precludes this defendant from being competent, e.g., psychosis, delusional disorder, intellectual disability, or organic brain impairment.
    - Recommendation for interventions that will possibly assist the restoration process

OBTAINING AND REVIEWING THE CST EVALUATION

- **Step 3 – Make a list of areas that you will assess in the first meeting with the defendant:**
  - Generate hypotheses about the areas of the defendant's competency deficits
    - Did the defendant understand their charges?
    - Did the defendant exhibit any difficulty understanding the courtroom personnel?
    - Did the defendant struggle to work with their attorney?
  - Look for association between deficits and symptoms – which symptoms are causing the deficits
  - Look for association between symptoms and underlying mental illness
  - What appeared to be driving the defendant's incompetency (i.e., lack of knowledge, symptoms of psychosis, behavioral/motivational issues, cognitive deficits, or brain injury, etc.)?
    - Any indication of developmental delays in early childhood?
    - Any indication of learning issues/special education in school?
    - Indications of troubles with daily living in adulthood?
    - Any prior history of psychiatric treatment?
    - Any history of reported closed head injuries/medical conditions?

INITIATE FIRST MEETING WITH THE DEFENDANT

- **Step 1 – Locating the defendant and deciding location of first meeting:**
  - The defense attorney should tell you the location of the defendant, who could be in jail, home, group living situation, etc.
  - Depending on the defendant's location, discuss issues of safety with your supervisor – especially if restoration will occur outside the CSB office
  - If incarcerated, inquire about the jail's visiting hours/way to reserve a contact visitation room with table and privacy
  - If on bond, where do they live and phone #? Who is the contact person?
  - Are they able to come to the CSB offices or are other arrangements necessary?
  - Regardless of the defendant's location, schedule a time to meet in a setting conducive to learning

INITIATE FIRST MEETING WITH THE DEFENDANT

- **Step 2 – Introducing yourself to the defendant:**
  - Explain your involvement in their case and the limitations of your role
  - Explain the limits to confidentiality and your obligation to update the court – you are under a court order so they do no need to sign ROI forms for you to write to the judge, defense, or Commonwealth's Attorney about your restoration services
  - Explain that you will not be divulging information such as treatment records or clinical information, and that you will not report to the court any specific statements the defendant makes about the events surrounding the offense
  - Obtain informed consent if possible – while consent is not required it is useful clinically
  - Have the defendant sign appropriate releases of information to obtain prior treatment records, if needed
  - Explain Duty to Warn and Mandated Reporter requirements

INITIATE FIRST MEETING WITH THE DEFENDANT

- **Step 3 – Conduct your initial restoration assessment:**
  - Use your clinical skills to establish rapport just as you would in any treatment setting – the first meeting may not actually address the specifics of the court case at all, depending on how the defendant responds
  - Initiate the mental status assessment, always paying attention to signs that might indicate need for additional psychiatric care
  - Assess each area of deficits you identified upon reading the initial CST and form your own opinions as to areas of focus – the defendant may look different than they did in their initial CST evaluation
  - During the first meeting, a pretest may be appropriate to verify current deficit(s) or problem area(s). A pretest is provided on **Page 92** of the DBHDS Training Manual for Community-Based Adult Restoration Services.
  - Start simple, and don't take on too much during the first meeting – this is just an initial assessment and you may need to meet with them several times before you fully understand their restoration needs

INITIATE FIRST MEETING WITH THE DEFENDANT

Step 4: What if the defendant looks different than described in the evaluation?

- There are many reasons why defendants may appear different when you see them than from how they are described in the evaluation:
  - Individual stopped taking medications or started taking meds
  - Despite medication compliance, individual experienced resurgence of symptoms
  - Defendant had limited motivation during initial evaluation but now is motivated
  - Evaluator only did cursory evaluation and did not uncover all the issues
- You are tasked with restoring the individual before you, not necessarily the person described in report
  - Even if they had factual understanding before, if they do not appear to have it now it is incumbent on you to ensure they have factual understanding
  - Generate hypotheses about why defendant may be different and test those hypotheses

INITIATE FIRST MEETING WITH THE DEFENDANT

- **Step 5 – Assess psychiatric and case management needs:**
  - Does the defendant need psychiatric care? Can the CSB provide psychiatric services or arrange for a psychiatric consult with the jail staff? Do they have a private provider or need linkage?
  - Is the defendant on medications? Are medications needed in order to be successful in restoration attempts?
  - If the defendant is unstable, do their symptoms indicate that emergency inpatient services are needed (i.e., do they meet the "civil" TDO if on bond or § 19.2-169.6 "forensic" TDO criteria if in jail?)
  - Are there any barriers to providing restoration services that need to be addressed (i.e., access to defendant, unstable housing, emergency food/clothing needs, intrusive psychiatric symptoms preventing progress, etc.)?
  - Continually assess appropriateness for outpatient restoration – if there is a question re: defendant's need for inpatient restoration, meet several times in close succession to make an informed opinion.
    - If it is determined that inpatient restoration is necessary, communicate with the court immediately by calling the clerk's office and writing a letter to the judge (copy to the attorneys) requesting that the order be changed from outpatient to inpatient. **See sample letters #5 or #6 in your manual, located on Pages 125 and 126.**

POTENTIAL CASE MANAGEMENT NEEDS DURING RESTORATION

- Restoration is focused on issues of the defendant's factual and rational understanding of the court process and the ability to work with their attorney, but those things can be impacted by other factors
- Addressing some case management needs will be necessary in order to provide restoration services - **restoration case management focuses on barriers to competency only/not necessarily providing wrap around services for all therapeutic and rehabilitation needs**
- The court expects that the restoration provider will take any and all steps available to them in order to restore an individual to competency – even if that includes addressing other needs that become barriers to restoration
- Restoration case management can include both linking the defendant to appropriate service providers in the community to address the barriers to the defendant's competence, as well as coordinating the care provided to the defendant by service providers, when necessary.

BARRIERS TO THE PROVISION OF OUTPATIENT RESTORATION SERVICES

The only reasons that you should NOT proceed are:

- The defendant clearly needs inpatient restoration services, is actively psychotic, won't take medications, etc.
- The defendant definitively refuses to meet with the restoration counselor after several attempts to engage in the process
- The defendant is unavailable – doesn't show for several appointments and refuses to meet if in jail after several attempts
- The defendant can't be located, either the jail location or the community address
- The defendant moves; no forwarding address in the community
- The defendant is transferred to a jail outside of the CSB jurisdiction

BARRIERS TO THE PROVISION OF OUTPATIENT RESTORATION SERVICES

- If any of these problems persist, your CSB Outpatient Restoration Coordinator must write to the judge (with copies to the defense & CWA) and explain the problem(s) related to the delivery of services pursuant to the § 19.2-169.2 court order
- Explain all of the attempts on behalf of the CSB
- Make recommendations to the court about non-compliance with appointments, refusing to meet, can't be located, etc. Example: contempt of court

OR

- Make recommendations to the court about inpatient restoration services if the defendant is clearly psychotic, refusing meds, and otherwise meets criteria for inpatient services.

NEXT ON THE AGENDA

CASE STUDIES PART 1!

1) DIVIDE UP INTO SMALL GROUPS AND REFERENCE THE 3 CASE SCENARIOS
2) REVIEW COURT ORDER, WARRANTS, INITIAL CST AND LIST: (APPROX. 30 MINUTES)
   a. POSSIBLE AREAS OF DEFICITS
   b. POSSIBLE SOURCES OF DEFICITS
   c. POSSIBLE CASE MANAGEMENT NEEDS YOU MAY NEED TO CONSIDER
   d. COLLATERAL INFORMATION YOU MAY GATHER
3) CONDUCT MOCK-INTERVIEW WITH DEFENDANT TO FURTHER ASSESS RESTORATION NEEDS (APPROX. 15 MINUTES)

Virginia Department of Behavioral Health & Developmental Services

CREATING A RESTORATION PLAN

DEVELOPING A RESTORATION PLAN & PROVIDING SERVICES

Session 3 Learning Objectives:

- Understand the goals of restoration services
- Learn the general parameters/expectations for restoration providers
- Learn the elements of a restoration plan
- Case Study – applying what we have learned so far

GOALS OF RESTORATION SERVICES

- Restoration services are provided in the least restrictive setting possible – community, jail, or hospital
- Restoration services are delivered promptly and frequently so as not to delay justice
- The defendant receives services that are appropriate for their restoration needs and that address issues that are barriers to restoration
- The safety of the restoration staff, public, and the defendant are taken into consideration at all times
- The court receives clear and frequent communication on the defendant's progress (either before each court hearing or before the expiration of the order, whichever is first)
- As soon as restoration has come to an end (regardless of result), the outcome evaluation should be obtained quickly and the court notified of the results immediately so that the process moves forward
- Being restored to competency ensures that the defendant will receive a fair trial; the defendant should only proceed to trial if competent to stand trial so their rights are not violated

Virginia Department of Behavioral Health & Developmental Services

Slide 67

Expectations for Outpatient Restoration Providers

- **The 6th Amendment right to a speedy trial dictates that defendant receive aggressive treatment.** There is an obligation to provide sufficient services to make restoration likely. Restoration counselor should meet with defendant a minimum of once a week, more if it can be tolerated by the defendant. Exceptions should be discussed with DBHDS staff.
- Restoration sessions should last 45 – 60 minutes unless otherwise indicated due to disability. For defendants with cognitive impairments, the sessions likely will occur more frequently but be of shorter duration.
- Your defendant has right to treatment in least restrictive environment. Inpatient restoration should not be recommended unless you have attempted every avenue for outpatient restoration first.

Virginia Department of Behavioral Health & Developmental Services

Slide 68

Expectations for Outpatient Restoration Providers

- **Ability to be restored is not diagnosis-specific but related to symptoms causing impairment** - two defendants with same diagnosis may have different outcomes - one may be restored and one unrestorably incompetent to stand trial (URIST)
- No outcome is better or worse than another, as long as the CSB has made every effort to restore the defendant to competency – not being able to restore someone is **not a failure**
- Sessions should be scheduled quickly and frequently, and the length of time services will continue will be balanced with the seriousness of the offense and evidence /lack of progress – the court will expect **sufficient attempts** based on the seriousness of the crime and whether victims were involved
- **Consult as needed** with DBHDS Central Office and if needed obtain an outcome CST evaluation if you feel the individual may be competent or if you are uncertain about an individual's restorability

Restoration Plan Development

FROM YOUR INITIAL RESTORATION ASSESSMENT YOU SHOULD HAVE IDENTIFIED:

Deficits:

- Factual understanding of legal issues and proceedings
- Rational understanding of legal issues and proceedings
- Ability to communicate with and assist legal council

Sources of Deficits:

- Cognitive issues related to a developmental disorder, dementia, or other disorders
- Symptoms of psychosis which impair thinking, perception, and/or communication
- Issues of impaired attention and/or concentration
- Affective issues – mania, depression
- Issues with motivation

Restoration Plan Development

- Each defendant should have a written restoration plan to guide the restoration counselor's work with the defendant
- Regardless of the strengths and weaknesses of the defendant, the plan should contain goals that revolve around one or more of these three points:

1. The defendant will evidence a sufficient level of factual understanding of court issues so as to be found competent to stand trial and/or
2. The defendant will evidence a sufficient level of rational understanding of court issues so as to be found competent to stand trial and/or
3. The defendant will evidence sufficient ability to assist counsel in his own defense so as to be found competent to stand trial.

Restoration Plan Development

FOR EACH GOAL YOU WILL NEED TO LIST INTERVENTIONS

- The defendant will meet with the restoration counselor __ times per week to receive education about the legal system to improve their factual understanding of court issues
- The defendant will meet with the restoration counselor __ times per week to discuss court related issues in order to improve their rational understanding of court issues
- The defendant agrees to a referral to a psychiatric evaluation of ____ symptoms which contribute to defendant's incompetency to stand trial
- The defendant will receive supportive counseling to encourage full engagement with treatment to ameliorate symptoms causing incompetency
- The defendant will sign releases of information to allow the restoration counselor to acquire prior treatment records for the purpose of maximizing treatment
- The defendant will agree to be evaluated by psychiatrist or psychologist for outcome evaluation at the end of treatment.

Sample Restoration Plan Language:

Problem Statement: Mr. Doe has been found incompetent to stand trial because he lacks a factual understanding of the court process.

Goal – Mr. Doe will become competent to stand trial.

Objective – Mr. Doe will increase his factual understanding of the court process, including developing a better understanding of his charges, the role of the prosecutor, and the possible outcomes for his case (i.e., plea bargain).

Interventions –

1. The defendant will meet with the restoration counselor 3 times per week to receive education about the legal system so as to improve their factual understanding of court issues.
2. The defendant will agree to a referral to a psychiatric evaluation of symptoms which contribute to defendant's incompetency to stand trial.
3. The defendant will receive supportive counseling to encourage full engagement with treatment to ameliorate symptoms causing incompetency.
4. The defendant will sign releases of information to allow the restoration counselor to acquire prior treatment records for the purpose of maximizing treatment.
5. The defendant will agree to be evaluated by psychiatrist or psychologist for outcome evaluation at the end of treatment.

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

ISSUES ARISING FROM COGNITIVE IMPAIRMENTS:

1. Impairments in learning new information and/or retaining information over time
2. Impairment in understanding abstract concepts
3. Impairments in communicating information/ideas
4. Issues generalizing knowledge/information to novel situations
5. Issues with inattention and concentration

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

1. If there are Impairments in Learning and Retaining Information, you should consider:

- Repeated instruction
- Shorter but more frequent instruction
- Instruction utilizing learning style strengths
- Multisensory instruction
- Breaking concepts into smaller bits
- If impairment is secondary to psychiatric issue, arranging for psychiatric assessment
- Learn one, do one, teach one
- Recognition memory is easier – starting with recognition then go to recall
- Starting with short interval between instruction & recall and then extending interval over time

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

2. If there are Impairment in Understanding Abstract Concepts, you should consider:

- Using a variety of scenarios to teach concept
- Starting with more simple abstract concepts and building to more complex – teach defendant to generalize
- Using multiple modalities to teach (e.g. use video, use role play, etc. to teach concepts)

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

3. If there are Impairments in Communicating Information/Ideas, you should consider:

- Encouraging them to communicate and respond for themselves. Some individuals with ID are not used to answering questions for themselves.
- Having them communicate about topics of interest just to get them in the habit of communicating then later move to communicating about court related issues.
- Teaching them to respond when asked for clarification – at times they may "shut down" but, with practice and reinforcement, you can help them learn to explain themselves.

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

4. If there are issues Generalizing Knowledge/Information to Novel Situations, you should consider:

- Practicing by giving alternate scenarios/examples of the same concept
- Beginning with short duration between sessions then expanding interval over time
- Sessions should initially be short but grow in length over time.

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

5. If there are issues with Inattention and Concentration, you should consider:

- Teaching attending skills. At first may need to focus on non-court related topics then gradually introduce court related topics.
- Starting with short periods of attention and gradually increasing periods (e.g. at first may only talk about court for 5 minutes, then 10 minutes, then 15 minutes).
- Using redirection to help them learn to focus. This also gives them exposure to what they will likely experience with their attorney.
- Having family/support system/ care providers practice concentration/ attention in between sessions.

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

If primary issue is Underlying Psychosis, you should consider:

1. Psychiatric consultation – must be actively involved to ensure psychiatrist understands context of your involvement and the need to ameliorate symptoms to a degree defendant is competent to stand trial.
2. Assessing medication compliance and work on strategies to improve compliance when indicated.
3. Assessing if thoughts are paranoia or negative world view secondary to life experiences or underlying personality disorder.
4. Reality orientation – providing feedback.
5. Encouraging involvement in structured activities.
6. Referral to case management for housing, transportation, etc.

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

7. Establishing rapport so defendant trusts you and participates in the instruction.
8. Some repeated instruction on factual issues to the degree defendant can tolerate.
9. Continuous assessment for impairments in rational understanding secondary to paranoia or delusions.
10. Teaching with hypotheticals and then trying to have defendant generalize knowledge to their particular situation.
11. For many, defendant will appear competent once psychosis is adequately addressed. For some, it will require some additional instruction.

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

If the primary issue is Underlying Depression, you may consider:

1. Referral for psychiatric consultation.
2. Referral for individual/group psychotherapy.
3. Monitoring medication compliance and help to develop strategies to enhance compliance.
4. Encouraging involvement in structured activities.
5. Referring to case management – housing, transportation, or other interventions that will enable to restoration process to continue. For example, if a person is homeless they will not be able to participate in restoration.

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

6. Initially, sessions will be more about establishing rapport and providing support to the defendant
7. Sessions will shift towards teaching about legal concepts over time
8. Watching for anhedonia (lack of interest) and how it might be impacting the decision making of the defendant, possibly in subtle ways
9. Generally when depression abates, most defendants are competent - some may require some minor instruction concerning court topics
10. Consider the importance of keeping defendant complaint with medication up to and throughout a possible trial, particularly if residing in the community

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

If the primary issue is Mania, you should consider:

1. Referring for psychiatric consultation
2. Monitoring medication compliance /strategize to enhance compliance
3. Encouraging involvement in structured activities
4. Referring to case management – housing, transportation, etc.
5. Initial sessions will be more about establishing rapport and aiding defendant to manage their symptoms
6. Sessions will shift more towards teaching legal concepts over time
7. Watching for grandiosity affecting decision making
8. Generally when mania subsides, most defendants are competent - some may require some minor instruction

TAILORING YOUR INTERVENTIONS BASED ON PRESENTING ISSUE

If the primary issue is Lack of Motivation, you should consider:

1. Initial treatment will focus on establishing rapport, educating defendant ,and dispelling any inaccurate assumptions about consequences of ongoing incompetence
2. If defendant remains unmotivated, educate about the consequences of ongoing incompetency (i.e. revocation of bond, admission to state hospital)
3. If defendant continues to not be fully involved, "treatment" will focus on parallel assessment of defendant's capacities in other realms of life
4. If defendant is in jail setting, restoration provider will need to gather collateral observations of defendant's functioning from jail staff
5. Consider psychological consultation to obtain symptom validity testing and response bias testing
6. Remember even individuals with mental illness or intellectual disabilities may exaggerate/feign symptoms. Just because someone is exaggerating/feigning does not mean they are not also mentally ill/intellectually disabled. Need data/observations to rule out MI or ID.

NEXT ON THE AGENDA

Case studies Part 2!

1. Divide up into the same small groups
2. Based on what you've learned, craft an initial case plan that addresses (Approx. 45 minutes):
   a. Identified deficits and sources of deficits
   b. List Goals, Objectives and Interventions for each deficit area

Virginia Department of Behavioral Health & Developmental Services

Teaching the Concepts Needed for Competency to Stand Trial

DBHDS Vision: A life of possibilities for all Virginians

Teaching the Concepts Needed for Competency

Session 4 Learning Objectives:

- Learn the topics you may need to cover when providing restoration services
- Review teaching points/questions for the defendant for the main topics of restoration training
- Understand documentation requirements

AREAS COVERED IN RESTORATION TRAINING

AREAS THAT YOU MAY NEED TO REVIEW:

- LEGAL RIGHTS OF THE DEFENDANT
- PROCEEDINGS OF A TRIAL
- CHARGES AND EVIDENCE
- PLEAS AND PLEA BARGAINS
- CRIMINAL PENALTIES & PLEA OUTCOMES
- COURTROOM PERSONNEL
- APPROPRIATE COURTROOM BEHAVIOR

TEACHING LEGAL RIGHTS OF THE DEFENDANT

TEACHING POINTS:

- You have the right to an attorney. If you cannot afford one, the Court will appoint an attorney. The attorney represents you and defends you in court.
- You have the right to be present at your trial. You cannot be tried unless you are in the courtroom.
- You have the right to a speedy trial. When you were referred for restoration services, your trial was put on hold. We will attempt to get you ready to return to court as quickly as possible.
- You have the right to know why you were arrested.
- You have the right to know what sentence you could be given if you are convicted.

Once you have provided education in this area, emphasize that if ever they are uncertain about their rights, they should ask their attorney for help in understanding.

TEACHING LEGAL RIGHTS OF THE DEFENDANT

QUESTIONS YOU MIGHT ASK THE DEFENDANT:

1. What does it mean that you have a right to an attorney?
2. What does it mean that you have a right to a speedy trial?
3. What is another right you have that may be important?
4. Who should you talk to if you have questions about your rights?

TEACHING PROCEEDINGS OF TRIAL

TEACHING POINTS:

1. **Arraignment:** Arraignment is a court appearance where you hear the charge and are asked whether you will enter a plea of guilty or not guilty to that charge.
2. **Pre-trial hearings:** Your defense attorney may make certain requests, such as a mental health evaluation. You decide, with assistance of your attorney, whether you want to go to trial or accept a plea bargain.
3. **Trial by jury:** You are entitled to a trial by jury if you have been charged with any crime that could result in a jail or prison sentence and you are entering a plea of not guilty. You may choose to have a non-jury trial where the Judge hears and decides your case (sometimes called a **bench trial**).
4. **Jury selection:** You have the right to a speedy and public trial by an impartial jury. You may choose a trial by Judge instead of a trial by jury. The jurors are questioned and then approved by the defense attorney, Commonwealth's Attorney, and the Judge.

TEACHING PROCEEDINGS OF TRIAL

5. **Opening statements:** The Commonwealth's Attorney has to prove you are guilty beyond a reasonable doubt. At trial, the Commonwealth's Attorney speaks first, and he/she explains to the jury how they plan to prove their case against you. Then your defense attorney makes an opening statement.
6. **Commonwealth's presentation of evidence**: The Commonwealth's Attorney presents the evidence against you by calling witnesses and by introducing physical evidence. Following witness testimony, the opposing attorney questions the witness; this is called cross-examination.
7. **Defense presentation of evidence:** After the Commonwealth's Attorney presents their case, your attorney will then call witnesses and present your evidence. Your witnesses also are subject to cross-examination from the Commonwealth's Attorney. You are not required to testify.
8. **Closing arguments and instructions:** After all the evidence is presented, the Commonwealth's Attorney presents their summary to the jury. Then your defense attorney gives your arguments before the jury. Then the Judge gives the jury instructions on the law as it relates to your case.

TEACHING PROCEEDINGS OF TRIAL

8. **Verdict:** The jury reaches a verdict (decision) about whether you are guilty or not guilty. The verdict must be unanimous among all jurors. The jury also may make a recommendation about punishment. The Judge decides the final verdict.
9. **Sentence:** If you are found guilty, the Judge will decide your sentence. Your sentence could include jail or prison time, a suspended sentence, probation, etc. Probation allows you to leave jail or prison but requires you to report to a probation officer and follow the rules of probation.
10. **Appeal:** You have the right to request an appeal of your verdict or sentence, but your request must be made soon after your conviction. If you plead guilty you cannot appeal your case.

TEACHING PROCEEDINGS OF TRIAL

QUESTIONS YOU MIGHT ASK THE DEFENDANT:

1. What does testimony mean?
2. Who gives testimony?
3. What does cross-examination mean?
4. What does verdict mean?
5. Who decides the verdict?

TEACHING CHARGES AND EVIDENCE

TEACHING POINTS:

1. You have been charged with a crime because a law enforcement officer reported that you broke a law. It is important that you understand the charges against you. You will hear about your charges many times. The Judge will tell you the formal name of your charges in Court and will read the brief legal description of your charges.
2. You need to know :
   a. The formal name of your charges,
   b. The brief legal description of your charges, and
   c. What they say you did that caused you to receive these charges.
3. Even though you may not agree with the charges, you need to know what they are and the seriousness of your charges. You need to be able to describe your charge to your attorney in a clear, coherent manner.

TEACHING CHARGES AND EVIDENCE

4. There are 2 types of charges:
   a. Felony – This is a crime that is considered serious and can result in a long prison sentence and/or a large fine, e.g., more than $1000 fine and more than 1 year in prison.
   b. Misdemeanor – This is a crime that is not as serious as a felony and can result in a shorter jail sentence, smaller fine, or another less serious consequence, e.g., up to a $1000 fine and/or up to a year in jail.
5. It is also important that you understand how much evidence there is against you. You may make a different decision about whether you will plead guilty or not guilty depending on the evidence against you. Ask your attorney what evidence the prosecutor has against you.

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TEACHING CHARGES AND EVIDENCE

QUESTIONS YOU MIGHT ASK THE DEFENDANT:

1. What is the formal name(s) of your charge(s)?
2. Can you briefly describe your charge(s)?
3. What did the police or witness say that you did that caused you to receive these charge(s)?
4. Is your charge a felony or misdemeanor?
5. What evidence is likely to be presented against you?
6. What questions do you need to ask your attorney?

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TEACHING PLEAS AND PLEA BARGAINS

TEACHING POINTS:

PLEAS: A plea is the answer you (and your lawyer) give to the charges made against you. There are four different ways to plead: guilty, not guilty, no contest, or not guilty by reason of insanity.

1. Not Guilty: A plea of not guilty means you say that you did not do the crime. When you plead not guilty, you go to trial and have evidence presented against you and for you. You retain all your legal rights.

2. Guilty: A plea of guilty means that you admit to doing the crime. You will have the conviction on your record if you plead guilty. You give up certain rights such as the right to a trial and the right to confront witnesses in court.

TEACHING PLEAS AND PLEA BARGAINS

3. No Contest: A plea of no contest (Nolo Contendere) means you say there is evidence you did the crime, but you are not admitting you did it. In other words, you are not fighting the charge, and you will take whatever sentence the court gives you and not ask for a trial. The outcome for you is similar to a plea bargain except you have a no contest plea instead of a guilty plea to the crime(s) on your record.

4. Not Guilty by Reason of Insanity: A plea of Not Guilty by Reason of Insanity means that you admit you did the crime, but you are asking that you not be put in jail and not be held criminally responsible because you have mental retardation or were mentally ill at the time. You are telling the court that at the time of the crime your mental illness caused you to act in a way that you didn't understand was wrong. This plea cannot be forced upon you. You and your attorney must decide together if this is how you want to defend yourself. In admitting you did the crime, you must admit you were mentally ill or have mental retardation.

TEACHING PLEAS AND PLEA BARGAINS

5. **Plea Bargain:** A plea bargain is when your lawyer, the Commonwealth's Attorney (prosecutor) and the Judge allow you to plead guilty to a less serious charge. The Judge and Commonwealth's Attorney avoid the time and expense of a trial. In exchange, you will usually get a lighter sentence. You must agree to a plea bargain and the Judge must approve it. People usually take a plea bargain because they believe the Commonwealth's Attorney has enough evidence to convict them (be found guilty) in court. You may accept a plea bargain because:

    a. You might get a lighter sentence;
    b. You might have some of the charges dropped; or,
    c. It takes away some of the uncertainty about what will happen to you.

If you take a plea bargain, you give up your rights to a trial and to appeal the conviction. Thus, you don't get to tell your side or challenge the people who might speak against you. You return to court to hear the Judge sentence you (e.g., jail time, fines, probation, etc).

TEACHING PLEAS AND PLEA BARGAINS

QUESTIONS YOU MIGHT ASK THE DEFENDANT:

1. **When you plead guilty, you give up your right to a trial. True/False (True)**
2. **List the four pleas you can make to a charge in court.**
    a. Guilty
    b. Not guilty
    c. No contest
    d. Not guilty by reason of insanity
3. **Which plea will guarantee me I will not serve any time?**
    a. Guilty
    b. Not Guilty
    c. No Contest
    d. Not Guilty by Reason of Insanity
    e. None of the above*
4. **Which pleas will result in a trial?**
    a. Guilty
    b. Not Guilty
    c. No Contest
    d. Not Guilty by Reason of Insanity
    e. 2 and 4*
5. **If you accept a plea bargain, who has to agree to the deal?**
    a. Judge
    b. Commonwealth's Attorney (prosecutor)
    c. Your attorney
    d. You (defendant)
    e. All of the above*
6. **What might you gain by accepting a plea bargain?**
    a. All charges are dropped
    b. A shorter sentence
    c. Less serious charges
    d. Number 2 and 3 *
7. **What right do you not give up in a plea bargain?**
    a. Right to a trial
    b. Right to an attorney*
    c. Right to appeal the conviction
    d. Right to confront your accusers
8. **Pleading No Contest means you are going to fight the charges. True/False (False)**

TEACHING CRIMINAL PENALTIES & PLEA OUTCOMES

TEACHING POINTS:

CRIMINAL PENALTIES

1. Jail or Prison: You could be locked up in a jail or prison. Whether you serve your sentence in a jail or in a prison depends on the seriousness of the crime (e.g., felony or misdemeanor), the length of your sentence and your criminal history.
   - If you are found guilty of a misdemeanor, a less serious crime, it can result in jail sentence ranging from one day to twelve months.
   - If you are found guilty of a felony, a more serious crime, it can result in a prison sentence ranging from one year to life.
2. Suspended sentence: A suspended sentence is a jail sentence that the Judge gives you, but instead of actually spending your time in jail, you can serve that amount of time on probation. However, you could go to jail if the probation officer tells the Judge you are not following the rules. You will be required to serve any remaining time on your sentence in jail.

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TEACHING CRIMINAL PENALTIES & PLEA OUTCOMES

3. Probation: This means you don't have to go to jail, but you must live by some rules decided by the Judge. You must meet regularly with a probation officer who will make sure you follow the rules that the Court gave you. If you don't, you could go to jail.
4. Treatment: Mental health and/or substance abuse treatment may be ordered by the Judge as part of your sentence.

PLEA OUTCOMES

1. If you plead Not Guilty, you go to trial and exercise all your legal rights. These are the possible outcomes of the trial:
   a. Found not guilty – sent home
   b. Found guilty – the conviction goes on your record and you are sentenced to:
      - Jail – for a misdemeanor (1 day to 12 months)
      - Prison – for a felony (1 year to life)
      - Probation – for all or part of the time sentenced to jail or prison

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TEACHING CRIMINAL PENALTIES & PLEA OUTCOMES

2. If you plead Guilty, you don't have a trial and you give up some rights. You just get sentenced and the conviction goes on your record. People often plead guilty as part of a PLEA BARGAIN. These are the possible outcomes of pleading guilty:
    a. Sentenced to Jail for a misdemeanor (1 day to 12 months)
    b. Sentenced to Prison for a felony (1 year to life)
    c. Given Probation – for all or part of the time sentenced to jail or prison

3. If you plead Not Guilty by Reason of Insanity, you go to trial and you can be found Guilty or Not Guilty by Reason of Insanity.
    A. If you are found guilty, you can be sentenced to:
        1. Jail (as above)
        2. Prison (as above)
        3. Probation (as above)

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TEACHING CRIMINAL PENALTIES & PLEA OUTCOMES

B. If you are found Not Guilty by Reason of Insanity, you are sentenced to treatment at a state psychiatric hospital. You cannot leave until your Judge says you are safe. The amount of time you spend in the hospital may be longer than if you were convicted of the crime. You may remain in court ordered and supervised treatment (like probation) even after you leave the hospital. This supervised treatment is called conditional release. The Judge determines the length of time that you spend in the hospital and on conditional release.

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TEACHING CRIMINAL PENALTIES & PLEA OUTCOMES

QUESTIONS YOU MIGHT ASK THE DEFENDANT:

1. **If you plead not guilty, which of the following might happen in court?**
   a. You are found not guilty
   b. You are found guilty and sentenced to jail
   c. You are found guilty & placed on probation
   d. All of the above*
2. **If you are found Not Guilty by Reason of Insanity, it means:**
   a. You knew what you were doing
   b. The judge lets you go home
   c. You have mental illness or mental retardation and did not know that your behavior was wrong*
   d. The judge believed there was not enough evidence to convict you
3. **What charge could result in the longest sentence?**
   a. Misdemeanor
   b. Felony*
3. **If you plead Not Guilty by Reason of Insanity, which of the following outcomes are possible?**
   a. Found guilty and go to jail
   b. Found not guilty by reason of insanity and sent to a hospital
   c. Found not guilty and sent home
   d. Found not guilty by reason of insanity and sent home
   e. 1 and 2*
4. **What might the judge do if you stop going to therapy when therapy is part of your probation?**
   a. Put me in jail*
   b. The judge wouldn't care because I would tell the judge I'm better.
   c. The judge wouldn't know because my therapy is confidential (private).
   d. The judge would find me a better therapist

TEACHING COURTROOM PERSONNEL

TEACHING POINTS:

1. Defendant: You are the defendant. You have been accused of a crime and your situation will be the focus of the court proceedings.
2. Judge: The Judge's job is to make sure that the rules (of law) are followed so that the trial is fair. The Judge sits in an elevated area at the front of the courtroom. If there is no jury, the Judge decides whether a person is guilty or not guilty. A Judge decides the sentence for a person who has been found guilty.
3. There are two types of attorneys in the courtroom. The two attorneys have opposing goals.
   a. **Defense attorney:** The defense attorney is for you; this is your attorney. Your attorney's job is to get you the best possible outcome in your criminal case. Your attorney will talk with you about the crime and will look for witnesses and evidence that support your case. Your attorney cannot tell anyone else what you say (this is called attorney-client privilege). If you cannot afford an attorney, the Court will provide a Court-appointed attorney or a Public Defender, who is an attorney paid for by the Commonwealth.

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TEACHING COURTROOM PERSONNEL

b. **Commonwealth's Attorney:** The Commonwealth's Attorney (prosecutor) is against you. This means that he/she is trying to convict you of the crime with which you have been charged. The Commonwealth's Attorney works with law enforcement officers to present evidence against you in order to show that you committed the crime.

4. Jury: If you decide to have a jury trial, a group of twelve impartial people from the community will listen to your case throughout the trial. At the end of the trial, the jurors will decide if you are guilty or not guilty. Their decision must be unanimous for you to be found guilty.

5. Witness: Witnesses have information related to the crime. They are subpoenaed to Court, sworn to tell the truth, and seated on the witness stand during the court proceedings. The witnesses can only answer the questions that the attorneys ask them. They may have statements that support the Commonwealth Attorney's case or they may have statements that support your case. Witnesses provide testimony (sworn statements under oath) and both attorneys ask them questions in order to clarify the information they are providing.

TEACHING COURTROOM PERSONNEL

6. Bailiff (also known as Court Security): A bailiff or court security officer is a law enforcement officer who stands near the front of the courtroom and assures that there is order in the courtroom. The bailiff may introduce the judge, keep people quiet, and bring you from the jail to the courtroom.

7. Court clerk and Court Reporter: These persons assist the trial process by swearing in witnesses and recording all that is said during the legal proceedings.

TEACHING COURTROOM PERSONNEL

QUESTIONS YOU MIGHT ASK THE DEFENDANT:

1. Who is the defendant?
2. What is the job of the Judge?
3. What is the job of the jury?
4. What is the job of a witness?
5. How is the role of the Commonwealth's Attorney different from the Defense Attorney?

There is a diagram on the laminated handout. The defendant should be able to (1) explain where each of the courtroom personnel sits in the courtroom and (2) explain the role of each of the courtroom personnel.

TEACHING APPROPRIATE COURTROOM BEHAVIOR

TEACHING POINTS:

1. When the Judge enters the courtroom, the bailiff will announce that the Judge is about to enter and will ask everyone to rise. You, along with everyone else in the room, will stand up and remain standing until the Judge sits down and tells you to sit down.
2. You must never speak out unless the Judge asks you to speak. You should stand or sit when your attorney tells you.
3. If you are confused, have a question, or don't understand what's going on, whisper your question to your attorney or write a note and quietly give it to your attorney.
4. You may not chew gum.
5. You should only speak if you are asked a question. If you are asked a question, answer ONLY the questions asked of you. Do not try to add any other information. If you want to say something, you should tell your attorney and let your attorney talk for you.

TEACHING APPROPRIATE COURTROOM BEHAVIOR

6. You must not speak too loudly, yell, get angry or curse in the courtroom. If you do, you may be held in contempt of court and taken out of the room. The Judge can also impose a sentence (i.e., fine you or give you more time in jail).
7. If you become upset and feel you can't remain quiet, you should tell your attorney that you need a break.
8. You should listen and pay careful attention to what is being said so you understand what is happening and can help your attorney. If you don't understand something, you should ask your attorney to explain it.
9. If one of the witnesses says something about you that is not true, you should let your attorney know.

TEACHING APPROPRIATE COURTROOM BEHAVIOR

QUESTIONS YOU MIGHT ASK THE DEFENDANT:

1. Is it important for you to dress nicely?
2. Can you speak directly to the judge during the trial?
3. How are people in the courtroom supposed to behave?
4. What do you do if you become upset in the courtroom?
5. What do you do when a witness tells a lie about you?

TEACHING HOW TO ASSIST YOUR ATTORNEY

TEACHING POINTS:

Your defense attorney (or lawyer) is a person trained to assist people with legal problems and represents you before the court. In order to practice law, an attorney usually spends four years in college, three years in law school and must pass the bar examination. The bar examination is a test of a person's knowledge of law and it is very difficult.

1. **Who is the Defense Attorney?** The Defense Attorney is your attorney. A court-appointed attorney (sometimes called a Public Defender) is assigned if you cannot afford an attorney. Your attorney is on your side whether you are innocent or guilty. Your attorney is supposed to explain to you all the things that can happen to you and explain to you all of your possible choices. Your attorney is also supposed to answer all of your questions about what is happening in court. Your attorney is getting paid to give you legal advice.

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TEACHING HOW TO ASSIST YOUR ATTORNEY

2. **What is Legal Advice?** When an attorney gives you advice about your case, they are sharing all the experiences gained in their years of legal study and training. Your attorney should tell you what the best thing would be for you to do if you have any choices or what you should tell the judge. Besides telling you what your best choices are, your attorney should explain why a certain choice is the best one. Of course, what you decide to do after you listen to your attorney's advice is up to you.

3. **What is your attorney's responsibility?** Your attorney has two main responsibilities:
   a. The first is to protect your rights by making sure everything that happens before and during your trial is legal. Before you go to court, your attorney will try to help you by asking the Judge to release you from jail on bail or on bond until your trial. Your attorney will try to get information about the evidence the Commonwealth Attorney has against you. Your attorney may also try to get the Commonwealth Attorney to agree to a plea bargain.

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TEACHING HOW TO ASSIST YOUR ATTORNEY

b. The second job of your attorney is to plan an effective defense strategy in order to defend you against the crime(s) you're charged with. There are several ways your attorney does this:

1. Your attorney will try to show the Judge and the jury that you are not guilty of the charge(s) against you. Your attorney does this by cross-examining the Commonwealth's witnesses and trying to find holes in their story or bringing out evidence from a witness that can help you.
2. Your attorney can also call new witnesses that the Commonwealth Attorney didn't call and ask questions to show anything that might help you. There are three kinds of witnesses your attorney might call:
   a) A character witness is someone who will tell the Judge about the kind of person you are.
   b) An expert witness is someone who will tell the court what kind of help you need or give the Judge and jury specific information about a particular aspect of your case.
   c) A material/fact witness is someone who will testify about facts of your case. For example, a fact witness might be someone who knew you weren't present when the crime happened.

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TEACHING HOW TO ASSIST YOUR ATTORNEY

4. If you are found guilty, your attorney's job is to try to get you as little a sentence (time) or punishment as possible. Your attorney may do this by talking to the Commonwealth Attorney about a plea bargain. Your attorney will also try to convince the Judge to go light on you (i.e., to give you the least amount of time possible.)

5. **What is your role as the defendant? Your role as the defendant is to cooperate with your attorney and help your attorney defend you against the charges. There are several ways you can help your attorney defend you.**
   a. If you want something said in the courtroom, quietly tell your attorney and let your attorney say it for you.
   b. Since your attorney's job is to plan a defense strategy, it is very important that you talk to your attorney. You should tell your attorney the whole truth so they can decide the best way to defend you. What you tell your attorney is confidential. Your attorney cannot tell anyone else what you tell him or her. What you say to your attorney can't be used against you.
   c. Be sure to tell your attorney everything that happened that led up to you being arrested. Try to remember everything you can. Try to remember if there were any witnesses.

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TEACHING HOW TO ASSIST YOUR ATTORNEY

QUESTIONS YOU MIGHT ASK THE DEFENDANT:

1. Who is your defense attorney?
2. What do you think of your defense attorney?
3. What is the job of your defense attorney?
4. Why is a criminal trial called an adversarial proceeding?
5. Does a defendant have to testify?
6. What is the role of the defendant? How does the defendant help their attorney?

NEXT ON THE AGENDA

Case studies Part 3!

1. Divide up into the same small groups
2. Based on what you've learned (Approx. 30 minutes):
   a. Which areas just discussed will be important topics to cover with your defendant; and
   b. Identify any tools you might use to teach concepts to your defendant; and
3. Pick one teaching area and practice asking questions/teaching concepts with the defendant (Approx. 30 minutes)

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Practical Strategies for Solving Problems:
Overcoming Barriers to The Provision of Restoration

OVERCOMING BARRIERS TO OUTPATIENT RESTORATION

Session 5 Learning Objectives:

- Learn the potential barriers you might encounter while providing restoration services
- Review strategies for overcoming those barriers

Barriers to Outpatient Restoration

Barriers to providing outpatient restoration services come from various sources:

- The judiciary and clerks associated with the court
- Defense or prosecuting attorneys
- The defendant
- The defendant's family/caregivers
- The jail or detention center (for those defendants incarcerated during restoration)
- The restoration counselor's own agency
- Other

Barriers Caused by Court/Lawyers

Barrier	Solution Steps
Court fails to provide restoration counselor with original CST evaluation, or collateral materials regarding offense	1. Call the defense attorney and request copy of CST evaluation. Reference them to §19.2-169.2 (A) which specifies restoration provider should be provided original CST evaluation.
	2. Call CWA and request copy of evaluation. See above for code reference.
	3. Call clerk of court.
	4. Send letter to judge requesting copy of evaluation (copying the defense and CWA).
	5. If all efforts above fail and if you know who completed the original CST evaluation, have defendant sign release of information and try to get CST evaluation from evaluator.

Barriers Caused by Court/Lawyers

Barrier	Solution Steps
Upon receipt of court order, restoration counselor notices next court date is sooner than when defendant can reasonably be restored	1. If you have sufficient time, complete initial assessment and immediately write to judge (with copies to attorneys) notifying them of dilemma, providing an update, and asking for case to be continued until later date.
	2. If there is insufficient time to conduct initial assessment, contact a representative of the court (usually the clerk), to explain and ask for the case to be continued. Follow up with a letter to judge and attorneys to the same effect.
	3. If there is no response from the court, call defense attorney and explain dilemma and ask them to request a continuance.

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Barriers Caused by the Defendant

Barrier	Solution Steps
Unable to locate defendant	1. Call defense attorney since they likely have most accurate phone number/address
	2. Call clerk of court since defendant would have provided information to have been granted bond.
	3. Attempt to call, visit or write to the defendant.
	4. If still unable to locate, write to judge with copies to Commonwealth Attorney & defense attorney to explain the problem.

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Barriers Caused by the Defendant

Barrier	Solution Steps
Defendant fails to attend sessions	1. Educate defendant (and family/ significant other if applicable) about importance of active participation and consequences of non-compliance.
	2. Problem-solve barriers to active participation (i.e. restoration counselor may need to leave phone messages reminding defendant of scheduled sessions).
	3. If non-compliance persists, contact defense attorney and seek their assistance in gaining defendant's active participation.
	4. If defendant continues to miss sessions, write to judge (with copies to attorneys)

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Barriers Caused by the Defendant

Barrier	Solution Steps
Defendant appears unmotivated to learn or resists active participation in sessions.	1. Work on establishing rapport and stress importance of engagement.
	2. Try teaching using different tools/techniques which teach to defendant's strengths.
	3. Assess that motivation issues aren't in fact signs/symptoms of mental illness or SA issues.
	4. Educate defendant about the possible consequences of non compliance with court order (same as those on bond in community) ▪ Contempt of Court – possibly more jail time ▪ Judge orders inpatient restoration – no guarantee time in hospital will be counted if eventually convicted ▪ Judge may find defendant competent and proceed to trial ▪ Tell defendant that charges will not be dropped
	5. If defendant has support system, try to engage support system and educate them about consequences of defendant's non-compliance

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Barriers Caused by the Defendant

Barrier	Solution Steps
Defendant refuses medications or fails to take medications as prescribed and it clearly impacts restoration to competency.	1. Address issues of compliance with defendant and/or caregiver. Arrange for psychiatric follow-up as necessary if reason for refusal is side effects or ineffectiveness.
	2. Educate defendant about possible consequences of medication non-compliance to include need for inpatient hospitalization and possible suspension of benefits.
	3. Enlist assistance of defense attorney.
	4. Consider whether inpatient restoration will be needed and seek outcome evaluation.

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Barriers Caused by the Defendant's Family/Caregiver

Barrier	Solution Steps
Restoration counselor suspects family/ care giver is discouraging defendant from demonstrating full capacity.	1. Attempt to establish rapport with family and educate them about restoration process.
	2. Educate family that if outpatient restoration is not feasible, court may incarcerate or hospitalize defendant which could result in suspension of benefits/entitlements.
	3. Enlist assistance from defense attorney.
	4. Send letter to judge explaining situation and making recommendations.

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Barriers Caused by the Defendant's Family/Caregiver

Barrier	Solution Steps
Family/caregiver answers for defendant instead of allowing defendant to respond on their own.	1. Explain to family/caregiver that goal is to determine defendant's own capacity. While in court, family will not be able to respond for defendant.
	2. If defendant is uncomfortable meeting without family, have family member sit behind defendant (out of eye sight). Start with non-court related questions to encourage response and to allow opportunity to correct family member if they respond for defendant.
	3. Meet with defendant alone.

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Barriers Caused by Jail

Barrier	Solution Steps
When restoration counselor arrives at jail, officers say defendant cannot meet alone with counselor, OR he/she is made to wait extended period of time.	1. Call ahead to schedule appointment. Try to address issues prior to your arrival.
	3. Ask if there are preferred times to come to jail to minimize conflicts with visitation, mealtime, count time, med call, etc.
	3. Explain to officer the nature of your work with defendant, the fact it is court ordered, and the reasons you need a quiet, private space.
	4. Remind jail staff that your work is being done in response to court order and that delays in service may upset judge.
	5. If problems arise on site, do not confront the officer. Do what you can at that time and later call and speak with jail supervisor.
	6. If jail still won't cooperate, try to enlist assistance of court/Commonwealth Attorney/defense attorney.

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Barriers Caused by Jail

Barrier	Solution Steps
Client clearly is in need of psychotropic medications.	1. Determine who provides psychiatric services in jail (i.e. jail staff, contract staff, CSB). 2. Speak with medical staff to ascertain barriers to psychotropic medications for defendant. 3. Advise staff of existence of the outpatient court order and benefits of providing aggressive treatment in the jail setting (outpatient vs. inpatient). 4. If necessary, speak with jail administrator to seek assistance. 5. If jail continues to decline provision of psychiatric services, attempt to enlist assistance of defense attorney. 6. Write to judge and explain the dilemma.

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Barriers Caused by Your Own Agency

Barrier	Solution Steps
Client needs psychiatric assessment but currently there is long waitlist to see psychiatrist; OR **Restoration counselor is not allocated sufficient time to provide restoration services.**	1. Try to access appointment through standard procedures. 2. Advise supervisor of dilemma and remind him/her that treatment is being provided in response to court order. Remind supervisor that psychiatric services are an integral part of restoration services. 3. If defendant has insurance investigate feasibility of referral to private psychiatrist. 4. Ensure awareness that the judge could issue "show cause order" to the CSB for failure to fully comply with order.

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Barriers Related to Other Factors

- Restoration defendants have barriers to active engagement in treatment just like other defendants (i.e. transportation, unstable housing, financial strain, etc.).
- If restoration counselor encounters unusual situations, they should consult with the CSB Outpatient Restoration Coordinator. If needed, they can also consult with the DBHDS Forensic Office or the DBHDS hospital forensic coordinator.

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Concluding Outpatient Restoration: How do you know when it is over?

Concluding Outpatient Restoration Services

Session 6 Learning Objectives:

- Learning how to identify stopping points
- Review factors to consider & steps that must be taken before concluding services
- Learn when an outcome evaluation must be completed and when is it not necessary
- Learn how to obtain an outcome evaluation
- Tips on communicating with the court
- Understand restoration documentation requirements
- Learn how to submit Restoration Reports to DBHDS

Reasons Outpatient Restoration Services May End

- Defendant participates in outpatient restoration, you believe they are restored and evaluator agrees
- Defendant participates in outpatient restoration, the order is expiring but the individual is not competent yet, you believe they can be restored with more attempts and evaluator agrees
- Defendant participates in outpatient restoration, you believe they are not going to be restored in the foreseeable future and the evaluator agrees
- You believe that he defendant is too psychiatrically impaired to participate in outpatient restoration services at the time of assessment. Services are not initiated.
- Defendant is initially able to participate in outpatient restoration services but mental status deteriorates and you believe he/she is no longer is suitable for outpatient restoration (needs inpatient restoration services), and evaluator agrees.
- Restoration provider is unable to locate the defendant, defendant fails to cooperate with outpatient competency restoration services, etc.

SIGNS YOUR DEFENDANT IS COMPETENT

1. Able to answer factual legal questions with “sufficient” degree of accuracy
2. Able to demonstrate sufficient factual understanding across sessions – retains knowledge.
3. Able to apply factual knowledge about legal system to novel situations and own situation.
4. Able to rationally understand key elements of legal process (for example: how guilt is determined, how sentence is determined, neutral role of judge/jury, etc.).
5. As most cases are resolved via plea bargain, has sufficient factual and rational understanding of plea bargaining process.
6. Appreciates adversarial nature of court proceedings (CWA is working to convict and the defense attorney working to acquit or get best outcome for defendant).
7. Issues highlighted in original CST evaluation have been sufficiently resolved and/or addressed.

YOUR DEFENDANT IS COMPETENT: NEXT STEPS

1. Make sure you have addressed those issues highlighted in original CST evaluation which led evaluator to originally opine that the defendant was incompetent to stand trial.
2. Even if defendant appears competent during first meeting, it is prudent to work with them over several sessions to make sure competency is sustained.
3. At the point when CSB feels defendant has been restored, they should arrange for an outcome evaluation by a qualified evaluator (see §19.2-169.1).
4. The outcome evaluation should be done immediately - do not need to wait for expiration of the order.
5. Provide evaluator a synopsis of the restoration services rendered, defendant's response, and agency recommendations (that defendant likely is competent).
6. If the CSB does not have their own evaluator, arrange for evaluator to conduct and send you the outcome competency evaluation – they are working as a contractor for your agency – not as a court appointed evaluator.

YOUR DEFENDANT IS COMPETENT: NEXT STEPS

7. If both the CSB and the evaluator agree that the defendant is competent, then send a letter to the Judge (with copies to CWA & defense attorney). Attach the outcome evaluation. Consider using **Sample Letter #1** from the training binder.
8. If evaluator disagrees that the individual is competent, consult with the evaluator to determine why their opinion differs from yours. Either:
   a. Arrange for re-evaluation
   b. Continue working to resolve incompetency issues identified by the evaluator, or
   c. Send a letter to court explaining difference of opinion (**generally judges do not like a difference of opinion between the CSB and the outcome evaluator).

YOUR DEFENDANT IS COMPETENT: NEXT STEPS

9. Just because defendant is restored does not mean they may not require other ongoing CSB services.

10. If the defendant's competency is likely to change between the end of restoration services and the next hearing date, services should continue in order to maintain competency level while the defendant waits for the hearing to take place.

SIGNS YOUR DEFENDANT IS NOT COMPETENT BUT RESTORABLE WITH MORE ATTEMPTS

When a court order is expiring, offering a recommendation of incompetent but restorable can be appropriate when:

1. The defendant is **making progress** but is still deficient in the factual information and/or rational understanding necessary for competency.

2. The defendant appears to have the **capacity** to learn more information and achieve more understanding.

YOUR DEFENDANT IS INCOMPETENT BUT RESTORABLE: NEXT STEPS

Before the court order expires:

1. Arrange for an outcome evaluation with a qualified evaluator
2. Write a letter to the judge with copies to the CWA and the defense attorney, and attach the outcome evaluation. A letter (see **Sample Letter #2**) should explain why the CSB and evaluator think that:
   a. The defendant remains incompetent
   b. The defendant is restorable with more time
   c. The CSB will need another order for restoration
   d. Attach a model order for § 19.2-169.2

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SIGNS YOUR DEFENDANT IS UNRESTORABLY INCOMPETENT TO STAND TRIAL

Offering opinion that defendant remains incompetent and is likely to remain so for the foreseeable future (URIST) is a serious step and should not be approached lightly – regardless of current charges. Assess the following:

1. There are no reasonably available treatments which could improve defendant's status to render them competent
2. The quality and quantity of services provided were reasonable and sufficient but the defendant has not shown improvement
3. If the defendant has IQ/Learning deficits:
   a. You attempted to increase frequency of sessions
   b. You used multisensory approach to teaching
   c. You addressed any motivational issues
   d. You considered learning styles and adjusted treatment accordingly
   e. You engaged natural support system to learn more about defendant and used information to adjust treatment approach

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SIGNS YOUR DEFENDANT IS UNRESTORABLY INCOMPETENT TO STAND TRIAL

4. If ongoing incompetency is due to psychiatric symptoms:
   a. The medication regimen been adjusted. The medication been used long enough and at sufficient dose
   b. Alternative medications been used. Prior psychiatric records suggest different medications have been attempted without prior success
   c. Residual symptoms always present (e.g., prior reports suggest condition is chronic) or better symptom alleviation has not been achieved in the past
   d. Other services provide more support and structure have not minimized the impact of symptoms (e.g. clubhouse, skill building services, intensive case management)?
   e. Doubt that symptoms could be improved via inpatient hospitalization to the point of rendering individual competent to stand trial

YOUR DEFENDANT IS UNRESTORABLY INCOMPETENT TO STAND TRIAL: NEXT STEPS

- Upon reaching conclusion that the individual is unrestorably incompetent, arrange for an outcome evaluation by a qualified evaluator (see §19.2-169.1).
- Remind the evaluator that pursuant to §19.2-169.3 if the opinion is that defendant is unrestorable then they must offer an opinion about disposition of defendant:
  - Release
  - Committed pursuant to §37.2-814 et seq.
  - Certified to Training Center pursuant to §37.2-806

YOUR DEFENDANT IS UNRESTORABLY INCOMPETENT TO STAND TRIAL: NEXT STEPS

- CSB should convey the evaluator's opinions via cover letter, see **Sample Letters #3 or #4.**
- Cannot consider defendant unrestorable until the judge rules. In interim you should provide some ongoing contact/services albeit focus does not need to be on restoration.
- Certification to Training Center has not been used in the last 15 years - with the DOJ settlement, this option likely will not be viable.
- If recommendation is for civil commitment – CSB needs to be prepared to initiate ECO/TDO process as defendant is entitled to Due Process protection/safeguards. Should ask yourself: "If well enough to remain in community for restoration, why do they now require civil commitment?"

YOUR DEFENDANT IS UNRESTORABLY INCOMPETENT TO STAND TRIAL: NEXT STEPS

- If judge disagrees and issues renewed outpatient restoration order, then CSB must continue working with defendant. CSB should strategize how to alter services to achieve desired outcome. May be prudent to ask defense attorney if the judge indicated why he/she disagreed with CSB and evaluator.
- While defendant was deemed URIST that does not negate fact they still may need CSB or other human services.

YOUR DEFENDANT IS UNRESTORABLY INCOMPETENT TO STAND TRIAL & HAS A QUALIFYING SEX OFFENSE: NEXT STEPS

- Everything covered in the previous scenario applies to this scenario as well.
- The only difference is that 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."
- The only difference in the CSB's role is to indicate in the cover letter that the defendant's charges may make them eligible for commitment under code sections §§ 37.2-903 and 37.2-904. **Your responsibility is only to reference the existence of what appears to be a qualifying offense.**

YOUR DEFENDANT IS UNRESTORABLY INCOMPETENT TO STAND TRIAL & HAS A QUALIFYING SEX OFFENSE: NEXT STEPS

- For those charged with some form of sexual offense, the restoration counselor should evaluate if the charge is a sexually violent offense:

Code Section	Charge
18-54	Rape, 1950 Code
18.1-44	Rape, 1950 Code
18.2-31 (5)	Capital Murder with sexual assault
18.2-61	Rape
18.2-67.1	Forcible Sodomy
18.2-67.2	Object Sexual Penetration
18.2-48 (ii)	Abduction with sexual intent
18.2-48 (iii)	Abduction of a child <16 with intent for concubinage or prostitution
18.2-63	Carnal Knowledge of child 13 to 15
18.2-64.1	Carnal Knowledge of minor in care by caregiver
18.2-67.3	Aggravated Sexual Battery
18.2-31 (1)	Capital Murder in commission of abduction with intent to defile
18.2-32	1st or 2nd degree murder when present with intent to rape, forcible sodomy or inanimate or animate object sexual penetration
	With conspiracy or attempt to commit or attempt any of the above offenses
	Forcible sexual offense committed prior to July 1, 1981 that constitutes forcible sodomy, object sexual penetration or aggravated sexual battery

SIGNS THAT YOUR DEFENDANT IS TOO PSYCHIATRICALLY UNSTABLE TO INITIATE RESTORATION SERVICES

1. During the initial assessment, you determine that the defendant will not likely be stabilized by receiving outpatient psychiatric services (from jail or from CSB)
2. The defendant exhibits symptoms that warrant emergency psychiatric treatment (in this case you should initiate a civil TDO or alert the jail that an emergency treatment order may be needed)
3. You have made several attempts to speak with the defendant and they are unable to participate or unwilling due to psychiatric symptoms such as delusions, paranoia, etc.

YOUR DEFENDANT IS TOO PSYCHIATRICALLY UNSTABLE TO INITIATE RESTORATION SERVICES: NEXT STEPS

1. If defendant is psychiatrically unstable and is unable or unwilling to consent to psychiatric care (after repeated encouragement), then write to judge with a copy to the defense attorney and Commonwealth's attorney (See Sample Letter #5)
2. Explain that the Court initially found defendant appropriate for outpatient restoration at the time restoration was ordered. However, the defendant is currently in need of inpatient care and explain why.
3. **Ask judge to issue amended order for inpatient restoration. Your work is not done until an amended order is issued.**
4. A call to defense attorney might expedite a hearing on this issue (and to obtain amended order for inpatient restoration).
5. In this situation, medication is the focus of restoration services until an amended order is issued or judge determines outpatient restoration will continue.

YOUR DEFENDANT IS TOO PSYCHIATRICALLY UNSTABLE TO INITIATE RESTORATION SERVICES: NEXT STEPS

6. No need for "outcome evaluation" as restoration plan was not developed due to psychiatric instability.
7. If judge changes the order to inpatient restoration or disposes of case in some other manner, your obligation ends.
8. If judge orders CSB to continue outpatient, then re-initiate restoration services with a focus on psychiatric resources.

YOUR DEFENDANT WAS ABLE TO START RESTORATION BUT IS TOO PSYCHIATRICALLY UNSTABLE TO CONTINUE: NEXT STEPS

1. If defendant's mental status changes and no longer appears appropriate for outpatient restoration:
   a. Try to determine reason for change.
   b. If change in psychiatric treatment could make defendant more amenable/appropriate for outpatient restoration, try to adjust treatment.
2. If defendant is still not amenable to outpatient services after adjusted psychiatric treatment, then arrange for an "outcome evaluation." You will need to provide outcome evaluator with a synopsis of what has transpired and your agency recommendations (no longer suitable for outpatient restoration).
3. Attach cover letter to outcome evaluation and send to judge, with copies to Commonwealth Attorney and defense attorney (see **Sample Letter #6**).
4. Continue to provide services, especially psychiatric services, while awaiting court to rule.

YOUR DEFENDANT WAS ABLE TO START RESTORATION BUT IS TOO PSYCHIATRICALLY UNSTABLE TO CONTINUE: NEXT STEPS

5. If judge changes the order to inpatient restoration or disposes of case in some other manner, your work is done.

6. If judge orders CSB to continue outpatient, then continue restoration attempts.

YOU ARE UNABLE TO LOCATE THE DEFENDANT OR THE DEFENDANT IS UNCOOPERATIVE WITH RESTORATION: NEXT STEPS

Restoration counselor must make reasonable efforts to contact and engage the defendant:

1. Ensure that you have made all reasonable attempts to locate the defendant and document your attempts.

2. Ensure that you have provided education to the defendant about the possible consequences of non compliance with court order :
   a. Contempt of court – possible jail time
   b. Revocation of bond – possible jail time
   c. Judge orders inpatient restoration – lose freedom and benefits may be suspended
   d. Judge may find defendant competent and proceed to trial

3. Ensure that you have made every attempt to engage defendant's support systems and the defense attorney in your efforts

YOU ARE UNABLE TO LOCATE THE DEFENDANT OR THE DEFENDANT IS UNCOOPERATIVE WITH RESTORATION: NEXT STEPS

4. Send a letter to judge (with copies to Commonwealth Attorney and defense attorney) outlining that defendant has not engaged in treatment and steps you've taken to remediate this (see Sample Letter #7). Communicate to the judge your impressions regarding their refusal and potential next steps:
    a. Is it volitional? If so, other court interventions may be needed to motivate the defendant to participate.
    b. Is it related to ID issues? If so, the court may need to tell existing supports that the defendant must participate and that there are consequences of future non-compliance.
    c. Is it related to SA issues? If so, the court may mandate engagement in SA services and/or incarcerate individual to force sobriety.
    d. Is it MI related? If so, the court may either mandate engagement in outpatient services or order inpatient treatment.

YOU ARE UNABLE TO LOCATE THE DEFENDANT OR THE DEFENDANT IS UNCOOPERATIVE WITH RESTORATION: NEXT STEPS

5. If judge orders inpatient restoration or disposes of case in some other manner, you are done.

6. If judge orders CSB to continue outpatient, then again attempt to engage defendant.

OTHER POSSIBLE SCENARIOS

- Existence of outpatient restoration does not preclude an inpatient admission under emergency treatment Code section §37.2-814 et seq.(on bond) or Code section §19.2-169.6 (in jail). Therefore, as soon as the CSB feels inpatient treatment is needed, they should request an inpatient restoration order.
- If a defendant who is receiving outpatient restoration services is hospitalized in a state hospital, the outpatient restoration counselor should contact the hospital to advise them of outpatient restoration status and to agree on a plan of action:
  - Will the Outpatient Restoration Coordinator pursue a change to an inpatient restoration order?

    OR
  - Will DBHDS hospital only keep the patient under current commitment status and discharge when ready, then Outpatient Restoration resumes?

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OTHER POSSIBLE SCENARIOS

- In scenario described in previous bullet - if decision is made that it would be best for patient to receive restoration services on inpatient basis, the CSB Outpatient Restoration Coordinator must write to court and explain what has happened and offer recommendations to Court.
- **CSB is only discharged of their responsibility when new order for inpatient restoration is issued**.
- Private hospitals do not have the staff or training required to provide restoration services.

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Important Points to Remember

- Always assess the need for inpatient restoration
- Know how & when to obtain an outcome evaluation
- Know how to properly communicate with the Court
- Properly maintain restoration records
- Seek consultation when needed

Always Assess the Need for Inpatient Restoration

Factors to consider may include, but are not limited to:

- Rate of progress – balancing progress with risk of permanent disability (particularly for those with psychotic illnesses)
- Right to speedy trial
- Right to treatment in least restrictive setting
- Seriousness of offense
- Availability of CSB/community resources
- Availability of state hospital beds and whether inpatient hospitalization is the standard of practice for the condition causing the incompetency
- Public relations issues with Courts, CWA, defense attorneys, etc.
- Cost to taxpayers

General Considerations for Not Making Recommendations for Inpatient Restoration

- Defendant's primary diagnosis is Intellectual Disability or learning disability.
- Defendant's primary diagnosis is an Axis II Personality Disorder which does not involve serious acts of self injury.
- Defendant's primary diagnosis is Dementia.
- Defendant's primary issue is ongoing substance misuse and intoxication.
- Evidence suggests defendant is malingering incompetency.
- *In high stakes cases, however, inpatient admission may be warranted regardless of presenting issues.*

OUTCOME EVALUATIONS

- If CSB does not have a qualified competency evaluator, then the CSB must obtain the service of a qualified evaluator in the community.
- Arrange for evaluator to send you the outcome evaluation. If the qualified evaluator is not a CSB employee, the evaluator is working as a contractor for your agency; not as a court appointed evaluator. Please take the time to explain to the outcome evaluator that they are providing an evaluation service for the CSB; not directly to the court as they are accustomed.

OUTCOME EVALUATIONS

- Qualified evaluators can be found at: www.DBHDS.virginia.gov under the Office of Forensic Services
- Click the link for *Commissioner's List of Qualified Evaluators*, search for your region.
- As long as evaluator is on this list, it is OK to use them.

When is an Outcome Evaluation Required?

"Phase" in the Restoration Process		Outcome Evaluation Required?
Assessment Phase – initial appointment, information collection, pre-test, and pre-restoration plan	• Defendant does not show for appointments	No
	• Defendant cannot be located	No
	• Defendant is in another CSB jurisdiction while on bond or in jail	No
	•Defendant is clearly in need of inpatient restoration	No

When is an Outcome Evaluation Required?

"Phase" in the Restoration Process		Outcome Evaluation Required?
Restoration Phase - post-assessment process; the restoration plan has been developed and implemented	• Regardless of whether the person becomes competent, the defendant cooperates with the restoration process and restoration services are provided with minimal complications (this is the majority of cases)	Yes
	• The defendant begins restoration services then disappears and can't be located	No
	• The Court holds a hearing and nolle prosses the case before you have concluded restoration	No
	•The defendant is transferred and is now incarcerated outside of the CSB's jurisdiction before restoration is concluded	No
	• The defendant begins restoration services but becomes so psychiatrically unstable that they must be hospitalized immediately	No

COMMUNICATION WITH THE COURT

- All letters will be sent to Judge with copies to Commonwealth Attorney and defense attorney with a copy of the outcome CST evaluation.
  - Any conversations conducted with one party should be conveyed to the other party
  - Any impressions you convey to one party should be conveyed to the other party
  - Important to remember that your goal is to restore the defendant if possible; not to treat them for all problems
  - Important to remember when you begin to feel the defendants is in need of inpatient restoration that this is conveyed immediately to all parties
- Restoration counselor is required to notify court if defendant fails to participate or is not compliant with the restoration recommendations.

COMMUNICATION WITH THE COURT

- Letter to judge should be factual, reference court order, reference steps taken, recommendations, and the reason you have reached this recommendation.
- Use sample letters in the reference manual to help formulate letters to the court, but individualize as necessary. Call DBHDS for consultation if needed.
- **Many judges will not accept phone calls about particular cases as this can be considered ex-parte communication which is prohibited.**

DOCUMENT YOUR CONTACT AND SERVICES

- The provision of restoration services by the CSB should be documented as you would for any other CSB-provided service.
- Documentation of each session will assist the restoration counselor remember what topics have been covered in previous sessions and what topics need to be covered in future sessions.
- Documentation will also be helpful to the restoration counselor should they be called to testify in court about their services.
- Documentation may assist the defendant should verification of service be required.
- Documentation will promote treatment continuity if behavioral health or intellectual disability services are needed.
- Documentation will help the CST outcome evaluator in conducting their assessment

Maintenance of Restoration Records

- When services are over, this should be documented. Remember, however, that the defendant may still need other CSB services.
- Restoration services often involves collecting collateral records from other health care providers. These documents should be clearly marked and are subject to limits on re-release.
- If your agency also completed Sanity Evaluation (very rare occurrence), be aware there are special protections on these evaluations and they need to be kept separate from other clinical assessments with notation of restrictions on re-release.
- Outcome evaluations are protected and should not be released without proper signed consents, court orders, or when allowable under HIPAA standards.

SUBMITTING RESTORATION REPORTS TO DBHDS

- Your CSB can receive financial reimbursement for restoration services and related activities.
- During your work, keep track of the hours you spend on assessment, restoration, and case management and how much the CSB spent on the outcome evaluation
- DBHDS will reimburse $50/hour for your services, and up to $400 for the outcome evaluation.
- You must complete the Outpatient Restoration Services Report and attach all required documentation to receive reimbursement.

SUBMITTING RESTORATION REPORTS TO DBHDS

Adult Competency Restoration Services Report (Revised 2/1/16)

Defendant Name: _____ DOB: _____

Referred to CSB by (*check one*): ☐ Court Order to CSB (*attach a copy*) **or** ☐ DBHDS Hospital

Date of Court Order or DBHDS Hospital Referral: _____

Dates of CSB Services: _____ (*Start date*) _____ (*End date*)

Date of CSB response letter back to the court: _____ (*attach a copy*)

Defendant's Primary Diagnosis (*check one*):

☐ Psychotic Disorder (1) ☐ Intellectual/Developmental Disability (4) ☐ Dementia/TBI/other organic disorder (7)
☐ Anxiety Disorder (2) ☐ Mood Disorder (5) ☐ Other (*please specify*) (8): _____
☐ Personality Disorder (3) ☐ Substance Use Disorder (6)

Services Rendered: (*Submit hours in whole or half number. *Outcome evaluation must be attached if restoration attempts were made, regardless of outcome.*)

Initial Assessment (*required*): ____ hours Restoration Services: ____ hours Case Management Services: ____ hours

Outcome Evaluation Completed by (*check one*): ☐ Private Evaluator ☐ CSB Evaluator ☐ Not Completed

Name of Evaluator: _____ Amount Paid by CSB (*reimbursable up to $400*): $_____

Location Where Services Provided (*Check the option where the majority of services were provided*):

☐ Jail ☐ CSB Office ☐ Defendant Home ☐ Other: _____

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SUBMITTING RESTORATION REPORTS TO DBHDS

CSB Disposition of Case (*See A or B below and check only one option under A or B*):

A. Closed After Assessment – No Restoration Services Provided:

☐ CSB recommended that the defendant was too disabled to receive outpatient services so was recommended for inpatient after the assessment was completed. Restoration services were not initiated. **(A1)**

☐ Other (*please specify why restoration services were not initiated*) **(A2)**: _____

B. Closed After Restoration Attempts or Completion of Restoration Services:

☐ CSB recommended that the defendant was restored to competency **(B1)**

☐ CSB recommends that the defendant remains incompetent but is restorable to competency with the following recommendation from the CSB: (*check one below*):
☐ Additional outpatient basis **(B2a)**, or ☐ inpatient services **(B2b)**

☐ CSB recommended that the defendant was incompetent for the foreseeable future (unrestorable) with the following recommendation from the CSB: (*check one below*):
☐ Release defendant **(C3a)**, or ☐ civilly commit defendant **(C3b)**, or ☐ order SVP evaluation **(C3c)**

☐ Other (*please specify*) **(D)**: _____

Staff Printed Name _____ CSB _____

Staff Signature _____ Phone # _____ Date _____

Revised 2/1/2016

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SUBMITTING RESTORATION REPORTS TO DBHDS

Submit the Report along with the court order indicating that the CSB was ordered to provide Outpatient Restoration, the letter the CSB sent to the court at the conclusion of restoration, and the outcome evaluation

- Scan and email all documents to jessica.morriss@dbhds.virginia.gov; OR
- Fax all documents to 804-786-9621 – Attn: Jessica Morriss; OR
- Mail to:
  Virginia DBHDS
  Office of Forensic Services
  Attn: Jessica Morriss
  P.O. Box 1797
  Richmond, VA 23218

CONSULT WITH DBHDS

When questions arise about specific restoration cases, feel free to consult with DBHDS:

- Email: sarah.shrum@dbhds.virginia.gov; OR
- Call Sarah Shrum at 804-786-9084

Questions and Final Comments?

Final questions from the audience and final comments from the trainers?

Before you leave:

- **Please remember to complete the course evaluation form and return to DBHDS staff**
- If you are eligible for motel reimbursement, please remember to complete and the green reimbursement to DBHDS staff
- **Please pick up your Certificate from DBHDS staff (to get credit for Contact Hours)**
- Please note the trainer contact information on the next page, should you have questions at a later date

Trainer Contact Information

Section 2:

Small Group Work & Case Studies

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SMALL GROUP WORK & CASE STUDIES

Small Group Work #1 –Training Day 1

Your class will be divided into equal groups, and each group will be assigned to work on one of the case samples in this section. You will be provided a pad for recording your thoughts about the topics below. Each group should assign a reporter who will share the outcomes of the exercise when the larger group reconvenes on day 2 for report-out. The small group should address the following issues:

1) REVIEW COURT ORDER, WARRANTS, INITIAL CST AND LIST: (APPROX. 30 MINUTES)
    a) POSSIBLE AREAS OF DEFICITS
    b) POSSIBLE SOURCES OF DEFICITS
    c) POSSIBLE CASE MANAGEMENT NEEDS YOU MAY NEED TO CONSIDER
    d) COLLATERAL INFORMATION YOU MAY GATHER

2) CONDUCT MOCK-INTERVIEW WITH DEFENDANT TO FURTHER ASSESS RESTORATION NEEDS (APPROX. 15 MINUTES)

Your small group will work for 45 minutes on this exercise. One faculty member will be assigned to your groups to help guide, answer questions, etc.

Small Group Work #2 – Training Day 1

Using the same case example, your small group will now start the process of developing a restoration plan framework. Once again, you will be provided a pad of paper to record your responses:

1) BASED ON WHAT YOU'VE LEARNED SO FAR, CRAFT AN INITIAL CASE PLAN THAT ADDRESSES THE FOLLOWING: (APPROX. 45 MINUTES)
    a. IDENTIFIED DEFICITS AND SOURCES OF DEFICITS
    b. LIST GOALS, OBJECTIVES, AND INTERVENTIONS FOR EACH DEFICIT CRITERIA

A sample restoration plan format is included in Section 3 of your manual; please use that format as a guide for developing your restoration plan and answering the questions above. Your small group will work for 45 minutes on this exercise. One faculty member will be assigned to your group to help guide, answer questions, etc.

Small Group Work #3 – Training Day 2

Using the same case example, your small group will now finalize the restoration plan. You will be provided with a pad of paper to record your responses:

1) BASED ON WHAT YOU'VE LEARNED SO FAR, LIST THE FOLLOWING: (APPROX. 30 MINUTES):
    a. WHICH AREAS JUST DISCUSSED WILL BE IMPORTANT TOPICS TO COVER WITH YOUR DEFENDANT; AND
    b. IDENTIFY ANY TOOLS YOU MIGHT USE TO TEACH CONCEPTS TO YOUR DEFENDANT

2) PICK ONE TEACHING AREA AND PRACTICE ASKING QUESTIONS/TEACHING CONCEPTS WITH THE DEFENDANT (APPROX. 30 MINUTES)

Competency Evaluation #1- Cecil Doe

April 8, 2013

The Honorable Judge Ima Nutral
Anytown General District Court
Anytown, VA

RE: ***Commonwealth v. Cecil Doe***
Case No(s): GC12345-00 through GC12349-00

Dear Judge Nutral:

Pursuant to your court order dated March 25, 2013, I have completed an evaluation of Cecil Doe's competency to stand trial. As you know, Mr. Doe is a 58-year-old male who has been charged with five counts of simple assault.

I met with Mr. Doe on April 1, 2013 for approximately four hours. At the beginning of the evaluation I informed Mr. Doe about the nature, scope, and purpose of the evaluation, including the relevant limits of confidentiality and privilege. He was told that the evaluation was being conducted on motion of the Defense, and that a copy of the ensuing report will be sent to defense counsel, the Commonwealth's Attorney, and the court (as required by Virginia Code Section 19.2-169.1). Mr. Doe appeared able to demonstrate a rudimentary understanding of these arrangements and the limits to confidentiality. He then agreed to participate in the evaluation.

SOURCES OF INFORMATION

During the evaluation, Mr. Doe participated in a general clinical interview as well as an interview specifically addressing competency to stand trial. In addition, I relied on the following sources of information:

[*Source list omitted for brevity*]

RELEVANT BACKGROUND INFORMATION
[*Note: Report is shorter than usual to facilitate training exercise*]

Family, Developmental, and Social History

Cecil Doe was born on January 1, 1955 in Abingdon, Virginia, where he remained through adulthood. He was the eighth of nine children in his family. He reported that he and his siblings had good relationships as children; however, he stated that he has had little contact with them as an adult, with the exception of the sister Mary, with whom he lives. Beyond this basic information, Mr. Doe appeared to be a poor historian who tended to report few details and described his history, relationships, and school performance as "so- so." He stated several

times that "there was nothing to complain about…because what's the point of complaining." Therefore, the accuracy of the early history and relationships he described is unclear.

Mr. Doe reported that he has lived with family his entire life. He indicated that he lived at home with his parents until he was approximately 19 or 20 years old, at which time he moved to live with an older sister Mary, and continued living with her for several decades until his arrest. He stated that he did not pay rent, but when he was employed he would give his income to his sister to help with expenses. However, Mr. Doe indicated that he has never taken primary responsibility for shopping for groceries or other necessities nor has he ever had responsibility for managing family money and bills.

Regarding Education and Career

Mr. Doe reportedly attended school only into the ninth grade. During my interview, he stated that he had no history of special education or special services. However, the available records[1] indicate that Mr. Doe attended special education classes throughout most of his schooling, due to his unusually low performance on intelligence tests and his poor ability to achieve academically. Specifically, records suggest that Mr. Doe was retained for a second year in the first grade, then transferred to the second grade, but was recommended for special education. Records indicate that he transferred to a "trainable mentally retarded" status rather than remaining in an "educable mentally retarded" class. His teachers often described him as pleasant, hardworking and helpful, but talkative and unable to make noticeable academic progress.

After leaving high school, Mr. Doe reportedly continued living at home with his parents and did not initially obtain a job. Only after he moved into his sister's home as an adult did Mr. Doe obtain a job, working at a lumber company saw mill for approximately nine years. According to Mr. Doe, he was fired after arguing with his employer about an instance of equipment malfunction, and then eventually obtained another job working with his nephew at a landfill. In short, Mr. Doe appeared to have much less formal employment than other men his age, and his two instances of employment ended unsuccessfully.

According to Mr. Doe, he has not held a job since working at the landfill, but he does not receive SSDI. When asked how he provides for himself financially, he reported that he does not need money because he does not pay rent to his sister, his sister provides groceries, and he generally does not spend money. Mr. Doe reported that he has never had his own bank account and has never had primary responsibility for shopping for groceries or clothing, although he did sometimes accompany his sister on shopping trips.

Medical History

Mr. Doe reported a limited medical history. He stated that he never had any serious illnesses or injuries requiring lengthy treatment or hospitalization. He reported sustaining a head injury that led to unconsciousness when he was thrown from a horse while in his twenties, but received only brief medical care thereafter.

Mental Health History

Mr. Doe denied any history of mental health services. He reported never undergoing outpatient or inpatient psychiatric care. With regard to alcohol use, Mr. Doe reported that he started

[1] Only a small portion of his school records were available, because school policy requires destruction of certain records five years after a student leaves the school district. Nevertheless, those that were available consistently indicated substantial deficits in intellect and school performance.

drinking in his late twenties. He stated that he typically drank beer, approximately a pint of beer at night when he could not sleep, and infrequently drank liquor. He maintained that his drinking had never led to loss of memory or consciousness, or caused other significant problems. He reported no illegal drug use, and there was nothing in records to contradict this account.

CURRENT CLINICAL STATUS

Mr. Doe arrived, escorted by jail staff, in a standard issue striped jumpsuit, with adequate grooming. He appeared older than his chronological age. Although generally cooperative with the interview, his interpersonal and response styles were curt and abrupt, though not overtly rude. He often answered quickly with, "I don't know," and he rarely gave answers longer than a few words. When asked about the quality of experiences or relationship, he gave brief, neutral replies such as "so-so" or "alright." With encouragement and further questioning he was able to provide additional details in some instances, but in others he maintained that he simply could not recall with any specificity.

Mr. Doe was oriented to person and generally oriented to time (he correctly identified the month, but not the day or date). He demonstrated difficulty with orientation to place, although it appeared that some of his answers were due to poor understanding rather than disorientation (e.g., he confused the distinction between country, state, and city). Mr. Doe's statements were linear, logical, and goal-directed, but unusually concrete in content. He demonstrated difficulty with understanding and explaining abstract concepts throughout the interview. Mr. Doe's speech was normal in rate, given his brief response style, and loud in volume.

Mr. Doe described his current mood as "so-so," explaining that he has "up and down days." He became tearful and reported that he was feeling sad during the interview because it was difficult talking about family. Mr. Doe reported that he rarely experienced a sad mood in the past. He stated that he has had thoughts about harming himself infrequently, but could not provide insight into his thinking around those times, and denied current suicidal ideation. He denied symptoms of mania (i.e., elevated highly- energized mood). Mr. Doe denied experiencing delusions (i.e., fixed, false beliefs) and demonstrated no evidence of paranoia or suspiciousness. He also denied auditory and visual hallucinations (i.e., unusual sensory experiences), and did not appear to be responding to internal stimuli during the current interview. Overall, interview revealed little indication of psychiatric illness other than depressed mood. But interview revealed much more evidence of serious intellectual deficits, consistent with his records.

Based upon Mr. Doe's reported symptoms, records, and presentation during the current interview, he does not appear to meet criteria for any psychiatric illnesses. Although he has periods of sad mood currently, he denied other symptoms of major mood disorders (e.g., poor sleep, restlessness, elevated mood and energy). In contrast, information gathered from Mr. Doe's self-report, records, and presentation appeared consistent with intellectual disability (formerly called mental retardation). It is important to note that formal intellectual and adaptive functioning testing were not undertaken during the current assessment; these would be necessary to assign a formal diagnosis of intellectual disability. Nonetheless, Mr. Doe's educational history reveals significant intellectual deficits, and his overall history appears to demonstrate deficits in adaptive functioning (e.g., dependency upon family for housing and needs, limited employment history, limited social interaction outside his family,

lack of basic financial skills). Moreover, intellectual impairments are documented from his childhood, consistent with the criterion of onset before age 18 years. Given these data, it appears quite likely that Mr. Doe has intellectual deficits that rise to the level of intellectual disability.

COMPETENCE TO STAND TRIAL

Generally, Mr. Doe's interview addressing trial competence was shorter than similar interviews with other defendants because of his brief and concrete response style. As in other portions of the interview, Mr. Doe tended to respond quickly with short, equivocal replies, and he tended not to provide much additional detail with further questioning. He repeated several times that he did not know much about court because he had never been to court. In general, he appeared able to handle simple and concrete information, but less able to understand, explain and discuss abstract questions or concepts.

Factual and Rational Understanding

Overall, Mr. Doe appeared to have a marginal factual understanding of the charges against him. When asked about his charges, he responded, "they said I hit them boys." Mr. Doe provided only the most basic description of the circumstances surrounding the allegations against him, and seemed confused about some basic facts (e.g., the location and date of the alleged offense). He stated that the charges were serious, although he could not articulate a reason *why* they were serious, repeating, "they said I got five charges against me." When asked if he could think of a charge that would be more serious than assault, he replied that he did not know, though when he was asked whether he thought murder would be more serious than rape, he stated, "I reckon, but I never did that." He continued to emphasize throughout the interview the seriousness of his current charges in the general sense that they have resulted in his involvement in the legal system, and that he had no prior involvement with the legal system. Mr. Doe was able to recall being in court twice pertaining to his current charges but could not convey even basic explanations for those appearances, instead posing questions such as "why didn't they fix all this already back then?"

Through direct, close-ended questions, Mr. Doe was able to state the pleas available to him. He defined guilty as meaning "you done it" and not guilty as meaning "you ain't done it." When asked if a defendant can plead *not* guilty even though he did the crime, Mr. Doe answered that the defendant cannot do so. Mr. Doe recognized that pleading guilty in a case like his could lead to imprisonment; however, when asked if he would have a trial if he pled guilty, he stated that he did not know. When asked if he thought a trial would be needed when a defendant pleads guilty, he appeared confused and stated, "no…yes…they always make you go to a trial." He did, however, recognize that a trial would follow a plea of not guilty. I re-explained the pleas and their consequences to Mr. Doe at this point, and he appeared to understand the basic procedural information. But after discussing other competence-related subjects, I asked Mr. Doe about these details again and he still appeared to have difficulty recalling when a trial occurs or does not occur. It appeared that Mr. Doe was able initially to understand new information, but had difficulty retaining it amid discussion of other matters.

At a basic level, Mr. Doe recognized the concept of sentencing, stating that the type of punishment a defendant receives "depends on the crime he done." However, he demonstrated confusion about what might be possible sentences in his own case, estimating a prison term far longer than he could actually receive.

Regarding courtroom personnel, Mr. Doe was able to recognize some personnel and their roles. For example, he was aware that his attorney would "defend [him]" and that her goal is to "get the court to say not guilty." Mr. Doe reported that the prosecutor's job is to "get you found guilty." Despite recognizing their roles, he failed to give any other indication that he recognized the adversarial nature of legal proceedings. Rather, he simply and repeatedly stated, "they all talk to the judge" when asked any more specific questions about how they might proceed. Mr. Doe described the judge's job as to "give a sentence," but he expressed confusion about the judge's neutral role, and implied that the judge would assume guilt before proceedings began. Efforts to correct Mr. Doe's factual misunderstandings were sometimes unsuccessful, because he became irritable and apparently defensive, offering statements like "I just wanna get this done with."

Mr. Doe had difficulty explaining that evidence is used at trial, but was able to respond to more concrete questions in a way that indicated he understood one or more of the alleged victims may be in court to describe the alleged offense. He expressed a limited understanding of plea bargaining ("they just make a deal"), and focused on the benefit of not going to trial and "getting it done with." However, when asked about a hypothetical plea bargain, Mr. Doe appeared to base his answer on his general distress around the criminal justice system, rather than reasoning about precise sentence lengths and outcomes.

Ability to Assist Counsel

Based on my interview alone, Mr. Doe appeared to have the basic motivation necessary to assist counsel, at least theoretically. For example, he was able to identify his attorney by name, conveyed that he trusted his attorney, and noted that he was willing to work with his attorney. *However*, collateral interviews with defense counsel suggest she has struggled to work with Mr. Doe because he reportedly becomes irritable and distressed when discussing the possibility of unpleasant outcomes, and he tends to cut short more substantive discussions with phrases like "I know, I know…Just do what you want to get this done with."

Similarly, during the current interview, Mr. Doe was sometimes quick to cut an interviewer's explanation short and interject answers that may or may not have been guesses. At times, it appeared that he probably knew more than he acknowledged, but answered quickly or dismissively (e.g., "I don't know") to avoid a difficult or uncomfortable discussion. In all instances Mr. Doe had substantial difficulty when information was presented abstractly, but showed slight improvements in understanding when information was provided in a simple and rudimentary fashion. Overall, Mr. Doe's substantial intellectual deficits make it extremely difficult for him to communicate meaningfully with counsel, unless counsel is remarkably skilled and patient in educating Mr. Doe and communicating at a simple, understandable level.

CONCLUSION

Mr. Doe demonstrated a marginal factual understanding of the legal process, demonstrating some familiarity with certain facts (i.e. attorney names and roles) but failing to recognize certain key concepts underlying those facts (i.e., the adversarial relationship between attorneys). Although he recognized the general seriousness of his charges, he seemed to misunderstand the likely potential outcomes and repeatedly emphasized that he was more eager to "get it done with" than to understand his situation. When discussing potential legal strategies, his reasoning appeared driven more by his distress at being involved in the legal system than a genuine effort to understand his predicament and options. Mr. Doe appeared able to learn some new information, but only on a temporary basis, in that he appeared

confused when I revisited it later in discussion. Finally, although Mr. Doe expressed a positive perspective on his defense counsel, his intellectual capacity makes it quite difficult to collaborate without extensive assistance, and counsel herself emphasized that he often "got too frazzled" to discuss his case meaningfully, and simply urged her to "get it done with."

Overall, Mr. Doe currently lacks a sufficient, rational appreciation of his legal situation, apparently due to his intellectual deficits and simplistic coping style (in which he tends to become distressed and tries to avoid case discussions). Likewise, these knowledge deficits and his tendency to avoid substantive discussion in an effort to, in his words, "just get the case over with," leave him ill-equipped to assist defense counsel in mounting his defense.

If the court should decide that Mr. Doe is not competent to stand trial, I strongly recommend restoration services. Although predictions about restorability are far from perfect, Mr. Doe's deficits are moderate enough—and he demonstrated some capacity to learn new information—that I are fairly optimistic that restoration efforts will be successful. Because his deficits are not attributable to severe psychiatric illness that requires medication, Mr. Doe is likely a good candidate for outpatient restoration services. These restoration services should address Mr. Doe's deficits in factual information and rational understanding of this information. These services may also need to address some distress and apparent depression that leaves him resistant to discussing his legal predicament in depth. Please do not hesitate to contact us should you have any questions, or if I can be of further assistance.

Sincerely,

Stacey Valuator, Ph.D.

CC: Ms. Dee Fender, Esq.
Office of the Public Defender
Anytown, VA

cc:
Mr. Luke Emallup, Esq.
Office of the Commonwealth's Attorney
Anytown, VA

REPORT SUMMARY

SAMPLE CASE #1

Name: Cecil Doe
Demographic: 59 year old male

Charge(s): 5 counts simple assault (misdemeanors)

Background:

Has resided with family members for entire life. Family members take responsibility for rent, groceries, paying bills. Married. No significant medical history except possible head injury (with loss of consciousness) caused by being thrown from horse in his twenties. Developmental history unknown but was classified as "trainable mentally retarded" in special education. Dropped out of school in 9th grade. Inconsistent, unsuccessful employment history.

Mental Health History:

No history of receiving mental health services. No history of substance abuse.

Competence-Related Interview:

Cooperative gave brief answers. Difficulty with abstraction. Acknowledged sad mood but denied pattern of symptoms consistent with mood or psychotic disorder. History (special education classification, poor adaptive functioning) and presentation consistent with mild intellectual disability. Became irritable over course of interview, expressing frustration and repeatedly stating desire to "get this done with."

Brief, concrete responses. Very simple basic description of charges and circumstances of allegations. Could not say why charges were serious. Could not understand purpose of previous court appearances within overall context of legal proceedings. Required direct, closed-end questioning to identify meanings of pleas and associated outcomes. Required education on basic factual legal information but then did not retain for duration of interview. Did not know all courtroom personnel's roles and responsibilities, did not appreciate adversarial nature of proceedings. Showed impaired reasoning when asked to consider hypothetical plea deal. Said he's willing to work with attorneys, but counsel reports that he becomes irritable and cuts meetings short when asked to consider unpleasant possible outcomes.

Conclusions Regarding Competence:

Marginal factual understanding. Did not grasp underlying legal concepts. Irritability, frustration reflected in repeated stated desire to "get it done with" impairs his ability to rationally weigh options and work with counsel. Showed difficulty retaining new information presented during evaluation. Not competent to stand trial. Outpatient restoration services recommended, because basis for IST is mild intellectual disability, not severe psychiatric illness. Restoration services may need to address not only factual information but his distress about legal charges (including his resistance to discussing them) and possible depression symptoms.

ORDER FOR TREATMENT OF INCOMPETENT DEFENDANT

Commonwealth of Virginia VA. CODE §§ 19.2-169.2, 19.2-169.3

Case No. .....

.....
COURT NAME AND ADDRESS

Commonwealth of Virginia v. .....

The Court having found, pursuant to Virginia Code § 19.2-169.1(E), that the Defendant is incompetent to stand trial, and having found further, based on the attached report or other evidence, that the Defendant can be treated to restore his or her competency

[ ] on an outpatient basis in jail or through a local mental health facility
[ ] solely on an inpatient basis in a hospital

the Court therefore ORDERS

[ ] .....
NAME OF OUTPATIENT THERAPIST OR FACILITY

[ ] qualified staff at a hospital to be designated by the Commissioner of Behavioral Health and Developmental Services or his or her designee

to treat the Defendant in an effort to restore him to competency.

Any psychiatric records and other information that have been deemed relevant and were submitted by the defendant's attorney to the evaluator pursuant to Virginia Code § 19.2-169.1(C) and any reports submitted pursuant to § 19.2-169.1(D) 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 this order.

If, at any time after treatment commences, 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 concerning (1) the defendant's capacity to understand the proceedings against him and (2) the defendant's ability to assist his attorney.

If, at any time after treatment commences, 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 and indicating whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent.

[ ] *Defendant charged with a misdemeanor crime enumerated in Virginia Code § 19.2-169.3(C).* If the defendant has not been restored to competency after forty-five (45) days from the date of commencement of treatment, the director of the community services board or 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.

If the defendant has not been restored to competency by six (6) months from the date of the commencement of treatment, the board, authority, or inpatient facility director or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to Virginia Code § 37.2-806 in the event he is found to be unrestorably incompetent.

.....
DATE

_____
JUDGE

WARNING TO DEFENDANT: PURSUANT TO § 18.2-308.1:3, YOU SHALL NOT PURCHASE, POSSESS, OR TRANSPORT A FIREARM UNLESS AND UNTIL YOU ARE RELEASED FROM TREATMENT AND OBTAIN A COURT ORDER RESTORING YOUR RIGHT TO DO SO.

FORM DC-345 MASTER 07/14

WARRANT OF ARREST – MISDEMEANOR (STATE)
COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Anytown
CITY OR COUNTY

General District Court [X] Criminal [ ] Traffic
[ ] Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about March 12, 2013 (DATE) did unlawfully in violation of Section § 18.2-57, Code of Virginia:

Commit assault and battery of John S. Sample. Officer Lockemup responded to the call, and observed Mr. Doe screaming at 5 adult males. Officer Lockemup then observed Mr. Mr. Doe strike John S. Sample with an open palm.

I, the undersigned, have found probable cause that the Accused committed the offense charged, based on the statements of Officer Lockemup, Complainant.

Execution by summons [ ] permitted at officer's discretion. [X] not permitted.

March 12, 2013
DATE AND TIME ISSUED

[ ] CLERK [X] MAGISTRATE [ ] JUDGE

SUMMONS (If authorized above and by serving officer)
You are hereby commanded to appear before this court located at

on ____ at ____ AM/PM.

I promise to appear in accordance with this Summons and certify that my mailing address as shown at right is correct.

ACCUSED

WARNING TO ACCUSED: You may be tried and convicted if your absence if you fail to appear in response to this Summons. Willful failure to appear is a separate offense.
SIGNING THIS NOTICE DOES NOT CONSTITUTE AN ADMISSION OF GUILT.

FORM DC-314 (MASTER, PAGE ONE OF TWO) 07/11

CASE NO. GC12345-00

ACCUSED:
DOE, CECIL NMN
LAST NAME, FIRST NAME, MIDDLE NAME
999 Main Street, Anytown, VA 22222
ADDRESS/LOCATION

To be completed upon service as Summons
Mailing address [X] Same as above
[ ]

RACE	SEX	BORN MO.	DAY	YR.	HT. FT.	IN.	WGT.	EYES	HAIR
AA	M	01	01	1955	5	11	195	Brn	Blk

SSN 999-99-9999

DL# B1111111 STATE VA

[ ] Commercial Driver's License

CLASS 1 MISDEMEANOR

[X] EXECUTED by arresting the Accused named above on this day: March 12, 2013
[ ] EXECUTED by summoning the Accused named above on this day ____
[ ] For legal entities other than individuals, service pursuant to Va. Code § 19.2-76.

DATE AND TIME OF SERVICE

Officer Lockemup, ARRESTING OFFICER
XXXXX, Anytown, VA
BADGE NO., AGENCY AND JURISDICTION

for Anytown, VA
SHERIFF

Attorney for the Accused:
Office of the Public Defender

Short Offense Description (not a legal definition):
Simple assault and battery
Offense Tracking Number: 001

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code: 18.2-57

M

Hearing Date/Time
March 25, 2013
9:00am

WARRANT OF ARREST – MISDEMEANOR (STATE)
COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Anytown
CITY OR COUNTY

General District Court [X] Criminal [ ] Traffic
[ ] Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about March 12, 2013 (DATE) did unlawfully in violation of Section § 18.2-57, Code of Virginia:

Commit assault and battery of Carl S. Sample Officer Lockemup responded to the call, and observed Mr. Doe screaming at 5 adult males. Officer Lockemup questioned the 5 males, and Mr. Carl Sample reported that Mr. Doe had kicked him in the leg and slapped him.

I, the undersigned, have found probable cause that the Accused committed the offense charged, based on the statements of Officer Lockemup, Complainant.

Execution by summons [ ] permitted at officer's discretion. [X] not permitted.

March 12, 2013
DATE AND TIME ISSUED

[ ] CLERK [X] MAGISTRATE [ ] JUDGE

SUMMONS (If authorized above and by serving officer)
You are hereby commanded to appear before this court located at

on ____ at ____ AM/PM.

I promise to appear in accordance with this Summons and certify that my mailing address as shown at right is correct.

ACCUSED

WARNING TO ACCUSED: You may be tried and convicted if your absence if you fail to appear in response to this Summons. Willful failure to appear is a separate offense.
SIGNING THIS NOTICE DOES NOT CONSTITUTE AN ADMISSION OF GUILT.

FORM DC-314 (MASTER, PAGE ONE OF TWO) 07/11

CASE NO. GC12346-01

ACCUSED:
DOE, CECIL NMN
LAST NAME, FIRST NAME, MIDDLE NAME
999 Main Street, Anytown, VA 22222
ADDRESS/LOCATION

To be completed upon service as summons
Mailing address [X] Same as above
[ ]

RACE	SEX	BORN MO.	DAY	YR.	HT. FT.	IN.	WGT.	EYES	HAIR
AA	M	01	01	1955	5	11	195	Brn	Blk

SSN 999-99-9999

DL # B1111111 STATE VA

[ ] Commercial Driver's License

CLASS 1 MISDEMEANOR

[X] EXECUTED by arresting the Accused named above on this day: March 12, 2013
[ ] EXECUTED by summoning the Accused named above on this day
[ ] For legal entities other than individuals, service pursuant to Va. Code § 19.2-76.

DATE AND TIME OF SERVICE

Officer Lockemup, ARRESTING OFFICER
XXXXX, Anytown, VA
BADGE NO., AGENCY AND JURISDICTION

for Anytown, VA
SHERIFF

Attorney for the Accused:
Office of the Public Defender

Short Offense Description (not a legal definition):
Simple assault and battery
Offense Tracking Number: 002

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code: 18.2-57

M

Hearing Date/Time
March 25, 2013
9:00am

WARRANT OF ARREST – MISDEMEANOR (STATE)

COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Anytown
CITY OR COUNTY

General District Court [X] Criminal [ ] Traffic
[ ] Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about March 12, 2013 (DATE) did unlawfully in violation of Section § 18.2-57, Code of Virginia:

Commit assault and battery of Mark S. Sample. Officer Lockemup responded to the call, and observed Mr. Doe screaming at 5 adult males. Officer Lockemup questioned the 5 males, and Mr. Mark Sample reported that Mr. Doe had kicked him in the leg.

I, the undersigned, have found probable cause that the Accused committed the offense charged, based on the statements of Officer Lockemup, Complainant.

Execution by summons [ ] permitted at officer's discretion. [X] not permitted.

March 12, 2013
DATE AND TIME ISSUED

[ ] CLERK [X] MAGISTRATE [ ] JUDGE

SUMMONS (If authorized above and by serving officer)

You are hereby commanded to appear before this court located at

on at AM/PM.

I promise to appear in accordance with this Summons and certify that my mailing address as shown at right is correct.

ACCUSED

WARNING TO ACCUSED: You may be tried and convicted if your absence if you fail to appear in response to this Summons. Willful failure to appear is a separate offense.
SIGNING THIS NOTICE DOES NOT CONSTITUTE AN ADMISSION OF GUILT.

FORM DC-314 (MASTER, PAGE ONE OF TWO) 07/11

CASE NO. GC12347-02

ACCUSED:

DOE, CECIL NMN
LAST NAME, FIRST NAME, MIDDLE NAME

999 Main Street, Anytown, VA 22222
ADDRESS/LOCATION

To be completed upon service as summons
Mailing address [X] Same as above
[ ]

RACE	SEX	BORN MO.	DAY	YR.	HT. FT.	IN.	WGT.	EYES	HAIR
AA	M	01	01	1955	5	11	195	Brn	Blk

SSN 999-99-9999

DL # B1111111 STATE VA

[ ] Commercial Driver's License

CLASS 1 MISDEMEANOR

[X] EXECUTED by arresting the Accused named above on this day: March 12, 2013

[ ] EXECUTED by summoning the Accused named above on this day

[ ] For legal entities other than individuals, service pursuant to Va. Code § 19.2-76.

DATE AND TIME OF SERVICE

Officer Lockemup, ARRESTING OFFICER

XXXXX, Anytown, VA
BADGE NO., AGENCY AND JURISDICTION

for Anytown, VA
SHERIFF

Attorney for the Accused: Office of the Public Defender

Short Offense Description (not a legal definition): Simple assault and battery

Offense Tracking Number: 003

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code: 18.2-57

M

Hearing Date/Time

March 25, 2013

9:00am

WARRANT OF ARREST – MISDEMEANOR (STATE)

COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Anytown
CITY OR COUNTY

General District Court [X] Criminal [ ] Traffic
[ ] Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about March 12, 2013 (DATE) did unlawfully in violation of Section § 18.2-57, Code of Virginia:

Commit assault and battery of James S. Sample. Officer Lockemup responded to the call, and observed Mr. Doe screaming at 5 adult males. Officer Lockemup then observed Mr. Mr. Doe strike James S. Sample with his fist.

I, the undersigned, have found probable cause that the Accused committed the offense charged, based on the statements of Officer Lockemup, Complainant.

Execution by summons [ ] permitted at officer's discretion. [X] not permitted.

March 12, 2013
DATE AND TIME ISSUED

[ ] CLERK [X] MAGISTRATE [ ] JUDGE

SUMMONS (If authorized above and by serving officer)

You are hereby commanded to appear before this court located at _____

on _____ at _____ AM/PM.

I promise to appear in accordance with this Summons and certify that my mailing address as shown at right is correct.

J. Doe
ACCUSED

WARNING TO ACCUSED: You may be tried and convicted if your absence if you fail to appear in response to this Summons. Willful failure to appear is a separate offense.
SIGNING THIS NOTICE DOES NOT CONSTITUTE AN ADMISSION OF GUILT.

FORM DC-314 (MASTER, PAGE ONE OF TWO) 07/11

CASE NO. GC12348-03

ACCUSED:
DOE, CECIL NMN
LAST NAME, FIRST NAME, MIDDLE NAME

999 Main Street, Anytown, VA 22222
ADDRESS/LOCATION

To be completed upon service as Summons
Mailing address [X] Same as above
[ ]

RACE	SEX	BORN MO.	BORN DAY	BORN YR.	HT. FT.	HT. IN.	WGT.	EYES	HAIR
AA	M	01	01	1955	5	11	195	Brn	Blk

SSN 999-99-9999

DL# B1111111 STATE VA

[ ] Commercial Driver's License

CLASS 1 MISDEMEANOR

[X] EXECUTED by arresting the Accused named above on this day: March 12, 2013

[ ] EXECUTED by summoning the Accused named above on this day _____

[ ] For legal entities other than individuals, service pursuant to Va. Code § 19.2-76.

_____
DATE AND TIME OF SERVICE

Officer Lockemup, ARRESTING OFFICER
XXXXX, Anytown, VA
BADGE NO., AGENCY AND JURISDICTION

for Anytown, VA
SHERIFF

Attorney for the Accused:
Office of the Public Defender

Short Offense Description (not a legal definition):
Simple assault and battery
Offense Tracking Number: 004

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code: 18.2-57

M

Hearing Date/Time
March 25, 2013
9:00am

WARRANT OF ARREST – MISDEMEANOR (STATE)
COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Anytown
CITY OR COUNTY

General District Court [X] Criminal [ ] Traffic
[ ] Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about March 12, 2013 (DATE) did unlawfully in violation of Section § 18.2-57, Code of Virginia:

Commit assault and battery of Jordan S. Sample. Officer Lockemup responded to the call, and observed Mr. Doe screaming at 5 adult males. Officer Lockemup questioned Mr. Jordan Sample, who reported Mr. Doe hit him in the back of the head with his fist.

I, the undersigned, have found probable cause that the Accused committed the offense charged, based on the statements of Officer Lockemup, Complainant.

Execution by summons [ ] permitted at officer's discretion. [X] not permitted.

March 12, 2013
DATE AND TIME ISSUED

[ ] CLERK [X] MAGISTRATE [ ] JUDGE

SUMMONS (If authorized above and by serving officer)
You are hereby commanded to appear before this court located at _____ on _____ at _____ AM/PM.

I promise to appear in accordance with this Summons and certify that my mailing address as shown at right is correct.

J. Doe
ACCUSED

WARNING TO ACCUSED: You may be tried and convicted if your absence if you fail to appear in response to this Summons. Willful failure to appear is a separate offense.
SIGNING THIS NOTICE DOES NOT CONSTITUTE AN ADMISSION OF GUILT.

FORM DC-314 (MASTER, PAGE ONE OF TWO) 07/11

CASE NO. GC12349-04

ACCUSED:
DOE, CECIL NMN
LAST NAME, FIRST NAME, MIDDLE NAME
999 Main Street, Anytown, VA 22222
ADDRESS/LOCATION

To be completed upon service as summons
Mailing address [X] Same as above
[ ] _____

RACE	SEX	BORN MO.	DAY	YR.	HT. FT.	IN.	WGT.	EYES	HAIR
AA	M	01	01	1955	5	11	195	Brn	Blk

SSN 999-99-9999
DL # B1111111 STATE VA
[ ] Commercial Driver's License

CLASS 1 MISDEMEANOR
[X] EXECUTED by arresting the Accused named above on this day: March 12, 2013
[ ] EXECUTED by summoning the Accused named above on this day _____
[ ] For legal entities other than individuals, service pursuant to Va. Code § 19.2-76.

_____
DATE AND TIME OF SERVICE
Officer Lockemup, ARRESTING OFFICER
XXXXX, Anytown, VA
BADGE NO., AGENCY AND JURISDICTION
for Anytown, VA
SHERIFF

Attorney for the Accused: Office of the Public Defender

Short Offense Description (not a legal definition): Simple assault and battery
Offense Tracking Number: 005

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code: 18.2-57

M

Hearing Date/Time
March 25, 2013
9:00am

GC12345-00; GC12346-00; GC12347-00;
GC 12348-00; GC12349-00

ORDER FOR TREATMENT OF INCOMPETENT DEFENDANT

Case No. .....

Commonwealth of Virginia VA. CODE §§ 19.2-169.2, 19.2-169.3

Anytown General District Court, 100 Court Street, Anytown, VA

COURT NAME AND ADDRESS

Commonwealth of Virginia v. Cecil Doe

The Court having found, pursuant to Virginia Code § 19.2-169.1(E), that the Defendant is incompetent to stand trial, and having found further, based on the attached report or other evidence, that the Defendant can be treated to restore his or her competency

[X] on an outpatient basis in jail or through a local mental health facility
[ ] solely on an inpatient basis in a hospital

the Court therefore ORDERS

[X] Anytown Community Services Board

NAME OF OUTPATIENT THERAPIST OR FACILITY

[ ] qualified staff at a hospital to be designated by the Commissioner of Behavioral Health and Developmental Services or his or her designee

to treat the Defendant in an effort to restore him to competency.

Any psychiatric records and other information that have been deemed relevant and were submitted by the defendant's attorney to the evaluator pursuant to Virginia Code § 19.2-169.1(C) and any reports submitted pursuant to § 19.2-169.1(D) 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 this order.

If, at any time after treatment commences, 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 concerning (1) the defendant's capacity to understand the proceedings against him and (2) the defendant's ability to assist his attorney.

If, at any time after treatment commences, 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 and indicating whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent.

[ ] *Defendant charged with a misdemeanor crime enumerated in Virginia Code § 19.2-169.3(C).* If the defendant has not been restored to competency after forty-five (45) days from the date of commencement of treatment, the director of the community services board or 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.

If the defendant has not been restored to competency by six (6) months from the date of the commencement of treatment, the board, authority, or inpatient facility director or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to Virginia Code § 37.2-806 in the event he is found to be unrestorably incompetent.

April 12, 2013
DATE

JUDGE

WARNING TO DEFENDANT: PURSUANT TO § 18.2-308.1:3, YOU SHALL NOT PURCHASE, POSSESS, OR TRANSPORT A FIREARM UNLESS AND UNTIL YOU ARE RELEASED FROM TREATMENT AND OBTAIN A COURT ORDER RESTORING YOUR RIGHT TO DO SO.

FORM DC-345 MASTER 07/14

Competency Evaluation #2

April 29, 2014

The Honorable Frank Lee Fare
Anytown General District Court
Anytown, VA

RE: Commonwealth v. Jay Smith
Case No(s): GC00123-01 through -03

Dear Judge Fare:

Pursuant to your court order dated April 8, 2014, I completed an evaluation of Jay Smith's competence to stand trial. As you know, Mr. Smith is a 23-year-old male who has been charged with *Trespassing, Disorderly Conduct,* and *Simple Assault* following incidents in which he allegedly delivered lengthy, loud speeches at a shopping mall until he was forcibly removed.

I met with Mr. Smith on April 19, 2014 for approximately three hours. At the beginning of the evaluation I informed Mr. Smith about the nature, scope, and purpose of the evaluation, including the relevant limits of confidentiality and privilege. He was told that the evaluation was being conducted on motion of the Defense, and that a copy of the ensuing report will be sent to defense counsel, the Commonwealth's Attorney, and the court (as required by Virginia Code Section 19.2-169.1). Mr. Smith was then able, in turn, to describe these arrangements in an accurate manner that suggested reasonable understanding. He then agreed to participate in the evaluation.

SOURCES OF INFORMATION

During the evaluation, Mr. Smith participated in a general clinical interview as well as an interview specifically addressing competency to stand trial.

In addition, I relied on the following sources of information:

[*Source list omitted for brevity and confidentiality*]

RELEVANT BACKGROUND INFORMATION
[*Note: Report is shorter than usual to facilitate training exercise*]

Family, Developmental, and Social History

Jay Smith was born on January 1, 1991, the oldest child born to Ms. Sheila Doe and Mr. Jim Smith. His has two younger brothers, born in 1992 and 1993 before his parents separated.

Regarding developmental history, records reveal little information about his mother's pregnancy, except that Mr. Smith was the product of a full-term pregnancy with normal delivery and normal birth weight. Educational and medical records show that Mr. Smith met major developmental milestones (e.g., walking, speaking) within typical time frames. However, as a toddler he exhibited mild delays in speech and motor skills that were significant enough to meet criteria for early intervention services.

Regarding living situation, when Mr. Smith was around two years old, he and his brothers were removed from his mother's custody due to parental neglect and placed in the custody of his paternal grandmother, Mrs. Daisy Doe. Both of Mr. Smith's parents reportedly had severe mental illness, which left them unable to provide a suitable, stable environment in which to raise children. Although stable for at least one decade, Mr. Smith's living situation with his grandparents reportedly destabilized during adolescence, leading to frequent changes in residence.

Beginning in mid-adolescence, Mr. Smith lived with various family members, with friends, and in residential placements arranged through the Department of Social Services (DSS). He also resided in foster homes, group homes, and institutional placements at times. Despite the instability and periodic conflict between Mr. Smith and his family members, collateral sources suggest that he maintained relatively close relationships with his brothers, father, and grandparents until his recent arrest.

Medical History

Mr. Smith's medical history is apparently unremarkable with the exception of a hospitalization during childhood following an automobile accident. Although records are sparse, they reveal no obvious or longstanding consequences due to the accident.

Educational and Employment History

Mr. Smith was first evaluated for possible developmental and learning problems at age three, and thereafter he received special education preschool services due to problems in speech, attention-deficit/hyperactivity disorder, and emotional lability. Individualized Education Plan records show that he continued to receive accommodations throughout his schooling. Mr. Smith showed mediocre academic achievement through middle school, typically earning Cs.

In high school Mr. Smith exhibited academic and behavioral problems. Report cards show that he was failing classes by his freshman year, with teacher comments noting that Mr. Smith had "great imagination and potential" and "adequate intelligence," but "did no work." Ultimately, school administrators withdrew Mr. Smith from high school at age 17, due to excessive absences. According to records, he obtained his GED three years later and received scores in the average range.

Regarding his employment history, Mr. Smith has reportedly worked both formally and informally in auto repair, briefly working in a commercial auto shop but more often working with an older cousin who maintained a private shop.

Substance Use History

Regarding alcohol use, records indicate Mr. Smith has reported only light social drinking, but he has acknowledged more regular marijuana use beginning at age 15. Police records indicate that he tested positive for cannabis at the time of his arrest for the current charges. However, there were no indications that Mr. Smith used other illegal drugs or abused prescription medications.

Legal History

Mr. Smith's prior criminal history includes only charges for possession of marijuana (twice in adolescence and once as an adult). Records do not indicate that Mr. Smith has ever previously been incarcerated or participated in lengthy legal proceedings.

Mental Health History

Mr. Smith's family history is notable for three close family members with psychiatric illness. Mr. Smith's biological father has a lengthy history of long-term psychiatric hospitalizations and reportedly carries a diagnosis of schizophrenia. Mr. Smith's biological mother has reportedly carried diagnoses of bipolar disorder, schizophrenia, and personality disorders. Finally, Mr. Smith's youngest brother was hospitalized at the Commonwealth Center for Children and Adolescents on two occasions, both reportedly resulting from severe depression and possible psychotic symptoms.

Mr. Smith received testing for psychiatric symptoms as early as age 14, during a regular re-evaluation for Special Education eligibility. At that point, school staff assigned only a diagnosis of Attention-Deficit/Hyperactivity Disorder and Adjustment Disorder with Disturbance of Mood and Conduct. At age 16 Mr. Smith began receiving services through his local Community Service Board, he reported. Although records were not available at the time of this writing, Mr. Smith reported that he received a diagnosis of Bipolar Disorder at age 17 and began trials of various antidepressant and mood-stabilizing medications. However, he reported that he received services at the CSB less frequently upon reaching adulthood, and that he had obtained no services for over one year (again, formal records from the CSB were not available at the time of this writing).

According to my collateral interview with Mr. Smith's grandmother, Mr. Smith has demonstrated significant mood variability (i.e., periods of apparent depression and periods of restlessness, minimal sleep, and excessive energy) since late adolescence. However, he demonstrated what appeared (to her) to be increasing symptoms for approximately six months preceding his arrest. Specifically, she described Mr. Smith as demonstrating dramatic mood swings, staying up all night, frequently crying, exhibiting a depressed mood, and discussing suicide. Furthermore, she reported that he developed an intense preoccupation with the Bible and literature from Jehovah's Witnesses, though he had not expressed religious beliefs of any sort in the past. She stated that Mr. Smith's apparent symptoms worsened over the following months, and that he tended to "lecture" incoherently about the Bible, reincarnation, and what she described as unusual ideas with quasi-religious themes.

Records from Big Region Regional Jail and Mr. Smith's attorney show that Mr. Smith was initially boisterous and energetic upon incarceration, speaking rapidly and continuously, primarily on religious topics. Likewise, records maintained by defense counsel documenting their early meetings with Mr. Smith memorialize numerous statements and behaviors that appear consistent with psychiatric illness. For example, Mr. Smith reportedly instructed counsel "to call Jesus for real on the phone" so that Jesus "could strike down all this persecution and say-so." He also reportedly told counsel—when they mentioned the possibility of hospitalization—that he "will not subject [him]self to the government's devils and blasphemers pretending to be doctors."

According to jail records, however, Mr. Smith's behavior became noticeably calmer in late February of this year, after the jail's contracted psychiatrist prescribed mood-stabilizing and anti-psychotic medications. Similarly, defense counsel acknowledged that his more outlandish statements have decreased, and he appears more calm and cooperative. Nevertheless, they emphasized that they have ongoing concerns about his competence, given his tendency to drift into monologues (primarily around religious themes) when speaking with them.

INTERVIEW AND CLINICAL STATUS

Mental Status and Behavioral Observations

Mr. Smith presented with an appearance that was slightly unkempt and malodorous (though apparently less so than in prior weeks, according to the jail staff). His affect, or emotional tone, varied considerably over the course of interviews. Although the emotions that he expressed generally matched the content of his statements, they were somewhat more intense than emotions typically exhibited by defendants in similar conversations. He also interjected occasional laughter at statements that were not particularly humorous. Despite jail staff reporting behaviors that appear typical of significant mania (i.e., sleeplessness, loud and boisterous "sermons," pacing), Mr. Smith flatly denied experiencing mania or unusual energy. He also eventually acknowledged some periods of depression in the past (prior to incarceration), including thoughts of suicide, but dismissed these with "that was another man; I was someone else then." Mr. Smith emphatically claimed that he had no current inclination toward suicide, but also "got no fear of death."

In addition to denying depression, Mr. Smith also denied all other psychiatric symptoms about which I queried. He explicitly denied seeing or hearing stimuli that others do not see or hear. He did not exhibit any gross signs of hallucinations, such as responding to stimuli that were not present. Despite denying most symptoms of psychosis, many of his statements seemed frankly delusional. For example, he lamented that his fellow inmates were "like fools stuck in the current dimension with no mind to the superior dimensions." Although some of his ideas shared similarities with certain subsets of Christianity, he also incorporated some ideas from Eastern religion (i.e., repeated discussions of reincarnation or repeating a life because of errors in a past life), as well as some ideas that appeared unrelated to any organized religion. Thus, his overall pattern of expressed beliefs appeared idiosyncratic, and was not attributable to any specific, shared religious belief system. When queried about anxiety, he flatly denied any worry, even about pending legal proceedings ("I never worry about man's word, only God's," he emphasized).

Interpersonally, Mr. Smith tended to be lively, engaging and superficially friendly, but he often answered my questions with questions of his own and attempted to redirect conversation to

idiosyncratic religious or philosophical matters. This often came across as dismissing questions about legal matters and sometimes was explicitly dismissive (e.g., "I got no concerns about man's courts; God's gonna put them in their place, and me in my rightful place.").

Regarding his style of speech, Mr. Smith often made circumstantial, meandering statements. For example, when asked about his understanding of the competence evaluation process, he stated, "I am ready for court, you got nothing more to ask me. Let's just send me in there and God can vindicate me with a power."

EVALUATION OF ADJUDICATIVE COMPETENCE

Factual and Rational Understanding of Legal Proceedings

Overall, Mr. Smith demonstrated only marginal legal knowledge and frequently strayed into philosophical and religious objections when asked about specific court personnel, procedures, and legal principles. He often seemed uninterested when I attempted to provide education on these topics, dismissing the value or importance of the legal process. Most of these dismissals involved his preference to discuss religious matters (and convey that court proceedings were relatively less important).

However, his dismissal of evaluation questions occasionally seemed to obscure a genuine lack of knowledge. For example, when queried about court personnel, Mr. Smith provided a rudimentary description of the judge's role ("he's like the boss, pretending he's in charge of anything"), but initially confused the role of defense counsel and the Commonwealth's Attorney. When queried again, he became mildly frustrated and emphasized, "Look, no attorney defends me, only God defends me. None of these people matter that much to me." Although he could at times acknowledge, at least theoretically, that court proceedings are adversarial, he more often described both opposing sides as similarly inept ("Neither of them make much a difference in the end," he summarized).

In some instances, Mr. Smith's mischaracterizations of legal proceedings could be attributed to a belief system that simply devalued legal proceedings in favor of religious themes. But at other times, he simply seemed to lack knowledge about some basic elements of legal proceedings. For example, he repeatedly failed to recognize that a trial was an effort to adjudicate guilt for a particular alleged offense; instead, he repeatedly characterized a trial as a broader effort to determine whether someone "is a good person or not."

Ability to Assist Counsel

Although Mr. Smith recognized that the general role of defense counsel is to represent the defendant, he tended to be dismissive of his own counsel. He lamented that counsel "treats [him] like a child," asking "all these court questions" and dismissing his own efforts to "seek vindication and restoration."

The frustration and cynicism Mr. Smith expressed regarding defense counsel was entirely consistent with the report that defense counsel offered when I queried them about interactions with Mr. Smith. For example, counsel reported that he often refused to discuss his case and instead perseverated on his religious beliefs or an idea that he was inappropriately persecuted.

CONCLUSIONS

Regarding psychiatric status, although there is limited information regarding Mr. Smith's psychiatric condition as an adult in the community, the available evidence suggests that he manifested some symptoms of significant psychiatric illness during the period preceding his arrest and incarceration. Specifically, collateral accounts indicate what appear to be symptoms of mania (a highly energized, elevated, and restless mood) as well as symptoms of psychosis, including delusions (fixed, false beliefs not based in reality) and bizarre behaviors. These symptoms appeared to persist through his initial incarceration, though they have apparently decreased since he was medicated approximately six weeks ago. Since then his mood and behavior have appeared less highly energized, but he has continued to make unusual statements and emphasize idiosyncratic religious and philosophical beliefs.

This pattern and combination of symptoms could be attributable to any one of a few psychiatric conditions (e.g., bipolar disorder, schizoaffective disorder) that involve psychosis and alterations in mood. Fortunately, assigning a precise diagnosis is not necessary to draw firm conclusions regarding the more circumscribed issue of his current ability to understand his legal proceedings and assist defense counsel.

Regarding competence to stand trial, Mr. Smith showed only a weak grasp of basic legal proceedings, and he often minimized his factual deficits by dismissing questions about legal matters and returning to lengthy discussions of his idiosyncratic beliefs. Likewise, he was overtly dismissive of his own legal status as a criminal defendant and instead emphasized various beliefs, such as the belief that "God will vindicate [him] with a forcefulness."

Similarly, Mr. Smith has consistently failed to demonstrate the capacity to work with his attorneys in his own defense. He did not identify counsel as an ally in an adversarial legal process. Rather, he has appeared consistently annoyed with counsel and declined his attorney's efforts to discuss the case in favor of his own efforts to discuss idiosyncratic religious matters.

Finally, his approach to mounting a defense is irrational. He is quick to dismiss the gravity of his situation and the standard steps in legal proceedings, based on his stated desire to "let God vindicate [him] for properly spreading good words."

Given these data, it is my opinion that:

1. Mr. Smith does *not* presently demonstrate the capacity to adequately understand the legal proceedings against him in a rational and factual manner.
2. Mr. Smith does *not* presently demonstrate the capacity to rationally collaborate with defense counsel or otherwise assist in his defense.

When opining that a defendant is not competent to stand trial, Virginia code also requires an opinion regarding prospects for remediation and appropriate location for remediation.

In my view, Mr. Smith is a reasonable candidate for outpatient (i.e., jail-based) restoration efforts. Indeed, members of jail medical staff have already begun administering medication, and this appears to have resulted in some decrease in symptoms. Ideally, any restoration efforts will involve collaboration with the staff administering medication *and* psycho-educational efforts to address the deficits in Mr. Smith's factual understanding of legal proceedings. Although predictions regarding competence restoration are necessarily speculative, the majority of

incompetent defendants are indeed restored to competence. I see no reason at present to conclude Mr. Smith could not regain the necessary capacities to stand trial.

Sincerely,

Sally James, Ph.D.
Forensic Psychologist
Anytown Clinic

CC:

Ms. Dee Fender, Esq.
Office of the Public Defender
Anytown, VA

Mr. Luke Emallup, Esq.
Office of the Commonwealth's Attorney
Anytown, VA

REPORT SUMMARY

SAMPLE CASE #2

Name: Jay Smith
Demographic: 23 year old male

Charge(s): Trespassing, Disorderly Conduct, Simple Assault

Background:
Developmentally and medically typical except for mild speech and motor impairments warranting early intervention services. Automobile accident resulted in hospitalization in childhood, but no apparent lasting negative effects from that accident. Removed from parents' custody age two due to neglect. Placed with grandmother—stable home environment until mid-adolescence, when household destabilized and he rotated through various DSS placements and extended family members' homes.

Received special education services for speech, attention, and behavior problems. Mediocre academic performance. IQ was in the normal range. Dropped out of high school age 17, completed GED—score in average range. Brief informal employment as an adult.

Mental Health History:
Immediate family notable for three members with major mood and psychotic psychiatric illnesses. Mother, father, sister all with multiple hospitalizations. Regular marijuana user since adolescence. No evidence of other drug use or problematic alcohol abuse. Defendant diagnosed with ADHD and Adjustment Disorder with Disturbance of Mood and Conduct age 14. Diagnosed with Bipolar Disorder at age 17, and began pharmacologic treatment. No services from CSB in year prior to offense. Mood lability starting in late adolescence. Family members describe onset of apparent mania symptoms in six months prior to offense. Also in this six month period, developed preoccupation with unconventional religious themes. Defense attorney and jail staff report rapid and incessant speech when first incarcerated. Statements reflecting grandiose religious/persecutory delusions. Behavior dramatically decreased later after prescription of mood-stabilizing and anti- psychotic meds. Still focused on religious themes when consulting with attorney.

Mental Status.
Unkempt, malodorous. Affect varied considerably over course of interviews. Emotions were unusually intense. Some inappropriate laughter. Denied mania, and all other psychiatric symptoms. Made frankly delusional statements. Lively and friendly, but dismissive. Circumstantial speech.

Competence-Related Interview.
Marginal factual legal knowledge, drifted into circumstantial statements related to religious preoccupations. Could acknowledge some legal concepts superficially, but tended to lose distinctions when describing legal circumstances within framework of delusional beliefs. Dismissive attitude towards his counsel.

Conclusions Regarding Competence:
Marginal factual understanding, and knowledge was occasionally distorted by delusional beliefs. Apparently experiencing mood and psychosis symptoms with onset at least six months prior to offense. Ability to work with attorney and process new information impaired by preoccupation with delusional beliefs, which also cause him to fail to appreciate seriousness of legal situation. Therefore, not competent to stand trial. Reasonable candidate for outpatient restoration, because recent medication appears to have alleviated symptoms somewhat already. Restoration should include both psychoeducational efforts and medication.

ORDER FOR TREATMENT OF INCOMPETENT DEFENDANT

Commonwealth of Virginia VA. CODE §§ 19.2-169.2, 19.2-169.3

Case No. .....

.....
COURT NAME AND ADDRESS

Commonwealth of Virginia v. .....

The Court having found, pursuant to Virginia Code § 19.2-169.1(E), that the Defendant is incompetent to stand trial, and having found further, based on the attached report or other evidence, that the Defendant can be treated to restore his or her competency

[ ] on an outpatient basis in jail or through a local mental health facility
[ ] solely on an inpatient basis in a hospital

the Court therefore ORDERS

[ ] .....
NAME OF OUTPATIENT THERAPIST OR FACILITY

[ ] qualified staff at a hospital to be designated by the Commissioner of Behavioral Health and Developmental Services or his or her designee

to treat the Defendant in an effort to restore him to competency.

Any psychiatric records and other information that have been deemed relevant and were submitted by the defendant's attorney to the evaluator pursuant to Virginia Code § 19.2-169.1(C) and any reports submitted pursuant to § 19.2-169.1(D) 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 this order.

If, at any time after treatment commences, 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 concerning (1) the defendant's capacity to understand the proceedings against him and (2) the defendant's ability to assist his attorney.

If, at any time after treatment commences, 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 and indicating whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent.

[ ] *Defendant charged with a misdemeanor crime enumerated in Virginia Code § 19.2-169.3(C).* If the defendant has not been restored to competency after forty-five (45) days from the date of commencement of treatment, the director of the community services board or 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.

If the defendant has not been restored to competency by six (6) months from the date of the commencement of treatment, the board, authority, or inpatient facility director or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to Virginia Code § 37.2-806 in the event he is found to be unrestorably incompetent.

.....
DATE

_____
JUDGE

WARNING TO DEFENDANT: PURSUANT TO § 18.2-308.1:3, YOU SHALL NOT PURCHASE, POSSESS, OR TRANSPORT A FIREARM UNLESS AND UNTIL YOU ARE RELEASED FROM TREATMENT AND OBTAIN A COURT ORDER RESTORING YOUR RIGHT TO DO SO.

FORM DC-345 MASTER 07/14

WARRANT OF ARREST – MISDEMEANOR (STATE)
COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Anytown
CITY OR COUNTY

General District Court [X] Criminal [ ] Traffic
[ ] Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about March 12, 2014 (DATE) did unlawfully in violation of Section § 18.2-119, Code of Virginia:

Trespassing after being forbidden, at Anytown Shopping Center at 123 Main Street, Anytown, VA 22222

I, the undersigned, have found probable cause that the Accused committed the offense charged, based on the statements of Officer Lockemup, Complainant.

Execution by summons [ ] permitted at officer's discretion. [X] not permitted.

March 12, 2014
DATE AND TIME ISSUED

[ ] CLERK [X] MAGISTRATE [ ] JUDGE

SUMMONS (If authorized above and by serving officer)
You are hereby commanded to appear before this court located at _____
on _____ at _____ AM/PM.

I promise to appear in accordance with this Summons and certify that my mailing address as shown at right is correct.

ACCUSED

WARNING TO ACCUSED: You may be tried and convicted if your absence if you fail to appear in response to this Summons. Willful failure to appear is a separate offense.
SIGNING THIS NOTICE DOES NOT CONSTITUTE AN ADMISSION OF GUILT.

FORM DC-314 (MASTER, PAGE ONE OF TWO) 07/11

CASE NO. GC00123-01

ACCUSED:
SMITH, JAY NMN
LAST NAME, FIRST NAME, MIDDLE NAME
999 Main Street, Anytown, VA 22222
ADDRESS/LOCATION

To be completed upon service as summons
Mailing address [X] Same as above
[ ] _____

RACE	SEX	BORN MO.	DAY	YR.	HT. FT.	IN.	WGT.	EYES	HAIR
W	M	01	01	1991	5	11	195	Brn	Brn

ucSSN 999-99-9999
DL # B1111111 STATE VA
[ ] Commercial Driver's License

CLASS 1 MISDEMEANOR
[X] EXECUTED by arresting the Accused named above on this day: March 12, 2014
[ ] EXECUTED by summoning the Accused named above on this day _____
[ ] For legal entities other than individuals, service pursuant to Va. Code § 19.2-76.

DATE AND TIME OF SERVICE
Officer Lockemup, ARRESTING OFFICER
XXXXX, Anytown, VA
BADGE NO., AGENCY AND JURISDICTION
for Anytown, VA
SHERIFF

Attorney for the Accused:
Office of the Public Defender

Short Offense Description (not a legal definition):
Trespass after forbidden
Offense Tracking Number: 001

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code: § 18.2-119

M

Hearing Date/Time
March 25, 2014
9:00am

WARRANT OF ARREST – MISDEMEANOR (STATE)

COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Anytown
CITY OR COUNTY

General District Court [X] Criminal [ ] Traffic
[ ] Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about March 12, 2014 (DATE) did unlawfully in violation of Section § 18.2-415, Code of Virginia:

Disorderly Conduct at Anytown Shopping Center at 123 Main Street, Anytown, VA 22222. Upon arriving at the scene, Officer Lockemup observed Mr. Smith screaming and shouting at mall patrons and preventing the mall vendor from doing business.

I, the undersigned, have found probable cause that the Accused committed the offense charged, based on the statements of Officer Lockemup, Complainant.

Execution by summons [ ] permitted at officer's discretion. [X] not permitted.

March 12, 2014
DATE AND TIME ISSUED

[ ] CLERK [X] MAGISTRATE [ ] JUDGE

SUMMONS (If authorized above and by serving officer)

You are hereby commanded to appear before this court located at: _____

on _____ at _____ AM/PM.

I promise to appear in accordance with this Summons and certify that my mailing address as shown at right is correct.

_____
ACCUSED

WARNING TO ACCUSED: You may be tried and convicted if your absence if you fail to appear in response to this Summons. Willful failure to appear is a separate offense.
SIGNING THIS NOTICE DOES NOT CONSTITUTE AN ADMISSION OF GUILT.

FORM DC-314 (MASTER, PAGE ONE OF TWO) 07/11

CASE NO. GC00123-02

ACCUSED:
SMITH, JAY NMN
LAST NAME, FIRST NAME, MIDDLE NAME
999 Main Street, Anytown, VA 22222
ADDRESS/LOCATION

To be completed upon service as Summons
Mailing address [X] Same as above
[ ] _____

RACE	SEX	BORN MO.	BORN DAY	BORN YR.	HT. FT.	HT. IN.	WGT.	EYES	HAIR
W	M	01	01	1991	5	11	195	Brn	Brn

SSN: 999-99-9999

DL# B1111111 STATE VA

[ ] Commercial Driver's License

CLASS 1 MISDEMEANOR

[X] EXECUTED by arresting the Accused named above on this day: March 12, 2014
[ ] EXECUTED by summoning the Accused named above on this day _____
[ ] For legal entities other than individuals, service pursuant to Va. Code § 19.2-76.

_____
DATE AND TIME OF SERVICE
Officer Lockemup, ARRESTING OFFICER
XXXXX, Anytown, VA
BADGE NO., AGENCY AND JURISDICTION
for Anytown, VA
SHERIFF

Attorney for the Accused:
Office of the Public Defender

Short Offense Description (not a legal definition):
Disorderly Conduct
Offense Tracking Number: 002

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code: § 18.2-415

M

Hearing Date/Time
March 25, 2014
9:00am

WARRANT OF ARREST – MISDEMEANOR (STATE)
COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Anytown
CITY OR COUNTY

General District Court [X] Criminal [ ] Traffic
[ ] Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about March 12, 2014 (DATE) did unlawfully in violation of Section § 18.2-57, Code of Virginia:

Simple assault of John S. Sample, vendor at Anytown Shopping Center at 123 Main Street, Anytown, VA 22222. Upon arriving, Officer Lockemup observed Mr. Smith strike Mr. Sample on the arm with a closed fist.

I, the undersigned, have found probable cause that the Accused committed the offense charged, based on the statements of Officer Lockemup, Complainant.

Execution by summons [ ] permitted at officer's discretion. [X] not permitted.

March 12, 2014
DATE AND TIME ISSUED

[ ] CLERK [X] MAGISTRATE [ ] JUDGE

SUMMONS (If authorized above and by serving officer)
You are hereby commanded to appear before this court located at _____

on _____ at _____ AM/PM.

I promise to appear in accordance with this Summons and certify that my mailing address as shown at right is correct.

_____
ACCUSED

WARNING TO ACCUSED: You may be tried and convicted if your absence if you fail to appear in response to this Summons. Willful failure to appear is a separate offense.
SIGNING THIS NOTICE DOES NOT CONSTITUTE AN ADMISSION OF GUILT.

FORM DC-314 (MASTER, PAGE ONE OF TWO) 07/11

CASE NO. GC00123-03

ACCUSED:
SMITH, JAY NMN
LAST NAME, FIRST NAME, MIDDLE NAME
999 Main Street, Anytown, VA 22222
ADDRESS/LOCATION

To be completed upon service as summons
Mailing address [X] Same as above
[ ] _____

RACE	SEX	BORN MO.	DAY	YR.	HT. FT.	IN.	WGT.	EYES	HAIR
W	M	01	01	1991	5	11	195	Brn	Brn

SSN 999-99-9999

DL # B1111111 STATE VA

[ ] Commercial Driver's License

CLASS 1 MISDEMEANOR

[X] EXECUTED by arresting the Accused named above on this day: March 12, 2014
[ ] EXECUTED by summoning the Accused named above on this day _____
[ ] For legal entities other than individuals, service pursuant to Va. Code § 19.2-76.

_____
DATE AND TIME OF SERVICE

Officer Lockemup, ARRESTING OFFICER
XXXXX, Anytown, VA
BADGE NO., AGENCY AND JURISDICTION

for Anytown, VA
SHERIFF

Attorney for the Accused:
Office of the Public Defender

Short Offense Description (not a legal definition):
Simple assault and battery
Offense Tracking Number: 003

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code: § 18.2-57

M

Hearing Date/Time
March 25, 2014
9:00am

Sample Competency Evaluation #3

The Honorable Judge Bill Bench
Anytown Circuit Court
321 Courtside Ave.
Anytown, VA

April 29, 2014

RE: *Commonwealth of Virginia v. Mary White*
Case No(s): CR1234-00

Dear Judge:

Pursuant to your order dated March 1, 2014, I have completed an evaluation of Ms. Mary White's competence to stand trial. Ms. White is a nineteen-year-old woman who was charged with Felony Breaking and Entering, arising from an alleged incident on January 17, 2014.

Ms. White, who has been released on bond, was evaluated at my Anytown Community Clinic on March 22, 2014. At the beginning of the evaluation, Ms. White was informed about the nature, scope, and purpose of the evaluation, including the relevant limits of confidentiality and privilege. She was also informed that a copy of the ensuing report would be sent to the Court, defense counsel, and the Commonwealth's Attorney. Ms. White indicated that she understood the purpose and limits of confidentiality associated with the evaluation and agreed to participate.

SOURCES OF INFORMATION

In conducting the evaluation, I completed a 3-hour interview with Ms. White, as well as a 1-hour collateral interview with her mother, Mrs. Pearl White and a 45-minute interview with her father, Mr. William White, Sr. I also relied on the following sources of information:

[*Source list omitted for brevity and confidentiality*] Social Service Records
School Records
Mental Health Records
Court Record

BACKGROUND INFORMATION AND RELEVANT HISTORY

Social/Developmental History

Ms. White's mother, Mrs. Pearl White, described her pregnancy with Ms. White as "normal" but stated that he was delayed in meeting typical developmental milestones such as walking and speaking. She indicated that Ms. White did not have any significant medical concerns or accidents during her childhood.

Collateral information indicated that Ms. White was raised in an unstable family marked by parental discord, financial difficulties, and frequent relocation due to eviction. According to records, Ms. White has previously reported that the family moved multiple times and occasionally resided in hotel rooms. There is also a pattern of family involvement in the criminal justice system, and some reports of substance abuse within the home.

Regarding Ms. White's behavior, a Sociocultural Report authored by Mary Moore, M.Ed., when Ms. White was age 16, described Ms. White as "impulsive and aggressive." The caseworker noted that he "rarely recognizes and avoids harmful and dangerous situations" and described her as "very caring…curious…and impulsive." Observations made by Mr. Edwards, Esq., Ms. White's Guardian *ad litem* during her adolescent years, characterized Ms. White as an impulsive child who tended to avoid difficult discussions or mundane tasks. Mr. Edwards also noted, "Her responses to questions befitted a child five to six years younger…when she did answer, questions were most prefaced with an "*I don't care*" attitude."

Educational History

Mrs. White noted that Ms. White was enrolled in a Head Start program at age three. School records indicated that Ms. White was first evaluated in Anytown County School Systems, also at age three, because she exhibited developmental delays in the areas of cognition, socialization, and perceptual skills. She also exhibited articulation errors that required services from a speech language therapist.

She transferred, around age seven, to Anytown County Schools where she received special education services. Records indicated that Ms. White was last evaluated at age 16. Test results over the years (i.e., in elementary, middle, and high school) indicated evenly developed cognitive abilities in slightly below-average range. Records described consistently below average achievement in reading, writing, and mathematics.

Per records from Anytown County Schools, in addition to academic deficits Ms. White has a history of social and behavioral difficulties. For example, according to her high school teacher's responses to a structured behavior rating form, Ms. White demonstrated significant problems with externalizing behavior (i.e., not accepting responsibility for her actions and instead blaming her actions on others) and inattention. The teacher perceived her Adaptive Skills to be below average. In contrast, her mother's report on the same structured rating form placed Ms. White's functioning and adaptive skills within normal limits for her age.
Over the years, school records document teachers describing Ms. White as "rough edged," argumentative, impulsive, and "needing tremendous structure." Teachers explained that although she has typically had friends in her classrooms, she has a difficult time when she does not get her way. High school records revealed that she had been suspended for defiance toward teachers and fighting peers on several occasions. Ultimately, Ms. White left school at age 17 (amid a variety of academic and disciplinary problems) without graduating.

Psychiatric History

Mrs. White reported that she her daughter never participated in individual or family counseling, received treatment in a psychiatric hospital, or received psychiatric medication. Mrs. White described her daughter as having "mood swings" and explained that she becomes upset when

limits are set and "she can't get her way." She added, "She is not sad, but mad at everybody. She's like that since when she was a teenager." According to Mrs. White, teachers have corroborated this report and stated, "She always looks angry."

As previously mentioned, a psychological report conducted by Mr. Smith at age 16 revealed significant concerns regarding hyperactivity, conduct problems, learning difficulties, and lower than average intellectual ability. There were no other indications of psychiatric symptoms or treatment in the available records.

CLINICAL ASSESSMENT

Mental Status Examination and Behavioral Observations

Ms. White presented as a slender young woman who appeared younger than her chronological age of nineteen. Her appearance was slightly disheveled. Her eye contact was poor and she remained silent throughout most of the consent process. Ms. White was oriented to person, place, and date. None of her statements suggested disorganized thinking or formal thought disorder. She failed to answer some of the simple questions that clinicians often ask in order to gauge concentration and memory. However, her failure to answer often appeared more attributable to a lack of motivation to answer, rather than cognitive problems per se.

For example, when asked to attempt serial sevens (counting backwards from 100 by seven), she stated, "I can't think, 600…I guess, I don't know." When asked the simple math problem "What is ten minus three?" she responded, "Ten…I don't know." Although records reveal her school performance in math has been below average, such poor performance would not be expected given her cognitive abilities. For example, when she attempted to spell a one-syllable word both forwards and backwards, she spelled the forwards version incorrectly but the backwards version correctly. She appeared easily frustrated by even mildly challenging tasks.

Regarding traditional indicators of psychiatric status, Ms. White denied auditory or visual hallucinations and did not appear to respond to hallucinations. She did not make statements suggesting paranoia or delusional (fixed, false) beliefs. When asked about her mood, she shrugged and responded, "I can't tell myself, I'm always like this." She elaborated that she has

"never been sad except once." She attributed her "one sad time" to the failure of a romantic relationship. Her emotional presentation during interview appeared to vacillate between flat, indifferent, and annoyed.

Throughout the first two and a half hours of the evaluation Ms. White was minimally cooperative. Her typical pattern involved initially responding to questions with, "I don't know" followed by lengthy pauses. She often required additional probes and prompts to respond with sufficient detail to queries. It became clear that Ms. White sometimes knew more relevant information than she initially provided. This was evidenced by her ability to identify the correct answer among several options or spontaneously recall the answer after several prompts. Sometimes, after stating "I don't know" repeatedly, she provided an adequately detailed answer (though it was still prefaced or followed with "I don't know").

Ms. White's apparent reluctance to engage fully in the interview may be explained by at least two patterns. First, she tends to avoid challenging situations that might reveal her inadequacies

or lack of knowledge. Second, she tends to become somewhat defiant when faced with situations that might reveal her inadequacies or lack of knowledge. Both of these patterns, in turn, likely result from some combination of Ms. White's young age, developmental immaturity, poor cognitive skills, and noncompliant personality style.

Ms. White took a break after the first two and a half hours of the evaluation. She returned with a slightly changed demeanor. Her responses to questions were somewhat quicker and better elaborated. Her change in demeanor is likely attributable to her increased comfort with the evaluator, as well as her stated desire for the interview to be completed.

Competence to Stand Trial

Ms. White's laconic, minimally cooperative style made it challenging to determine her understanding of the legal proceedings and her potential to assist counsel in her defense. She initially answered most questions with "I don't know" or did not answer at all. Therefore, multiple inquiries, and at times teaching, were necessary before she was able to provide substantive answers.

Ms. White identified her charge as "breaking and entering." She provided a logical, albeit vague account of the events surrounding her arrest. She also demonstrated some appreciation for the severity of her charge. For example, she could identify certain dispositions or sanctions that appeared reasonably likely (e.g., a jail sentence), and could also identify some more severe sanctions that were unlikely (e.g., a death sentence).

When queried about courtroom personnel, Ms. White initially failed to distinguish their roles or duties. For example, she tended to provide statements like "They all just talk to each other and figure out what they want to do with me." These statements were not entirely *in*accurate (particularly based on her prior experiences in juvenile court), but they did not reflect a sufficiently accurate understanding that different personnel had very different responsibilities.

With further education and questioning, she could provide a better (albeit rudimentary) description of some of the court personnel. For example, she defined the Commonwealth's Attorney's role as, "to get you locked up," and defense counsel's role as "to help me." She also recognized the judge was a neutral arbiter of proceedings and "has say-so over both of them." She later conveyed, "The judge is the boss … in the middle [neutral], she listens to the stories." Although she was rarely willing to supplement these general answers with greater detail, she did demonstrate the necessary, general understanding that defense and prosecution have opposing roles and the judge is aligned with neither.

Although Ms. White recognized the general roles of court personnel and their adversarial posture, she apparently failed to recognize the goal of court proceedings. Specifically, she failed to recognize that proceedings were an effort to determine guilt or innocence *regarding a specific offense*. Instead, she described them as an effort to determine whether her behavior was generally appropriate. For example, she initially expressed that the judge "should have" determined her guilt or innocence by the time of her first court appearance (i.e., even before she enters a plea or proceeds to trial) "if she's done her research." When asked *how* a judge decides guilt or innocence, she answered, "your background… (after request for elaboration)...your history (after request for elaboration)…like if you got a job, she won't lock you up." When

asked at a different point in the interview how a judge might determine guilt or innocence, she answered "the judge wants to know you do the right thing. If you're head's not screwed on right, they'll want you to screw it on right." Similarly, when asked how a prosecutor achieves the goal of having a defendant "locked up," she explained "like if you're not in compliance… (after request for elaboration)…like if I didn't come to this [evaluation] today."

Generally, Ms. White tended to view court proceedings not as an effort to adjudicate guilt for a particular offense, but rather to generally gauge appropriate behavior. This misunderstanding likely reflects her only prior court experience, i.e., in the juvenile justice system, where dispositions likely were based on a broader range of factors, and hearings might address compliance with conditions, as well as any particular offense.

Of course, a defendant need not demonstrate perfect legal knowledge from the start; she need only demonstrate the capacity to learn that knowledge and apply it reasonably to her case. Therefore, I attempted to re-educate Ms. White regarding the specific goals of a trial (i.e., to determine guilt or innocence for a particular, specific offense). After education, Ms. White was able to at least articulate a rudimentary explanation that opposing sides would "argue" and that a judge would "listen to both sides of the story" before rendering a verdict (she consistently failed to recognize or use the word "trial," but instead used the word "argue," which seemed to reflect a general understanding of the concept). She reached the point where she could answer correctly simple questions about the trial process, always mimicking language I had used. But her answers were "parroted" and unelaborated (always using my language, even when I asked him to rephrase in her own). She also offered other answers that seemed to undermine her apparent understanding (for example, she mentioned that a judge might find her guilty if the judge heard negative gossip about her, despite my emphasis that any judicial decision would be based solely on the evidence against her).

Finally, even with education, Ms. White still failed to place the trial within the broader context of potential proceedings. For example, she repeatedly failed to recognize that pleading not guilty would necessarily prompt a trial, though I made several attempts to remediate this understanding. At times, she suggested that a judge might simply be convinced of her innocence because she pled not guilty, and end proceedings immediately.

Ms. White's reasoning and decision making capacity were assessed through questioning which involved hypothetical scenarios and discussion of her plea options. She sometimes demonstrated an immature perspective regarding her legal circumstances. For example, she occasionally—and with a tone of bravado—dismissed her circumstances as "not serious" and that she described—again with a tone of bravado—how she might confront a witness who lied about him. When I questioned whether expressing anger or aggression in court could cause further legal trouble, she tended to dismiss these concerns.

Finally, I queried Ms. White's perspective on her defense counsel. Here too, it was difficult to elicit detailed responses; Ms. White consistently provided simplistic explanations of defense counsel's role and responsibilities, and described having little interest in collaboratively identifying a realistic legal strategy with her attorney. For example, when asked about plea bargaining, she waved her hand in a dismissive gesture and responded, "I don't know…the judge is gonna do whatever they want anyway." When asked for details about how her attorney might assist her with trial proceedings, she stated "He talks to them...it's a bunch of talking." She did not provide additional description, even with several prompts. When I provided education about

the typical responsibilities of defense counsel, Ms. White sighed and appeared irritated, interrupting to say, "I'm just gonna let him do it." She did not demonstrate understanding of attorney-client privilege, averring that her attorney "might could tell the judge" anything she disclosed during privileged conversations. When I explained attorney-client privilege, she appeared incredulous, responding, "yeah, right…I don't say nothin."

CONCLUSION

Mary White is a 19-year-old female facing a charge of Felony *Breaking and Entering* in Anytown Circuit Court. When assessing competence, it is important to consider four domains that are relevant to trial competence: 1) understanding of the legal process, 2) appreciation of the legal process as it applies to one's particular case, 3) capacity to communicate with counsel, and 4) capacity to make decisions (decisional competency).

Regarding her understanding and appreciation of the legal process, Ms. White did not show adequate appreciation for the overarching process and purpose of her legal proceedings. She consistently maintained that the trial process is an effort to gauge her overall "good behavior" rather than to adjudicate whether she is guilty of a specific charge (i.e., Breaking and Entering). Her knowledge of basic factual legal information, such as roles and responsibilities of major court personnel and trial procedures was difficult to assess due to her dismissive responses and irritation at having to answer questions. More importantly, she was resistant to my efforts to remediate the gaps in her knowledge. This difficulty may be due to her low intellectual ability and related feelings of embarrassment, but it appears that Ms. White's immature and somewhat oppositional personality style also plays a role when she encounters new and challenging information. Her history and presentation during interview suggests that her style of coping with stressful, undesirable circumstances involves becoming quiet, uncommunicative, and often defiant. She tends to deny any worry or vulnerability by adopting a toughened, unconcerned demeanor (apparently the style that her former Guardian ad litem characterized as an "I *don't care* attitude"). My interview suggests that she gradually becomes more comfortable and communicative (though still much less so than most young adults her age), albeit with considerable patience and encouragement. Thus, it will be important to budget adequate time and resources to interact productively with this defendant.

Ms. White described a simplistic understanding of the role of defense counsel, and she exhibited wariness about disclosing information to her attorney. She exhibited a disengaged approach, with poor investment, interest, or appreciation of the need to develop a legal strategy with the assistance of counsel. Her oppositional stance and limited grasp of important factual information, particularly the concept of attorney-client privilege, would substantially impair her ability to work with her attorney and assist in her defense.

Overall, Ms. White shows substantial deficits in her legal factual knowledge and her ability to apply her knowledge to her present circumstances, and to collaborate with her attorney in her defense. Additionally, she has a personality and coping style that inhibits her ability to benefit from educational efforts, requiring more intensive intervention. Her capacity to make informed decisions currently appears inadequate due to her below average intellectual ability and poor motivation to attend to new information.

Should the Court find Ms. White incompetent to stand trial, restoration services are available from the Virginia Department of Behavioral Health and Developmental Services (DBHDS).

Virginia policy encourages outpatient competence restoration (i.e., restoration services provided by the Community Services Boards, delivered to the defendant's location in jail or community) in circumstances when inpatient hospitalization is not necessary. In Ms. White's case, inpatient hospitalization does *not* appear necessary, as I did not see any indications of a major psychiatric illness. Thus, she appears to be an ideal candidate for outpatient (rather than inpatient, hospital-based) restoration.

Given Ms. White's slightly below-average intellectual ability, restoration content should be delivered in simplified, brief, repeated interventions, with regular checking for understanding. Counselors should be aware that her personality style may make educational efforts more challenging, but not impossible. Restoration efforts may need to initially focus on information aimed at increasing Ms. White's motivation to learn legal information, consider her rights, and collaborate with her.

Please do not hesitate to contact me should you have any questions, or if I can be of further assistance.

Respectfully,

Susie Small, Ph.D.
Anytown Clinic

cc: Fred Freeman, Esq., Counsel for Defense
Gregory Guiltman, Esq., Assistant Commonwealth's Attorney

REPORT SUMMARY

SAMPLE CASE #3

Name: Mary White
Demographic: 19 year old female Charge(s): Felony breaking and entering

Background:
No major medical problems. Unstable home life marked by family conflict and poverty. Impulsive and aggressive as a child. Also described as caring and curious. Tended to avoid challenging or boring tasks. *Guardian ad litem* described her as immature and having "I don't care" attitude. Received early intervention and special education services for learning disabilities. Borderline intellectual functioning. Below average academic achievement. Behavior problems in school reported by teachers. Oppositional and defiant at times. Dropped out at age 17.

Mental Health History:
No formal psychiatric treatment. Mother says she has had "mood swings" and becomes upset when "she can't get her way." Angry as child and adolescent. Psych eval conducted when she was 16 yo described concerns related to hyperactivity, conduct, learning problems, low intellectual ability.

Mental Status.
Slightly disheveled. Eye contact poor. Very little speech at outset of interview. No signs or reports of significant psychiatric problems. Failed some items related to concentration and memory, but difficulty appeared more related to motivation than ability. Frequently stated "I don't know." Easily frustrated by mildly challenging tasks. Emotional expression varied from flat, to indifferent, to annoyed. Minimally cooperative for first part of evaluation, improved cooperativeness and attitude during latter half. Often required several prompts/probes to provide sufficiently detailed responses to questions. Came across as immature with below average intellectual ability.

Competence-Related Interview.
Frequently answered "I don't know." Had some superficial factual legal knowledge, lacked appreciation of overarching framework and purpose of legal proceedings. Very rudimentary understanding of court personnel roles and responsibilities. Evaluator had difficulty remediating gaps in defendant's knowledge due to her apparent low motivation and ability to process new information. Simplistic understanding of defense counsel role, overly deferential to her attorney with respect to legal decision-making. Did not grasp attorney-client privilege, even after attempts made to explain.

Conclusions Regarding Competence:
Marginal factual understanding, ability to remediate misunderstandings and gaps in knowledge was impeded by below-average intellectual ability, poor motivation, and defensive coping style. Legal understanding is superficial; does not appreciate overall meaning of proceedings as an adjudication of her guilt with respect to specific offenses. Ability to work with attorney and process new information appeared impaired by attitude toward proceedings. Tended to deny worry and adopt toughened demeanor, possibly as coping strategy. Therefore, not CST. Good candidate for outpatient, because limited intellectual ability (not major psychiatric illness) is cause of incompetence. Restoration efforts should be slowly paced, delivered in brief simple interventions. Rapport is crucial and may be somewhat slow to develop. Initial restoration efforts may need to focus on information aimed at increasing her motivation to learn legal information, consider her rights, and collaborate with counsel.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF ANYTOWN

COMMONWEALTH OF VIRGINIA

Vs. Mary White

RECEIVED

Case No.: CR1234-00

ORDER FOR OUTPATIENT RESTORATION

THIS DAY came the Defendant, by counsel, and requested an _order for ***Outpatient Restoration*** for the defendant pursuant to §19.2-169.2(A) on the following grounds:.

1. The defendant, Mary White, is charged with unlawfully and feloniously breaking and entering a residence with intent to commit a misdemeanor offense § 18.2-95; and

2. A psychological evaluation performed by Susie Small, Ph.D., dated April 29, 2014, who concludes that the defendant is incompetent to stand trial.

A hearing was conducted by this court on May 1, 2014, with the defendant, defense counsel, and counsel for the Commonwealth present, and' the Court finds that the defendant is incompetent to stand trial and requires outpatient restoration services.

THEREFORE, it is ORDERED that the defendant, MARY WHITE, receive treatment to restore her competency, pursuant to §19.2-169.2 of the Code of Virginia, and it is hereby ORDERED that Anytown Community Services Board provide outpatient restoration services.

It is further ORDERED that when the director of the treatment provider or his designee determines the defendant's competency is restored, the director shall immediately send a report to the Court as prescribed in Subsection D of §19.2-169.1. The Court shall then make a ruling on the defendant's competency according to the procedures specified in Subsection E of §19.2-169.1.

It is ORDERED that the defendant remains under the jurisdiction of the Court.

ENTER: This 1st day of May, 2014.

Judge 

Endorsement of Counsel is dispensed with – Rule 1:13

WARRANT OF ARREST – FELONY

COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Anytown
CITY OR COUNTY

[X] General District Court [X] Criminal [ ] Traffic
[ ] Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about January 17, 2014 did unlawfully and feloniously in violation of Section § 18.2-92, Code of Virginia:

Breaking and entering with intent to commit a misdemeanor – Ms. White entered 123 Main Street, Anytown, VA, residence of John S. Sample, by breaking the lock on the rear entry. Ms. White was found by Mr. Sample when he arrived home from work. Officer Lockemup arrived at the scene at 11:45am and took Ms. White into custody.

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of Officer Lockemup, Complainant.

January 17, 2014
DATE AND TIME ISSUED

[ ] CLERK [X] MAGISTRATE [ ] JUDGE

FORM DC-312 (MASTER, PAGE ONE OF TWO) 10/13

CASE NO. CR1234-00

ACCUSED: WHITE, MARY NMN
LAST NAME, FIRST NAME, MIDDLE NAME

999 Main Street, Anytown, VA 22222
ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	BORN MO.	BORN DAY	BORN YR.	HT. FT.	HT. IN.	WGT.	EYES	HAIR
W	F	01	01	1995	5	4	145	Brn	Blue

D.L.# N/A STATE

[ ] Commercial Driver's License

CLASS 6 FELONY

[X] EXECUTED by arresting the Accused named above on this day:
January 17, 2014
DATE AND TIME OF SERVICE

Officer Lockemup, Arresting Officer
XXXX, Anytown, VA
BADGE NO., AGENCY AND JURISDICTION

for Anytown, VA
SHERIFF

Attorney for the Accused:
Office of the Public Defender

Short Offense Description (not a legal definition):
Breaking and entering with intent

Offense Tracking Number: 001

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code: § 18.2-92

F

Hearing Date/Time
February 1, 2014
9:00am

FELONY

Sample Restoration Case Plan Format

Presenting Issue/Problem:

Goal #1:

Objective #1:

Intervention #1:
Intervention #2:
Intervention #3:

Objective #2:

Intervention #1:
Intervention #2:
Intervention #3:

Goal #2:

Objective #1:

Intervention #1:
Intervention #2:
Intervention #3:

Objective #2:

Intervention #1:
Intervention #2:
Intervention #3:

Restoration Case Planning Sample Language

Problem: On _____, Mr. _____ was found to be incompetent to stand trial on charges of _____ in the _____Circuit Court.

Goal: Mr. _____'s competency to stand trial will be restored and he will be returned to court to resolve his current legal predicament.

Objectives:

1. Mr. _____ will evidence a sufficient factual understanding of court related issues as evidenced by his ability to answer questions regarding courtroom personnel, procedures, and processes with 80% accuracy and evidence this ability sustained over several sessions.
2. Mr. _____ will evidence a rational understanding of court related issues as evidenced by his being able to rationally discuss his legal case (without reference to his delusional beliefs or able to respond appropriately to redirection), his legal defense strategies, the possible consequences of various pleas, and other court related issues. He will evidence this rational understanding consistently over ____ sessions.
3. Mr. _____ will evidence the ability to assist counsel in his own defense as evidenced by his being able to freely and coherently share relevant information with others without significant mental confusion, thought disorganization, or other communication impairment. Attainment of goal when he is able to carry on a 30 minute conversation with minimal reference to his delusional beliefs and/or his being receptive to re-direction and being able to rationally answer questions.

Interventions:

1. Restoration counselor will meet with Mr. _____ for ___ minute sessions, ____ times a week for the purpose of educating Mr. ____ about the legal system and to establish a positive working relationship.
2. Restoration counselor will utilize _____ tools, focusing on Mr. _____'s learning strengths, in order to teach Mr. _____ new concepts.
3. Restoration counselor will have Mr. _____ sign Releases of Information to allow counselor to gain access to prior treatment records and also to gather information from Mr. _____'s family/ support network.
4. Restoration counselor will refer Mr. ____ to Dr. _____ for psychiatric evaluation to determine if psychotropic medications could aid Mr. _____.
5. Restoration counselor will arrange for a post-restoration outcome evaluation when Mr. _____ appears to have regained his competency to stand trial, when the Order is going to expire, or when it is determined Mr. _____ likely is unrestorably incompetent to stand trial.
6. Restoration counselor will refer Mr. _____ to Dr. ____ for psychological testing to determine current level of cognitive functioning.

Section 3:

Orientation for CSB/BHA Restoration Counselors

Virginia Department of Behavioral Health & Developmental Services

ORIENTATION FOR CSB/BHA RESTORATION COUNSELORS

I. CURRENT LEGAL AND PROFESSIONAL CRITERIA FOR COMPETENCY

Virginia Code § 19.2-169.1 states that a competency evaluation shall be performed when "… the defendant lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense."

To further explain the above legal standard, the professional standards for competency have been summarized below:

- **Defendant's understanding of the seriousness of the charges and likely consequences**
- **Defendant's ability to participate in the trial and ability to understand the court proceedings**
- **Defendant's ability to assist his attorney**
- **Defendant's ability to maintain the dignity of the courtroom**

II. PRACTICAL TIPS FOR RESTORATION COUNSELORS

- The defendant who has been found incompetent to stand trial and is in need of restoration services on an outpatient basis is probably an individual with limited cognitive abilities or an individual whose mental illness may be interfering with their normal thought processes. **The CSB/BHA staff are already trained and experienced in working with people with mental illness or mental retardation**.

- **Restoration services include educational information and training and/or clinical intervention including medications.** The clinical skills are the same that are used with other CSB/BHA clients. The primary difference is that restoration services include legal information that is to be taught and assessed.

- **Before restoration services are initiated by the CSB/BHA, make sure that you have a copy of the current restoration court order** and that it is written for the provision of restoration services pursuant to §19.2-169.2. Note the date of the Court order and remember that the court order is valid for six (6) months from the date that the defendant is "admitted to the treating facility". See

Virginia Code § 19.2-169.3A & B for reference. Note that there are forty-five (45) day limits placed on restoration orders for certain misdemeanant charges - see § 19.2-169.3C for specific charges.

- **Before restoration services are initiated by the CSB/BHA, obtain a copy of the competency to stand trial evaluation for the defendant**. Make sure that the restoration counselor assigned to work with the defendant has a copy of the competency evaluation. It will assist your staff in a number of ways, including providing some background information about the defendant, information about the charges and possibly the incident that led to those charges, and most importantly, it should provide a description of the defendant's areas of impairment in their competency abilities. In the competency evaluation, look for the specific deficit(s) that precludes this defendant from being competent, e.g., psychosis, delusional disorder, mental retardation, or organic brain impairment.

- **The restoration counselor may want to contact the competency evaluator directly** to review and/or clarify the areas of deficiencies in the defendant's competency abilities.

- If not provided with the competency evaluation or restoration court order**, it may be helpful to obtain copies of the charges/arrest warrant(s), the police report and witness/victim statements from the Court.**

- The defendant ordered for restoration services will be in jail or out on bond, **you will likely have to contact the attorneys to determine the defendant's lcoation**. If the defendant is in jail (and cannot be transported to the CSB/BHA office), inquire about the jail's requirements for reserving a professional visitation room (sometimes called a contact visitation room) with a table.

III. STEPS IN THE OUTPATIENT RESTORATION TO COMPETENCY PROCESS

1. Receipt of order from court.

2. Request/obtain copy of competency to stand trial evaluation, warrants and criminal complaint if not provided with the order. (via the defense attorney, prosecutor, or clerk)

3. If needed, contact the evaluator to clarify deficits that need to be addressed during restoration.

4. Provide services as described in DBHDS Adult Outpatient Restoration Services Manual. May also refer to psychiatric services and/or education services, or any type of services that will serve to restore competency.

5. One month prior to the expiration of the restoration order or when you think the client is restored or unrestorable, contact an evaluator (per Code this must be a psychiatrist or licensed clinical psychologist with forensic training) to arrange a new restoration "outcome" evaluation. No new order is required as evaluation is part of the process of restoration. CSB should obtain consent from the client or their surrogate decision maker to exchange information with the evaluator. CSB contracts with the provider for the evaluation. The CSB will be reimbursed by DBHDS and CSB will pay the evaluator.

6. Provide evaluator with information regarding the case such as original evaluation, warrants and criminal complaints (unless it is the same evaluator as who originally evaluated them.) Also provide evaluator with updated information regarding the progress of the restoration process (e.g. restoration and other relevant notes/assessments).

7. If you feel the individual remains incompetent, you should assess the barriers to the individual being restored. You should consider what changes in treatment might help restore the individual. Consider whether the person realistically can be restored on an outpatient basis. If not, then how likely is it that the individual can be restored on an inpatient basis? If unlikely, then likely the individual is unrestorably incompetent to stand trial and that opinion should be shared with the evaluator.

8. Evaluator conducts evaluation and sends it to the CSB.

9. CSB Director/designee writes a letter to the court explaining the competency evaluation findings with a copy of the competency evaluation attached. In the letter, ask the court to notify you if testimony is required and of their decision regarding competency. The Commonwealth Attorney and Defense Attorney should be copied with the letter/evaluation.

10. If the evaluator and provider are recommending that the client is unrestorable, you must also make a recommendation as to whether the client should be:

a. released,
b. committed pursuant to 37.2-814 et seq. (civil commitment),
c. committed pursuant to 37.2-900 (sexual offender commitment) or
d. certified pursuant to 37.2-806 (intellectually disabled certification to training center)

11. For clients who are only marginally competent, the CSB should consider continuing services until such time as the Court rules on the client's competency to stand trial (so that they do not "lose" their competency between the date of the report and the actual hearing).

12. Based on the evaluation, the Court decides whether the individual is now competent, unrestorable or should receive additional treatment for restoration. The court may call evaluator or restoration providers as witnesses.

13. Submit bill for Restoration services to DBHDS.

IV. GETTING STARTED – WORKING WITH THE DEFENDANT

- Schedule a time and meet with your client, the defendant. Try to arrange a setting conducive to learning.

- Explain your involvement to your client, the defendant.

- Use your clinical skills just as you would in any treatment setting – the only difference is that you are teaching legal concepts as well as assessing and treating the defendant.

- Assess the defendant's specific deficit(s) and then tailor your restoration service plan to the specific deficit(s) of the defendant. You should review the original competency evaluation for reference and you may want to use the pretest to verify the current deficit(s) or problem area(s). The pretest is provided at the end of this chapter.

- The CSB/BHA restoration counselor needs to keep the following time frames in mind:

- On a weekly basis, record progress and note continuing problem areas.

- On a monthly basis, record progress and project training goals for the next three months or less frequently for defendants with misdemeanor charges of trespassing, disorderly conduct or petit larceny.

- For the defendant who does require the full 6 months (or longer if a new restoration court order is issued) of restoration services, notify the CSB/BHA director (or designee) of the defendant's status one month in advance of the expiration of the current court order. Defendants with certain misdemeanor offenses (trespassing, disorderly conduct, petit larceny) receive a maximum of 45 days for restoration; therefore, notification of the CSB/BHA director (or designee) will need to occur at the beginning of the restoration process to ensure that a timely follow-up restoration evaluation is arranged.

- Not all defendants require the full 6 months for restoration services (or the full 45 days for certain misdemeanant defendants). At any point after the initiation of restoration services that the CSB/BHA restoration counselor believes the defendant (1) has been restored to competence or (2) is likely to remain incompetent for the foreseeable future, the restoration counselor should notify the CSB/BHA director (or designee) so that a follow-up competency evaluation can be arranged.

- The DBHDS Forensic Office staff and the forensic coordinators at the state hospitals are available for consultation to CSB/BHA staff assigned to provide restoration services (see Appendix).

V. PRE-TEST FOR THE DEFENDANT

1. **What are your charges? Explain what these charges mean in your own words.**

2. **How much time (sentence) could you get? The most time? The least time?**

3. **Tell me what is the defense attorney's job.**

4. **Tell me what is the commonwealth attorney's (or prosecutor's) job.**

5. **Tell me what is the judge's job.**

6. **Tell me how you should behave in court during your trial.**

7. **What are the three or four ways to plea and explain each?**
   - **Not guilty**
   - **Guilty**
   - **NGRI (not guilty by reason of insanity)**
   - **No contest (Nolo Contendere) – optional answer**

8. **What is a plea bargain and what rights do you give up if you accept a plea bargain?**

9. **What is a jury?**

10. **If you do not understand what is happening in the courtroom, what should you do?**

11. **Can your defense attorney tell anyone what you have said (to your attorney) without your permission?**

12. **Do you know what your legal rights are? Can you name some?**

VI. CONFIDENTIALITY

- At no time should the CSB/BHA restoration counselor repeat any statements, either orally or in agency records, from the defendant about the alleged offenses. The CSB/BHA restoration counselor should not indicate, orally or in writing, whether the defendant is guilty or not guilty or whether the defendant plans to plead guilty or not guilty. Virginia Code permits no specificity – "No statements of the defendant relating to the time period of the alleged offense shall be included…"

- Other State and ethical reporting requirements (e.g., duty to warn, alleged sexual abuse, etc.) still apply to the restoration counselor.

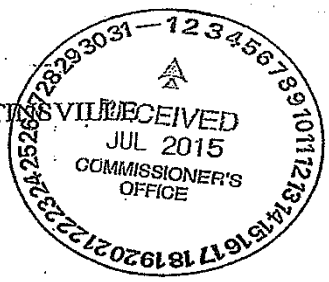
Section 4:

Competency Restoration Court Orders

Virginia Department of Behavioral Health & Developmental Services

COMPETENCY RESTORATION COURT ORDERS

I. Sample Competency Restoration Order #1



VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF MARTINSVILLE

COMMONWEALTH OF VIRGINIA

Vs. CASE NOS.

ORDER FOR INPATIENT HOSPITALIZATION

THIS DAY came the Defendant, by counsel, and requested an order for inpatient hospitalization for the defendant pursuant to §19.2-169.2(A) on the following grounds:

1. The defendant, , is charged with unlawfully and feloniously taking, stealing and carrying away personal property valued at over $200 pursuant to §18.2-95 and felony possession of more than one-half ounce but less than five pounds of marijuana with the intent to distribute pursuant to §18.2-248.1 (a)(2); and

2. A psychological evaluation addressing the defendant's competency to stand trial was performed by , Psy.D, who concludes that the defendant is incompetent to stand trial.

NTY-FIRST
AL CIRCUIT
IRGINIA

A hearing was conducted by this court on June 26, 2015, with the defendant, defense counsel, and counsel for the Commonwealth present, and the Court finds that the defendant is incompetent to stand trial and requires inpatient hospitalization.

THEREFORE, it is ORDERED that the defendant, (, receive treatment to restore his competency, pursuant to §19.2-169.2(A) of the Code of Virginia, and it is hereby ORDERED that (: be and is hereby committed to the custody of the Commissioner of the Department of Behavioral Health and Developmental Services.

It is further ORDERED that when the director of the treatment facility determines the defendant's competency is restored, the director shall immediately send a report to the Court as prescribed in Subsection D of §19.2-169.1. The Court shall then make a ruling on the defendant's competency according to the procedures specified in Subsection E of §19.2-169.1.

It is ORDERED that the defendant remains under the jurisdiction of the Court and shall not be released from custody and inpatient hospitalization without further order of this Court.

ENTER: This 26th day of June, 2015.

Judge

Endorsement of Counsel is dispensed with – Rule 1:13

ENTY-FIRST
IAL CIRCUIT
VIRGINIA

A Cop
Teste Ashby P. Pritchett, Clerk
By. , Deputy Clerk

II. Sample Competency Restoration Order #2

ORDER FOR TREATMENT OF INCOMPETENT DEFENDANT
Commonwealth of Virginia VA. CODE §§ 19.2-169.2, 19.2-169.3

Case No. 1

2
COURT NAME AND ADDRESS

Commonwealth of Virginia v. 3

The Court having found, pursuant to Virginia Code § 19.2-169.1(E), that the Defendant is incompetent to stand trial, and having found further, based on the attached report or other evidence, that the Defendant can be treated to restore his or her competency

4 [ ] on an outpatient basis in jail or through a local mental health facility
5 [ ] solely on an inpatient basis in a hospital

the Court therefore ORDERS

[ ] .....
NAME OF OUTPATIENT THERAPIST OR FACILITY

6 [ ] qualified staff at a hospital to be designated by the Commissioner of Behavioral Health and Developmental Services or his or her designee

to treat the Defendant in an effort to restore him to competency.

If, at any time after treatment commences, 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 concerning (1) the defendant's capacity to understand the proceedings against him and (2) the defendant's ability to assist his attorney.

If, at any time after treatment commences, 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 and indicating whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent.

7 [ ] *Defendant charged with a misdemeanor crime enumerated in Virginia Code § 19.2-169.3(C).* If the defendant has not been restored to competency after forty-five (45) days from the date of commencement of treatment, the director of the community services board or 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.

If the defendant has not been restored to competency by six (6) months from the date of the commencement of treatment, the board, authority, or inpatient facility director or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to Virginia Code § 37.2-806 in the event he is found to be unrestorably incompetent.

8
DATE

9
JUDGE

WARNING TO DEFENDANT: PURSUANT TO § 18.2-308.1:3, YOU SHALL NOT PURCHASE, POSSESS, OR TRANSPORT A FIREARM UNLESS AND UNTIL YOU ARE RELEASED FROM TREATMENT AND OBTAIN A COURT ORDER RESTORING YOUR RIGHT TO DO SO.

FORM DC-345 MASTER 07/09

Section 5:

Providing Restoration Services to the Defendant

Virginia Department of Behavioral Health & Developmental Services

PROVIDING RESTORATION SERVICES TO THE DEFENDANT

Note to the restoration counselor: The following nine areas are presented in a sequential order that may be helpful to follow when providing restoration training with the defendant. Each of these nine areas is written in language designed for training the defendant.

I. EXPLAINING THE PURPOSE OF RESTORATION SERVICES

You are here because you have been accused of breaking the law. You have already been arrested and have an attorney. You are waiting to go back to court with your attorney who will help to defend you. Soon after you were arrested, you may remember going before the judge. At that time, it was recommended that you be evaluated to determine whether you understood the charges against you and what could happen to you if you are convicted of these charges. The results of the evaluation showed that you needed help in learning more about the court process in order to help your attorney. We will spend our time trying to teach you things that you will need to know to help your attorney in court.

NOTE to the restoration counselor: After you have provided an explanation for the defendant and established rapport, it might be helpful to administer the pre-test provided in the previous chapter.

II. EXPLAINING LEGAL RIGHTS

Even though you have been arrested, you still have many rights. The United States Constitution grants these rights to you. Violations of your Constitutional rights can be appealed up to the U.S. Supreme Court. It is important to know your rights so that you can protect yourself when necessary. These rights include the following:

- You have the right to remain silent when you are arrested and afterwards. This means that you do not have to answer questions or explain anything unless you have your attorney present.
- You have the right to an attorney. If you cannot afford one, the Court will appoint an attorney for you. Work with your attorney and don't make their job harder by trying to handle your legal affairs on your own.
- You have the right to face your accuser. You should know who has accused you of the crime and the accuser will be at the trial. You have the right to ask your accuser questions through your attorney.

- You have the right to be present at your trial. You cannot be tried unless you are in the courtroom. If you cannot behave appropriately in the courtroom, the Judge may order that you be restrained.

- You have the right to a public trial. Anyone can come to your trial, including the press. This right is to protect you from the court doing anything unfair to you behind closed doors.

- You have the right to a jury trial. This means that 12 people must be selected that do not know you or anything about you and should decide about your charges fairly.

- You have the right to a speedy trial. When you were referred for restoration services, your trial was put on hold. Your defense attorney knows the rules about speedy trials.

- You have the right to know why you were arrested.

- You have the right to understand the possible pleas.

- You have the right to know what sentence that you could be given if you are convicted.

  It is important to know your rights and to ask questions if you are unsure about your rights. Tell me what some of your rights are.

III. EXPLAINING CHARGES, PENALTIES, AND EVIDENCE

NOTE: The restoration counselor should pay close attention to paranoid thinking that interferes with the defendant's ability to effectively communicate with their attorney.

You have been charged with a crime because a law enforcement officer reported that you broke a law. It is important that you understand the charges against you. You will hear about your charges many times. The Judge will tell you the formal name of your charges in Court and will read the brief legal description of your charges.

You need to know 1) the formal name of your charges, 2) the brief legal description of your charges, and 3) what they say you did that caused you to receive these charges. Even though you may not agree with the charges, you need to know what they are and the seriousness of your charges. You need to be able to describe your charge to your attorney in a clear, coherent manner.

There are 2 types of charges:

- Felony – This is a crime that is considered serious and can result in a long prison sentence and/or a large fine, e.g., more than $1000 fine and more than 1 year in prison.

- Misdemeanor – This is a crime that is not as serious as a felony and can result in a shorter jail sentence, smaller fine, or another less serious consequence, e.g., up to a $1000 fine and/or up to a year in jail.

Judges have guidelines for penalties (length of jail/prison time, fines, etc.) when you are found guilty of the charges. Although the Judge does not have to stay within these guidelines, he/she usually does. Your attorney can tell you what the penalty guidelines are for your charges.

It is also important that you understand how much evidence there is against you. You may make a different decision about whether you will plead guilty or not guilty depending on the evidence against you. Some of the evidence comes from the *Criminal Complaint*, which gives a brief description from a police officer or other witness. Also, ask your attorney to review the police report and any witness statements with you if they are available.

In summary, do you know the following?

1. What is the formal name(s) of your charge(s)?
2. Can you briefly describe your charge(s)?
3. What did the police or witness say that you did that caused you to receive these charge(s)?
4. Is your charge a felony or misdemeanor?
5. What evidence is likely to be presented against you?
6. What questions do you need to ask your attorney?

IV. EXPLAINING PLEAS AND PLEA BARGAINS

PLEAS: A plea is the answer you (and your lawyer) give to the charges made against you. There are four different ways to plead: guilty, not guilty, no contest, or not guilty by reason of insanity.

- Not Guilty**:** A plea of not guilty means you say that you did not do the crime. When you plead not guilty, you go to trial and have evidence presented against you and for you. You retain all your legal rights.

- Guilty**:** A plea of guilty means that you admit to doing the crime. You will have the conviction on your record if you plead guilty. You give up certain rights such as the right to a trial and the right to confront witnesses in court.

- No Contest**:** A plea of no contest (Nolo Contendere) means you say there is evidence you did the crime, but you are not admitting you did it. In other words, you are not fighting the charge, and you will take whatever sentence the court gives you and not ask for a trial. You give up some rights in order to get a speedy decision and a lighter sentence, which you will know about and agree to ahead of time. The outcome for you is

similar to a plea bargain except you have a no contest plea instead of a guilty plea to the crime(s) on your record.

- Not Guilty by Reason of Insanity**:** A plea of Not Guilty by Reason of Insanity means that you admit you did the crime, but you are asking that you not be put in jail and not be held criminally responsible because you have mental retardation or were mentally ill at the time.

  You are telling the court that at the time of the crime your mental illness or mental retardation caused you to act in a way that you didn't understand was wrong. This plea cannot be forced upon you. You and your attorney must decide together if this is how you want to defend yourself. In admitting you did the crime, you must admit you were mentally ill or have mental retardation.

  A psychiatrist or psychologist will have to examine you and will tell the court about your crime and your mental illness or mental retardation. If the Judge or jury believes that, due to your mental illness or mental retardation, you did not know that your behavior was wrong, you could be found not guilty by reason of insanity. If you are found not guilty by reason of insanity, you will be sent to a state psychiatric hospital for an indeterminate period of time. If the Judge or jury believes you understood that your behavior was wrong, you will be found guilty of the charge(s).

Plea Bargain: A plea bargain is when your lawyer, the Commonwealth's Attorney (prosecutor) and the Judge allow you to plead guilty to a less serious charge. The Judge and Commonwealth's Attorney avoid the time and expense of a trial. In exchange, you will usually get a lighter sentence. You must agree to a plea bargain and the Judge must approve it. People usually take a plea bargain because they believe the Commonwealth's Attorney has enough evidence to convict them (be found guilty) in court. You may accept a plea bargain because:

1. You might get a lighter sentence;
2. You might have some of the charges dropped; or,
3. It takes away some of the uncertainty about what will happen to you.

If you take a plea bargain, you give up your rights to a trial and to appeal the conviction. Thus, you don't get to tell your side or challenge the people who might speak against you. You return to court to hear the Judge sentence you (e.g., jail time, fines, probation, etc).

Questions for Pleas and Plea Bargains (Correct answer has an asterisk)

1. When you plead guilty, you give up your right to a trial.

   True* False

2. Pleading No Contest means you are going to fight the charges.

True False*

3. List the four pleas you can make to a charge in court.

   a. Guilty
   b. Not guilty
   c. No contest
   d. Not guilty by reason of insanity

4. Which plea will guarantee me I will not serve any time?

   a. Guilty
   b. Not Guilty
   c. No Contest
   d. Not Guilty by Reason of Insanity
   e. None of the above*

5. Which pleas will result in a trial?

   a. Guilty
   b. Not Guilty
   c. No Contest
   d. Not Guilty by Reason of Insanity
   e. 2 and 4*

6. If you accept a plea bargain, who has to agree to the deal?

   a. Judge
   b. Commonwealth's Attorney (prosecutor)
   c. Your attorney
   d. You (defendant)
   e. All of the above*

7. What might you gain by accepting a plea bargain?

   a. All charges are dropped
   b. A shorter sentence
   c. Less serious charges
   d. Number 2 and 3 *

8. What right do you not give up in a plea bargain?

   a. Right to a trial
   b. Right to an attorney*
   c. Right to appeal the conviction
   d. Right to confront your accusers

V. EXPLAINING CRIMINAL PENALTIES & PLEA OUTCOMES

CRIMINAL PENALTIES: It is very important to understand all the possible criminal penalties. They are listed below:

Jail or Prison: You could be locked up in a jail or prison. Whether you serve your sentence in a jail or in a prison depends on the seriousness of the crime (e.g., felony or misdemeanor), the length of your sentence and your criminal history.

If you are found guilty of a misdemeanor, a less serious crime, it can result in jail sentence ranging from one day to twelve months.

If you are found guilty of a felony, a more serious crime, it can result in a prison sentence ranging from one year to life.

Suspended sentence: A suspended sentence is a jail sentence that the Judge gives you, but, instead of actually spending your time in jail, you can serve that amount of time on probation. If you successfully complete probation, then your charge will be dismissed. However, if you do not successfully complete probation, then you will be required to serve any remaining time on your sentence in jail. For example, if you get a six month suspended sentence for assault, you will have to serve six months in jail if you don't follow all the rules of probation. You could go to jail if the probation officer tells the Judge you are not following the rules.

Probation: This means you don't have to go to jail, but you must live by some rules decided by the Judge. You must meet regularly (usually either weekly or monthly) with a probation officer who will make sure you follow the rules that the Court gave you. Typical rules of probation include things like: 1) no drug or alcohol use; 2) comply with mental health and/or substance abuse treatment; 3) taking all medicine prescribed by your doctor; and 4) living in a certain place or with certain people. You may remain on probation for the entire time you would otherwise have had to serve in jail.

Treatment: Mental health and/or substance abuse treatment may be ordered by the Judge as part of your sentence.

You may be required to participate in counseling and possibly to take medication if you are found guilty. Treatment could occur in jail or prison and/or as part of probation when you return home. Treatment is usually a part of the probation rules. You give up some of your rights to privacy (confidentiality) about your treatment, because your therapist must tell the probation officer and/or Judge about how often you come to treatment and if they believe the treatment is helping you.

If you are found not guilty by reason of insanity, you will be sent to a state psychiatric hospital for treatment. You do not go home. At the state hospital, staff will treat your mental illness or mental retardation. You cannot go home until the Judge agrees that you will be safe. The length of treatment could last from several months to many years.

PLEA OUTCOMES: It is very important to understand all the pleas and their possible outcomes. They are listed below:

❖ If you plead **Not Guilty**, you go to trial and exercise all your legal rights.

These are the possible outcomes of the trial:

- Found not guilty – sent home
- Found guilty – the conviction goes on your record and you are sentenced to:
  - Jail – for a misdemeanor (1 day to 12 months)
  - Prison – for a felony (1 year to life)
  - Probation – for all or part of the time sentenced to jail or prison

❖ If you plead **Guilty**, you don't have a trial and you give up some rights. You just get sentenced and the conviction goes on your record. People often plead guilty as part of a PLEA BARGAIN. These are the possible outcomes of pleading guilty:
- Sentenced to Jail for a misdemeanor (1 day to 12 months)
- Sentenced to Prison for a felony (1 year to life)
- Given Probation – for all or part of the time sentenced to jail or prison

❖ If you plead **Not Guilty by Reason of Insanity**, you go to trial and you can be found Guilty *or* Not Guilty by Reason of Insanity.

a. If you are found guilty, you can be sentenced to:
   - Jail (as above)
   - Prison (as above)
   - Probation (as above)

b. If you are found Not Guilty by Reason of Insanity, you are sentenced to treatment at a state psychiatric hospital. You cannot leave until your Judge says you are safe. The amount of time you spend in the hospital may be longer than if you were convicted of the crime. You may remain in court ordered and supervised treatment (like probation) even after you leave the hospital. This supervised treatment is called conditional release. The Judge determines the length of time that you spend in the hospital and on conditional release.

Questions for Criminal Penalties & Plea Outcomes (Correct answer has an asterisk)

1. If you plead not guilty, which of the following might happen in court?

   a. You are found not guilty
   b. You are found guilty and sentenced to jail
   c. You are found guilty and placed on probation
   d. All of the above*

2. If you are found Not Guilty by Reason of Insanity, it means:

a. You knew what you were doing
b. The judge lets you go home
c. You have mental illness or mental retardation and did not know that your behavior was wrong*
d. The judge believed there was not enough evidence to convict you

3. If you plead Not Guilty by Reason of Insanity, which of the following Outcomes are possible?

a. Found guilty and go to jail
b. Found not guilty by reason of insanity and sent to a hospital
c. Found not guilty and sent home
d. Found not guilty by reason of insanity and sent home
e. 1 and 2*

4. What charge could result in the longest sentence?

a. Misdemeanor
b. Felony*

5. What are the possible penalties if you are found guilty of your charge?

6. You would serve a six-month sentence in prison.

True False*

7. What might the judge do if you stop going to therapy when therapy is part of your probation?

a. Put me in jail*
b. The judge wouldn't care because I would tell the judge I'm better.
c. The judge wouldn't know because my therapy is confidential (private).
d. The judge would find me a better therapist

VI. EXPLAINING COURTROOM PERSONNEL

It is important that you understand the roles of the different people in the legal process and in the courtroom. Several people are needed in a trial. Their titles and descriptions of their role in the trial process are listed below:

Defendant: You are the defendant. You have been accused of a crime and your situation will be the focus of the court proceedings.

Judge: The Judge's job is to make sure that the rules (of law) are followed so that the trial is fair. The Judge will decide what evidence is allowed and what testimony the witnesses can provide. The Judge sits in an elevated area at the front of the courtroom, which is a symbol of authority. If there is no jury, the Judge decides whether a person is guilty or not guilty. A Judge decides the sentence for a person who has been found guilty.

There are two types of attorneys in the courtroom. The two attorneys have opposing goals.

Defense attorney: The defense attorney is for you; this is your attorney. Your attorney's job is to get you the best possible outcome in your criminal case. Your attorney will talk with you about the crime and will look for witnesses and evidence that support your case. Your attorney cannot tell anyone else what you say (this is called attorney-client privilege). If you cannot afford an attorney, the Court will provide a Court-appointed attorney or a Public Defender, who is an attorney paid for by the Commonwealth.

Commonwealth's Attorney: The Commonwealth's Attorney (prosecutor) is against you. This means that he/she is trying to convict you of the crime with which you have been charged. The Commonwealth's Attorney works with law enforcement officers to present evidence against you in order to show that you committed the crime.

Jury: If you decide to have a jury trial, a group of twelve impartial people from the community will listen to your case throughout the trial. At the end of the trial, the jurors will decide if you are guilty or not guilty. Their decision must be unanimous for you to be found guilty. They may also be asked to provide a recommendation for punishment if you are found guilty.

Witness: Witnesses have information related to the crime. They are subpoenaed to Court, sworn to tell the truth, and seated on the witness stand during the court proceedings. The witnesses cannot make any statements; they can only answer the questions that the attorneys ask them. They may have statements that support the Commonwealth Attorney's case or they may have statements that support your case. Witnesses provide testimony (sworn statements under oath) and both attorneys ask them questions in order to clarify the information they are providing.

Bailiff (also known as Court Security): A bailiff or court security officer is a law enforcement officer who stands near the front of the courtroom and assures that there is

order in the courtroom. The bailiff may introduce the judge, keep people quiet, and bring you from the jail to the courtroom.

Court clerk and Court Stenographer: These persons assist the trial process by swearing in witnesses and recording all that is said during the legal proceedings.

Questions for Courtroom Personnel:

1. Who is the defendant?
2. What is the job of the Judge?
3. What is the job of the jury?
4. What is the job of a witness?
5. How is the role of the Commonwealth's Attorney different from the Defense Attorney?

There is a diagram at the end of this chapter for the defendant. The defendant should be able to (1) explain where each of the courtroom personnel sits in the courtroom and (2) explain the role of each of the courtroom personnel.

VII. ASSISTING YOUR DEFENSE ATTORNEY

Your defense attorney is supposed to defend you against the charges. You should know some of the defensive strategies a defense attorney may use outside as well as inside the courtroom and what you could do to assist your defense attorney in developing your defense. This includes knowing what to tell your attorney and how your appearance and behavior can help or hurt your case.

Your defense attorney (or lawyer) is a person trained to assist people with legal problems and represents you before the court. In order to practice law, an attorney usually spends four years in college, three years in law school and must pass the bar examination. The bar examination is a test of a person's knowledge of law and it is very difficult.

Who is the Defense Attorney? The Defense Attorney is your attorney. A court-appointed attorney (sometimes called a Public Defender) is assigned if you cannot afford an attorney. Your attorney is on your side whether you are innocent or guilty. Your attorney is supposed to explain to you all the things that can happen to you and explain to you all of your possible choices. Your attorney is also supposed to answer all of your questions about what is happening in court. Your attorney is getting paid to give you legal advice.

What is Legal Advice? When an attorney gives you advice about your case, they are sharing all the experiences gained in their years of legal study and training, as well as knowledge gained from searching the law books about the laws affecting your legal problem. Your attorney has the training and resources you do not so it is to your advantage to listen to what your attorney says. Your attorney should also tell you what the best thing

would be for you to do if you have any choices or what you should tell the judge. Besides telling you what your best choices are, your attorney should explain why a certain choice is the best one. For example, your attorney will advise you about how you should plead, whether you should have a trial by a jury or Judge and whether or not you should testify. Of course, what you decide to do after you listen to your attorney's advice is up to you.

What is your attorney's responsibility? Your attorney has two main responsibilities:

- The first is to protect your rights by making sure everything that happens before and during your trial is legal. For example, your attorney will make sure that no one takes advantage of you by doing things like trying to make you talk without a attorney present or by allowing the Commonwealth's Attorney (prosecution) to say things about you in court that are not true.

  Before you go to court, your attorney will try to help you by asking the Judge to release you from jail on bail or on bond until your trial. Your attorney will try to get information about the evidence the Commonwealth Attorney has against you. Your attorney may also try to get the Commonwealth Attorney to agree to a plea bargain.

- The second job of your attorney is to plan an effective defense strategy in order to defend you against the crime(s) you're charged with. There are several ways your attorney does this:

  - Your attorney will try to show the Judge and the jury that you are not guilty of the charge(s) against you. Your attorney does this by cross-examining the Commonwealth's witnesses and trying to find holes in their story or bringing out evidence from a witness that can help you.

  - Your attorney can also call new witnesses that the Commonwealth Attorney didn't call and ask questions to show anything that might help you. There are three kinds of witnesses your attorney might call:
    - A character witness is someone who will tell the Judge about the kind of person you are.
    - An expert witness is someone who will tell the court what kind of help you need or give the Judge and jury specific information about a particular aspect of your case.
    - A material/fact witness is someone who will testify about facts of your case. For example, a fact witness might be someone who knew you weren't present when the crime happened.

  - If you are found guilty, your attorney's job is to try to get you as little a sentence (time) or punishment as possible. Your attorney may do this by talking to the Commonwealth Attorney about a plea bargain. Your attorney will also try to convince the Judge to go light on you (i.e., to give you the least amount of time possible.)

What is your role as the defendant? Your role as the defendant is to cooperate with your attorney and help your attorney defend you against the charges. There are several ways you can help your attorney defend you.

- When you are in the courtroom (unless you are on the witness stand testifying), your attorney will speak for you. If you want something said in the courtroom, quietly tell your attorney and let your attorney say it for you.

- Since your attorney's job is to plan a defense strategy, it is very important that you talk to your attorney. You should tell your attorney the whole truth so they can decide the best way to defend you. What you tell your attorney is confidential. Your attorney cannot tell anyone else what you tell him or her. What you say to your attorney can't be used against you. If you don't tell your attorney the truth, your attorney may decide to use a defense strategy that hurts rather than helps you. For example, Joe lies and tells his attorney that he's not guilty of breaking and entering and that he was nowhere near the scene of the crime. During the trial, the Commonwealth Attorney shows evidence that Joe's fingerprints and footprint were found at the scene of the crime. Because Joe didn't tell his attorney he was there, his attorney has no defense prepared (i.e., no way to show that Joe's fingerprints and footprint were there for another reason). Because of this evidence, Joe will probably be convicted and will go to prison.

- Be sure to tell your attorney everything that happened that led up to you being arrested. Try to remember everything you can. Try to remember if there were any witnesses.

Questions for Assisting your Defense Attorney:

1. Who is your defense attorney?
2. What do you think of your defense attorney?
3. What is the job of your defense attorney?
4. Why is a criminal trial called an adversarial proceeding?
5. Does a defendant have to testify?
6. What is the role of the defendant? How does the defendant help their attorney?

VIII. EXPLAINING THE TRIAL PROCESS

The criminal proceedings follow a specific order.

Arraignment: Arraignment is a court appearance where you hear the charge and are asked whether you will enter a plea of guilty or not guilty to that charge. If you refuse to enter a plea, the court will enter a not guilty plea for you and order your case to go to trial.

Pre-trial hearings: Your defense attorney may make certain motions or requests, such as a mental health evaluation. You decide, with assistance of your attorney, whether you want to go to trial or accept a plea bargain.

Trial by jury: You are entitled to a trial by jury if you have been charged with any crime that could result in a jail or prison sentence and you are entering a plea of not guilty. If you, the Commonwealth's Attorney and the Judge agree, you may choose to have a non-jury trial where the Judge hears and decides your case (sometimes called a bench trial).

Jury selection: The Constitution of the United States allows an accused person the right to a speedy and public trial by an impartial jury. You may choose a trial by Judge instead of a trial by jury. Trial jurors are selected from a list called the jury panel. The jurors are questioned and then approved by the Judge. Then the defense attorney and the Commonwealth's Attorney can question each juror and sometimes excuse a juror from serving.

Opening statements: The Commonwealth's Attorney has to prove you are guilty beyond a reasonable doubt. The Commonwealth's Attorney makes the first opening statement where he/she explain to the jury how they plan to prove their case against you. Then your defense attorney makes an opening statement.

Commonwealth's presentation of evidence: The Commonwealth's Attorney presents the evidence against you by calling witnesses and by introducing physical evidence. Witness testimony is the statements a witness makes when they are sworn under oath to tell the truth. The witness can only answer the questions asked by the attorneys and must testify only about what they saw or heard. A witness cannot testify to something someone else told them and cannot give a conclusion. If a witness tries to do this, the opposing attorney will object. Following direct testimony, which is brought out by the attorney who called the witness, the opposing attorney questions the witness; this is called cross-examination.

Defense presentation of evidence: After the Commonwealth's Attorney presents their case, your attorney will then call witnesses and present your evidence. Your witnesses also are subject to cross-examination from the Commonwealth's Attorney. You are not required to testify.

Closing arguments and instructions: After all the evidence is presented, the Commonwealth's Attorney presents the first argument in closing the case. Then your defense attorney gives your arguments. The Commonwealth has the option to make a final

rebuttal argument. After the closing arguments, the Judge gives the jury instruction on the law as it relates to your case.

Verdict: The jury reaches a verdict (decision) about whether you are guilty or not guilty. The verdict must be unanimous among all jurors. The jury also may make a recommendation about punishment. The Judge decides the final verdict.

Sentence: If you are found guilty, the Judge will decide your sentence. Your sentence could include jail or prison time, a suspended sentence, probation, etc. Probation allows you to leave jail or prison but requires you to report to a probation officer and follow the rules of probation.

Appeal: You have the right to request an appeal of your verdict or sentence, but your request must be made soon after your conviction.

Questions for Proceedings of a Trial:

1. What does testimony mean?
2. Who gives testimony?
3. What does cross-examination mean?
4. What does verdict mean?
5. Who decides the verdict?

IX. APPROPRIATE COURTROOM BEHAVIOR

When you go to court, the way you look and act is important and could affect the impression you give the Judge and the jury. You will help your attorney defend you by dressing in clean, neat clothing. You can help your attorney defend you by behaving respectfully in court. Some of the ways you show respect for the court are:

- When the Judge enters the courtroom, the bailiff will announce that the Judge is about to enter and will ask everyone to rise. You, along with everyone else in the room, will stand up and remain standing until the Judge sits down and tells you to sit down.
- You must never speak out unless the Judge asks you to speak. You should stand or sit when your attorney tells you.
- If you are confused, have a question, or don't understand what's going on, whisper your question to your attorney or write a note and quietly give it to your attorney.
- You may not chew gum.

- You should only speak if you are asked a question. If you are asked a question, answer ONLY the questions asked of you. **Do not try to add any other information**. If you want to say something, you should tell your attorney and let your attorney talk for you.

- You must not speak too loudly, yell, get angry or curse in the courtroom. If you do, you may be held in contempt of court and taken out of the room. The Judge can also impose a sentence (i.e., fine you or give you more time in jail).

- If you become upset and feel you can't remain quiet, you should tell your attorney that you need a break.

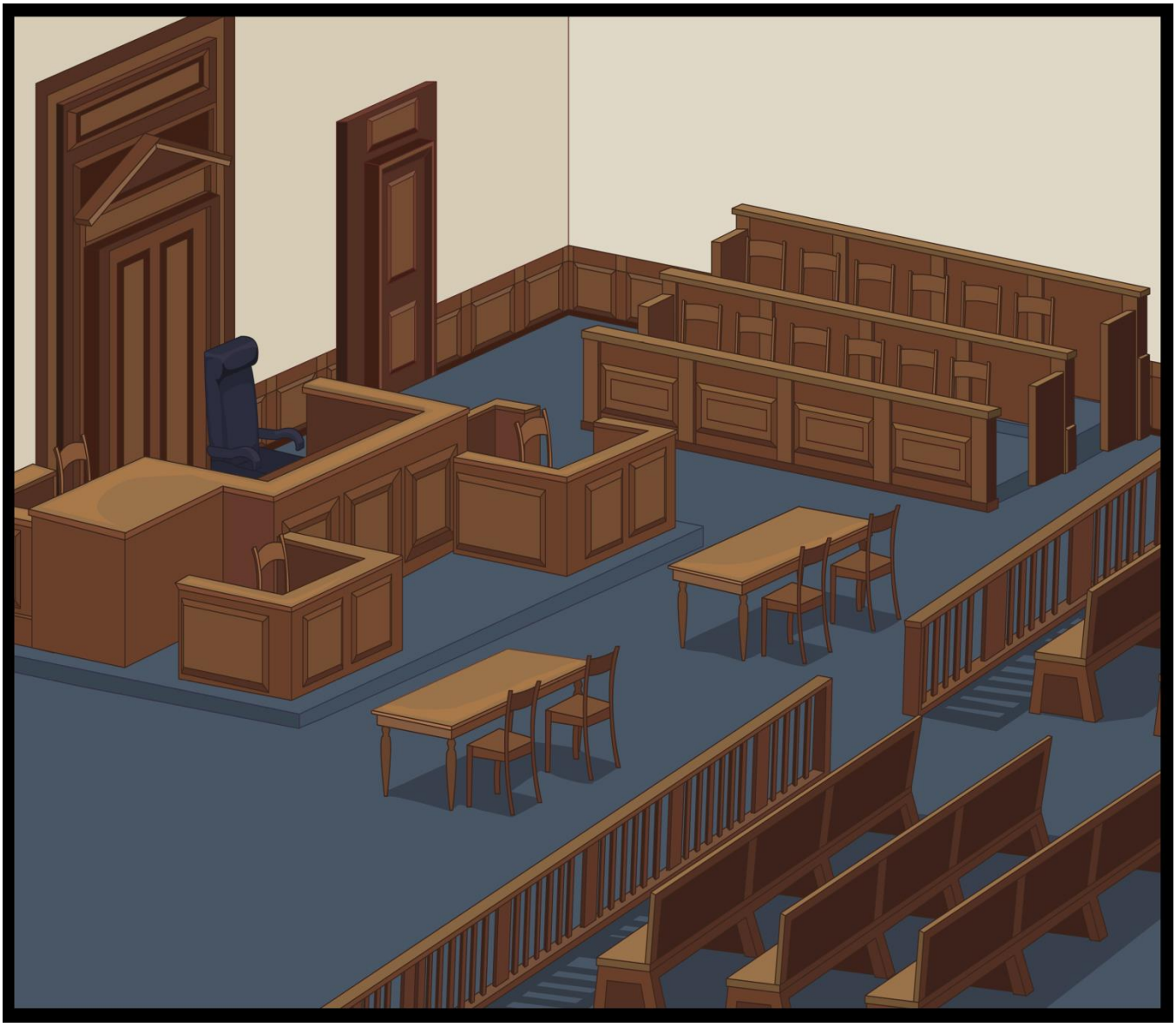
- You should listen and pay careful attention to what is being said so you understand what is happening and can help your attorney. If you don't understand something, you should ask your attorney to explain it.

- If one of the witnesses says something about you that is not true, you should let your attorney know.

Questions for Appropriate Courtroom Behavior:

1. Is it important for the defendant to dress nicely?
2. Can the defendant speak directly to the judge during the trial?
3. How are people in the courtroom supposed to behave?
4. What do you do if you become upset in the courtroom?
5. What do you do when a witness tells a lie about you?

X. COURTROOM DIAGRAM



Section 6:

When is Restoration Over & What's Next?

Virginia Department of Behavioral Health & Developmental Services

WHEN IS RESTORATION OVER & NEXT STEPS

I. RESTORATION COUNSELOR

- Give a post-test to the defendant. See the post-test at the end of this chapter. This post-test should be administered with the understanding that it includes the required elements for competency. The required elements for competency are summarized below:
  - Defendant's understanding of the seriousness of the charges and likely consequences
  - Defendant's ability to participate in the trial and ability to understand the court proceedings
  - Defendant's ability to assist his attorney
  - Defendant's ability to maintain the dignity of the courtroom

- Review and assess the following:
  - Review initial competency evaluation and any follow-up competency evaluations (if appropriate) for statements regarding defendant's previous inabilities or problem areas
  - Assess whether defendant has made any progress in those areas
  - Assess whether defendant might make any additional progress in those areas

- Ask yourself the following questions:
  - Do you believe the defendant's symptoms will improve with further treatment or are they at their optimal level of functioning?
  - Is there evidence of a learning curve or has the defendant reached their learning plateau?
  - Are the clinical problems contributing to the defendant's incompetence such that they are not likely to improve (e.g. mental retardation) or possibly worsen over time (e.g. dementia)?

- Discuss defendant's progress with your supervisor. Keep the following outcomes and time frames in mind throughout the process:
  - The defendant is competent. Tell your supervisor as soon as this determination is made.
  - The defendant is likely to remain incompetent for the foreseeable future. Tell your supervisor as soon as this determination is made.

- The defendant is incompetent but restorable to competency in the foreseeable future. Tell your supervisor one (1) month prior to the expiration of the restoration court order.
- If the defendant is charged with certain targeted misdemeanor offenses and is under a 45 day restoration order, tell your supervisor about the short time frame. The possible outcomes remain the same as above – competent, incompetent for the foreseeable future or incompetent but restorable in the foreseeable future.
- NOTE: Do not repeat any statements of the defendant about the time period of the offense.

II. RESTORATION COORDINATOR

❖ Notify the CSB/BHA Executive Director (or designee) of the restoration counselor's recommendations at the appropriate time in order to obtain a follow-up competency evaluation (often called a restoration outcome evaluation) in a timely manner.

❖ The appropriate time could be at any time after the initiation of restoration services if the defendant appears competent or incompetent for the foreseeable future. If the defendant is incompetent but restorable in the foreseeable future, the CSB/BHA Executive Director (or designee) should be notified at least one (1) month in advance of the expiration of the current restoration court order.

❖ The CSB/BHA Executive Director (or designee) should be notified upon initiation of restoration services for the defendant with targeted misdemeanor charges under a 45 day restoration order.

III. CSB/BHA EXECUTIVE DIRECTOR OR DESIGNEE

❖ The CSB/BHA Executive Director (or designee) should arrange for follow-up competency evaluation (often called a restoration outcome evaluation) to be performed by a forensically trained evaluator for all restoration court orders and outcomes. See #4 on the previous page and #5 above. According to § 19.2-169.1D, the evaluator's report should address (1) the defendant's capacity to understand the proceedings against him; (2) the defendant's ability to assist his attorney; and (3) the defendant's need for treatment in the event he is found incompetent. The CSB/BHA Executive

Director (or designee) may consider contacting the original competency evaluator to perform this follow-up competency evaluation.

- The CSB/BHA Executive Director (or designee) is responsible for reporting back to the court within the appropriate time frame. The report to the court should be addressed to the judge and copied to the attorneys of record. The report should include a cover letter stating the competency evaluation findings (with a copy of the competency evaluation attached) and the CSB/BHA recommendations. A summary of the findings and recommendations are listed below:
  - The defendant is competent. Continued restoration services are not necessary. (See § 19.2-169.2B for reference)
  - The defendant is incompetent but restorable in the foreseeable future; continued restoration services and other mental health treatment are recommended. (See § 19.2-169.3B for reference)
  - The defendant is likely to remain incompetent for the foreseeable future. The CSB/BHA should review the recommendations detailed in § 19.2-169.3A. Some of these Code recommendations, however, are more hospital-based in nature, e.g., civil commitment and certification. Because restoration services were ordered in the community, the court is probably interested in community-based treatment recommendations that would include risk reduction strategies.
  - For the defendant with targeted misdemeanor charges and a 45 day restoration order, the findings can be any of the those listed above. The CSB/BHA should review the recommendations detailed in § 19.2-169.3C. Some of these Code recommendations, however, are more hospital-based in nature, e.g., release, civil commitment and certification. Because restoration services were ordered in the community, the court is probably interested in community-based treatment recommendations that would include risk reduction strategies.
  - An exception to the points above occurs in the cases of defendants who are opined to be unrestorable on sexually violent charges, as defined in § 37.2-900. The Code of Virginia § 19.2-169.3 (E) provides that such individuals "shall be reviewed for commitment pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2." The court will order that the defendant be held in the custody of the Department of Behavioral Health and Developmental Services "for secure confinement and treatment."

- For each restoration court order received, the CSB/BHA Executive Director will need to arrange for restoration services to be provided and then report back to the court in the same manner described in #6 and #7 on the previous page.

IV. POST-TEST

- Assess the defendant's understanding of the seriousness of the charges and likely consequences, including pleas and plea bargains. Can the defendant sufficiently explain the following?

    - Formal name of charge(s)
    - Ability to describe the events surrounding the incident(s) that led to his/her arrest and being charged with the offense.
    - Type of charge(s) involved – felony and/or misdemeanor
    - If convicted, what are the likely consequences (e.g., jail or prison sentence, probation, etc.)?

- Assess the defendant's ability to describe the role of trial participants and the proceedings, including the adversarial nature of the proceedings. Can the defendant sufficiently explain the following?

- Role of the participants in the trial:
    - What is the role of the judge? (Defendant should be able to explain that the judge makes decisions in courtroom, should be fair/neutral and decides guilt or innocence if it's a bench trial)
    - What is the role of the defense attorney? (Defendant should be able to explain that the defense attorney is "on the side" of the defendant and tries to get him/her off or the least possible sentence)
    - What is the role of the Commonwealth's attorney? (Defendant should be able to explain that the Commonwealth's attorney is "against" the defendant and will try to get him/her convicted)
    - What is the role of jury? (Defendant should be able to explain that the jury decides whether the defendant is guilty or not guilty)
    - What is a witness? (Defendant should be able to explain that a witness is someone who tells the court what they know)

- Description of the trial proceedings:
    - The defendant should be able to explain available pleas
    - The defendant should be able to describe direct testimony and cross examination
    - The defendant should be able to describe possible penalties for a guilty verdict

- ❖ Assess the defendant's ability to work collaboratively with and assist their attorney. Can the defendant sufficiently explain the following?
    - Can the defendant tell a complete and accurate story about the incident and the charges to their attorney?
    - Can the defendant explain when an attorney would be doing a "good" job? (Defendant should be able to explain that the attorney would listen to the defendant, explain things to the defendant, and/or relay that this attorney defended an acquaintance and "got them off")
    - Can the defendant describe how "strong" the case is against the defendant? (Defendant should be able to describe the evidence that is available and if that makes it a "strong" or "weak" case)
    - Can the defendant describe how the attorney and the defendant would decide to take a plea bargain? (The defendant should be able to explain the concept of "the stronger the case, the more attractive a plea bargain should be".)
    - Can the defendant describe an effective working relationship with his attorney?
    - Is there any evidence of paranoid delusions or other clinical symptoms that may interfere with the defendant's ability to assist their attorney?

- ❖ Assess the defendant's ability for appropriate behavior in the courtroom. Can the defendant sufficiently and accurately describe the following?
    - How are you supposed to dress in the courtroom? (Defendant should be able to explain that clothing should be neat and that the defendant should be clean)
    - How are you supposed to behave in the courtroom? (Defendant should be able to explain that they should be quiet unless spoken to by the judge or on the witness stand and remain in their seat)
    - What do you do when a witness is on the stand and says something that is not true? (Defendant should be able to explain that they should write a note to their attorney or quietly whisper to the attorney)
    - What do you do when you do not understand what is going on in the courtroom? (Defendant should be able to explain that they should write a note to their attorney or quietly whisper to the attorney)
    - What will happen if you "act out" in the courtroom? (Defendant should be able to explain that they will "get in trouble" and could be held in contempt, get extra jail time, be put in restraints, etc.)
    - When is it ok to talk in the courtroom? (Defendant should be able to explain that they should be quiet unless spoken to by the judge or called to the witness stand)

Section 7:

Letters to the Court

Virginia Department of Behavioral Health & Developmental Services

SAMPLE LETTERS TO THE COURT

SAMPLE LETTER #1 – Defendant is competent to stand trial

[date]

The Honorable _____
_____ Court
_____
_____, VA _____

Re: _____
Case #: _____

Dear Judge _____:

The above captioned defendant has been receiving treatment to restore his competency to stand trial pursuant to your order, dated _____. Enclosed you will find an evaluation of competency to stand trial in accordance with requirements of Section 19.2-169.2 of the Code of Virginia, as amended. The evaluator, _____ , has opined that the defendant is now competent to stand trial. Based upon our work with the defendant, we agree with this finding.

I hope that this information is sufficient for the court to proceed with a hearing. Should you have any questions or concerns in this matter, please feel free to contact me at (phone number).

Sincerely,

_____, Executive Director (or designee)
_____ CSB/BHA

ATTACHMENT (Outcome Competency Evaluation)

cc: _____, Commonwealth's Attorney
_____, Defense Attorney

SAMPLE LETTER #2 – Defendant is incompetent to stand trial at the present time, but restorable in the foreseeable future

[date]

The Honorable _____
_____ Court
_____
_____, VA _____

Re: _____
Case #: _____

Dear Judge _____:

The above captioned defendant has been receiving treatment to restore his competency to stand trial pursuant to your §19.2-169.2 order, dated _____. Enclosed you will find an evaluation of competency to stand trial in accordance with requirements of §19.2-169.2, as amended. The evaluator, _____, has opined that the defendant remains incompetent to stand trial at this time, but may be restorable in the near future. We agree with this finding and recommend that outpatient restoration services be continued. A model order for (continued) treatment of an incompetent defendant is enclosed for your convenience.

I hope that this information is sufficient for the court to proceed with a hearing. Should you have any questions or concerns in this matter, please feel free to contact me at (phone number).

Respectfully,

_____, Executive Director (or designee)
_____ CSB/BHA

ATTACHMENTS (2)
Outcome Competency Evaluation
Model court order for restoration services, §19.2-169.2

cc: _____, Commonwealth's Attorney
_____, Defense Attorney

SAMPLE LETTER #3 – Defendant is incompetent to stand trial for the foreseeable future (Unrestorable)

(Date)

The Honorable _____
_____ Court
_____
_____, VA _____

Re: _____
Case #: _____

Dear Judge _____:

The above captioned defendant has been receiving treatment to restore his competency to stand trial pursuant to your §19.2-169.2 order, dated _____. .

Mr./ Ms. _____ continues to not understand the nature and consequences of the proceedings against him/her and continues to be unable to assist his attorney in his/her own defense. In our opinion, he/she remains incompetent to stand trial and will remain incompetent for the foreseeable future. Enclosed you will find an evaluation of competency to stand trial in accordance with requirements of §19.2-169.2, as amended. The evaluator, _____, has opined that (insert evaluator's opinion).

Our recommendation is that Mr./ Ms. _____ does not appear to meet the criteria for commitment pursuant to §§ 37.2-814, 37.2-900 or 37.2-806. Should the defendant be released, community services are available (clarify what is available) to the defendant. I hope that this information is sufficient for the court to proceed with a hearing. Should you have any questions or concerns in this matter, please feel free to contact me at (phone number).

Sincerely,

_____, Executive Director (or designee)
_____ CSB/BHA

ATTACHMENT (Outcome Competency Evaluation)

cc: _____, Commonwealth's Attorney
_____, Defense Attorney

SAMPLE LETTER #4 – Defendant is Unrestorable and had been charged with a sexually violent offense(s) as defined in § 37.2-900

(Date)

The Honorable _____
_____ Court
_____
_____, VA _____

Re: _____
Case #: _____

Dear Judge _____:

The above captioned defendant has been receiving treatment to restore his competency to stand trial pursuant to your §19.2-169.2 order, dated _____.

Mr./ Ms. _____ continues to not understand the nature and consequences of the proceedings against him/her and continues to be unable to assist his attorney in his/her own defense. In our opinion, he/she remains incompetent to stand trial and will remain incompetent for the foreseeable future. Enclosed you will find an evaluation of competency to stand trial in accordance with requirements of §19.2-169.2, as amended. The evaluator, _____, has opined that (insert evaluator's opinion).

Our recommendation is that Mr./ Ms. _____ does not appear to meet the criteria for commitment pursuant to §§ 37.2-814, 37.2-900 or 37.2-806. Should the defendant be released, community services are available (clarify what is available) to the defendant. I hope that this information is sufficient for the court to proceed with a hearing.

It is our understanding Mr. / Ms. _____ has been charged with a sexually violent offense, as defined in § 37.2-900. §19.2-169.3 states that he shall be screened pursuant to the procedures set forth in §§ 37.2-903 and 37.2-904.

Should you have any questions or concerns in this matter, please feel free to contact me at (phone number).

Sincerely,

_____, Executive Director (or designee)
_____ CSB/BHA

ATTACHMENT (Outcome Competency Evaluation)

cc: _____, Commonwealth's Attorney
_____, Defense Attorney

SAMPLE LETTER #5 – Defendant was too psychiatrically unstable for Outpatient Restoration. Restoration services were not initiated, therefore no outcome evaluation is required.

[date]

The Honorable _____
_____ Court
_____
_____, VA _____

Re: _____
Case #: _____

Dear Judge _____:

In a court order dated _____, you ordered Mr./ Ms. _____ to received treatment in an attempt to restore his/her competency to stand trial pursuant to Virginia Code § 19.2-169.2. Upon receipt of the court order, I conducted an initial assessment of Mr./ Ms. _____. During the course of my initial assessment it became clear Mr./Ms. _____ is currently too psychiatrically impaired to receive outpatient competency restoration services.

This paragraph should describe the specific conditions that made them psychiatrically unsuitable for outpatient restoration. Some examples are: Mr./ Ms. _____ is evidencing significant symptoms of psychosis to include _____, _____, and _____. Mr./ Ms. _____ refused to be evaluated by _____ CSB's psychiatrist for a medication consultation. Mr./Ms. _____ indicated he/ she would not voluntarily consent to taking prescribed medications.

As a result of his/her current mental status and his/her unwillingness to receive psychiatric services, it is my professional opinion Mr./Ms. _____ is not an appropriate candidate for outpatient competency restoration services. My recommendation is that the Court amend the current court order and order Mr./ Ms. _____ to receive competency restoration services on an inpatient basis at a DBHDS hospital. If you have any questions, please call me at (phone number).

Sincerely,

_____, Executive Director (or designee)
_____ CSB/BHA

ATTACHMENT: Model order for restoration pursuant to § 19.2-169.2

cc: _____ , Commonwealth's Attorney
_____, Defense Attorney

SAMPLE LETTER #6 – Defendant was initially able to participate in Outpatient Restoration but mental status deteriorated & is no longer appropriate. Needs Inpatient Restoration. Because restoration services started, an outcome competency evaluation is required.

[date]

The Honorable _____
_____ Court
_____
_____, VA _____

Re: _____
Case #: _____

Dear Judge _____:

In a court order dated _____, you ordered Mr./ Ms. _____ to received treatment in an attempt to restore his/her competency to stand trial pursuant to Virginia Code § 19.2-169.2. Upon receipt of the court order, I conducted an initial assessment of Mr./ Ms. _____ and began providing restoration services. Over time, Mr./ Ms. _____'s mental status began to deteriorate.

This paragraph should describe the specific conditions that led to your recommendation. For example: Mr./ Ms. _____ began evidencing significant symptoms of psychosis to include _____, _____, and _____. Mr./ Ms. _____ refused to be evaluated by _____ CSB's psychiatrist for a medication consultation (or: Despite agreeing to receive psychiatric services, Mr./ Ms. _____'s condition did not improve).

As a result of his/her current mental status and our inability to fully stabilize his/her condition on an outpatient basis, it is my professional opinion Mr./Ms. _____ is no longer an appropriate candidate for outpatient competency restoration services. Dr. _____ provided an outcome evaluation and agrees with this recommendation for inpatient restoration. Please see their evaluation attached.

I recommend the Court amend the current court order and order Mr./ Ms. _____ to receive competency restoration services on an inpatient basis at a DBHDS hospital. If you have any questions, please call me at (phone number).

Sincerely,

_____, Executive Director (or designee)
_____ CSB/BHA

ATTACHMENT (Outcome Competency Evaluation)

cc: _____, Commonwealth's Attorney
_____, Defense Attorney

SAMPLE LETTER # 7 – Unable to Find Defendant or Defendant Refuses to Cooperate, therefore unable to Initiate Restoration Services

[date]

The Honorable _____
_____ Court
_____
_____, VA _____

Re: _____
Case #: _____

Dear Judge _____:

In a court order dated _____, you ordered Mr./Ms. _____ to received treatment in an attempt to restore his/her competency to stand trial pursuant to Virginia Code § 19.2-169.2. Upon receipt of the court order, I attempted to communicate with Mr./ Ms. _____ at the address/phone number provided. I have (*sent letter/left phone message*) but Mr./Ms. _____ has not responded (or *has refused to cooperate, if that is the issue*). I have spoken with Mr./Ms. _____'s attorney to enlist his/her help to locate (or *engage, if the issue is defendant cooperation*) Mr./Ms. _____ to no avail. At this point in time, I am unable to initiate competency restoration services with Mr./Ms. _____.

If the court is able to address Mr./Ms. _____'s non-compliance with the court's order, the _____ CSB/BHA would be willing to reinitiate restoration efforts should we receive further instruction from the court. At this point in time, we are unable to proceed.
If you have any questions, please feel free to contact me at (phone number).

Sincerely,

_____, Executive Director (or designee)
_____ CSB/BHA

cc: _____ , Attorney for the Commonwealth
_____ , Attorney for the Defense

SAMPLE LETTER #8 – Initially able to participate in O-P restoration but too symptomatic for outcome evaluation - URIST.

[date]

The Honorable _____
_____ Court
_____
_____, VA _____

Re: _____
Case #: _____

Dear Judge _____:

In a court order dated _____, you ordered Mr./ Ms. _____ to received treatment in an attempt to restore his/her competency to stand trial pursuant to Virginia Code § 19.2-169.2. Upon receipt of the court order, I conducted an initial assessment of Mr./ Ms. _____ and began providing restoration services.

Mr./ Ms. _____ continues to not understand the nature and consequences of the proceedings against him/her and continues to be unable to assist his/her attorney in his/her own defense. In our opinion, he/she remains incompetent to stand trial and will remain incompetent for the foreseeable future. However, as a result of Mr./ Ms. _____'s significant symptoms of psychosis to include _____, _____, and _____, she has been unable to complete the outcome competency evaluation despite repeated attempts to schedule.

As a result of his/her current mental status and our inability to obtain an outcome competency evaluation, we have concluded restoration services. Our recommendation is that Mr./ Ms. _____ does not appear to meet the criteria for commitment pursuant to §§ 37.2-814, 37.2-900 or 37.2-806. Should the defendant be released, community services are available *(clarify what is available)* to the defendant. I hope that this information is sufficient for the court to proceed with a hearing. Should you have any questions or concerns in this matter, please feel free to contact me at (phone number).

Sincerely,

_____, Executive Director (or designee)
_____ CSB/BHA

ATTACHMENT (Outcome Competency Evaluation)
cc: _____, Commonwealth's Attorney
_____, Defense Attorney

Section 8:

Relevant Virginia Code Sections

Virginia Department of Behavioral Health & Developmental Services

RELEVANT CODE SECTIONS

Code of Virginia
Title 19.2. Criminal Procedure
Chapter 11. Proceedings on Question of Insanity

§ 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 the court specifically finds that outpatient evaluation services are unavailable or unless the results of outpatient evaluation indicate that hospitalization of the defendant for evaluation on competency is necessary. If the court finds that hospitalization is necessary, the court, under authority of this subsection, may order the defendant sent to a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for evaluations of persons under criminal charge. The defendant shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the defendant's competency, but not to exceed 30 days from the date of admission to the hospital.

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 is recommended. 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.

1982, c. 653; 1983, c. 373; 1985, c. 307; 2003, c. 735;2007, c. 781;2009, cc. 813, 840;2014, cc. 329, 739;2016, c. 445.

§ 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. 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.

1982, c. 653; 2003, c. 735;2007, c. 781;2008, cc. 751, 788;2009, cc. 813, 840;2014, cc. 373, 408.

§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; capital 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 capital 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 capital murder, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the capital murder case may order that the defendant receive continued treatment under subsection A of § 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period, (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.

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

1982, c. 653; 1999, cc. 946, 985;2003, cc. 915, 919, 989, cls. 4, 5, 1018, cls. 4, 5, 1042, cls. 10, 11; 2006, cc. 863, 914;2007, cc. 781, 876;2008, cc. 406, 796;2009, cc. 813, 840;2012, cc. 668, 800.

§ 37.2-806. Judicial certification of eligibility for admission of persons with intellectual disability

A. Whenever a person alleged to have intellectual disability is not capable of requesting admission to a training center pursuant to § 37.2-805, a parent or guardian of the person or another responsible person may initiate a proceeding to certify the person's eligibility for admission pursuant to this section.

B. Prior to initiating the proceeding, the parent or guardian or other responsible person seeking the person's admission shall first obtain (i) a preadmission screening report that recommends admission to a training center from the community services board or behavioral health authority that serves the city or county where the person who is alleged to have intellectual disability resides and (ii) the approval of the training center to which it is proposed that the person be admitted. The Board shall adopt regulations establishing the procedure and standards for the issuance of such approval. These regulations may include provision for the observation and evaluation of the person in a training center for a period not to exceed 48 hours. No person alleged to have intellectual disability who is the subject of a proceeding under this section shall be detained on that account pending the hearing except for observation and evaluation pursuant to the provisions of this subsection.

C. Upon the filing of a petition in any city or county alleging that the person has intellectual disability, is in need of training or habilitation, and has been approved for admission pursuant to subsection B, a proceeding to certify the person's eligibility for admission to the training center may be commenced. The petition shall be filed with any district court or special justice. A copy of the petition shall be personally served on the person named in the petition, his attorney, and his guardian or conservator. Prior to any hearing under this section, the judge or special justice shall appoint an attorney to represent the person. However, the person shall not be precluded from employing counsel of his choosing and at his expense.

D. The person who is the subject of the hearing shall be allowed sufficient opportunity to prepare his defense, obtain independent evaluations and expert opinion at his own expense, and summons other witnesses. He shall be present at any hearing held under this section, unless his attorney waives his right to be present and the judge or special justice is satisfied by a clear showing and after personal observation that the person's attendance would subject him to substantial risk of physical or emotional injury or would be so disruptive as to prevent the
Hearing from taking place.

E. Notwithstanding the above, the judge or special justice shall summons either a physician or a clinical psychologist who is licensed in Virginia and is qualified in the assessment of persons with intellectual disability or a person designated by the local community services board or behavioral health authority who meets the qualifications established by the Board. The

physician, clinical psychologist, or community services board or behavioral health authority designee may be the one who assessed the person pursuant to subsection B. The judge or special justice also shall summons other witnesses when so requested by the person or his attorney. The physician, clinical psychologist, or community services board or behavioral health authority designee shall certify that he has personally assessed the person and has probable cause to believe that the person (i) does or does not have intellectual disability, (ii) is or is not eligible for a less restrictive service, and (iii) is or is not in need of training or habilitation in a training center. The judge or special justice may accept written certification of a finding of a physician, clinical psychologist, or community services board or behavioral health authority designee, provided such assessment has been personally made within the preceding 30 days and there is no objection to the acceptance of the written certification by the person or his attorney.

F. If the judge or special justice, having observed the person and having obtained the necessary positive certification and other relevant evidence, specifically finds that (i) the person is not capable of requesting his own admission, (ii) the training center has approved the proposed admission pursuant to subsection B, (iii) there is no less restrictive alternative to training center admission, consistent with the best interests of the person who is the subject of the proceeding, and (iv) the person has intellectual disability and is in need of training or habilitation in a training center, the judge or special justice shall by written order certify that the person is eligible for admission to a training center.

G. Certification of eligibility for admission hereunder shall not be construed as a judicial commitment for involuntary admission of the person but shall authorize the parent or guardian or other responsible person to admit the person to a training center and shall authorize the training center to accept the person.

1976, c. 493, § 37.1-65.1; 1979, c. 204; 1980, c. 582; 1984, c. 425; 2005, c. 716;2012, cc. 476, 507.

§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to counsel; rights of petitioner

A. The commitment hearing for involuntary admission shall be held after a sufficient period of time has passed to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809;however, if the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

B. At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an opportunity for voluntary admission. The district court judge or special justice shall advise the person whose involuntary admission is being sought that if the person chooses to be voluntarily admitted pursuant to § 37.2-805, such person will be prohibited from possessing, purchasing, or transporting a firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then willing and c apable of seeking voluntary admission for inpatient treatment. In determining whether a person is capable of consenting to voluntary admission, the judge or special justice may consider evidence regarding the person's past compliance or noncompliance with treatment. If the judge or special justice finds that the person is capable and willingly accepts voluntary admission for inpatient treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a community services board as provided in § 37.2-805.

C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge or special justice shall inform the person of his right to a commitment hearing and right to counsel. The judge or special justice shall ascertain if the person whose admission is sought is represented by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel, the judge or special justice shall give him a reasonable opportunity to employ counsel at his own expense.

D. A written explanation of the involuntary admission process and the statutory protections associated with the process shall be given to the person, and its contents shall be explained by an attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the person whose involuntary admission is sought has been given the written explanation required herein.

E. To the extent possible, during or before the commitment hearing, the attorney for the person whose involuntary admission is sought shall interview his client, the petitioner, the examiner described in § 37.2-815, the community services board staff, and any other material witnesses. He also shall examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. A health care provider shall disclose or make available all such reports, treatment information, and records concerning his client to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

F. The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

1976, c. 671, § 37.1-67.3; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636; 1992, c. 752; 1994, cc. 736, 907;1995, cc. 489, 668, 844;1996, cc. 343, 893;1997, cc. 558, 921;1998, c. 446;2001, cc. 478, 479, 507, 658, 837;2004, cc. 66, 1014;2005, c. 716;2008, cc. 751, 788, 850, 870;2009, c. 647 ;2014, cc. 499, 538, 691.

Code of Virginia
Title 37.2. Behavioral Health and Developmental Services
Chapter 9. Civil Commitment of Sexually Violent Predators

§ 37.2-900. Definitions

As used in this chapter, unless the context requires a different meaning:

"Commissioner" means the Commissioner of Behavioral Health and Developmental Services. "Defendant" means any person charged with a sexually violent offense who is deemed to be an unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred for commitment review pursuant to this chapter.
"Department" means the Department of Behavioral Health and Developmental Services.
"Director" means the Director of the Department of Corrections.

"Mental abnormality" or "personality disorder" means a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others.

"Respondent" means the person who is subject of a petition filed under this chapter.

"Sexually violent offense" means a felony under (i) former § 18-54, former § 18.1-44, subdivision 5 of § 18.2-31, § 18.2-61, 18.2-67.1, or 18.2-67.2;(ii) § 18.2-48 (ii), 18.2-48 (iii), 18.2-63, 18.2-64.1 , or 18.2-67.3;(iii) subdivision 1 of § 18.2-31 where the abduction was committed with intent to defile the victim; (iv) § 18.2-32 when the killing was in the commission of, or attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration; (v) the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior is set forth in § 18.2-67.1 or 18.2-67.2, or is set forth in § 18.2-67.3;or (vi) conspiracy to commit or attempt to commit any of the above offenses.

"Sexually violent predator" means any person who (i) has been convicted of a sexually violent offense, or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial pursuant to § 19.2-169.3;and (ii) because of a mental abnormality or personality disorder, finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts.

1999, cc. 946, 985, § 37.1-70.1; 2001, c. 776;2003, cc. 989, 1018;2005, cc. 716, 914;2006, cc. 863, 914;2007, c. 876;2009, cc. 740, 813, 840.

§ 37.2-904. CRC assessment of prisoners or defendants eligible for commitment as sexually violent predators; mental health examination; recommendation

A. Within 180 days of receiving from the Director the name of a prisoner or defendant who has been assessed by the Director pursuant to § 37.2-903, the CRC shall (i) complete its assessment of the prisoner or defendant for possible commitment pursuant to subsection B and (ii) forward its written recommendation regarding the prisoner or defendant to the Attorney General pursuant to subsection C.

B. CRC assessments of eligible prisoners or defendants shall include a mental health examination, including a personal interview, of the prisoner or defendant by a licensed psychiatrist or a licensed clinical psychologist who is designated by the Commissioner, skilled in the diagnosis and risk assessment of sex offenders, knowledgeable about the treatment of sex offenders, and not a member of the CRC. If the prisoner's or defendant's name was forwarded to the CRC based upon an evaluation by a licensed psychiatrist or licensed clinical psychologist, a different licensed psychiatrist or licensed clinical psychologist shall perform the examination for the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner or defendant is a sexually violent predator, as defined in § 37.2-900, and forward the results of this evaluation and any supporting documents to the CRC for its review.

The CRC assessment may be based on:

An actuarial evaluation, clinical evaluation, or any other information or evaluation determined by the CRC to be relevant, including but not limited to a review of (i) the prisoner's or defendant's institutional history and treatment record, if any; (ii) his criminal background; and (iii) any other factor that is relevant to the determination of whether he is a sexually violent predator.

C. Following the examination and review conducted pursuant to subsection B, the CRC shall recommend that the prisoner or defendant (i) be committed as a sexually violent predator pursuant to this chapter; (ii) not be committed, but be placed in a conditional release program as a less restrictive alternative; or (iii) not be committed because he does not meet the definition of a sexually violent predator. To assist the Attorney General in his review, the Department of Corrections, the CRC, and the psychiatrist or psychologist who conducts the mental health examination pursuant to this section shall provide the Attorney General with all evaluation reports, prisoner records, criminal records, medical files, and any other documentation relevant to determining whether a prisoner or defendant is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC may recommend that a prisoner or defendant enter a conditional release program if it finds that (i) he does not need inpatient treatment, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he would need inpatient treatment; (ii) appropriate

outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that, if conditionally released, he would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety.

E. Notwithstanding any other provision of law, any mental health professional employed or appointed pursuant to subsection B or § 37.2-907 shall be permitted to copy and possess any presentence or postsentence reports and victim impact statements. The mental health professional shall not disseminate the contents of the reports or the actual reports to any person or entity and shall only utilize the reports for use in examinations, creating reports, and testifying in any proceedings pursuant to this article.

F. If the CRC deems it necessary to have the services of additional experts in order to complete its review of the prisoner or defendant, the Commissioner shall appoint such qualified experts as are needed.

1999, cc. 946, 985, § 37.1-70.5; 2001, c. 776;2003, cc. 989, 1018;2004, c. 764;2005, cc. 716, 914; 2006, cc. 863, 914;2007, c. 876;2009, c. 740;2011, c. 42;2012, cc. 668, 800.

§ 37.2-903. Database of prisoners convicted of sexually violent offenses; maintained by Department of Corrections; notice of pending release to CRC

A. The Director shall establish and maintain a database of each prisoner in his custody who is (i) incarcerated for a sexually violent offense or (ii) serving or will serve concurrent or consecutive time for another offense in addition to time for a sexually violent offense. The database shall include the following information regarding each prisoner: (a) the prisoner's criminal record and (b) the prisoner's sentences and scheduled date of release. A prisoner who is serving or will serve concurrent or consecutive time for other offenses in addition to his time for a sexually violent offense shall remain in the database until such time as he is released from the custody or supervision of the Department of Corrections or Virginia Parole Board for all of his charges. Prior to the initial assessment of a prisoner under subsection C, the Director shall order a national criminal history records check to be conducted on the prisoner.

B. Each month, the Director shall review the database and identify all such prisoners who are scheduled for release from prison within 10 months from the date of such review or have been referred to the Director by the Virginia Parole Board under rules adopted by the Board (i) who receive a score of five or more on the Static-99 or a similar score on a comparable, scientifically validated instrument designated by the Commissioner, (ii) who receive a score of four on the Static-99 or a similar score on a comparable, scientifically validated instrument if the sexually violent offense mandating the prisoner's evaluation under this section was a violation of § 18.2-61, 18.2-67.1, 18.2-67.2, or 18.2-67.3 where the victim was under the age of 13, or (iii) whose records reflect such aggravating circumstances that the Director determines the offender appears to meet the definition of a sexually violent predator. The Director may exclude from referral prisoners who are so incapacitated by a permanent and debilitating medical condition or a terminal illness so as to represent no threat to public safety.

C. If the Director and the Commissioner agree that no specific scientifically validated instrument exists to measure the risk assessment of a prisoner, the prisoner may instead be screened by a licensed psychiatrist, licensed clinical psychologist, or a licensed mental health professional certified by the Board of Psychology as a sex offender treatment provider pursuant to § 54.1-3600 for an initial determination of whether or not the prisoner may meet the definition of a sexually violent predator.

D. The Commissioner shall forward to the Director the records of all defendants who have been charged with a sexually violent offense and found unrestorably incompetent to stand trial, and ordered to be screened pursuant to § 19.2-169.3. The Director, applying the procedure identified in subsection B, shall identify those defendants who shall be referred to the CRC for assessment.

E. Upon the identification of such prisoners and defendants screened pursuant to subsections B, C, and D, the Director shall forward their names, their scheduled dates of release, court orders finding the defendants unrestorably incompetent, and copies of their files to the CRC for assessment.1999, cc. 946, 985, § 37.1-70.4; 2001, c. 776;2003, cc. 989, 1018;2005, cc. 716, 914;2006, cc. 863, 914;2007, c. 876;2009, c. 740;2010, c. 389;2012, cc. 668, 800.

Charges that are Considered Sexually Violent Offenses

18-54	Rape, 1950 Code
18.1-44	Rape, 1950 Code
18.2-31 (5)	Capital Murder with sexual assault
18.2-61	Rape
18.2-67.1	Forcible Sodomy
18.2-67.2	Object Sexual Penetration
18.2-48 (ii)	Abduction with sexual intent
18.2-48 (iii)	Abduction of a child <16 with intent for concubinage or prostitution
18.2-63	Carnal Knowledge of child 13 to 15
18.2-64.1	Carnal Knowledge of minor in care by caregiver
18.2-67.3	Aggravated Sexual Battery
18.2-31 (1)	Capital Murder in commission of abduction with intent to defile
18.2-32	1st or 2nd degree murder when present with intent to rape, forcible sodomy or inanimate or animate object sexual penetration
	With conspiracy or attempt to commit or attempt any of the above offenses
	Forcible sexual offense committed prior to July 1, 1981 that constitutes forcible sodomy, object sexual penetration or aggravated sexual battery

Section 9:

Tools and Resources Summary and Supplements

Virginia Department of Behavioral Health & Developmental Services

TOOLS AND RESOURCES SUMMARY & SUPPLEMENTS

During the training you will see demonstrations of the various tools and resources you might use in the provision of restoration services, depending on the skills and deficits of the defendants. Here is a summary of these tools and resources, included in this section and reviewed during the training session:

1. **Competency Restoration Training Powerpoints** - In English, as well informal and formal Spanish translations. You can find links to all of the PowerPoint teaching aids on the DBHDS website at the following link:

   www.dbhds.virginia.gov/forensic-services - once at this page, click the tab for Adult Outpatient Competency Restoration and scroll down to see the various Powerpoints.

2. **Competency Restoration Flash Cards** – Flash cards will be distributed to each participant during the training session. These flash cards can be useful tools in measuring a defendant's level of understanding of the legal process. While DBHDS has distributed English versions of the card, we also have a Spanish translation available for printing on the DBHDS website:

   www.dbhds.virginia.gov/forensic-services - once at this page, click the tab for Adult Outpatient Competency Restoration and scroll down to see the 'Competency Restoration Flash Cards – Spanish Translation.'

3. **"Going to Court: A Motion-Graphic Tool"** – Online video series and accompanying Handbook – A seven-part video series that can be used with defendants to teach the court process. In your binder Section 7, you will see a description of how to access the videos, as well as a printed handbook to accompany the videos. At the end of the printed handbook there is also a Spanish translation of the teaching exercises for each of the seven sessions. You can access all seven videos, as well as a video in which all sections are combined at the following link:

   http://vimeo.com/album/2821215 - Then enter password: ILPPP1. Please note that these videos and the link are not to be shared with individuals outside of the CSB and/or DBHDS.

4. **Laminated Courtroom Graphic Tool** – In your binder you will see a laminated graphic of a courtroom. This tool can be used in combination with the videos above or alone. You can test defendants' understanding of the courtroom and the individuals involved in the case through use of this tool.

5. **DJ & Alicia Interactive Video (CD-ROM)** – Each CSB that participates in the training will receive one copy of the DJ & Alicia interactive CD-ROM. A demonstration of this interactive tool during the training will help you better understand how to use the tool with adult defendants. Please also refer to a handout in this section of your binder that described the interactive video and how to use it.

6. **"Going to Court: A Motion-Graphic Tool"**

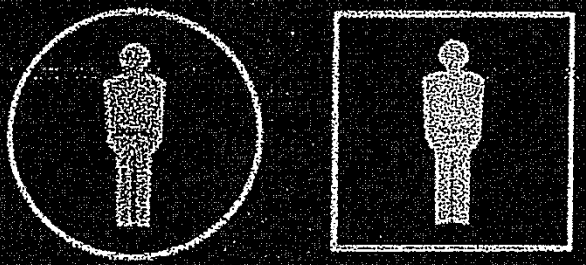
   You can access this video online through Vimeo. Please use the following link and password to access the videos:

   http://vimeo.com/album/2821215

   Password: ILPPP1

Attached you will find lesson plans that you can use with defendants as you watch the individual sections of the motion-graphic tool online. Included is the English version, but a Spanish version is also available upon request. If you are interested in the Spanish lesson plans, contact Sarah Shrum at sarah.shrum@dbhds.virginia.gov.

GOING TO COURT:
A MOTION-GRAPHIC TOOL



You
The Defendant

Your Lawyer
Your Attorney

UNIVERSITY OF VIRGINIA
&
THE DEPARTMENT OF BEHAVIORAL
HEALTH & DEVELOPMENTAL SERVICES

LESSON 1:

UNDERSTANDING YOUR SITUATION

SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 1:

Understanding Your Situation

You are supposed to go to court because you were charged with a crime. That means the police thought you broke the law, and then they arrested you. Maybe you remember being arrested.

In the United States, you cannot be punished just because the police think you did a crime. There has to be proof. A trial is the court's way to figure out if someone did a crime or not.

Trials are supposed to be fair. But in order for you to have a fair trial, you have to understand the court and the charges against you. You also must work with the person who is supposed to help you in court—your lawyer, or defense attorney.

At some point, the Judge decided you were ***not competent.*** This means that the Judge thinks you do not understand your case or cannot help your lawyer defend you. So, the Judge took a "time out" so that you can become competent. To become competent, you will need to participate in treatment and learn more about court. If you learn those things, you will understand your case better, and be able to help your lawyer. This is what we are doing right now.

Lesson 1: *Understanding Your Situation*

Recap: You have been charged with a crime, which is why you are supposed to go to court. However, you cannot be punished just because the police think you broke the law and arrested you. A trial is a way to look at all the evidence and find out if you are guilty or not guilty. You have the right to a fair trial, meaning that you have to understand your charges and courtroom rules and be able to help your lawyer. You are here right now because the judge thinks you are not able to do or understand these things. This is called "*not competent.*" The judge took a "time-out" in your case so that you can learn about the law and court. This is what we are going to do.

Discussion questions about "understanding your situation"

- So why are you here? What is the purpose of what we are doing?
- What is happening with your trial right now?
- Why do you have to go to court?
- What is the right to a fair trial?
    - Do you have the right to a fair trial?
- Can you name a few other rights that you have as a defendant?
- In a fair trial, you have the right to a defense lawyer. Do you have a lawyer? What is your lawyer's name?
- What is the point of a trial?
- During a trial, does the prosecutor have to *prove* that you did the crime for you to be punished?
- What does it mean to be "competent to stand trial?"
- If a defendant is not able to help his lawyer and does not understand the crimes that he is being accused of doing, do you think he is competent to stand trial?
- Why do you think the Judge thinks that you are not ready to go to court?

Background information about "understanding your situation" for Restoration Counselors

In order to be ***competent to stand trial*** in the United States, a defendant must have:

> "Sufficient ***present*** ability to consult with his or her attorney with a *reasonable* degree of *rational* understanding and whether he or she has a rational as well as factual understanding of proceedings against him or her; it is not enough that he or she is oriented to time and place and has some recollection of events." (*Dusky v. United States*, 1960,emphasis added)

In the *Dusky* case, the Supreme Court established three necessities for competency to stand trial: 1) a factual understanding of the proceedings; 2) a rational understanding of the proceedings; and 3) a rational ability to consult with counsel. If a defendant fails to meet any one of these prongs, he is not competent to stand trial. It is important to note that these requirements apply to the defendant's *present ability* and not ability at the time of the offense.

The question of competency can arise at many different points in a case. The Commonwealth of Virginia outlines in 19.2-169.1:

> "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 is qualified by training and experience in forensic evaluation."

If declared incompetent, the defendant must be evaluated and a formal report addressing specific issues must be written by the evaluator. The issues addressed are: 1) capacity to understand the proceedings against him; 2) ability to assist his attorney; and 3) need for treatment if found competent but restorable, or incompetent for the foreseeable future.

Competency restoration is necessary to return to court for a defendant who is deemed incompetent. This restoration could take place in the hospital, jail or community depending on the circumstances, and it is recommended that the initial competency restoration does not last more than 120 days. It is a best practice for the court to commit an individual for restoration no longer than necessary, and not for a period longer than the defendant would have served in a sentence for his/her crime.

Extra resources containing teaching material or videos about "understanding your situation" for Restoration Counselors

http://www.youtube.com/watch?v=CPmxjn_63kA
(9.5 min) Defines competency to stand trial, what constitutes competency, and restoring competency (interview with a forensic psychologist)

http://www.youtube.com/watch?v=FwxwbkP-WK0
(12 min) Mock initial competency hearing

http://www.youtube.com/watch?v=gAkBqJ3DgT4
(11 min) Mock post-restoration competency hearing

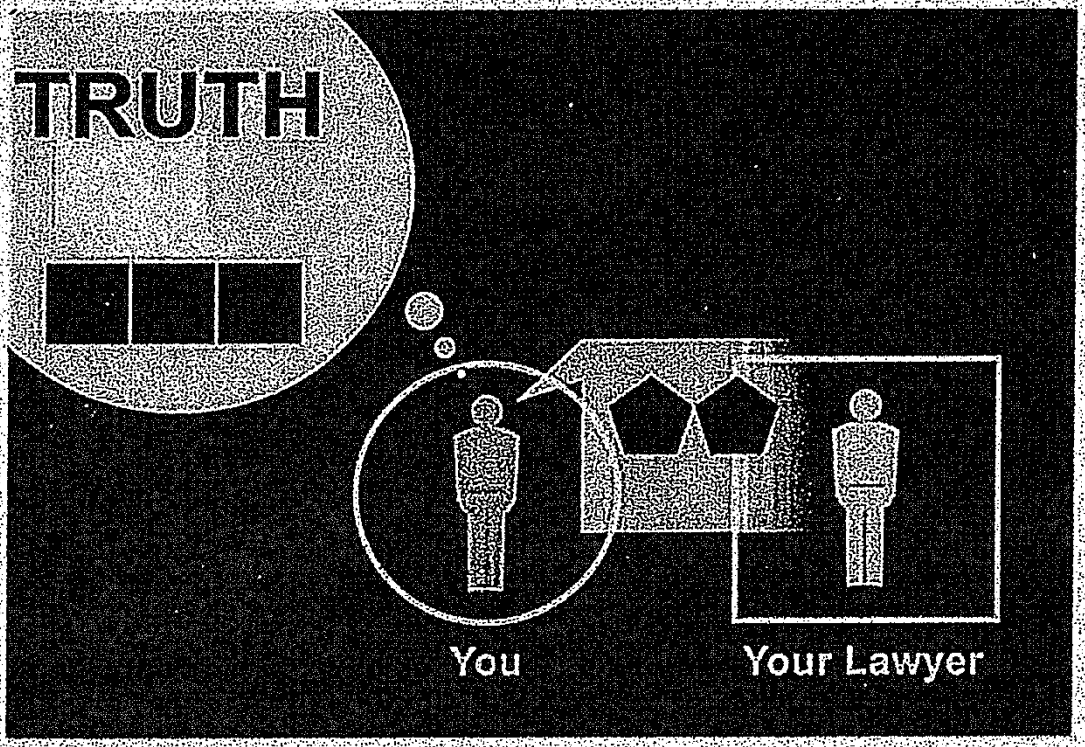
http://www.youtube.com/watch?v=26b0k9NFXIM
(3 min) What is a speedy and impartial trial?

http://www.youtube.com/watch?v=bte7aqCRg10
(8.5 min) A civics teacher briefly walks through a criminal court case, beginning with the crime, and reviews legal terminology

http://www.courts.state.va.us/main.htm
Website for Virginia's Judicial System

LESSON 2:

WORKING WITH YOUR ATTORNEY



SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 2:

Working with Your Attorney

When you are facing criminal charges in the United States, you have certain rights that protect you, and these rights cannot be taken away from you no matter what you have done. Every person who is charged with a crime in the United States has these rights.

One right you have is the right to a lawyer (or defense attorney), even if you cannot pay for one. This *defense attorney* helps you with your charge. This lawyer listens when you tell what happened, looks at what was written about the charge, helps you decide what to do about the charge, explains things you need to know, and answers your questions. Even if the court pays for your lawyer, your lawyer works *only for you* and not the court. So helping your lawyer is one of the most important things you can do to help yourself.

You have a special kind of relationship with your defense attorney, called a *privileged relationship*. This means that *everything* you tell your lawyer is a secret between just the two of you. Your lawyer cannot tell anyone what you say, without your permission. This means that you can tell your attorney *everything* without worrying that what you say will get you in trouble when you go to court.

The best way you can help your lawyer is to tell the truth. Tell your lawyer everything you can about the situation that led to your charges. Lying to your defense attorney or keeping secrets makes it harder for your lawyer to help you.

If you go to trial, your lawyer will work hard to tell your side of the story. If you plead guilty, or if the court decides that you are guilty, your lawyer will try to get you the least punishment possible.

Lesson 2: *Working with Your Lawyer*

Recap: One of the basic rights that you have when you are charged with a crime is to have a lawyer to help you with the legal problems you are facing. Your defense lawyer works only for you and is on your side. A defense lawyer will not tell the judge or the prosecutor what you have told them and will work hard to get you the best sentence possible and possibly to have you be found not guilty. It is important to be truthful with your defense lawyer and to tell them everything you can about what led to you being charged with a crime. This will make it easier for your lawyer to help you.

Discussion questions about your defense lawyer

- Have you ever had a lawyer? If so – why did you have a lawyer? What was that like? Did you feel like you could trust your lawyer?
- Do you have a defense lawyer now?
- Who is your defense lawyer?
- What was your defense lawyer doing the last time you were in the courtroom?
- Do you know how to get in touch with your defense lawyer?
- Have you met with your defense lawyer yet?
    - If you have, what happened when you met with your defense lawyer? What did you talk about?
- Do you trust your defense lawyer? Why? Why not?

Discussion questions about "working with your lawyer"

- Is your defense lawyer trying to help you or is he/she trying to prove that you are guilty?
    - What are some ways that your defense lawyer can help you in court?
- What are some ways that you can help your defense lawyer to defend you in court?
- If your defense lawyer asks you to tell him/her what led to your arrest, what would you do? Would you tell your lawyer? Why is it important to do this?
- Can your defense lawyer tell the judge or the other lawyer what you have said? Why not?
- Is it better to tell your defense lawyer the truth, or is it better to try to convince him that you are not guilty?
- What could happen if you lied to your defense lawyer?
- Can you think of anything that you might *not* want to tell your defense lawyer? Why?
- Let's say you were arrested for a crime that your friend committed. Would it be a good idea to tell your lawyer about your friend? Why?

Background information about criminal defense lawyers for Restoration Counselors

A ***criminal defense lawyer*** specializes in representing individuals who have been charged with criminal conduct. They may be either privately retained or employed by a specific jurisdiction to represent indigent defendants who are financially incapable of hiring a private attorney. These government-employed attorneys are commonly known as ***public defenders.***

In order to become a criminal defense lawyer, an individual must graduate from law school (typically following completion of undergraduate studies) and pass the bar exam. The individual may then represent defendants in criminal court.

Criminal defense lawyers in the United States may be involved in many stages of a client's criminal case and trial process, including issues surrounding the arrest, investigations, charges, sentencing, appeals and issues after the trial.

The lawyer may initiate involvement in a case with review of the criminal charges and facts surrounding the crime and discovery of any constitutional violations. In addition, the lawyer typically assesses possible sentences or sentencing issues that may arise and ensures that all evidence being presented during the trial has been legally acquired.

Extra resources containing teaching material or videos about criminal defense lawyers for Restoration Counselors

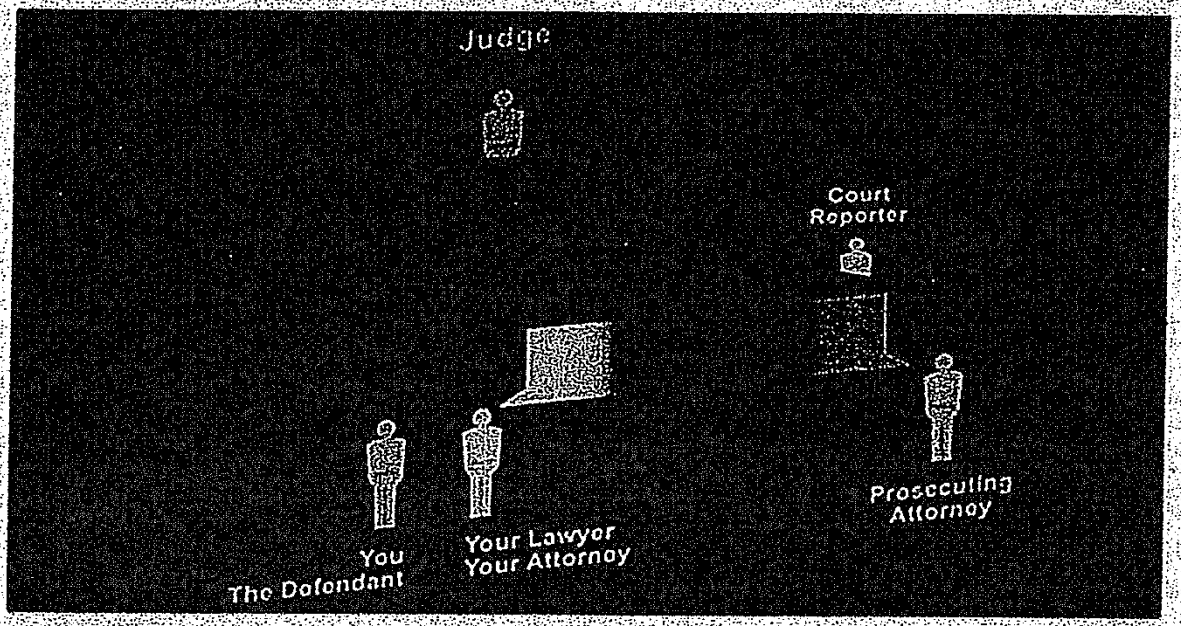
http://www.youtube.com/watch?v=JH-wzxOPitI
(1.5 min) Attorney-client privilege and confidentiality

http://www.youtube.com/watch?v=0pUYawkmD2U
(1.2 min) What is covered under attorney-client privilege; reasons for this privilege

http://www.youtube.com/watch?v=_4C5uWuy7rk&list=PLSAUbOBYUIN9J-iSge0BHDu7HKWepbvUE
(1 min) Criminal defense attorneys and their responsibilities

LESSON 3:

WHO IS IN COURT?



SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 3:

Who Is in Court?

When you go to court, you are called the defendant. The defendant is the person who is charged with breaking the law. There are other important people in court, and each of them has a job.

Two of these people will, basically, be arguing about your case. This is because the United States justice system tries to find the truth by letting two sides argue about whether the defendant really broke the law.

The Defense Attorney

The person arguing *your* side of the case is the defense attorney. The defense attorney is *your* lawyer, who tries to get the best outcome for you. If you go to trial, your lawyer will work hard to present *your* side of the story, and show evidence that helps you. The lawyer *might* convince the court that you are *not* guilty. But if the court *does* decide you are guilty, the lawyer tries to convince the Judge to give you the least punishment. If you chose to plead guilty instead, your lawyer will still try to get you the least punishment possible.

The Prosecutor

The *prosecutor* is the other lawyer in court who argues that you broke the law and should be punished. Usually, the prosecutor will try to convince the court to give you the most punishment possible. In Virginia, the Prosecutor is also called the Commonwealth's Attorney.

The Judge

The Judge is the boss of the courtroom. The Judge sits in the front of the courtroom and listens to everything said about your case. The Judge is *neutral,* just like a referee in a sporting event. The Judge is not for you or against you. If your lawyer and the prosecutor argue about the law, or the rules of the trial, the Judge will decide who is right. It is the Judge's job to make the decisions in court.

Usually, the Judge will make the final decision about whether you are guilty or not guilty. When the Judge makes the final decision, it is called a *bench trial.* If the Judge says you are guilty, he or she will also determine your punishment.

The Jury

Sometimes a jury, not a Judge, decides whether the defendant is guilty or not guilty. This is called a *jury trial.*

The jury is group of twelve men or women who have been asked to listen to your case and decide if you broke the law and should be punished, or did not break the law and can go home. They are supposed to be neutral and not take anyone's side. Their job is to listen very carefully to all the evidence and *then* decide if you are guilty or not guilty. The evidence they listen to could be from witnesses, who are people who saw or heard something, or the evidence could be things like photos or fingerprints.

Other People in the Courtroom

There are a few other people in court, who are less important to your case. For example, every courtroom has a bailiff, who looks like a police officer. The bailiff is in charge of safety and makes sure that no one disrupts the trial.

There is also the court reporter who sits near the Judge and types everything that is said during your trial, so that there is a record of what happened.

Lesson 3: *Who is in Court?*

Recap: When you go to court, you are called the defendant, the person charged with a crime. The United States justice system is *adversarial,* which means that it tries to find the truth by letting two sides argue about whether the defendant is really guilty of a crime. The person arguing your side of the case is your defense lawyer. The lawyer arguing on the other side of the case, against you, is the prosecutor, and he is trying to prove that you are guilty of your charges. The Judge is the boss of the courtroom, makes sure everyone follows the rules, and sometimes will make the final decision about whether you are guilty or not. Sometimes a jury – twelve neutral people who listen to all the evidence – will decide if you are guilty or not guilty.

Discussion questions about "who is in court"

- Is this the first time you have been in a courtroom? If not, talk about the other times you have been in a courtroom.
    - Have you ever seen courts on television?
    - Who was in the courtroom and what did they do?
- There are always at least two lawyers in court during a trial. Who are they? Why are there at least *two* lawyers?
- When you do go to court, which of the lawyers is trying to prove that you are guilty for a crime? Who is trying to show that you are not guilty?
    - Which lawyer is more likely to be telling the police officers' side of the story?
    - Which lawyer is more likely to be telling your (the defendant's) side of the story?
- Is the prosecutor on your side or against you?
- Who has the bigger job? Does the prosecutor have to prove that you are guilty or does your lawyer have to prove that you are innocent?
- Let's pretend that someone has committed a crime, and this person is now in the courtroom for the trial. How will the prosecutor try to prove that the person is guilty? What will they show to the court?
- What is the Judge supposed to do in court?
- Whose side is the Judge on?
- How is the Judge different from the prosecutor and your defense lawyer?
- What is the job of the jury, if there is a jury?

Discussion questions about "who is in court," in your trial

- Does the prosecutor – the lawyer on the other side – think you are guilty?
    - What is the prosecutor trying to do?
- At the beginning of your trial, does the Judge think you are guilty?
- What about the jury? On the very first day of your trial as you walk into the courtroom, will the jury think you are innocent or guilty?
    - When does the jury decide if you are innocent or guilty?
- Whose advice should you listen to carefully?
- Do you think the judge in your trial will be fair?
- Do you believe that the jury will listen carefully and try to make the best decision about whether you are guilty or not guilty?

- How does the jury decide if you are guilty or not guilty?
- Is there any reason why you think that you will not get a fair trial?
- What concerns do you have about the people involved in your trial? Why?

Background information about "courtroom personnel" for Restoration Counselors

The ***judge*** must ensure that the trial is orderly and is conducted according to certain rules and laws addressing jury selection, arguments made by lawyers, permissible evidence and its presentation, instructing the jury, and determining the verdict. It is the judge's responsibility to educate jurors about which issue of fact they must decide, laws that are relevant to the case, and the responsibilities they hold as jurors.

Prosecutors are lawyers who are usually elected locally by the public and are responsible for attempting to prove criminal defendants guilty. Because a defendant is deemed "innocent until proven guilty," prosecutors bear the burden of working against the court's presumption of innocence to prove the offense and dismantle the defense.

"Beyond a reasonable doubt" is considered the highest standard of proof, and thus usually only applies in criminal cases because the defendant's life and freedom could potentially change dramatically. This standard does not require absolute certainty, but requires that there is no other reasonable, feasible explanation or alternative to the defendant's guilt.

Prosecutors employed by the state must also comply with rules, such as timely disclosure of evidence to the defense that could negate the defendant's guilt. The titles of prosecutors vary between states, but in Virginia they are usually called the Commonweath's Attorney.

The ***bailiff*** is responsible for maintaining order in a courtroom while a trial is in progress. The bailiff opens and closes the courtroom and protects the security and privacy of the jury during deliberation.

The ***courtroom clerk*** sits beside the judge and documents the proceedings of a trial, any court orders that are made, and the final verdict. This documentation is called a docket. In addition, the clerk labels all evidence presented during a trial and administers the oath or affirmation for all jurors and witnesses. Witnesses are sworn in before they may testify, and if they fail to tell the whole truth, they can be charged with perjury.

In some cases, a recording device is used instead of a court reporter. If necessary, courts may also have interpreters for people who do not speak or do not understand English. The interpreter is responsible for translating all that is said in court.

See also: Working with your lawyer, for additional information about defense lawyers

Extra resources containing teaching material or videos about "courtroom personnel" for Restoration Counselors

http://www.youtube.com/watch?v=6cqmPLLyzog
(3 min) Courtroom basics: attire, courtroom personnel and their locations, respect of judge, when to speak, and more

http://www.youtube.com/watch?v=KJEf19NBJTY
(2 min) Jury, role of jury, hung jury, reasonable doubt

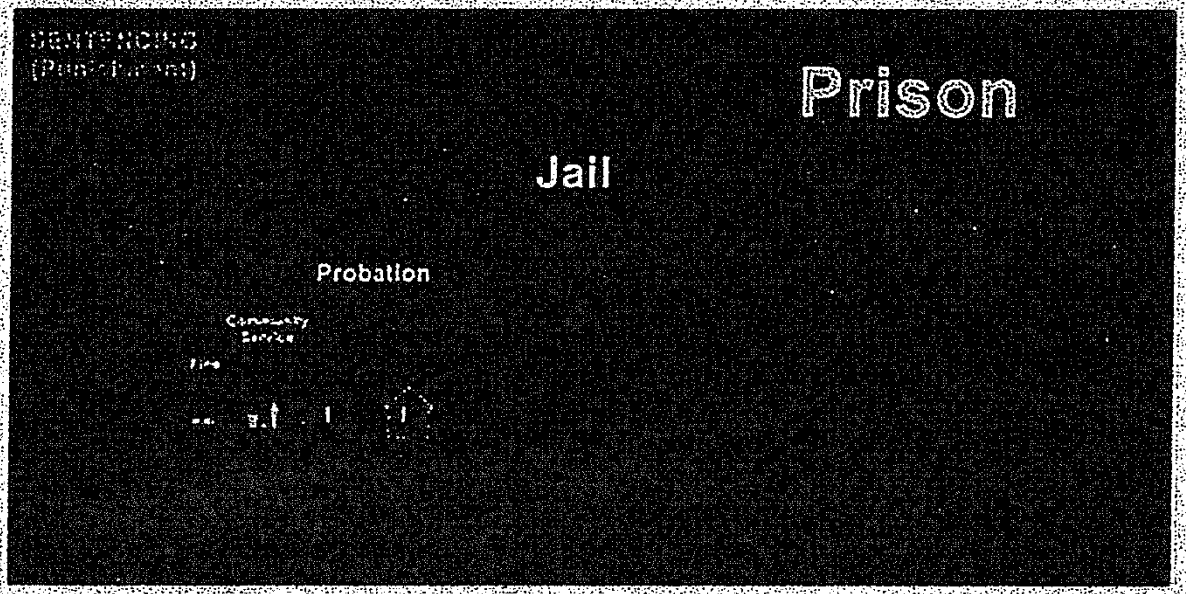
http://www.youtube.com/watch?v=z8V0CgCYsFI
(1.5 min) Selecting a jury, voir dire

http://www.youtube.com/watch?v=a1Oeu87eNzI
(2 min) Prosecutors, burden of proof; defense lawyers; "beyond a reasonable doubt"

http://www.youtube.com/watch?v=jKGKgwEOM0I&list=PLSAUbOBYUIN9J-iSge0BHDu7HKWepbvUE
(1 min) The burden of proof

LESSON 4:

CHARGES AND SENTENCES



SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 4:

Charges and Sentences

Charges

When the police arrested you, they should have told you your charges. A charge is the official name of your crime, and the charge says that somebody thinks you broke the law. You can have one charge or many charges depending on what the police think that you did.

There are two types of charges.

A serious charge is called a *felony*. A felony charge can lead to a very serious punishment, such as spending years in prison.

A less serious charge is called a *misdemeanor*. A misdemeanor can lead to a less serious sentence, such as spending a short time in jail or paying a fine. Misdemeanors can never lead to more than one year in jail.

Sentences

Charges are just what the police say you did. But if the court finds you *guilty* of the charge, and decides you really *did* do the crime, then the Judge will give you a punishment. This punishment is called a *sentence*.

Generally, the Judge tries to match the punishment to the charge against you. This is what people are talking about when they say, "the punishment should fit the crime."

There are different types of sentences that the Judge can give you. Some sentences are less serious, and some sentences are more serious.

A fine or community service are examples of less serious sentences. If the Judge gives you a fine, this means that you have to pay some amount of money to the court. If the Judge gives you community service, this means that you have to do something helpful in the community, such as picking up trash along a road.

Another sentence that is more serious is called probation. If the Judge gives you probation, this means that you can live at home but you have to check in regularly with a person called a "probation officer" who makes sure you are staying out of trouble. Usually people who break the probation rules are sent back to jail.

There are some sentences that are more serious than a fine, community service, and probation. Examples of more serious sentences are going to jail or prison. If the Judge sentences you to jail, the jail is usually near where you live and you can stay there for up to one year. If the Judge sentences you to prison, the prison is usually further from your home and you may stay for many years, or even the rest of your life, depending on your sentence.

Lesson 4: *Charges and Sentences*

Recap: A charge is what the police gave you when you were arrested. It is the official name of the crime and says that you broke the law. Serious charges are called felonies, and less serious charges are called misdemeanors. If the judge decides that you are guilty of the charge(s), the judge will give you a sentence that is fitting for the crime. Like charges, sentences can also be more serious, like spending time in jail or prison, or less serious, like paying a fine or doing community service. Probation is another type of sentence where you can live at home but you have to check in regularly with a person called a "probation officer" who makes sure you are staying out of trouble.

Discussion questions about "charges and sentences"

- What are the charges against you? What is/are the name(s) of your charge(s)?
- What do the police say that you did?
- Do you think these are serious felony charges or less serious misdemeanor charges? Why?
    - Can you give me an example of a charge that would be more serious than your charge? An example of a charge that would be less serious?
- What things could happen to you if you are found guilty?
    - Have you talked with your defense lawyer about what could happen if you are found guilty? What has he/she told you?
- What sentence do you hope the Judge might give you if you are proven guilty? Why?
- What sentence do you hope the Judge won't give you if you are found guilty? Why wouldn't you want that punishment?
- What do you think is most likely to happen?
- Who will say to the Judge that you should be given an easy sentence?
- Who will say to the Judge that you should be given a worse sentence?
- What type of sentence do you think you are *most likely* to get from the Judge if you are found guilty of the charges that you have against you?
- What types of things will the judge think about when deciding your sentence?

Background information about "charges and sentences" for Restoration Counselors

A ***criminal charge***, also known as a *count*, is a formal accusation that the defendant committed a particular crime. The charge initiates a criminal court case, but in order for the defendant to be proven guilty in court, the charge must be proven "beyond a reasonable doubt." In other words, the defendant must have committed the crime, the charges are proven true, and there is no alternative explanation. A defendant must be prosecuted in the state in which the charges were issued.

The United States Constitution gives certain rights to anyone facing a criminal charge. Among the rights are the right to an attorney, right to remain silent, and habeas corpus (a petition used to determine if detention of the accused is lawful and valid).

With regard to ***sentencing***, there are trends and guidelines that judges typically follow. These *sentencing guidelines* specify the range of punishments that could be assigned for a certain charge. While it may be misleading to associate a specific sentence with a specific crime (such as a misdemeanor with community service or a fine, or a felony with a sentence to prison), these associations represent *typical* charge-sentence guidelines for judges. However, a defendant might get more than one type of sentence, and factors other than the current charge can affect sentencing, such as offense history. For example, an *armed career criminal* or *habitual offender* may be subject to more serious punishment, particularly for repeat offenses of certain crimes. In addition, probation could be given prior to rendering of a guilty verdict and, if successfully completed, result in dismissal of charges.

For minor crimes, the judge typically issues a sentence immediately after the hearing. For more serious crimes and felonies, a separate hearing and more lengthy process ensues in order to assign a sentence.

If a defendant is imprisoned for more than one crime, a consecutive sentence or a concurrent sentence, or something in between, may be served. Imprisonment with a ***consecutive sentence*** represents the sum of each individual sentence added together, consecutively. In a ***concurrent sentence***, sentences are served simultaneously. Other types of sentences include intermediate (served on the weekend), determinate (a specific number of days), and indeterminate (the sentence has a minimum and maximum length, such as 80-100 days). It is possible for a sentence to be *mitigated*, or reduced to a less serious punishment. A sentence may also be appealed to a certain degree, and the sentence given by the highest Appeal court becomes final and supplements any other sentences not appealed by the defense or prosecution.

Extra resources containing teaching material or videos about "charges and sentences" for Restoration Counselors

http://www.youtube.com/watch?v=ZQ_yQ49e6RU
(1 min) Felony vs. Misdemeanor and examples of each

http://www.youtube.com/watch?v=q2UN8sGhAj8
(3 min) Miranda Rights, admissible evidence, search and seizure

http://www.youtube.com/watch?v=Yw0oGNm9KC0
(8 min) Process of going to court, some rights of the accused, courtroom personnel and proceedings.

http://www.youtube.com/watch?v=BTJlnwhwG_I
(1.5 min) What is a criminal appeal?

http://www.youtube.com/watch?v=2_6upP-kM9E
(1 min) Sentencing in a criminal case; types of sentencing to be considered

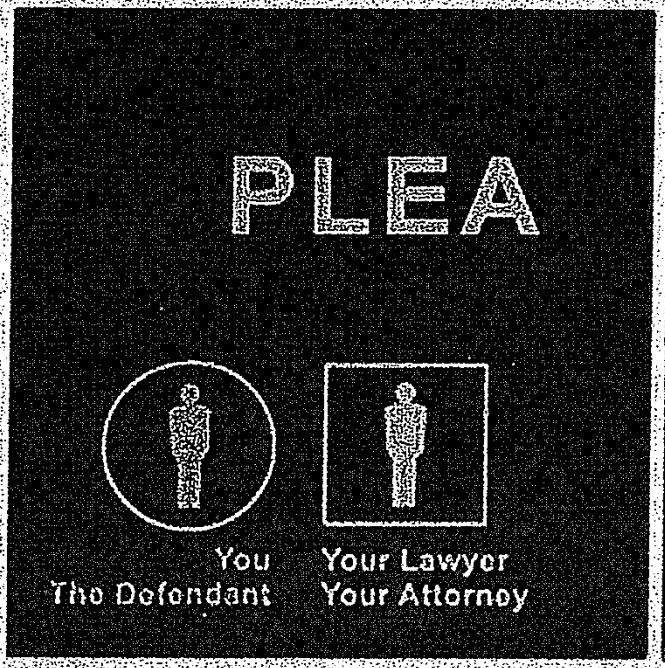
http://www.youtube.com/watch?v=TuJjgNa2lqM
(3 min) Consecutive sentences, when a consecutive sentence might be used

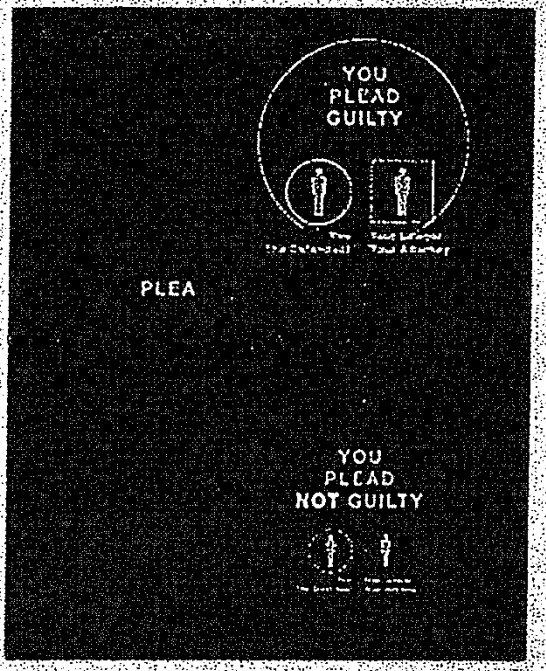
http://www.youtube.com/watch?v=9KSFbD9ElUU
(2 min) Concurrent and consecutive sentences

http://www.youtube.com/watch?v=EZhdpm2Q-Rw
(45 sec) Miranda rights: right to remain silent

LESSON 5:

PLEAS





SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 5

Pleas

When you go see the Judge you have to *enter a plea.* Entering a plea is how you tell the court if you agree with the charges or plan to fight the charges.

If you plead ***guilty***, you are agreeing with your charges and saying you *did* break the law. If you plead guilty, you are saying that you do *not* want to fight the charges and do *not* want a trial.

But if you plead ***not guilty*** you are saying that you *did not* break the law. Pleading *not guilty* is *dis*agreeing with the prosecutor about your charges; this is the first step in fighting your charges.

Defendants can still plead *not* guilty, even if they *really did* break the law. That is because pleading not guilty is just saying, "I want to fight my charges in a trial." Defendants might plead not guilty because they think there is not enough proof that they did the crime. Basically, pleading *not* guilty is a way of saying that the prosecutor needs to *prove* that you committed the crime.

So, if you plead not guilty, you are disagreeing with the prosecutor and saying that you are going to fight your charges in a trial. But if you plead guilty, you are agreeing with the prosecutors and saying that you will accept punishment for the charges.

There are other pleas that are not used very much called an Alford plea and a No Contest plea. You can ask your attorney about it if you would like to know more.

Lesson 5: *Pleas*

Recap: A defendant must enter a plea to the judge. The plea is a statement to the court either saying you (the defendant) agree with the charges (a guilty plea) or plan to fight the charges (a not guilty plea). A *guilty* plea means you say that you committed the crime, or that you believe there is enough evidence to prove that you committed the crime. When you plead *guilty* you say that you will accept punishment for the charges. A *not guilty* plea means you say that you did not commit the crime or disagree with the prosecutor about your charges. If you plead *not guilty*, the prosecutor must prove that you committed the crime in a trial.

Discussion questions about "pleas"

- How do you decide what you will plead?
  - What did your lawyer say about it?
- Do you want to plead guilty or not guilty? Why do you want to do that?
- Let's talk more generally about pleading guilty or not guilty. Let's look at an image that shows evidence for and against a person (scales of justice). If there were a person with a lot of evidence against him or her, would you tell them to plead guilty or not guilty? Why?
  - If someone knows there is a lot of proof that they did the crime, should they plead guilty or not guilty? Why?
- Now, if we look at a different image, where there is very little evidence that the person committed the crime, would you tell them to plead guilty or not guilty? Why?
  - If there isn't very much proof that a person did the crime, should they plead guilty or not guilty? Why?
- If you plead guilty, is there still going to be a trial?
- If you decide to plead guilty, what would you like your lawyer to work out with the prosecutor? What kind of charge? What kind of sentence?
- What are the benefits of pleading *guilty*?
- What are the drawbacks of pleading *guilty*?
- What do you give up when pleading *guilty*?
- What are the benefits of pleading *not* guilty?
- What are the risks of pleading *not* guilty?

Background information about "pleas" for Restoration Counselors

A ***plea*** is the defendant's answer in response to his/her charges at ***arraignment***, the formal reading of criminal charges to the accused. In the United States arraignment takes place in two phases. In the first, *initial arraignment*, which must occur within a few days of arrest, the judge informs the defendant of the charges and the right to retain counsel. If applicable, the judge also sets the bail amount. The second phase, called *post-indictment arraignment*, is when the defendant enters a plea. Possible pleas include guilty, not guilty, no contest ("nolo contendere") and the Alford plea.

The defense and prosecution will often make an agreement known as a ***plea bargain*** accompanied by a guilty plea from the defendant. Plea bargains usually result in less serious

punishment or dismissal of some charges in exchange for the defendant's guilty plea. *For more information about plea bargains, see Lesson 6.*

A ***plea of no contest*** indicates that the defendant neither argues against nor agrees with the charges against him/her. This type of plea leads to the same outcome as a guilty plea, but without the defendant admitting guilt. There may be some restrictions on when a defendant can use a no contest plea.

The ***Alford plea*** is a guilty plea in criminal court in which the defendant asserts innocence and does not admit to committing the crime, but agrees that the prosecution's evidence would probably elicit a guilty verdict in court "beyond a reasonable doubt." This type of plea derives its name from *North Carolina v. Alford.* The defendant, Alford, would have faced the death penalty if convicted of first-degree murder by a jury trial, but would receive a life sentence if he pled guilty. The defendant did not want to admit guilt, but feared the death penalty if he fought the charge. The case was appealed to the Supreme Court, which held that it is permissible for a defendant to enter an Alford plea "when he concludes that his interests require a guilty plea and the record strongly indicates guilt." Thus, because the evidence against him probably would have led to conviction, Alford's guilty plea in attempt to avoid the death penalty was allowed even though he simultaneously asserted his innocence.

Though not technically a plea, a defendant can plead *not guilty*, then argue *not guilty by reason of insanity.* This is an "affirmative defense," in which the defendant essentially admits committing the crime, but then argues he was not guilty for doing so because of his psychiatric illness. Specifically, the insanity defense requires that the defendant was so impaired by a "mental disease or defect" (i.e., severe psychiatric illness or intellectual disability) that he could not understand "the nature, character, or consequences of the offense" or could not understand that the offense was wrong, or could not resist the impulse to commit the offense. Overall, few defendants pursue an insanity defense, and of those who do, very few are "successful."

Extra resources containing teaching material or videos about "pleas" for Restoration Counselors

http://www.youtube.com/watch?v=iYqpoylpk-o
(3 min) Stages of a typical criminal case -- including the arrest process, plea bargains, and sentencing options

http://www.youtube.com/watch?v=u4q_0OgBZ5g
(1 min) Agreeing on a sentence, resolving cases, pleas; plea bargaining

http://www.youtube.com/watch?v=xw_8bhXp-lo
(45 sec) Pros and cons of a plea bargain

http://www.youtube.com/watch?v=J-k1s-zpXmk
(1 min) Types of pleas explained: guilty, not guilty, no contest

http://www.youtube.com/watch?v=Pgj2OG1yfLo
(2 min) Arraignment and types of pleas

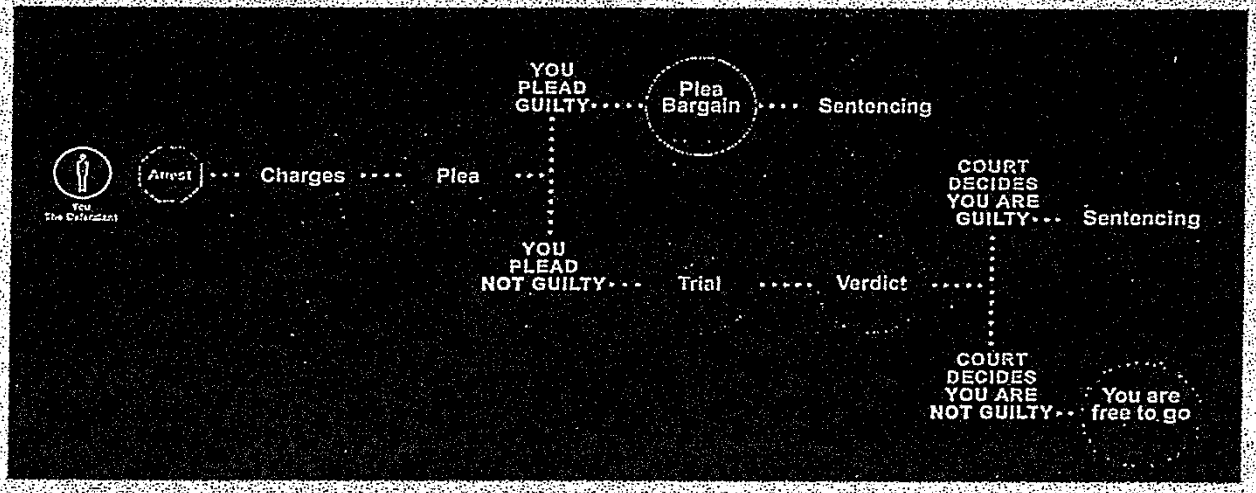
http://www.youtube.com/watch?v=hJKC9zq1XTg
(3.5 min) What is "not guilty by insanity"?

http://www.youtube.com/watch?v=Yw0oGNm9KC0
(8 min) Process of going to court, some rights of the accused, courtroom personnel and proceedings

http://www.youtube.com/watch?v=GaEvvIZ_u58
(1.5 min) Defending criminal charges

LESSON 6:

THE PROCESS



SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 6

The Process

What happens in court is different depending on whether you plead guilty or not guilty. The way you plead determines which of two paths your case will go down.

After pleading *Not Guilty*

Remember that if you plead not guilty, you are saying that you did *not* do the crime. The lawyer on the other side--the prosecutor--is going to say that you *did* do the crime. When this happens, there must be a trial. Remember that a defendant has certain rights that cannot be taken away. One is the right to a trial, to present your side of the story. At the trial, you get a chance to prove that you did not do the crime, and the prosecutor gets a chance to try to prove that you did do the crime.

At the trial, the prosecutor will try to present proof that you broke the law. This is called *evidence.* Evidence can be photos, fingerprints, or people. If someone saw something, the Judge might call them up to talk about it. Both your side and the other side can show evidence, or proof, during the trial.

After both your side and the prosecutor's side are done talking about the evidence, then either the Judge or the Jury will take some time to decide if you are guilty or not guilty.

If they decide that you are *not* guilty then you are free to go home. That is the end of the case against you!

But if they decide that you are *guilty,* then the Judge will decide the sentence, or punishment, that fits your charge. Once the sentence has been decided, you will be taken to the place where you can begin serving your sentence. Remember, this is what happens if you plead *not* guilty.

After pleading *Guilty*

If you plead guilty, what happens next is very different.

Remember that pleading guilty means you are *agreeing* with the charges against you. So if you agree with the charges by pleading guilty, you do not need a trial, because trials are only needed for disagreements. When you plead guilty, you *give up* the right to tell your side of the story at a trial. Everyone agrees that the charges are right, so you move straight to sentencing.

Often, when a defendant decides to plead guilty, the defense attorney will try to make a deal with the prosecutor. That deal is called a *plea bargain* or *plea agreement.* In a plea bargain, the defense attorney will tell the prosecutor that the defendant is willing to plead guilty if the defendant can get a less serious charge or a less serious sentence. You make the decision to take a plea bargain or not.

If the two attorneys—the defense attorney and the prosecutor—can agree on this deal, then they take it to the Judge. If the Judge approves the deal, then the Judge will announce the sentence and the defendant will start serving the sentence.

In many cases, defendants choose to accept this type of *plea bargain*, because they know what will happen. In a trial, they might get a better sentence, but they could also get a worse sentence. So, a plea bargain may seem less risky. Attorneys also like plea bargains because then they know for sure what will happen.

You get to decide if you want to accept a plea bargain that has been offered. Just remember that plea bargains can happen only when you choose to go plead guilty. That means you have to give up your right to fight your charges, but you will know what punishment you will get.

Lesson 6: *The Process*

Recap: The way you plead determines which of two paths your case will go down. If you plead *not guilty*, you are disagreeing with the prosecutor, so there must be a trial to determine which side is correct. After both the prosecutor and your lawyer have finished talking about all the evidence, then either the Judge or the Jury will take some time to decide if you are guilty or not guilty. When you plead *guilty*, you give up the right to tell your side of the story at a trial and everyone agrees that the charges are right, so you move straight to sentencing. Often, the defendant and his lawyer will make a deal, called a plea bargain, with the prosecutor, where the prosecutor will agree to less serious charges and/or punishments if the defendant will plead guilty. In a plea bargain you have to *give up your right to fight your charges*, but you will know what punishment you will get.

Discussion questions about "the process"

- What happens if you plead *not guilty*?
- If you thought there was not enough evidence against you to convict you of the crime, would you plead not guilty?
- Can you plead "not guilty" even if you really did commit the crime?
- During the trial, who tries to show proof that you did the crime?
- During the trial, who tries to show proof that you didn't do the crime?
- Once the prosecution and the defense are finished presenting this proof, called evidence, who decides whether you are guilty or not guilty?
- Why might someone plead *not guilty*?
- In your case, can you think of evidence to show you might be *not* guilty?

- What happens if you plead *guilty*?
    - If you plead guilty, will you have a trial? Why not?
- If you thought there was not enough evidence against you to convict you of the crime, would you plead guilty?
- What is a plea bargain?
    - Why is a plea bargain good for the prosecutor?
    - Why is a plea bargain good for the defense lawyer?
    - What are some reasons a plea bargain could be good for you, the defendant?
    - Do you have to take a plea bargain? How do you decide?
- Why would the prosecutor agree to give you an easier sentence if you decide to plead guilty?
- If you decide to say no to a plea bargain, what can happen? Could this be risky?
- Who must approve the plea bargain after the prosecutor and the defense lawyer agree on the bargain?
    - If the Judge approves the plea bargain, what does the Judge do next?
- What are some reasons that someone might plead *guilty*?
- Let's pretend that the prosecutor offers you a plea bargain that involves a small sentence. Your defense lawyer tells you that you probably have an equal chance of winning or losing a trial if you go to trial, and your punishment might not be as small if you go to

trial. What would you decide to do – would you accept the plea bargain and plead guilty, or would you plead not guilty and go to trial? Why?

- What are some of the benefits of a plea bargain?
- What are some of the drawbacks of a plea bargain?

Background information about "the process" for Restoration Counselors

Approximately nine out of ten criminal cases in the United States end with ***plea bargaining*** and never involve a trial. This is usually a mutually beneficial agreement for all parties; the judge is not as overwhelmed with the quantity of cases going to trial, the court is not burdened with every crime that is committed, the prosecutors are successful in prosecuting the defendant and save on trial costs, and the defense attorney and defendant know exactly what the charges and punishment will be. Both the prosecution and defense avoid a potentially risky trial for which the outcome would be unknown.

The prosecution often makes a plea bargain more attractive by agreeing to drop some of the charges, reduce the severity of charges, or suggesting a reduced punishment for the defendant. Sometimes both attorneys can communicate with the judge to prearrange hypothetical sentences that would result from a bargain. Despite recommendations from the attorneys in the bargain presented to the judge, the judge still holds final authority over sentencing decisions, or may not approve the bargain at all.

In *any* plea bargain, the defendant waives three rights that are legally protected in the Constitution: the right to a jury trial, the right against self-incrimination, and the right to confront hostile witnesses. However, plea bargaining itself is not unconstitutional, and the U.S. Supreme Court has upheld this consistently, provided that a guilty plea is not forced from the defendant.

If either the defendant or the prosecutor does not uphold the terms of the plea bargain and breaks the deal in some way, the judge may intervene. For example, the judge may allow withdrawal of the guilty plea or force the prosecutor's compliance with the plea bargain. If the defendant does not uphold the terms, the prosecutor does not have to continue to comply with the plea bargain.

Some alternatives to plea bargains exist and are used in various jurisdictions that avoid certain formal, lengthy criminal justice system procedures. For example, ***diversion programs*** are often encouraged and used in conjunction with probation for less serious crimes. In such programs the defendant must complete a rehabilitation plan and/or some sort of service assignment, after which the crime may be removed from the defendant's record.

See also: Lesson 5 – Pleas, including information about arraignment

Extra resources containing teaching material or videos about "the process" for Restoration Counselors

http://www.youtube.com/watch?v=iYqpoylpk-o
(3 min) Stages of a typical criminal case -- including the arrest process, plea bargains, and sentencing options

http://www.youtube.com/watch?v=GaEvvIZ_u58
(1.5 min) Defending criminal charges

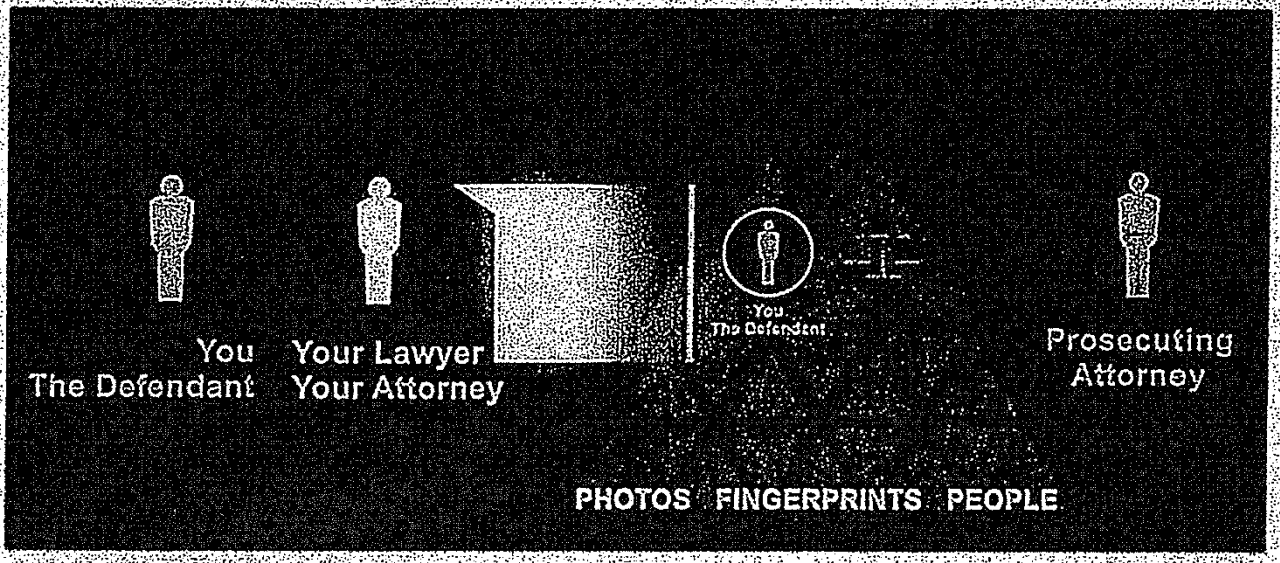
http://www.youtube.com/watch?v=PmdvZU-pRxY
(2 min) Diversion Programs

http://www.youtube.com/watch?v=u4q_0OgBZ5g
(1 min) What is a plea bargain? Agreeing on a sentence, resolving cases, pleas

http://www.youtube.com/watch?v=09wuDynoq5A&list=PLSAUbOBYUIN9J-iSge0BHDu7HKWepbvUE
(45 sec) Deciding to accept or reject a plea bargain

http://www.youtube.com/watch?v=N7P4-BTxi-k&list=PLSAUbOBYUIN9J-iSge0BHDu7HKWepbvUE
(1 min) Plea bargains and what happens after plea bargains

LESSON 7:
THE TRIAL



SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 7

The Trial

Remember that if you plead guilty, there is *no* trial because you agree with the charges, so there is no reason to argue about what happened. But, for defendants who plead *not guilty*, the court must hold a trial to try to find the truth about the charge.

How does the trial process work?

First, the court will set your trial date. Then you decide with the help of your lawyer if you want a jury to listen and decide about your charge or you only want the Judge to listen and decide.

Remember, a jury is those 12 people who listen to the whole trial and make a decision in the end. If your trial has a jury, then first the jury members are picked. Both the prosecutor and the defense attorney are involved in picking the jury.

When the trial begins, it starts with opening statements. First, the prosecution, then the defense, each get to talk for a few minutes to tell the Judge and jury the main point of their argument.

After these opening statements, the prosecution has to argue their side. The prosecution always goes first, because it is their job to prove you really did break the law. The prosecution will use evidence to make their case. Evidence can be almost anything that shows you did the crime; this might be your fingerprints, video of you or the crime scene, or even materials from a crime scene, like a weapon or stolen property. Evidence can also be people, like witnesses who saw some part of the crime, or heard something about the crime.

After the prosecution argues their case, the defense presents their side. This is when your lawyer gives evidence that you did not do the crime. Remember, evidence can be almost anything or anyone that you can use to support your argument, and show that the prosecution is wrong about you. Your attorney can help you choose the best evidence in your case.

As part of presenting your case, you may testify yourself. Testifying means you speak to the court. But you do not *have* to testify; it is your right to choose. If you do testify, the prosecution will have a turn to ask the questions they want to ask. Your attorney can help you decide whether it is a good idea for you to testify in your case.

During the whole trial, each side has to play by certain rules. The Judge is in charge and makes sure that everyone follows the rules.

Near the end of the trial, after each side has had the chance to present their evidence, each side gets to make a closing statement. They give their final message, or argument, to the Judge and jury.

Then, there is a break called deliberation. During this break, the Judge or jury will think about all the evidence they heard and will make a decision about whether you are guilty or not guilty.

They will come back and read their decision, called the *verdict*. If they decide that you are *not* guilty, you may go home. But if they decide that you *are* guilty, you will be sentenced by the Judge or the jury. This may happen immediately, or may happen at a later date during a sentencing hearing.

Lesson 7: *The Trial*

Recap: If a defendant pleads guilty, the court must hold a trial to find the truth about the crime. Either a judge or a jury – 12 neutral people who listen to all the evidence – will make the final decision in a case. First, the prosecutor and your lawyer will give their opening statements to the court, which is when they present their main point. Next, they will give evidence, or proof, to the court. The prosecutor will try to prove you did the crime, and your lawyer will try to prove that you did not. The evidence could be people (called witnesses), fingerprints, a weapon, or something else from the crime scene. Next, the prosecutor and your lawyer give their last speech to the court, called closing statements. Finally, the judge or jury will take a break and decide whether or not you are guilty, and then they will read their decision, called the verdict. If you are guilty, the judge will start deciding on your sentence.

Discussion questions about "the trial"

- Why do we have trials?
  - What does the court want to find during a trial?
- What does it mean if there is a jury deciding your case?
- Who are the people in the jury? Are they supposed to be neutral before the trial or already have an opinion before the trial?
  - When do the people on the jury decide if you are guilty or not guilty?
- Does the trial start with opening statements or closing statements? Which is at the end of the trial?
  - Who gives these statements?
- What is evidence?
- What are some examples of evidence in *your* case?
- After the opening statements, who starts showing evidence?
- Can evidence be for you or against you? Both?
- Do you have to testify, or speak, in court? Who can help you decide whether or not you should testify yourself?
  - If you do testify, can the prosecution ask you questions they want to ask?
- If the prosecutor cannot prove that you did the crime, should the court assume that you are innocent, or should they assume that you are guilty?
- Who is in charge in the courtroom?
- After the closing statements, the Judge or Jury will start deliberation. How long does this usually take?
- What is a verdict?
  - After deliberation, a verdict will be given. If you are found not guilty, where do you go? If you are found guilty, what happens next?
- What concerns do you have about a trial in your case?

Background information about "the trial"

Presentation of evidence is central to the trial. Two types of evidence may be presented. ***Direct evidence*** tends to be more straightforward and links clearly to the crime, such as a weapon found at the scene, a clear confession to the crime, or an eyewitness of the crime. ***Circumstantial evidence*** is less objective; rather, it may suggest facts of the crime based on deduction, inference or connection. Examples include a testimony that proposes an association to the crime or concrete objects that suggest relevant criminal actions. Most often, circumstantial evidence is more available and easier to gather, and this is the type that is most often presented in court. There are stringent laws that filter the kinds of evidence allowed in court and the ways in which it is presented.

Direct examination is when a lawyer questions a witness that he has called and prepared. Witnesses may testify to factual evidence and occasionally offer opinions. Typically only expert witnesses in a specific field, such as a forensic psychologist or psychiatrist, are permitted to offer personal conclusions and opinions that must be rooted in factual evidence.

During direct examination, lawyers are not permitted to ask their witnesses ***leading questions*** that prompt a certain answer, such as those beginning with "Don't you think" or "Isn't it true that." If the other lawyer has a legal reason that a question should not be allowed (for example, a leading question or a question that prompts the witness to give an opinion), he can raise an objection before the judge. The judge considers the reason and may either sustain or overrule the objection. If the objection is sustained, the lawyer must change the question or move on to the next question. The judge's decision is based on legal precedent and law and is not based on opinion about the case.

Cross-examination is when a lawyer questions a witness called by the opposing counsel. Leading questions are allowed during cross-examination in order to test the credibility and testimony of a witness. The lawyer's goal is to reduce trust in and credibility of the witness through a variety of strategies, such as undermining moral character or revealing prejudice. Objections may also be raised during cross-examination if a question is not relevant to information explored during direct examination or breaks a law related to presentation of evidence.

In a jury trail, the judge instructs the jury before deliberation about pertinent laws and precedent that should guide their decisions, standards such as "beyond a reasonable doubt," and the issues of fact that must be decided. This is called the *charge* given to the jury. Jurors are required to follow and interpret these laws while making their decision and come to conclusions solely based on evidence and arguments presented during the trial.

Extra resources containing teaching material or videos about "the trial" for Restoration Counselors

http://www.youtube.com/watch?v=dxANoPEbzmQ
(4 min) What is evidence? What are the different types of evidence?

http://www.youtube.com/watch?v=iYqpoylpk-o
(3 min) Stages of a typical criminal case -- including the arrest process, plea bargains, and sentencing options

http://www.youtube.com/watch?v=nV8_WkJ1j54&list=PLSAUbOBYUIN9J-iSge0BHDu7HKWepbvUE
(1 min) Typical criminal trial procedures

http://www.youtube.com/watch?v=6cqmPLLyzog
(3 min) Courtroom basics: attire, courtroom personnel and their locations, respect of judge, when to speak, public seating, and more

http://www.youtube.com/watch?v=EMPOyX4w0hY
(1.5 min) What is an opening statement?

http://www.youtube.com/watch?v=qHqfiVfA1ak
(13 min) Live opening statement in murder trial

http://www.youtube.com/watch?v=z8V0CgCYsFI
(1.5 min) Selecting a jury, voir dire

http://www.youtube.com/watch?v=KJEf19NBJTY
(2 min) Jury, role of jury, hung jury, reasonable doubt

http://www.youtube.com/watch?v=zfdO9Tt9RDA
(1 min) What is direct examination in criminal trials?

http://www.youtube.com/watch?v=8QvLVAUV6rI
(40 sec) Cross-examination and leading questions

http://www.youtube.com/watch?v=BVAMlD5ElRE
(1.5 min) What are closing arguments?

Lección 1:

Entender su situación

Usted tiene que acudir a los tribunales porque le acusaron de un delito. Esto significa que la policía creía que violó la ley, y después la policía le detuvo a Usted. Tal vez recuerde su detención.

En los Estados Unidos, una persona no puede recibir un castigo sólo porque la policía cree que hizo un delito. Hay que existir evidencia. El tribunal usa un juicio para descubrir si el acusado hizo un delito, o si esta persona no es culpable. Los juicios deben ser justos. Para tener un juicio justo, tiene que entender el tribunal y los cargos en su contra. También tiene que trabajar con la persona que quiere ayudarle en el tribunal – su abogado defensor.

En algún momento el juez decidió que estaba incompetente. Esto significa que el juez cree que no entiende su causa penal o no puede ayudar a su abogado a defenderle. El juez tomó un "tiempo muerto" para que pueda hacerse competente. Para hacerse competente, participará en su tratamiento y aprenderá más sobre el tribunal. Si aprende esas cosas, entenderá mejor su causa penal y ayudará mejor a su abogado. Esto es lo que estamos haciendo ahora.

Lección 2:

Trabajar con su abogado

Cuando se está enfrentando a cargos penales en los Estados Unidos, tiene derechos específicos que le protege, y estos derechos no se pueden quitar, a pesar de lo que hizo. Cada persona acusada de un delito en los Estados Unidos tiene estos derechos.

Un derecho que tiene es el derecho a tener un abogado defensor, incluso si no puede pagar. Este abogado defensor le ayuda con su cargo. Este abogado le escucha a Usted cuando habla sobre lo que pasó, lee lo que se había escrito sobre su cargo, le ayuda a decidir lo que va a hacer sobre su cargo, le explica las cosas que necesita entender, y contesta sus preguntas. Incluso si el tribunal paga por su abogado, su abogado trabaja para Usted, y no trabaja para el tribunal. Por lo tanto, ayudar a su abogado es una de las cosas mejores que puede hacer para ayudar a Usted mismo.

Tiene una relación especial con su abogado defensor, se llama una "relación privilegiada." Esto significa que todo lo que dice a su abogado es un secreto entre sólo Ustedes. Su abogado no puede decir a nadie lo que Usted dice, sin su permiso. Esto significa que puede contar todo a su abogado sin preocupar que lo que dice causará problemas cuando va al tribunal.

La manera mejor de ayudar a su abogado defensor es decir la verdad. Debe decir tanto como puede sobre la situación que causó sus cargos. Para su abogado, será más difícil ayudarle si Usted miente a su abogado o si oculta secretos.

Si va al tribunal, su abogado trabajará con fuerza para contar su cuento de los eventos. Si Usted se declara culpable, o si el tribunal decide que tiene la culpa, su abogado tratará a obtener el castigo tan pequeño como posible.

Lección 3:

¿Quién está en el tribunal?

Cuando va al tribunal Usted, se llama "el acusado." El acusado es la persona que tiene el cargo de violar la ley. Hay otras personas importantes en los tribunales, y cada persona tiene un trabajo específico.

Dos de estas personas argumentan, básicamente, sobre su causa. La razón por estos argumentos es que el sistema de justicia en los Estados Unidos trata de descubrir la verdad, usando los argumentos de los dos lados acera de si el acusado realmente violó la ley.

El Abogado Defensor

La persona que argumenta su lado de la causa es el abogado defensor. El abogado defensor es *su abogado*, quien trata de obtener los resultados mejores para Usted. Si va a juicio, su abogado trabajará con fuerza a presentar su lado de la causa y la evidencia que le ayuda. Tal vez su abogado convencerá al tribunal de que no es culpable. Pero, si el tribunal decide que es culpable, su abogado tratará de convencer al juez para darle el castigo menor.

El Fiscal

El *fiscal* es el otro abogado en el tribunal, quien argumenta que Usted violó la ley y debe recibir un castigo. Usualmente, el fiscal trata de convencer al tribunal para darle la sentencia más serio. En Virginia, el fiscal también se llama el *abogado de la Commonwealth.*

El Juez

El juez es jefe del tribunal. El juez se sienta en el frente de la sala de juicios y escucha a todo lo que se dice acerca de su causa. El juez es *neutral*, como el árbitro de un evento deportivo. El juez ni está en su lado ni está contra su lado. Si su abogado y el fiscal argumentan sobre la ley o las reglas de los tribunales, el juez decidirá quién tiene razón. Es la responsabilidad del juez de tomar las decisiones en los tribunales.

Usualmente el juez toma la decisión final acerca de si Usted es culpable o no culpable. Cuando el juez toma la decisión final, se llama un *juicio sin jurado*. Si el juez decide que es culpable, también él determinará su sentencia.

El Jurado

De vez en cuando, un jurado, en vez de un juez, decide si el acusado es culpable o no culpable. Se llama un *juicio con jurado*. El jurado es un grupo de doce hombres y mujeres quienes escuchan a su causa y deciden si violó la ley y debe recibir una pena, o si no violó la ley y puede regresar a casa. El jurado debe ser neutral y no debe estar predispuesto en contra de un lado. Su responsabilidad es escuchar atentamente a toda la evidencia y *después* decidir si Usted es

culpable o no culpable. La evidencia a que escuchan los miembros del jurado puede ser testigos – personas que vieron o escucharon algo – o la evidencia puede ser cosas materiales, como fotos o huellas dactilares.

Otras Personas en los Tribunales

Hay otras personas en un tribunal, quienes son menos importantes a su causa. Por ejemplo, cada sala de juicios tiene un *alguacil*, quien parece como un oficial de policía. El alguacil tiene la responsabilidad de mantener la seguridad de la sala de juicios y asegurar que nadie interrumpe el tribunal.

También hay un *taquígrafo de actas* que sienta acerca del juez y escribe todo lo que se dice durante el juicio, para que haya una historia de lo que pasó.

Lección 4:

Cargos y Sentencias

Cargos

Cuando la policía le detuvo, debería decirle sus cargos a Usted. Un cargo es el nombre oficial de su delito, y el cargo significa que alguien cree que violó la ley. Puede tener un cargo o muchos cargos, dependiendo de lo que la policía cree que hizo Usted.

Hay dos tipos de cargos. Un cargo serio se llama un *delito grave*. Un cargo de *delito grave* puede llevar a una pena muy seria, como años en la prisión. Un cargo menos serio se llama un *delito menor*. Un cargo de *delito menor* puede llevar a una pena menos seria, como un tiempo breve en la prisión o una multa. Delitos menores nunca pueden llevar a más de un año en la cárcel.

Sentencias

Cargos son lo que la policía dicen que hizo. Pero, si el tribunal decide que es culpable del cargo, y decide que realmente hizo el delito, el juez le dará un castigo a Usted. Este castigo se llama una *sentencia.*

Por lo general, el juez trata de igualar el castigo con su cargo. Esto es lo que se refiere en esta frase popular, "el castigo debe ser proporcional al delito."

Hay tipos diferentes de sentencias que puede darle el juez. Algunas sentencias son menos serias, y otras son más serias.

Una multa o trabajo comunitario son ejemplos de sentencias menos serias. Si el juez le diera una multa, tendría que pagar cualquier cantidad de dinero al tribunal. Si el juez le diera trabajo comunitario, tendría que hacer algo útil en la comunidad, como recoger basura en la calle.

Otra sentencia más seria se llama *libertad a prueba.* Si el juez le diera libertad a prueba, podría vivir en su casa, pero tendría que comunicar regularmente con una persona, se llama *Oficial del Departamento de Libertad a Prueba*, quien asegure que portarse bien.

Hay unas sentencias más serias que una multa, trabajo comunitario, y libertad a prueba. Ejemplos de las sentencias más serias incluyen la cárcel o prisión. Si el juez le sentenciara a la cárcel, usualmente la cárcel estaría cerca de su hogar, y podría quedar allí hasta un año. Si el juez le sentenciara a prisión, usualmente la prisión estaría lejos de su hogar, y posiblemente podría que quedar allí por muchos años, o por el resto de su vida, dependiendo en su sentencia.

Lección 5:

Declaraciones

Cuando se presenta ante el juez, tiene que *declararse no culpable* o *culpable*. Una *declaración* es cómo le dice al tribunal si está de acuerdo con sus cargos, o si planea luchar contra sus cargos.

Si Usted **se declarara culpable**, estaría de acuerdo con sus cargos y estaría diciendo que realmente violó la ley. Si se declarara culpable, estaría diciendo que *no* quería luchar contra sus cargos y *no* quería un juicio.

Pero, si Usted **se declarara no culpable**, estaría diciendo que *no* violó la ley. Declararse *no culpable* es decir que *no* está de acuerdo con el fiscal sobre sus cargos; esto es el primer paso para luchar contra sus cargos.

El acusado puede declararse no culpable, aunque realmente violó la ley. Esto es porque declararse no culpable es decir, "quiero luchar contra mis cargos en un juicio." Tal vez el acusado se declare no culpable porque cree que no hay evidencia suficiente para decidir que el acusado cometió el delito. Básicamente, declarase no culpable es una manera de decir que el fiscal necesita demostrar con certeza que el acusado cometió el delito.

Entonces, si se declarara no culpable, no estaría de acuerdo con el fiscal y estaría diciendo que iría a luchar contra sus cargos en un juicio. Pero, si se declarara culpable, estaría de acuerdo con el fiscal y estaría diciendo que aceptaría un castigo por los cargos.

Hay otros tipos de declaraciones que no se usa con frecuencia, se llama *declaración de Alford* y *declaración de No Contest (nada consurso)*. Puede preguntar a su abogado defensor si quisiera aprender más sobre estas declaraciones.

Lección 6:

El Proceso

Dependiendo en su declaración de inocencia o culpabilidad, hay una diferencia en lo que pasa en el tribunal. Su declaración determinará cuál de dos caminos en que su causa irá.

Después de Declararse No Culpable

Recuerde que, si se declarara no culpable, estaría diciendo que *no* cometió el delito. El fiscal – el abogado al otro lado – va a decir que realmente cometió el delito. Cuando pasa esto, se necesita un juicio. Recuerde, el acusado tiene derechos específicos que no se puede quitar. Un derecho es el derecho a un juicio, para presentar su lado de la causa. Durante el juicio, tiene la oportunidad a demostrar que no cometió el delito, y el fiscal tiene la oportunidad a tratar de demostrar que realmente cometió el delito.

Durante el juicio, el fiscal tratará de presentar prueba que violó la ley. La prueba se llama *evidencia.* Evidencia puede ser fotos, huellas dactilares, o personas. Si una persona miró algo, el juez puede llamarle al tribunal para hablar sobre lo que miró. Su lado y el otro lado pueden presentar evidencia durante el juicio.

Después de la presentación de evidencia de ambos lados, el juez o el jurado toma tiempo para decidir si Usted es culpable o no culpable. Si decidiera que no fuera culpable, podría regresar a casa. Esto sería el fin de la causa contra Usted.

Pero, si decidiera que fuera culpable, el juez decidiría la sentencia, o castigo, que iguala su cargo. Cuando se hubiera decidido la sentencia, se le llevaría al lugar dónde empezaría a cumplir con su sentencia.

Después de Declararse Culpable

Si se declarara culpable, lo que pasaría después sería muy diferente.

Recuerde que, si se declarara culpable, estaría de acuerdo con los cargos contra Usted. Entonces, si estuviera de acuerdo con los cargos y se declarara culpable, no necesitaría un juicio, porque los juicios sólo se necesitan cuando los dos lados no están de acuerdo. Cuando una persona se declara culpable, renuncia a su derecho de presentar su cuento durante un juicio. Todos estarían de acuerdo que los cargos son correctos, entonces Usted procedería inmediatamente a recibir una sentencia.

Muchas veces, cuando el acusado decide a declararse culpable, el abogado defensor trata de hacer un trato con el fiscal. Este trato se llama *acuerdo de reducción de sentencia.* Durante esta *negociación para declararse culpable,* el abogado defensor dice al fiscal que el acusado estará dispuesto a declararse culpable si el acusado puede recibir una sentencia o un cargo menos serio. El acusado decide si quiere aceptar el acuerdo de reducción de sentencia.

Si los dos abogados – el abogado defensor y el fiscal – pueden estar de acuerdo en el trato, lo presentarán al juez. Si el juez aprueba el trato, el juez anunciará la sentencia, y el acusado empezará a cumplir con la sentencia.

En muchas causas, al acusado elige a aceptar este tipo de *acuerdo de reducción de sentencia*, porque sabe lo que va a pasar. En un juicio, posiblemente recibiría una sentencia menos seria, pero posiblemente recibiría una sentencia más seria también. Entonces, un acuerdo de reducción de sentencia puede parecer menos arriesgado. Los abogados también les gustan estos acuerdos de reducción de sentencia porque saben con certeza lo que pasará.

Usted tiene la oportunidad de decidir si quiere aceptar un acuerdo de reducción de sentencia que se le ha ofrecido. Recuerde que estos tratos pueden ocurrir sólo cuando Usted elige a declararse culpable. Tiene que renunciar a sus derechos para luchar contra sus cargos, pero sabe el castigo que recibirá.

Lección 7:

El Juicio

Recuerde que, si se declarara culpable, no habría un juicio porque estaría de acuerdo con sus cargos, y no habría razón para argumentar sobre lo que pasó. Pero, para los acusados que se declara no culpable, el tribunal tendrá que llevar a cabo un juicio para encontrar la verdad sobre el cargo.

¿Cómo funciona el proceso de un juicio?

Primero, el tribunal programa la fecha del juicio. Usted y su abogado defensor deciden juntos si Usted quiere un jurado o sólo un juez para escuchar a su causa y decidir.

Recuerde, un jurado es el grupo de doce personas quienes escuchan al juicio y, al final, toman una decisión. Si su juicio tiene un jurado, primero se necesita elegir los miembros del jurado. El fiscal y el abogado defensor participan en el proceso de elegir el jurado.

Cuando empieza el juicio, los abogados dan sus *declaraciones de apertura.* Primero, el fiscal, y después el abogado defensor. Los dos pueden hablar por unos minutos y dicen al juez o jurado el punto central de sus argumentos.

Después de las declaraciones de apertura, el fiscal tiene que argumentar su punto de vista. El fiscal siempre empieza, porque es su responsabilidad a demostrar que el acusado violó la ley. El fiscal usará evidencia para presentar su lado de la causa. Evidencia puede ser casi cualquier cosa que demuestra que el acusado cometió el delito; puede ser huellas dactilares, videos del acusado o del lugar del crimen, o materiales del lugar, como una arma o propiedad robada. Evidencia también puede ser personas, como testigos que miraron alguna parte del delito, o escucharon algo sobre el delito.

Después de los argumentos del fiscal, el abogado defensor presenta su lado del argumento. En este momento, su abogado presenta evidencia que no hizo el delito. Recuerde, evidencia puede ser cualquier cosa o persona que puede usar para apoyar su argumento y demostrar que el fiscal no es correcto. Su abogado puede ayudarle a elegir la evidencia mejor en su causa.

Como parte de la presentación de su causa, es posible que Usted elija a rendir testimonio. Rendir testimonio, o testificar, significa que Usted habla al tribunal. Pero, no tiene que rendir testimonio – no es obligatorio – y tiene el derecho de decidir. Si rende testimonio, el fiscal tendrá la oportunidad de preguntarle si quiere.

Durante el juicio, los dos lados tienen que cumplir con reglas específicas. El juez es jefe, y el juez asegura que todos siguen las reglas.

Cerca del fin del juicio, después de que los dos lados han tenido la oportunidad de presentar evidencia, cada lado presta su *declaración de cierre*. Los abogados hablan brevemente sobre sus mensajes, o argumentos finales, al juez y jurado.

Después de estas declaraciones de cierre, hay una pausa, se llama *deliberación*. Durante esta pausa, el juez o jurado pensará en toda la evidencia que escuchaba, y decidirá si el acusado es culpable o no culpable. El juez o jurado regresará al tribunal y leerá la decisión en voz alta, se llama el veredicto. Si el veredicto dice que Usted es no culpable, podrá regresar a casa. Pero, si el juez o el jurado decide que es culpable, recibirá una sentencia del juez o jurado. Se puede dar la sentencia inmediatamente, o durante una *vista de sentencia* en el futuro.

Using DJ & Alicia Interactive Video with Adults (CD-ROM)

DJ & Alicia is a 24 chapter interactive computer program which was developed by the ILPPP and the DBHDS juvenile restoration program (although it is copyrighted to UVA). The UVA-ILPPP has agreed to allow CSBs to utilize this program with adults when it seems appropriate to do so. The DJ & Alicia program, however, should only be used in restoring individuals in Virginia and is restricted to use by CSBs and DBHDS staff. Providers are prohibited from using the materials for private use and/or giving, copying the program for others (to include others in other states).

DJ & Alicia tracks the process of the two main characters as they move through the criminal justice system. Alicia, who is 13 years old, is tried as a juvenile hence much of the information pertinent to her "story" will not be appropriate for adult clients. DJ, who is 15, is being tried as an adult thus the information in his "story" may be applicable to adults being restored.

The DJ & Alicia program includes the interactive video and flashcards. Within the video there are 24 chapters and each chapter is followed by interactive exercises to assess the individual's understanding of certain legal concepts. The program does not require any reading, thus is appropriate for the adult defendant who is a non-reader. The restoration counselor is able to skip chapters and repeat chapters in order to gear restoration towards their defendant's particular learning needs. It should be noted, however, that the program is not a "plug and play" program in that for optimal use the restoration counselor should routinely stop the video and engage the defendant in discussion about what just transpired on the tape. The program was developed to assess both factual and rational understanding of court related issues. As with any test/program, the defendant's results on DJ & Alicia are simply one piece of data to consider when determining whether a particular defendant has regained capacity to proceed to trial. Simply "passing" the DJ & Alicia sub-tests or final review does not necessarily mean a particular defendant is competent to stand trial.

Prior to using the DJ & Alicia interactive computer program, it is highly recommended that the restoration counselor review the video in its entirety (we recommend reviewing it multiple times) so as to become familiar with the concepts covered in each chapter.

With regard to its applicability to adults, the DJ & Alicia interactive video is likely most appropriate for the following types of defendants:

- Those with or suspected of having intellectual disabilities
- Those defendants with severe learning disabilities
- Young defendants (those 18-22)
- Immature defendants (as the material is presented in cartoon format)
- Non readers

<u>Using the Interactive Software:</u>

1. Load the DVD into the DVD drive of your computer. If the DVD does not automatically begin playing, follow these steps:
2. Hit the "Start" key
3. Select "Computer" or "My Computer"
4. Double click on "DVD" drive.
5. Double click on "PC Manual Install Files"
6. Double click on "DJ & Alicia. Exe"
7. Enter a "dummy" counselor ID number

8. Enter either a "dummy" student ID or assign a student ID (assigning student ID will facilitate your starting back where you left off during previous session).
9. After you have entered the student ID, click on "Add Student"
10. Next click on "Continue"

It takes a while for the computer to begin reading the disc. On the top left of your screen you will see "Options". If you click on "Options" you will see several options. Click on "DJ Only". This will instruct the program to only show you those sections relevant to DJ, which includes information about "adult" court. Remember this tool was originally designed for juveniles, so will contain some information which is not relevant (and could be confusing) to your defendant.

Regardless of the learning needs of the defendant (e.g. where they have specific deficits in factual or rational understanding of court issues), show the defendant the first segment/chapter of video. This chapter shows the offense behavior.

In order to avoid confusion, you should <u>skip</u> the following segments (and related questions):

- DJ's lawyer discusses transfer
- DJ in detention reviews transfer
- Juvenile Courtroom personnel (AKA Alicia's court preview)
- Juvenile court review of evidence & witnesses
- Juvenile court review of closing arguments & verdict
- DJ Transfer hearing

If you want to re-review a particular video or exercise, simply go to the top portion of the screen. Most of the introductory video can be found in "Video Bookmarks- Part A". Simply click on this and a drop down menu will appear. Click on the section of video you want to replay and the computer will automatically skip to that section. Most of the informative sections pertaining to DJ are located in "Video Bookmark – Part B". Follow procedures described above to re-play those sections. The exercises are divided between "Exercises- Part A" and "Exercises – Part B". Finally, the final "test" is located in "Final Review".

Section 10:

Guidelines for Restoration Services Payments

Virginia Department of Behavioral Health & Developmental Services

GUIDELINES FOR RESTORATION SERVICES PAYMENT

I. Definitions for Adult Outpatient Restoration Services

SERVICE FUNCTIONS - There are three service functions listed on the DBHDS Adult Competency Restoration Services Report. They are **assessment**, **case management** and **restoration**. The definitions are listed below.

I. ASSESSMENT – Assessment is not only a separate category, it is also a REQUIRED part of the adult restoration process. Assessment should be completed for every court order that is received by the CSB for O-P services and then recorded on the DBHDS *Adult Competency Restoration Services Report*. This initial phase of the restoration process called assessment refers to the work of the CSB Outpatient Restoration Coordinator or Counselor. This is a required function and must be provided by the CSB for all Outpatient Restoration court orders. The allowable reporting activities in this category include the following:

- collection of the necessary collateral materials (restoration order, competency evaluation, jail medical info),
- review of medical/treatment collateral materials and preparation for initial interview(s),
- initial interview(s) with the defendant and/or jail medical staff and/or other collateral contacts,
- travel time to assess the defendant and return to the office, and
- coordination of psychiatric services or psychological testing when indicated

** Before the CSB designee makes a recommendation to the court that inpatient services are actually necessary for the restoration of the defendant, they should take the time to carefully evaluate the defendant, possibly meeting with them on several occasions. However, this should not be done at the expense of the defendant who clearly needs inpatient services upon the initial CSB visit. These visits should be conducted as soon as possible to ensure a timely response to the order.

** This required assessment function is not the same as the function of the competency evaluator. The time spent by the evaluator is not included under assessment on the *Adult Competency Restoration Services Report*.

** The only reasons that the CSB should NOT proceed from assessment into restoration are:

- The defendant clearly needs inpatient restoration services, is actively psychotic, won't take medications, etc.,
- The defendant refuses to meet with the restoration counselor after several attempts to engage in the process,
- The defendant is unavailable – doesn't show for several appointments and refuses to meet if in jail after several attempts to engage,
- The defendant can't be located, either the jail location or the community address,
- The defendant moves; no forwarding address in the community, or
- The defendant is transferred to a jail outside of the CSB jurisdiction

If any of these problems persist, the CSB O-P Coordinator must write to the judge (with copies to the Defense Attorney & Commonwealth Attorney) and explain the problem(s) related to the delivery of services pursuant to the § 19.2-169.2 court order. Example letters were provided at the training.

** When the CSB receives a 2nd (or more) O-P restoration order for the same defendant, there may not be a need to have additional assessment time on the 2nd (or additional) DBHDS *Adult Competency Restoration Services Report*.

** The only time an outcome evaluation is not required is when the CSB recommends inpatient restoration services at the time of the assessment phase, prior to the initiation of restoration services. The CSB should complete and submit the DBHDS *Adult Competency Restoration Services Report* when the court changes the O-P restoration order to an inpatient restoration order.

II. RESTORATION - The allowable reporting activities in this category include the following:

- delivery of psycho-educational restoration services to improve the factual and rational understanding of court issues and related documentation (not to exceed 10-15 minutes per hour of restoration service),
- provision of pre and post tests,
- arrangements for the provision of restoration at the jail, at the CSB, in the defendant's home, etc.,
- travel time to provide restoration services to the defendant and return to the office,
- psychiatric services and/or brief therapy when indicated, and
- supervision time can be included as appropriate to the complexity of the case

** Any time restoration services are initiated after assessment, even if the CSB finds that outpatient restoration is not feasible after all, an outcome evaluation is still required to obtain

and submit with the letter to the court explaining the circumstances of the case and the CSB recommendation.

** When the CSB does complete restoration, or at the expiration of the court order (whichever comes first) an outcome evaluation is required to obtain and submit with the letter to the court explaining the outcome of restoration with the CSB recommendation.

III. CASE MANAGEMENT - The allowable reporting activities in this category include the following:

- arrangement of the outcome evaluation,
- correspondence to the presiding judge, the assigned Commonwealth Attorney and the defense attorney,
- completing release of information forms, etc.,
- reviewing relevant documents, and
- coordination of all services required for the restoration to competency order including collaborating with jail staff (if detained) and/or treatment providers and other collateral contacts.

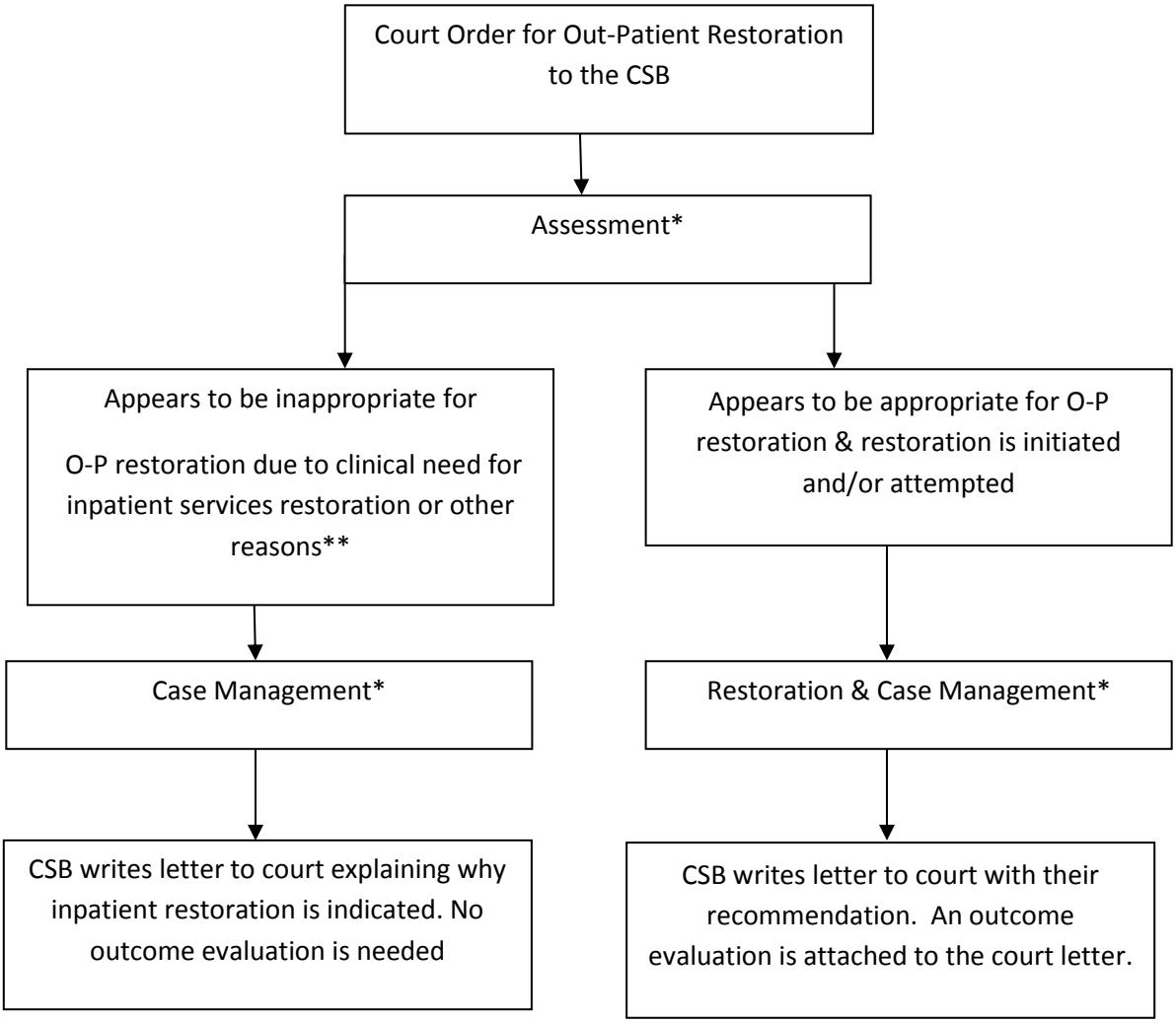
CSB ASSIGNMENT WHEN ASKED BY COURT OR BY A CSB - There are times when the court will call DBHDS and ask which CSB should be ordered to provide the outpatient restoration because they don't have the CSB information or because of jurisdictional questions. In any situation, the court of jurisdiction will not change but the CSB normally associated with the court may change. If asked by the court for the appropriate CSB, we will recommend a CSB based on accessibility to/location of the defendant.

If a CSB should get an O-P restoration order for a defendant residing outside of their jurisdiction or incarcerated in another jurisdiction, that CSB still has a court order to provide O-P restoration until and/or if the court changes the O-P restoration order to another CSB. The time spent responding to the original court order, determining the location of the defendant and communicating back to the Court can all be recorded as assessment and/or case management time spent on the DBHDS Adult Competency Restoration Services Report and submitted to DBHDS for payment with the letter to the court explaining the situation and the CSB recommendation.

IMPORTANT RULES TO REMEMBER:

1. ASSESSMENT TIME SHOULD BE RECORDED FOR EVERY RESTORATION CASE.
2. OUTCOME EVALUATIONS ARE REQUIRED ONCE RESTORATION SERVICES HAVE ENDED OR A COURT ORDER EXPIRES (WHICHEVER COMES FIRST).
3. A SEPARATE REPORT IS REQUIRED FOR EVERY COURT ORDER (EVEN IF FURTHER RESTORATION ATTEMPTS ARE NEEDED TO BRING THE DEFENDANT TO COMPETENCY).

II. Adult Outpatient Competency Restoration Flow Chart



* See Definitions document, updated 2/1/16.

**There are other reasons for the CSB to find that the defendant is not appropriate for Out-Patient Restoration services during the assessment phase to include the following:

- Defendant refuses to meet with the CSB restoration staff after several attempts by staff to engage the defendant in the process. This can apply to the defendant on bond or in jail
- Defendant is "unavailable" – doesn't show for several appointments
- Defendant can't be located or no forwarding address can be obtained if moved
- Defendant moves outside CSB catchment area, either on bond or while incarcerated

III. ADULT COMPETENCY RESTORATION PAYMENT GUIDELINES

1. DBHDS will pay the CSB under the following two circumstances:
   a) The CSB is directly ordered by the Court to provide services to restore an adult's competency to stand trial pursuant to §19.2-169.2 or
   b) The CSB receives a referral from a DBHDS hospital to assess the outpatient restoration appropriateness for an adult ordered to the state hospital for inpatient restoration services pursuant to §19.2-169.2.

2. DBHDS will **only** pay for those services not covered by the other payment source(s). CSBs should only report those services to DBHDS for which they were **not** paid from another payment source.

3. DBHDS will pay $50/hour for the following services:
   a) Assessment Services - Please note that this service function is required in all situations.
   b) Restoration Services
   c) Case Management Services

4. Please refer to the document *Definitions for Adult Out-Patient Restoration (Revised 2/1/16)* for a summary of allowable functions under the above services.

5. DBHDS will reimburse the CSB **up to** $400 for an outcome evaluation completed by a licensed clinical psychologist or psychiatrist who has the requisite forensic training and experience prescribed by the Code of Virginia, only if the outcome evaluation is not reimbursed from another source. The CSB should indicate the amount paid to the evaluator when submitting for reimbursement from DBHDS. An outcome evaluation is **required** after the conclusion of restoration services or the expiration of the court order (whichever comes first). Cases requiring multiple outcome evaluations per episode (a rare occurrence) will be decided on a case-by-case basis and payment must be approved in advance if requesting DBHDS payment for multiple evaluations.

6. DBHDS will pay the CSB regardless of the actual outcome of restoration services.

7. To receive payment, the CSB **must** provide the following documentation to DBHDS:
   a) A copy of the court order designating the CSB to provide competency restoration services or a copy of the referral from the state hospital (the CSB should date stamp the order upon receipt),
   b) A copy of the outcome evaluation when restoration was attempted or completed,
   c) A completed *Adult Competency Restoration Services Report (Revised 2/1/16)*, and
   d) A copy of the letter sent to the court explaining the disposition of the restoration order.

8. DBHDS will **not** pay the CSB if:
   a. Assessment time is not included on *Adult Competency Restoration Services Report*,
   b. An outcome evaluation is not included for restoration services that were attempted or completed, or

c. An *Adult Competency Restoration Services Report* is received for services that were completed more than 2 months earlier.

9. The *Adult Competency Restoration Services Report* should be submitted when CSB services are completed, mailed to Sarah Shrum at DBHDS, Office of Forensic Services, P.O. Box 1797, Richmond, VA 23218-1797 or faxed to 804-786-9621.

10. Payment will be processed upon receipt of the required information and included in CSB's next warrant with a notification email sent to the Executive Director and O-P Restoration Coordinator.

IV. Adult Competency Restoration Services Report

Defendant Name: _____ DOB: _____

Referred to CSB by **(*check one*)**: ☐ Court Order to CSB (***attach a copy***) **or** ☐ DBHDS Hospital

Date of Court Order or DBHDS Hospital Referral: _____

Dates of CSB Services: _____ **(*Start date*)** _____ **(*End date*)**

Date of CSB response letter back to the court: _____ **(*attach a copy*)**

Defendant's Primary Diagnosis (*check one*):

☐Psychotic Disorder **(1)** ☐Intellectual/Developmental Disability **(4)** ☐ Dementia/TBI/other organic disorder **(7)**

☐Anxiety Disorder **(2)** ☐Mood Disorder **(5)** ☐ Other ***(please specify)*** **(8)**: _____

☐Personality Disorder **(3)** ☐ Substance Use Disorder **(6)**

Services Rendered: (*Submit hours in whole or half number. *Outcome evaluation must be attached if restoration attempts were made, regardless of outcome.)*

Initial Assessment (***required***): _____hours Restoration Services: _____hours Case Management Services: _____ hours

Outcome Evaluation Completed by (***check one***): ☐ Private Evaluator ☐CSB Evaluator ☐ Not Completed

Name of Evaluator: _____ Amount Paid by CSB ***(reimbursable up to $400)***: $_____

Location Where Services Provided (*Check the option where the majority of services were provided*):

☐Jail ☐CSB Office ☐Defendant Home ☐Other: _____

CSB Disposition of Case (*See A or B below and check only one option under A or B*):

A. Closed After Assessment – No Restoration Services Provided:

☐CSB recommended that the defendant was too disabled to receive outpatient services so was recommended for inpatient after the assessment was completed. Restoration services were not initiated. **(A1)**

☐Other ***(please specify why restoration services were not initiated)*** **(A2)**: _____

B. Closed After Restoration Attempts or Completion of Restoration Services:

☐CSB recommended that the defendant was restored to competency **(B1)**

☐CSB recommends that the defendant remains incompetent but is restorable to competency with the following recommendation from the CSB: (***check one below***):

☐ Additional outpatient basis **(B2a),** or ☐ inpatient services **(B2b)**

☐CSB recommended that the defendant was incompetent for the foreseeable future (unrestorable) with the following recommendation from the CSB: (***check one below***):

☐ Release defendant **(C3a),** or ☐civilly commit defendant (**C3b),** or ☐order SVP evaluation **(C3c)**

☐ Other (***please specify***) **(D)**: _____

_____ _____

Staff Printed Name CSB

_____ _____ _____

Phone # Date Staff Signature

Section 11:

Glossary & Helpful Contacts

Virginia Department of Behavioral Health & Developmental Services

GLOSSARY OF LEGAL TERMINOLOGY

ACQUITTAL -- used in criminal cases to designate a finding, after trial, that a defendant is not guilty of the crime charged.

ACTUS REUS -- the physical act or omission required for conviction of a particular crime; the act or omission must be one over which the person has conscious physical control.

ADJUDICATION -- the judgment rendered in a criminal or civil case.

AGGRAVATING CIRCUMSTANCE -- in capital or determinate sentencing, a factor that, if proven, tends to enhance the sentence. To be distinguished from MITIGATING CIRCUMSTANCE.

APPEAL -- resort to a superior (i.e., appellate) court to review the decision of an inferior (i.e., trial) court or administrative agency.

APPELLATE COURT -- a court that reviews the decision of a lower court, focusing on that court's rulings on the proper law to apply to the case and the proper interpretation of that law. To be distinguished from a TRIAL COURT.

ARRAIGNMENT -- the stage of the criminal process at which a defendant is required to plead in court to a criminal charge.

ATTORNEY-CLIENT PRIVILEGE -- a legal doctrine that permits a person to refuse to disclose, and to prevent others from disclosing, communications between the person and his or her lawyer (or the lawyer's agent) that are made during the course of their professional relationship. This privilege is deemed waived under certain circumstances.

ATTORNEY GENERAL, STATE -- the official who represents and advises state agencies, issues opinions on how ambiguous laws should be interpreted, and represents the Commonwealth in criminal cases on appeal.

AUTOMATISM, LEGAL -- a defense to a crime; if the defendant lacked conscious physical control over the criminal act with which he is charged, the act is considered legally involuntary ("automatic") and therefore not criminal.

BENCH TRIAL -- a non-jury trial.

BEYOND A REASONABLE DOUBT -- a standard of proof required to be met by the prosecution in criminal trials for each element of the crime charged; normally defined as a belief to a moral certainty that does not exclude all possible or imaginary doubt, but that is of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

CAPITAL CASE -- a court case involving a crime punishable by death.

CROSS EXAMINATION -- the questioning of a party's witness by the opposing party.

CSBs -- Community Service Boards; provide a community-based forensic evaluation system responsible for the treatment, tracking, and monitoring or conditional release of persons found not guilty by reason of insanity (NGRI). In some jurisdictions designated as Behavioral Health Authorities.

CSH -- Central State Hospital.

DEFENDANT -- the accused in a criminal case; the alleged wrongdoer in a civil case.

DEFENSE ATTORNEY/COUNSEL -- the attorney for the defendant.

"DETERMINATE" SENTENCING LAWS -- laws establishing a fixed period of incarceration for a given offense; the length of a determinate sentence is established at the time of sentencing. To be distinguished from INDETERMINATE SENTENCING LAWS.

DETERRENCE -- by punishing this offender, goal is to discourage other, would-be offenders (general deterrence) and to discourage this offender from committing future crimes (specific deterrence).

DIMINISHED CAPACITY -- a doctrine addressing mental state relevant to MENS REA.

DIMINISHED RESPONSIBILITY -- although sometimes confused with DIMINISHED CAPACITY, the term actually refers to a degree of mental impairment short of that necessary to meet the INSANITY test. It does not negate MENS REA, but it may be relevant at trial to reduce the grade of the offense or, more likely, it may be relevant at sentencing to mitigate the severity of the punishment. Also known as "partial responsibility."

DIRECT EXAMINATION -- questioning of a witness at trial by the party calling the witness.

DISCOVERY -- pre-trial devices that can be used by one party in a case to obtain facts and information about the case from the other party to assist the first party to prepare for trial.

DISPOSITION -- the outcome in a juvenile court proceeding.

DISPOSITIONAL HEARING -- in juvenile court, the sentencing hearing.

DISTRICT COURT, FEDERAL -- the United States District Courts are the trial courts that hear cases involving alleged violations of federal laws or actions between citizens of different states.

DISTRICT COURT, STATE -- the Virginia General District Courts have jurisdiction (i.e., are empowered to hear a case) where the offense charged is a misdemeanor; in felony cases, the court provides a forum for a preliminary hearing; it has exclusive jurisdiction in civil cases when

the amount in controversy is $4,500, and concurrent jurisdiction with the Circuit Court when the amount is less than $15,000.

DMHMRSAS -- Department of Mental Health, Mental Retardation and Substance Abuse Services.

DOC -- Department of Corrections.

DUE PROCESS OF LAW -- the constitutional guarantee found in the Fifth and Fourteenth Amendments of the federal constitution that the government will act fairly when it attempts to deprive a person of life, liberty, or property; comparable provisions are typically found in state constitutions as well.

EMANCIPATED MINOR -- a minor who, as a result of exhibiting general control over his or her life, is found to be no longer in the care or custody of his or her parents or guardians and is thus accorded the rights of an adult.

EXPERT WITNESS -- a witness who, by virtue of specialized knowledge or skill, can provide the factfinder with facts and inferences drawn from those facts that will assist the factfinder in reaching a conclusion on the issue addressed by the witness. A lay witness is not generally permitted to offer opinions about the evidence; an expert witness is.

FELONY -- an offense punishable by death or imprisonment in the penitentiary. To be distinguished from a MISDEMEANOR.

FIFTH AMENDMENT, THE -- an amendment to the United States CONSTITUTION providing that (1) no person shall be required to answer for a capital offense or otherwise infamous offense unless on INDICTMENT or presentment of a GRAND JURY except in military cases; (2) no person will suffer double jeopardy; (3) no person will be compelled to witness against him or herself; (4) no person shall be deprived of life, liberty, or property without due process of law; and (5) private property will not be taken for public use without just compensation.

FORENSIC SYSTEM -- the court system.

GRAND JURY -- composed of 12 to 24 members in most states; investigates specific criminal charges brought to it by the prosecutor and issues an indictment if it finds PROBABLE CAUSE to believe that a crime was committed and a trial ought to be held.

GUARDIAN -- a person lawfully vested with the power to make and charged with the duty of making personal and/or financial decisions for a person who, due to some disability (including being a minor), is considered incapable of doing so.

GUARDIAN AT LITEM -- a person appointed by a court to represent the best interests of a minor or an incapacitated person who is involved in litigation.

HABEAS CORPUS -- literally "you have the body." Typically, a writ directing a state official in charge of detaining a person to produce that person in court so as to determine whether his or her liberty has been deprived in violation of DUE PROCESS.

INCAPACITATION -- to protect society from the offender by rendering the offender incapable of committing another similar offense.

INCOMPETENT TO STAND TRIAL -- *See* COMPETENCY TO STAND TRIAL.

"INDETERMINATE" SENTENCING LAWS -- laws establishing a maximum period of incarceration for a given offense, but with the minimum term usually set at the time of sentencing by the presiding judge and the maximum term left up to parole authorities, based largely on an offender's behavior while serving the sentence. These laws were inspired by the rehabilitative ideal. To be distinguished from DETERMINATE SENTENCING LAWS.

INDICTMENT -- a document issued by the GRAND JURY accusing the person named of a criminal act.

INSANITY, LEGAL -- a lack of criminal responsibility for one's acts due to mental dysfunction or, in legal terms in Virginia, MENTAL DISEASE OR DEFECT.

IST -- Incompetent to Stand Trial.

JUDGE -- the official who presides over the trial and makes evidentiary and other legal rulings. In a bench trial, the judge also serves as fact finder and decides the verdict.

JURY/PETIT JURY -- a group of 6 to 12 persons selected to hear the evidence at civil and criminal trials and return a verdict. To be distinguished from GRAND JURY.

JURY INSTRUCTIONS -- a direction given by the JUDGE to the JURY concerning the law applicable to the case.

JUVENILE -- in most states (including Virginia), a person under the age of 18.

JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS -- in Virginia, this court has jurisdiction in (1) delinquency cases (i.e., where a person under the age of 18 is charged with an offense that would be a crime if committed by an adult); (2) CHINS (Child In Need of Services) cases (i.e., "status" offenses, such as truancy, committable only by minors); (3) in child custody and support cases (concurrent with CIRCUIT COURTS); and (4) criminal cases involving family members or child victims.

MAGISTRATE -- a court official with the authority, among other things, to issue warrants for arrest and issue temporary detention orders in civil commitment cases.

MENS REA -- "guilty mind"; the specific state of mind (e.g., purposeful, knowing, reckless, or negligent) required for conviction of a crime.

"MENTAL DISEASE OR DEFECT" -- the threshold mental condition in Virginia for the INSANITY defense and, in some states, for DIMINISHED CAPACITY. In Virginia, for the defendant to be considered legally insane, it must be found that at the time of the offense, as a result of a *mental disease or defect*, he or she (i) did not understand the nature, character, and consequences of the act; or (ii) was unable to distinguish right from wrong; or (iii) was unable to resist the impulse to commit the act.

MIRANDA RIGHTS -- the Miranda Rule states that, prior to any questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of freedom in any significant way, the person must be warned: (1) that he or she has the right to remain silent; (2) that any statement that the person does make may be used as evidence against him or her; (3) that he or she has a right to the presence of an attorney; and (4) that if he or she cannot afford an attorney, one will be appointed for the person prior to any questioning if he or she so desires.

MISDEMEANORS -- a category of offenses less serious than a FELONY; generally punishable by fine or imprisonment in jail, as opposed to the penitentiary, for a year or less.

MITIGATING CIRCUMSTANCE -- in capital or determinate sentencing, a factor that, if proven, tends to reduce the sentence. More generally, any factor that tends to reduce the culpability of the defendant at trial or at sentencing.

NGRI -- Not Guilty by Reason of Insanity.

PARENS PATRIAE -- the authority of the state to act as "parent"; traditionally exercised over children, individuals with a mental illness, and individuals with an intellectual disability.

PAROLE -- conditional release of a convict before the expiration of his or her sentence; failure to abide by the conditions of parole will result in the convict's serving the remainder of the sentence in a correctional setting.

PARTIES -- those persons or entities involved in litigation, as defined by the pleadings in civil cases and the INDICTMENT or information in criminal cases.

PLEA -- in a criminal case, the defendant's response to a criminal charge (i.e., guilty, not guilty, or nolo contendere). If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

PLEA BARGAINING -- the process by which a criminal defendant seeks a reduced charge or recommended sentence from the prosecutor in exchange for a plea of guilty.

PRECEDENT -- a previously issued judgment of a court that is viewed as authority for deciding similar cases similarly. Related to the doctrine of STARE DECISIS.

PRE-SENTENCE EVALUATION -- in Virginia, a mental health professional will often be ordered to perform a pre-sentence evaluation as part of the pre-sentence investigation by the probation officer or pursuant to the inherent authority of the court.

PRIMA FACIE CASE -- a prima facie case consists of sufficient evidence to allow the case to continue; when established, defendant is required to respond and proceed with his or her case.

PROBABLE CAUSE -- a reasonable ground for belief in the truthfulness of a proposition. Most commonly used in the criminal law to refer to the degree of certainty required for issuing an arrest or search warrant or for detaining an arrested person.

PROBATION -- the suspension of a convicted offender's sentence on the condition that he or she abide by the conditions set by the court. If these conditions are violated, the offender may be required to serve the remainder of the sentence in a correctional setting. To be distinguished from PAROLE.

PROSECUTOR -- an official of the state responsible for charging persons with crime and representing the state against those so charged at pretrial and trial proceedings.

PSYCHOTHERAPIST (PSYCHOLOGIST)-PATIENT PRIVILEGE -- a legal doctrine that permits, under limited circumstances, the patient/client to prevent disclosure of any communication that was made during treatment between the patient/client and his or her treating clinician.

RECIDIVISM -- the commission of another criminal act by someone who has been previously convicted of a criminal offense.

REHABILITATION -- to inhibit recidivism (additional crime) by a convicted offender.

RESTORATION TO COMPETENCY -- the use of clinical services to make a defendant competent to stand trial who was earlier found incompetent to stand trial.

RETRIBUTION -- to punish the offender in proportion to the offense (commensurate desserts).

SENTENCE -- the judgment formally pronounced by the court or judge upon the defendant after his conviction in a criminal prosecution; imposes the punishment to be inflicted.

STARE DECISIS -- the legal principle stating that the legal rules expounded in decided cases govern subsequent cases; designed to ensure the consistency of legal rules.

SUPREME COURT -- in the federal court system, and in most states, the highest appellate court or court of last resort.

TRANSFER HEARING -- in juvenile court, the hearing to determine whether a juvenile should be tried in adult court. Also called a "waiver hearing."

TRIAL COURT -- the court of original jurisdiction (i.e., where the case is first brought), where all evidence is first received and considered.

VERDICT -- the final judgment of the judge or jury in a criminal or civil case.

VOIR DIRE -- an examination of a prospective juror to determine whether he or she should serve as a juror. Also, a pretrial examination of a witness to determine whether he or she is competent (i.e., possesses the qualifications) to testify, or whether the information the witness has to offer is admissible.

WAIVER, JUVENILE -- *See* TRANSFER HEARING.

DBHDS FORENSIC STAFF CONTACTS

Updated 02/02/2018

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