

FORENSIC EVALUATIONS IN MONTANA

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WHAT IS A FORENSIC EVALUATION?

- A mental health evaluation of a criminal defendant to assist a legal decision-maker
 - Must meet statutory requirements if ordered by the Court**
 - Evaluations for defense, prosecution are more flexible
- Generally entails an assessment of the presence of a mental disease or disorder (MCA §46-14-101) or developmental disability (MCA §53-20-102), **that impairs a specific legal capacity**

Must be conducted by a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse

TYPES OF COURT ORDERED EVALUATIONS

1. Fitness to proceed (FTP; MCA §46-14-221; 90 days)
2. Mental state at the time of the crime (COE; MCA §46-14-202 and §46-14-206; 60 days)
 - Fitness to proceed
 - Ability to appreciate/conform*
 - Ability to form specific intent for crime (i.e., act knowingly and purposefully)*
3. Care, custody, and treatment needs (PSE; MCA §46-14-311; no timeframe), occurs prior to sentencing
 - Can also include ability to appreciate/conform

**** When directed
by the court****

FITNESS TO PROCEED EVALUATIONS

- **Assess current mental state and its impact on the defendant's ability to understand legal proceedings and assist in their defense**
- **If fit → returned to jail/community and case proceeds**
- *If unfit → recommend additional 90 days at Galen for treatment/restoration*
 - Typically, this requires medication and psychoeducation
 - If refusing, must have a *Sell* hearing for involuntary meds
- Re-evaluated when mental state improves or commitment period is ending
 - Possible opinions:
 - Fit
 - Unfit and more time is needed for treatment/restoration
 - Will not become fit in the foreseeable future
 - Charges dropped, civil commitment procedures initiated

MENTAL STATE EVALUATIONS

- **Assesses mental state at the time of the crime, and its impact on a defendant's:**
 - a. Ability to appreciate the criminality of their behavior, OR**
 - b. Ability to conform their behavior to the requirements of the law, OR**
 - c. Capacity to form the requisite mental state ***
- **If A or B:** a Guilty But Mentally Ill plea– results in commitment to DPHHS
- **If C,** either not guilty/charges dropped, or guilty of a lesser offense

- Note: typically include incriminating information (def's account of the crime)

PRE-SENTENCE EVALUATIONS

- **Assesses a defendant's needs for care, custody and treatment with respect to a criminal sentence (current mental health plus risk)**
 - After a finding of GBMI, then assess current functioning and level of care needed (e.g., inpatient or less restrictive setting)
 - As part of a mental state/COE eval, where you opine on appreciate/conform AND treatment needs at the same time

Only relevant if GBMI criteria are met. Otherwise, it is a judicial/DOC decision.

WHAT DO FORENSIC EVALUATIONS ENTAIL?

- **Detailed clinical interview with defendant:**
 - Life history (childhood, education, medical, legal, substance use)
 - Detailed mental health history
 - Current/recent functioning
 - Behavioral observation
 - ***Info specific to legal question***
- **Record review**
- **Collateral informants (when available)**
- **Many also include psychological testing**
 - Validity/impression management
 - Differential diagnosis

WHERE/WHEN DO FORENSIC EVALUATIONS OCCUR?

- Montana State Hospital, Galen Campus (FMHF)
 - Close to end of commitment period, to allow for treatment and stabilization of symptoms
 - Occasionally earlier in admission:
 - If clear that person is fit and does not require inpatient treatment
 - If clear that person is very mentally ill and unfit, but refusing medication, to expedite treatment
- In jail/community settings:
 - For public defender (often)
 - For judge (rarely)
 - For DPHHS (new)
 - Court-ordered, same as Galen evals, but for people on waiting list

Note: most evaluations are pre-trial, except for PSE's

MY TOP 5 CURRENT CONCERNS

1. Seriously mentally ill defendants deteriorating in jail waiting for an evaluation/bed at Galen
 - a. Also: fit defendants returned to jail/community and becoming unfit while waiting for trial
2. Unnecessary evaluations
 - a. Judges/attorneys requesting time of crime questions
 - b. Attorneys confusing evaluation types, requesting evals for anyone with a mental health history
3. Including incriminating information in reports
4. Not enough trained forensic evaluators to handle the volume
5. Lack of data from DPHHS