



Program Statement

OPI: CPD/PSB
NUMBER: P5070.12
DATE: 4/16/2008
SUBJECT: Forensic and Other
Mental Health
Evaluations

1. **PURPOSE AND SCOPE.** To describe the procedures the Bureau of Prisons (Bureau) shall follow to prepare a psychological or psychiatric evaluation on an inmate committed to its custody for pretrial and post-trial detention pursuant to Title 18 U.S.C. §§ 4241 through 4247 and the pre-sentence stage of trial under Title 18 U.S.C. § 3552(b). These procedures also apply to a defendant committed by the court for an evaluation during their pre-release parole eligibility "old law" stage of confinement under Title 18 U.S.C. § 4205 (c), and to a defendant committed by the court for an evaluation pursuant to Title 18 U.S.C. § 5037(e).

2. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. Information concerning an inmate's mental health status and recommendations will be provided to the court upon request.

b. Forensic Evaluators will provide timely and accurate responses to referral questions and concerns addressed by the court.

c. All psychological or psychiatric evaluations will be forwarded to the courts in a timely manner.

3. **SUMMARY OF CHANGES.** This Program Statement expands or modifies earlier policy in the following ways:

a. In addition to earlier types of court-ordered evaluations referenced, this Program Statement describes procedures used to complete pretrial and post-trial evaluations governed by Title 18 U.S.C. §§ 4241 through 4247.

b. Requirements clarifying the Chief Psychologist's supervision of reports are added.

c. A section clarifies evaluation requirements pertaining to inmates who are mentally ill and receive a disciplinary report.

d. The policy specifies evaluation requirements in cases where the United States Parole Commission or other entities request an evaluation to assist in determining parole suitability.

4. DIRECTIVES AFFECTED

a. Directive Rescinded

P5070.11 Study and Observation Report (12/31/97)

b. Directives Referenced

P5100.08 Security Designation and Custody Classification Manual (9/12/06)
P5215.05 Youth Corrections Act YCA), Inmates and Programs (3/17/99)
P5270.07 Inmate Discipline and Special Housing Units (12/29/87)
P5310.12 Psychology Services Manual (8/13/93)
P6010.02 Health Services Administration (1/15/05)
P6270.01 Medical Designations and Referral Services for Federal Prisoners (1/15/05)

5. STANDARDS REFERENCED

a. American Correctional Association 4th Edition Standards for Adult Correctional Institutions: 4-4372.

b. American Correctional Association 4th Edition Performance Based Standards for Adult Local Detention Facilities: 4-ALDF-4C-31.

6. INSTITUTION SUPPLEMENTS. None required.

7. DEFINITION OF TERMS. For the purpose of this program statement, the following definitions apply.

a. **Forensic Evaluator** - A licensed psychologist or licensed psychiatrist assigned to complete an evaluation for the Federal Court System.

b. **Non-Study Inmates** - All inmates in the Bureau for whom a Federal judge has not ordered a psychological or psychiatric evaluation

c. **Study Inmates** - Inmates for whom a psychological or psychiatric evaluation has been ordered by a Federal Court.

8. TRAINING MANUAL "HOW TO CONDUCT A THOROUGH AND PROFESSIONAL FORENSIC EVALUATION" - FEDERAL BUREAU OF PRISONS. Psychologists and psychiatrists in the Bureau who engage in any type of evaluation need to become familiar with the best practice standards and expectations in the Bureau's Forensic Training Manual.

9. EVALUATIONS UNDER TITLE 18 § 3552(B) - PRE-SENTENCE. The sentencing court may order a local community psychologist/psychiatrist (LCP) to complete the evaluation. Evaluations can be conducted while the defendant is on bail by a LCP or in a local facility (Federal or non-Federal) by a LCP - Title 18 § 3552(b). If the sentencing judge finds that there is a compelling reason for the Bureau to do the study or there are no adequate professional resources available in the community to perform the study the order may direct the Bureau to complete an evaluation on a defendant who has been found guilty. The purpose of this evaluation is to provide additional information that will aid the court in imposing a final sentence. Ordinarily, the court will specify what information it requires to assist in the final determination of sentence.

The evaluator will inquire into those matters specified by the court and any other information the Bureau evaluator believes is important concerning Bureau policy and the application of sentencing guidelines issued by the Sentencing Commission. Since the determination of a sentence under the guidelines is the province of the Court, recommendations ordinarily focus on identifying psychological or psychiatric factors pertinent to the sentencing guidelines to help the Court make its determination. Examples of factors for consideration include, but are not limited to:

- Diminished Capacity as defined by the Sentencing Commission Guidelines.
- Mitigating and aggravating factors in the form of mental or behavioral disorders.
- Unusual characteristics of the defendant.
- Additional information that may affect the application of guidelines.

Recommendations provided in the evaluation shall not specifically address or make recommendations as to numerical calculations or recalculations of sentencing guideline elements.

The results of the evaluation are to be furnished to the referring court within 60 days, unless the court grants an extension for further study. An extension may not exceed an additional 60 days.

a. **Designation.** Designations will be completed as outlined in Chapter 3, Security Designation Procedures for New Commitments, of Program Statement 5100.07, Security Designation and Custody Classification Manual. Designation may be made to any Bureau facility as long as this meets statutory requirements and the facility has the resources necessary to meet the needs of the inmate.

Following the designation, the Designation and Sentence Computation Center (DSCC) shall forward to the institution all available documents that may include, but are not limited to:

- Judgment in a Criminal Case (J&C), referral letter and essential background information (e.g., copies of previous evaluations), and Statement of Reasons (SOR).
- Pre-sentence/Post-sentence Report.
- Pretrial Services Report.
- Other relevant information provided in written form by family, friends, or supervisors.
- Written communication to institution staff about the specific objectives of the study.
- The arrest report or any other law enforcement agency reports pertaining to the instant offense.

This information is essential in completing the background sections of psychological and psychiatric evaluations, as well as giving an indication of the defendant's behavioral pattern in the community.

If the inmate does not arrive within 15 days of designation, the receiving institution should contact the DSCC for assistance.

The Warden will designate a staff member, ordinarily the Case Management Coordinator, to be responsible for initiating such contact, as necessary. The psychologist or psychiatrist assigned the evaluation will be responsible for requesting extensions (see Attachment A for an extension letter example), and monitoring progress and due dates of the evaluation.

b. **Evaluation Cases With Referral Questions.** The primary report prepared by the forensic evaluator is the psychological or psychiatric evaluation (see the Forensic Evaluation Training Manual for an example). Psychological evaluations will be prepared by a licensed psychologist and psychiatric evaluations

should be prepared by a licensed psychiatrist. Clinical interns may be involved in the process, but their work will be closely supervised by a licensed psychologist or licensed psychiatrist.

Other assessments that may be part of an evaluation include an educational, medical, vocational, or other assessment prepared by the appropriate discipline. The need for, and content of, such assessments will depend on the objectives of the evaluation and the nature of the court's questions. The psychologist or psychiatrist responsible for completing the evaluation shall summarize the consultants' findings in the evaluation, or include written consultations in their entirety. If written consultations are included, the consultant(s) shall also sign the evaluation, specifying which sections they authored.

c. Pre-Sentence Evaluation With No Referral Questions. When the court has no specific referral questions for the evaluation, and efforts to secure referral questions have been unsuccessful, the Bureau will provide the court an evaluation that includes any information the evaluator believes is pertinent to the factors set forth in 18 U.S.C. § 3553(a). This may include:

- A description of the nature of the offense.
- Characteristics of the defendant.
- Risk of dangerousness and propensity of defendant to engage in further criminal conduct.
- Needed education, vocational training, medical care, or other treatment.

10. PRETRIAL AND POST-TRIAL FORENSIC EVALUATIONS

(a) **Time Frames and extensions** for evaluations are statutorily governed. It is critical that these time limits be adhered to strictly. These time frames and any allowable extensions are stated in the United States Code Title 18 Crimes and Criminal Procedures. For internal monitoring purposes the evaluation reckoning period begins on the date the evaluation case arrives at a Bureau forensic site.

Forensic sites should implement a procedure for notifying the court of the date of arrival and to request reasonable adjustments to and extensions in the forensic evaluation time frames when necessary.

The final day of the evaluation is the day on which the Bureau must be ready to relinquish the inmate's custody. The U.S. Marshals Service should be notified by a staff person, usually the Case Management Coordinator, via the DSCC, to transport the inmate within the last portion of the evaluation period.

The standard for evaluation of competency to stand trial is found at 18 U.S.C. § 4241 (a) and (d): "Whether the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense."

The standard for evaluation of criminal responsibility is found at 18 U.S.C. § 17: "It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense."

11. **FORENSIC EVALUATION.** Each evaluation completed pursuant to Title 18 U.S.C. §§ 4241 through 4246, must, by law, contain the following information according to the format outlined in Title 18 U.S.C. § 4247:

- Personal history and present symptoms.
- Description of all psychological, psychiatric, and medical tests performed, as well as results.
- The evaluator's findings.
- A current diagnosis in proper DSM multiaxial format.
- A prognosis.
- The evaluator's opinion as to the specific questions posed by the court.

The Psychology Services Administrator will provide guidance for the standards and formats for forensic evaluations completed by contract and forensic psychologists. The Medical Director will provide guidance for the standards and formats for forensic evaluations completed by contract and forensic psychiatrists.

Evaluators should only offer opinions on the issues specifically raised by the court. In some instances, court orders may cite certain statutes, yet the text of the order may refer to other issues. Whenever the actual intent of the court is unclear, the forensic evaluator will contact the Clerk or the attorneys (assistant U.S. attorney and defense counsel) assigned to the case for clarification before preparing an evaluation.

12. **FORENSIC SITES.** The Correctional Programs Division and Health Services Division will identify certain institutions as forensic sites. Cases committed to the custody of the Attorney General for evaluation under Title 18 U.S.C. §§ 4242 - 4247 will be designated as noted in section 7 of this Program Statement. Generally, only those inmates requiring hospitalization by

statute (§4241(d), §4243(e), §4245, §4246(e)) or clinical condition will be designated to a Medical Referral Center (MRC). All other inmates will be designated to non-MRC forensic sites.

13. FORENSIC EVALUATOR QUALIFICATIONS. Federal law stipulates that only licensed psychologists or licensed psychiatrists can perform forensic evaluations ordered pursuant to Chapter 313, Title 18 U.S.C. §§ 4241-4246. The Bureau encourages participation by pre-doctoral psychology interns, post-doctoral fellows, psychiatric residents, and persons pursuing licensure in the forensic process. However, it is critical that an appropriately licensed psychologist/psychiatrist take full responsibility for the final product and opinion. This person must be fully involved in all aspects of the evaluation and be prepared to testify if called.

The possibility always exists that persons other than the licensed psychologist/psychiatrist could be subpoenaed. However, at no time should they be portrayed as the primary evaluator, nor should attorneys ever be encouraged to subpoena them in lieu of the primary evaluator.

14. EVALUATION SUPERVISION.

(a) **FORENSIC EVALUATOR SUPERVISION AT FORENSIC SITES.** All forensic evaluations completed by staff psychiatrists, residents, fellows, or contract psychiatrists will be reviewed by the institution Chief Psychiatrist, where one is on staff, or, if no Chief Psychiatrist is on staff, then by a supervisory staff clinician designated by the Medical Director. The reviewing Chief Psychiatrist or supervisory staff clinician will co-sign the evaluation of any non-licensed psychiatrist prior to filing with the court. The reviewing Chief Psychiatrist or supervisory staff clinician must review, at minimum, 10 percent of the forensic evaluations completed by a forensic psychiatrist. A documented system of control must be in place to ensure the sample of evaluations and accompanying data have been reviewed. The Chief Psychiatrist or supervising staff clinician must sign a review memorandum to acknowledge that all information in the forensic file is complete and the evaluation follows the statutory guidelines and answers the court's questions.

The Chief Psychologist must review, at minimum, 10 percent of the evaluations of all forensic psychologists. A documented system of control must be in place to ensure the sample of evaluations and accompanying data have been reviewed. The Chief Psychologist must sign a review memorandum to acknowledge that all information in the forensic file is complete and the evaluation follows the statutory guidelines and answers the court's questions.

The Chief Psychologist, or a designated licensed psychologist, must review and co-sign every evaluation prepared by psychology students, pre-doctoral interns, post-doctoral fellows/residents, or any consultant or contractor. The Chief Psychologist is also required to review and co-sign all evaluations written by any new forensic psychologist until such time as the Chief Psychologist believes this staff member is fully aware of, and responsible for, following Bureau policy and training guidelines. Typically, this intensive review of the new evaluator's work will last one year. The Chief Psychologist must sign all evaluations completed by non-forensic psychologists. In addition, contacts related to the forensic evaluation at outpatient study sites should be documented in a log (see Attachment B - Sample Contact Log).

(b) **FORENSIC EVALUATOR SUPERVISION AT MRCs.** At MRCs, the evaluation supervision process can be shared with another supervisory psychologist as long as the Chief Psychologist can assure policy and best practices are followed. At MRCs, the medical record and Psychological Data System (PDS) serves as the official, chronological record of services provided.

15. **MANAGING THE EVALUATION.** The Warden shall assign the evaluation to a staff member, ordinarily an Associate Warden or Psychologist, who is responsible for:

- Ensuring quality control.
- Ensuring timely completion of the study.
- Ensuring the standards specified by policy have been satisfied.
- Ensuring the court's objectives have been met.
- Preparing the final transmittal letter to the court.
- Notifying the U.S. Marshal and the DSCC that the inmate is ready for return to court.

Once the evaluation is completed, the Warden signs the transmittal letter and forwards it and the original evaluation to the Court. Closely examine the Court Order to determine if copies of the evaluation are to be provided directly to the attorneys, the Office of United States Probation, or the Clerk of the Court. Where these issues are not specifically addressed, provide the original and two additional copies of the evaluation to the Court. General guidelines for a transmittal letter are specified in Attachment C.

All correspondence addressed to a Federal Court shall include the inmate's register number and docket number(s) pertinent to the inquiry.

A summary of clinically relevant information from each forensic evaluation will be entered by the forensic evaluator (or a designee) in PDS at the conclusion of the study. This will include:

- A diagnosis.
- A summary of psychological test results.
- A summary of mental health history, including any incidence of treatment.

16. **CONFIDENTIALITY.** Prior to the initial interview, the forensic evaluator must inform the inmate about the limits to confidentiality that exist in a forensic evaluation. The nature of the evaluation and questions raised by the Court must also be explained. The inmate will be told that all things learned from him or her or about him or her may be included in an evaluation to the Court. The inmate will also be informed that staff may be subpoenaed to testify at a later hearing regarding the evaluation. The issue of the confidentiality warning must be documented in the final report.

Conducting telephone interviews with family members, arresting officers, or others with valuable information is encouraged. However, prior to such an interview, these persons must also be informed of the nature of the study and lack of confidentiality described above.

17. **PROFESSIONAL ROLE RESPONSIBILITIES.** Bureau psychologists and psychiatrists conduct forensic evaluations directly for the Federal Court, not for the U.S. Attorney or for the defense. Evaluators must strive to be thorough, unbiased, and to use reasoning that comports with a consensus of professional judgement. Neither attorney will be given a final opinion on a forensic issue prior to the court being notified.

Individuals engaged in forensic work should be familiar with the ethical guidelines applicable to their professions. The ethical guidelines published by the American Psychological Association, the American Psychiatric Association, and the American Academy of Psychiatry and the Law should be consulted and clinical supervision should be sought when potential ethical conflicts arise.

Professional ethics dictate that psychologists completing forensic evaluations make every effort to avoid role conflicts. Whenever possible, the forensic evaluator should not be the person providing therapy or otherwise overseeing the treatment of the person being evaluated. However, in some situations such as crisis intervention the evaluator may find it necessary to

provide time-limited treatment to the person being evaluated. In addition, at MRCs the utilization of a team approach may make the distinction between treatment and evaluation roles less easily separated. In these circumstances, the evaluator may belong to a team which is expected to both evaluate and have some role in treatment.

18. **DISCIPLINARY CASES/REPORTS.**

(a) **Study Inmates.** In order to avoid dual role conflicts, when a **study inmate** incurs a disciplinary report, the need for evaluation of competency or responsibility may arise. If this occurs, it will be assigned by the Chief Psychologist to a psychologist who is not the primary evaluator for an opinion of competence or responsibility prior to initiating any disciplinary procedures. The psychologist completing the disciplinary evaluation should consult with the forensic evaluator assigned to the court case to maintain consistency.

(b) **Non-Study Inmates.** If at any stage of the disciplinary process an inmate appears to staff to be mentally ill, Unit Discipline Committee (UDC) staff or the Discipline Hearing Officer (DHO) will consult with psychology staff to determine if an evaluation of competency or responsibility is warranted. If warranted, the psychological evaluation is guided by both P.S. 5270.07 (Inmate Discipline and Special Housing Policy - Chapter 1, Page 2), and the standards for responsibility and competence addressed in this Program Statement. It is important to note that psychologists must make every effort to review all past forensic evaluations on the individual in question and, when relevant, mental health information from the person's Pre-Sentence Investigation (PSI). Although disciplinary evaluations are not governed by statute, they follow the same general standards as competency and responsibility (insanity) evaluations, although they may need to be modified to fit the disciplinary situation.

When completing an evaluation for disciplinary purposes, on either a study inmate or a non-study inmate, use the abbreviated report format in Attachment D.

19. **EVALUATIONS FOR THE U.S. PAROLE COMMISSION.** Requests for psychological evaluations to help determine parole eligibility may, on occasion, come from the U.S. Parole Commission (USPC), the District of Columbia Parole Commission, and some State Parole Commissions when a Federal inmate is serving concurrent state and

Federal sentences. Most of these evaluations will fall under the purview of Title 18 U.S.C § 4205. This statute was repealed (along with others pertaining to parole) in 1987; however, some inmates sentenced prior to 1987 ("old law") may be eligible for parole. The statute allows for the USPC to receive an evaluation from the Bureau on an inmate's suitability for parole, including mental and physical health, criminal record, and social background.

On occasion, the USPC will ask for predictions about future criminal and/or dangerous behavior. Predictions regarding such acts under specific circumstance should be qualified and appropriate disclaimers given, for example:

"The following information concerning the inmate's behavior and possible future behavior are based upon the inmate's self-report, test responses, and other information for which the reliability may be unknown. There are no consistent means by which to accurately predict an individual's future behavior. Some accuracy, however, has been demonstrated by considering past behavior patterns in combination with demographic, personal and possible precipitating factors in conjunction with psychological assessment data."

These evaluations will be in accordance with the Freedom of Information Act/Privacy Act (FOIA/PA). The format to be used in preparing these reports should be similar to the one presented in the training manual "How to Conduct a Thorough and Professional Forensics Evaluation."

20. EVALUATIONS FOR THE WITNESS SECURITY PROGRAM. 18 U.S.C. § 3521(c) requires the Attorney General to obtain and evaluate all available information regarding the suitability of any person seeking admission into the Federal Government's Witness Security Program. A psychological evaluation is **required as part of this assessment process.**

Bureau psychologists have been designated to perform these evaluations. These psychologists work under the supervision of the Chief, Psychological Evaluation Section, Psychology Services Branch, Central Office, or his/her designee.

21. **RECORDS RETENTION.** Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) system in BOPDOCS and Sallyport. Information created by this program is also governed by all applicable FOIA/PA laws and regulations.

/s/

Harley G. Lappin
Director

EXAMPLE

Date (fill in)

The Honorable _____
United States District Court
Western District Of Missouri St. Joseph Division
6672 Charles Evans Whittaker United States Court House
400 East 9th Street
Kansas City, Missouri 64106

Re:

Reg. No. _____
Case No. _____

Dear Judge _____:

Your Court Order dated **fill in date here** committed Mr. X to the custody of the Attorney General for a mental health evaluation pursuant to Title 18, United States Code, Section 4241. The provisions of this statute permit commitment to the custody of the Attorney General for 30 days.

Mr. X arrived at **fill in name of institution** on **date**. He would normally be approved for a return to court on approximately **date**. However, **fill in the reason why an extension is necessary**. Given this new development, we are respectfully requesting a 15-day extension.

In accordance with Title 18, United States Code, Section 4241, the Court may grant an additional 15-day period of time to complete the mental health evaluation. If the extension is granted, the evaluation will be completed on or about **date**, and a written report will be submitted to the Court. If the mental health evaluation is completed prior to the projected completion date, the Court will be notified. If you have any questions or concerns about the proposed extension or the details of the case, please contact me at **number**.

Sincerely,

Name of Warden,
WARDEN

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Attachment A

Inmate Name:
Register Number:

"Sample Contact Log"

	Inmate Contacts	Attorney Contacts	Collateral Contacts
Date, Time, Length			
Brief Notes			
Date, Time, Length			
Brief Notes			
Date, Time, Length			
Brief Notes			
Date, Time, Length			
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Brief Notes			
Date, Time, Length			
Brief Notes			

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

GENERAL GUIDELINES FOR TRANSMITTAL LETTER

Paragraph 1:

This paragraph will state that we are forwarding two copies of the evaluation. It will mention the date of the sentence, type of sentence, the offense, arrival date at the facility, and the date the case is due in court (to include any extension information).

Paragraph 2 (and additional paragraphs, if needed):

This paragraph will briefly respond to the court's referral questions, highlighting major findings. If no questions were posed by the court, then summarize the findings of the clinical evaluation and any pertinent information from the observation process.

Final Paragraph:

Inform the court that we will provide any additional information the court may need.

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

Complete in PDS

Mental Health Evaluation - "Institution Disciplinary Process"

Institution:

Date:

Name of Inmate:

Register Number:

Name of Evaluator:

REASON FOR REFERRAL AND IDENTIFYING INFORMATION: (source, reason for referral, identifying information)

BACKGROUND INFORMATION: (history of mental illness, psychological or psychiatric treatment, prior forensic evaluation)

CLINICAL INTERVIEW AND MENTAL STATUS EXAM: (results of brief clinical interview and mental status exam, note limits of confidentiality discussed)

CLINICAL IMPRESSION: (diagnosis if rendered, basis for diagnosis)

FINDINGS: (conclusions based on general criteria for competence and/or responsibility)

The following language may be helpful for explanation:

A person is **not responsible** for his conduct if, at the time of the conduct, the person, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his/her acts. Some key criteria:

- Diagnosable mental disorder or defect.
- Lacked mental capacity to realize that he/she committed a wrong.
- Did not appreciate why his/her behavior or conduct was wrong.
- Could not stop his/her behavior ("irresistible impulse").

A person is **incompetent** if he/she lacks the ability to understand the nature of the disciplinary proceedings, or to assist in his/her defense at the proceedings. Some key criteria:

- Understanding of charges against him/her.
- Understanding of the disciplinary process/proceedings.
- Can they participate in his/her own defense?

(Note: File in Central File - FOI Exempt - Section 2)