



MONTEREY BAY PSYCHOLOGICAL ASSOCIATION

Monterey, San Benito, and Santa Cruz County, California

Forensic Committee Newsletter

April, 2022

Hello all!

Welcome to the first Forensic Committee Newsletter. There is a great deal of information to share, so I will jump right in by picking up where I left off previously.

Introduction to Forensic Psychology Continued

- ***How is confidentiality different in forensic evaluations?*** Forensic psychologists have different guidelines for confidentiality depending upon the context of their evaluation. For example, if a psychologist receives a court order to complete an evaluation for the court, then the psychologist informs the examinee that they will write a report to the court, and anything that the examinee tells them may be included in the report or could be disclosed during testimony. There is no expectation that anything will be kept from the court, even though the psychologist should strive to keep irrelevant information out of their report.

If the psychologist is retained by the defense attorney, then there is an open line of communication between the defense attorney and the psychologist. Any disclosures in a defense-retained evaluation, such as submitting a copy of the report to the court, will be done by the defense attorney.

If the psychologist is appointed by another third-party, such as an insurance company, then again there will be no expectation of confidentiality from the retaining party. Again, while the psychologist likely will not include every statement made by the examinee in their report, it is made clear that they will not intentionally keep relevant information private.

- ***How is informed consent different in a forensic evaluation?*** Forensic psychologists must be as clear as possible about the purpose of the evaluation, who will receive a copy of the report (if one is written), and what may transpire if the examinee declines the evaluation (e.g., that a report will be written based solely from collateral records, that the court will be notified, etc.). Given the involuntary nature of court-ordered evaluations, assent may be sought by the psychologist.
- ***What types of measures do forensic psychologists use?*** Forensic psychologists are often asked to answer a number of questions which can range from purely clinical (e.g., does the defendant have a mental illness?) to those specific to statutory language (e.g., does the defendant have the ability to understand the nature of criminal proceedings and assist counsel in a rational manner?). To answer these questions, forensic psychologists utilize both clinical assessment instruments (CAIs; e.g., PAI, WAIS-IV, etc.) and forensic assessments instruments (FAIs). FAIs are those instruments which are designed for use in legal proceedings or to aid in evaluation of a commonly asked legal question.

- ***What is a competency to stand trial evaluation?*** Competence to stand trial evaluation is one of the most, if not the most, common types of forensic evaluation. In California, statutory information about this evaluation and process may be found between PC 1368 and PC 1372. First, a doubt about a defendant's competence to stand trial is raised (commonly by the defense attorney). After the doubt is raised, the court typically appoints one forensic psychologist (or psychiatrist) to evaluate the defendant. The specific questions asked in the court order may differ by county, but per penal code statute, the evaluator is ultimately attempting to gather information about whether the defendant has a rational and factual understanding of proceedings, and whether they are rationally able to assist their attorney in their own defense.

In order to answer the referral questions, the evaluator will often review mental health records and jail records. The evaluator will also contact both the district and defense attorneys to gather information about why a doubt was raised and request police records. In a competency to stand trial evaluation, it is paramount that the psychologist have a good understanding of the police reports involving the alleged offense(s) and potential sentence if convicted, as this information will be used to shape some case-specific interview questions. During the interview, the evaluator will typically gather the defendant's biopsychosocial history before administering a forensic assessment instrument (FAI). In California, common competency to stand trial measures/interview guides include the Revised - Competency Assessment Instrument (R-CAI), Evaluation of Competency to Stand Trial – Revised (ECST-R), and Georgia Court Competence Test (GCCT). Additionally, some people choose not to administer any measure/interview guide at all.

After a defendant is found by the court to be incompetent to stand trial, proceedings are suspended and they are ordered to participate in competency restoration. This often involves placement in a state hospital, although outpatient competency restoration is also possible in some cases. Competency restoration includes training on basic court concepts, and medication management. The defendant is re-evaluated regularly to determine whether they have regained competence. If they have not regained competence by the statutorily defined period of time to do so, they may be identified as unlikely to be restored. At this point, some counties may elect to pursue a Murphy Conservatorship in felony cases.

In competence to stand trial evaluations, the focus is on *current* functioning. Competence to stand trial should generally be considered fluid and may change over time with factors such as medication compliance, substance use, or other factors impacting stability. One of the more common errors made during competence to stand trial evaluations is to equate current mental illness with incompetence. That is, acute symptoms of mental illness may or may not actually preclude competence to stand trial. For example, a defendant may have persistent delusions that are irrelevant to their case and do not otherwise impact their ability to understand proceedings or work with their attorney. Additionally, some people erroneously equate naiveté about the legal system with incompetence. General naiveté about the legal system is only indicative of incompetence if the defendant's mental illness is precluding their ability to learn new information about the legal system. Psychologists who conduct competency evaluations should understand these common pitfalls and have training/supervised experience in this area of criminal forensic evaluation.

New and Proposed Laws/Legislation

'Tis the time of year for bills to be introduced, which means there is a lot to sift through. Here are some highlights relevant to forensic psychology in California:

AB-1630:

- Amendment of PC 1369 (competence to stand trial)
- In addition to rendering opinions related to the defendant's ability to understand the nature of criminal proceedings and assist counsel in a rational manner, the evaluator should also consider whether the defendant is eligible for mental health diversion (PC 1001.35).
- Once a defendant is found to be incompetent to stand trial, this information will be included in the defendant's state summary criminal history information. Once the defendant is restored to competency, that information will also be included in the defendant's state summary criminal history information.
- If a defendant has been deemed incompetent to stand trial in any jurisdiction and there has been no official restoration, the court in which a defendant is appearing with a new charge shall presume that the person is still incompetent, and shall assess whether competence has been restored. This presumption does not apply in misdemeanor cases or if the charges were dismissed at the conclusion of mental health diversion.

SB-1223

- Existing law authorizes a court to grant pretrial diversion to a defendant suffering from a mental disorder in order to allow the defendant to undergo mental health treatment. Eligibility is conditioned on several criteria, including a court finding that the defendant suffers from a mental disorder, as specified, and that the mental disorder played a significant role in the commission of the charged offense.
- This bill would change the eligibility criteria to include a *diagnosis* of mental disorder instead of the *court finding* that the defendant suffers from a mental disorder. This bill would also remove the criteria that the diagnosis would be recent, and would define who could render the diagnosis as a "qualified mental health expert." The court would find that the mental disorder was a significant factor in the alleged offense unless there was clear and convincing evidence that it was not a significant factor in the alleged offense.

AB-2417

- Existing law has established that the Youth Bill of Rights applies to any youth confined in a facility of the Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (DJJ). However, all DJJ facilities will close by 06/30/2023, and counties will be responsible for youths adjudged wards of the court.
- Adopts Youth Bill of Rights to include any youth confined in any juvenile justice facility.
- This bill would additionally prohibit discrimination based on gender expression or immigration status.

AB-503

- This bill would limit the period of time a juvenile ward may remain on probation to six months.

- The court could extend the probation period for a period not to exceed increments of six months upon proof by preponderance of the evidence that doing so would be in the ward's best interest.
- Conditions of probation would need to be individually tailored, developmentally appropriate, and reasonable.

AB-1042

- This bill would include human trafficking within the definition of a violent felony and a serious felony for all purposes, including the Three Strikes Law.

Upcoming Trainings

- California Coalition On Sexual Offending (CCOSO):
 - Held virtually between 05/11/2022-05/14/2022
 - Register at: <https://web.cvent.com/event/12bd3e1a-acf4-4960-a87f-4c80df765167/summary>
- American College of Forensic Psychology and Fielding Graduate University:
 - Held virtually between 04/28/2022-04/30/2022
 - Register at <https://symposium.fielding.edu>
- Santa Clara County Psychological Association and San Mateo County Psychological Association:
 - Child custody and domestic violence update training
 - 07/23/2022 and 07/24/2022 – save the date and be on the lookout for registration information!

How else can I get information about forensic topics?

There are some great resources available for forensic topics:

- American Academy of Forensic Psychology (AAFP) <https://aafpforensic.org>
- Association for the Treatment of Sexual Abusers (ATSA) <https://www.atsa.com>
- APA Specialty Guidelines for Forensic Psychology <https://www.apa.org/practice/guidelines/forensic-psychology>
- American Academy of Psychiatry and the Law (AAPL) <https://www.aapl.org>
- American Psychology-Law Society (AP-LS; Division 41 of APA) <https://ap-ls.org>
- Melton, G. B., Petrila, J., Poythress, N. G., Slobogin, C., Otto, R. K., Mossman, D., & Condie, L. O. (2018). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (4th ed.). New York, NY: Guilford Press
- The quarterly Forensic Newsletter sent out by the MBPA Forensic Committee!

Please let me know if you have any questions!

Best,

Elizabeth Stotler-Turner