

FORENSIC EVALUATOR MANUAL FOR THE

SANTA CLARA COUNTY SUPERIOR COURT

Updated in 2012

*Court Appointed Evaluators must adhere to
the policies outlined within this manual*

FORENSIC EVALUATOR MANUAL

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SECTION 1: INTRODUCTION

In an effort to provide consistency to the psychiatric evaluation reports prepared for the Superior Court of California, Santa Clara County, the following guidelines have been developed. Please adhere to these standards so that the process of completing your assessment can be streamlined and standardized. By following the outlined procedures everyone involved in the case can know when, where, and how your assessment will be conducted.

It is expected that panel evaluators will familiarize themselves with this manual, applicable statutes (Evidence Code Section 1017, Penal Code Sections 1026-1027, 25(b) (insanity); 1368-1370), and governing case law interpreting the standards set forth in the applicable statutes. A comprehensive list of these sections is provided in Section 3 of this manual.

SECTION 2: BASIC PROCEDURES

2.1 INITIAL PROCEDURE UPON APPOINTMENT TO THE FORENSIC EVALUATOR PANEL

Upon notification of your appointment to the Santa Clara County Forensic Evaluator Panel you should receive the following documents:

- a. A letter confirming the Evaluator's appointment to the Santa Clara County Criminal Division Forensic Evaluator Panel and/or Juvenile Justice Division Forensic Evaluator Panel

If you have not received this letter please contact the Court Forensic Evaluator Program Coordinator ([see website for contact information](#)).

The evaluator should be familiar with the following documents located on the Court's Forensic Evaluator Resources website:

- a. The Standards for Report Content and the standard report format required for use in this Court.
- b. Invoicing instructions and invoicing forms.
- c. The Forensic Evaluator Manual for practice within the Santa Clara County Superior Court.

The Court Forensic Evaluator Program Coordinator will request a username and password to be assigned to the evaluator for online report submission.

2.2 NOTICE OF APPOINTMENT

You will periodically receive appointments in the following types of cases: Adult Competency, Juvenile Competency (if appointed to Juvenile Justice Forensic Evaluator Panel), and confidential evaluations for defense attorneys.

Adult Competency (Penal Codes 1368- 1369)

Appointments for 1368s are made in one of two ways: Non-Clinic or Clinic Interviews. The Clinic Interviews are conducted in Department 24 following the arraignment calendar on Monday afternoons. The Court selects the evaluators that will be included in the Clinic Interview rotation. If you would like to be considered for the Clinic Interview list, please indicate this on your application.

- (1) Non-Clinic Appointments: The courtroom clerk shall mail the evaluator an appointment packet. The report is to be received no later than 25 calendar days and calendared for no later than 30 calendar days from the date of appointment
- (2) Clinic Appointments: When an evaluator is appointed by the Court on the After Arraignment Calendar for a “Clinic Interview” in Department 24 of the Superior Court, the courtroom clerk shall provide an appointment packet and the interview shall be conducted in that department on the following Monday and the case shall be calendared 21 calendar days from the date of appointment. The report is to be received no later than 20 calendar days from the date of appointment.
- (3) An evaluator submitting a late report shall fax or email a memorandum to the Court Forensic Evaluator Program Coordinator specifying the reason(s) for the delay and indicating the date the Court can expect receipt of the report. A copy of the memorandum shall be maintained in the Court’s file for that evaluator.
- (4) At the time of appointment, if an evaluator does not believe he/she can meet this deadline due to unavailability during the specified time frame or if for any reason the evaluator does not accept the appointment, the evaluator shall inform the courtroom clerk immediately. The courtroom clerk shall notify the Supervising Criminal Division Judge, the evaluator’s appointment will be vacated and another evaluator on the list will be appointed. The courtroom clerk will advise the defense attorney and the district attorney that the appointment has been vacated and another evaluator appointed.
- (5) Date of evaluator appointments, date appointment packet mailed (Non-Clinic) or provided (Clinic), requests for additional time, and receipt of report dates will be tracked by the Court Forensic Evaluator Program Coordinator and made available to court staff as needed.

Juvenile Competency

You will only be appointed to prepare juvenile competency reports if you meet the qualifications for the Juvenile Justice Division Forensic Evaluator Panel. Please note,

regardless of the panel an evaluator is assigned to, an evaluator may only prepare one report per minor.

- (1) For Juvenile Competency appointments, the supervisor or lead shall notify you either by phone or email, of the appointment on the day the appointment is made, whenever possible, and in any event no later than noon on the court day following the day of appointment. If for any reason you cannot meet the timelines indicated below for the report you are asked to prepare, please advise the supervisor or lead upon notification of appointment so that an alternative appointment can be made.
- (2) The competency report is due to the court seventeen (17) calendar days from the date of the order of appointment.
- (3) An evaluator submitting a late report shall fax or email a memorandum to the Juvenile Division supervisor or lead specifying the reason(s) for the delay and indicating the date the Court can expect receipt of the report. A copy of the memorandum shall be maintained in the Court's file for that evaluator.
- (4) At the time of appointment, if an evaluator does not believe he/she can meet this deadline due to unavailability during the specified time frame, has previously prepared a report for the minor, or if for any reason the evaluator does not accept the appointment, the evaluator shall inform the supervisor or lead immediately. The supervisor or lead will be vacate the appointment and another evaluator on the list will be called.
- (5) Date of evaluator appointments, date appointment packet mailed, requests for additional time, and receipt of report dates will be tracked by the supervisor or lead and made available to court staff as needed

Confidential Evaluations (Evidence Code 1017)

Confidential evaluations are prepared exclusively to assist defense counsel on the question of whether or not a particular mental defense should be pursued. These reports are confidential, and should be sent directly to defense counsel. **Do not submit the report through the Court's website, or send a copy to the Court.**

- (1) Counsel will mail you a certified copy of the order of appointment and a copy of the police report. If you notify counsel that you are not able to complete the report within the designated timeframe or if you have previously prepared a report for the minor/defendant, another evaluator will be appointed.
- (2) If you cannot complete the evaluation and report within the Court's fee structure, the following steps must be taken:
 - i Contact counsel and advise why the report cannot be completed within the standard fee structure, and provide an estimate of the amount required to complete the evaluation and report;
 - ii If the defense attorney agrees that the additional work is

necessary, you must submit the Request for Additional Funds form to the Judge.

2.3 SCHEDULING THE EVALUATION

Clinic Interviews

The clinic is held Monday at 1:30pm in Department 24 of the Superior Court, Hall of Justice, 190 W. Hedding St, San Jose, CA 95110. Covered parking is available across the street.

Interviews are conducted on site at the Courthouse. Defendants can be either in-custody or out of custody. In-custody interviews are conducted in the Department 24 holding cells. Out of custody interviews are conducted in the Department 24 attorney interview rooms, adjacent to the courtroom entry doors.

Evaluators on the Clinic Interview list are appointed on a rotational basis. Clinic appointments are scheduled in advance; the courtroom clerk will provide you with the dates you are assigned to the clinic. You will receive your appointment packet on Monday when you appear in court on the assigned date. If there are no evaluations scheduled for your assigned date, the courtroom clerk will notify you by telephone or email the Friday before.

Non-Clinic In-Custody Interviews

In all cases where the defendant is in custody, the courtroom clerk will send you a written notice of appointment as well as a copy of the offense report (if one has been prepared) and a copy of the probation report if applicable.

Jail Schedule

The following schedule indicates the hours that the various custodial facilities are open for interviews. The times indicating "closed" represent those times during the day that the facility is closed for purposes of meals, shift change and/or prisoner count. The hours the facilities are open in the morning and closed at night are also indicated. The telephone number is provided for your convenience. It may save time to call and confirm the location and availability of the defendant prior to the interview.

If you have questions or concerns about an inmate's mental health status at the conclusion of your interview, you may contact Christine Ferry, Director of Adult Custody Mental Health Services at (408) 808-5216 or christine.ferry@hhs.sccgov.org.

MAIN JAIL

Enter from the main entrance at 150 W. Hedding Street

| | | |
|--|--|--|
| 150 W. Hedding St. San Jose, CA (408) 299- 3344 (Days) (408) 299- 8770 (Evenings) | <u>Open</u> 8:00 am to 11:00am 1:00 pm to 5:00 pm 7:00 pm to 11:00 pm | <u>Closed</u> 11:00 am to 1:00 pm 5:00 pm to 7:00 pm |
|--|--|--|

ELMWOOD WOMEN'S FACILITY

Enter through the front lobby (Entrance is located on Abel Street) and obtain visitor's badge. After 5:00 pm, enter through the West gate.

| | | |
|---|---------------------|---------------------|
| 945 Thompson Street Milpitas, Ca 95035 (408) 299-3334 | <u>Open</u> | <u>Closed</u> |
| | 8:00 am to 11:00 am | 11:00 am to 1:00 pm |
| | 2:00 pm to 5:00 pm | 5:00 pm to 7:00 pm |
| | 7:00 pm to 11:00 pm | |

ELMWOOD MEN'S FACILITY

Enter through west gate and obtain visitor's badge from administration office.

| | | |
|---|---------------------|-------------------|
| 945 Thompson Street Milpitas, Ca 95035 299-2835 | <u>Open</u> | <u>Closed</u> |
| | 8:00 am to 10:00 am | 10:00am to 1:00pm |
| | 1:00 pm to 5:00 pm | 5:00pm to 7:00pm |
| | 7:00 to 11:00 pm | |

JUVENILE HALL

| | |
|---|---------------------------|
| 840 Guadalupe Parkway San Jose, CA 95110 (408) 278-5810 | <u>Open</u> |
| | <u>8:00 am to 7:00 pm</u> |

Non-Clinic Out of Custody Cases

If the defendant is out of custody the following procedure should be followed:

- a. The defendant will be given your name, address and telephone number upon appointment and instructed to contact you immediately for an appointment.
- b. Inform the courtroom clerk, via email or mail, if the defendant fails to contact your office within 5 days of your appointment.

2.4 SUBMISSION PROCESS

Interim Process

All reports, other than EC 1017, may be faxed to:

Adult: 408-808-6892

Juvenile: 408-808-6290

Original reports must be on file with the Court. Mailing instructions are included in your appointment letter.

Online Submission

The Court is in the process of creating an electronic reporting system. Once this system

is operational, all reports other than those for EC 1017, shall be submitted electronically through the courts online submission system. You will be able to save the progress of completing your report online, enabling you to complete the report at your own pace. Specific instructions on how to complete the report using the online submission system will be available.

Once you submit your report through the system, the Court will distribute copies to the necessary parties.

EC 1017 Reports

EC 1017 reports are to be submitted to the defense attorney only, and are not to be submitted through the Court's online system. You must make arrangements for how the report is to be submitted with the defense attorney. The report template is available for you to download on the courts website.

2.5 PAYMENT AND INVOICING

The fee schedule for Forensic Evaluators shall be as follows:

Psychiatrists/ Psychologists

| | |
|---|--|
| Evaluation and Report (Flat Rate) | \$350 |
| Evaluation and Report with Testing (Psychiatrists, M.D.) | \$95/hr (2 hours maximum) |
| Evaluation and Report with Testing (Psychologists, Ph.D.) | \$85/hr (2 hours maximum) |
| ½ Day Testimony | \$250 |
| Full Day Testimony | \$425 |
| Unusual Evaluations | \$95/hr (Psychiatrists) \$85/hr (Psychologists) |

Requesting Additional Funds

For unusual evaluations in which you wish to request additional payment, you must complete the Request for Additional Funds form. This form can be found on the courts website. This form must be submitted directly to the Judge for approval. You will receive a copy of the approved or denied request from the Court.

Payment for Extraordinary Services will be paid on the standard hourly rates only. If requesting payment for Extraordinary Services, you must include a copy of the approved court order with your invoice.

Invoicing

Invoices are due within 30 days upon submission of the report, and for reports submitted in June, invoices must be submitted by July 7th.

The required invoice form (Compensation Claim Form), can be found at the courts website. Complete the form and mail the original copy to:

| | |
|---------------------------|---------------------------|
| For Criminal evaluations: | For Juvenile evaluations: |
| Superior Court | Superior Court |
| Attn: HOJ Asst. Director | Attn: Juvenile Justice |
| 191 North First Street | 191 North First Street |
| San Jose, CA 95113 | San Jose, CA 95113 |

SECTION 3: STATUTORY BASIS OF REPORTS

The following section is intended to serve as a brief overview of the legal issue presented in each type of report. This is not intended to substitute for a thorough review of the relevant statutes. A list of relevant statutes with links can be found at the Court's Psychiatric Evaluator Website.

3.1 PC 1368- CURRENT MENTAL COMPETENCY

A defendant is mentally incompetent per Penal Code Section 1368 if as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings **OR** to assist counsel in the conduct of a defense in a rational manner.

Attributes of competence include not only awareness of procedural rights, but also the abilities to decide whether to exercise procedural rights, such as, the privilege against self-incrimination, to put on a defense, or to raise an affirmative defense. (See Godinez v. Moran (1993) 509 US 389, 399.)

Careful discussion of the reasons supporting your conclusions is critical. For example, if you conclude that the defendant is malingering, your report must clearly state the reasons for your conclusion.

If the evaluator concludes that the defendant is not competent, the evaluator should state whether further evaluation concerning the administration of anti-psychotic medication is indicated.

3.2 JUVENILE COMPETENCY

Pursuant to Welfare and Institutions Code Section 709, a juvenile is incompetent to stand trial if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her. If the court finds substantial evidence of incompetency, proceedings shall be suspended.

Minors may be found incompetent based on developmental immaturity alone. *Timothy J. v. Superior Court* (2007)58 Cal.Rptr.3d 746.

3.3 PC 1370 (a)(2)(B) INVOLUNTARY ADMINISTRATION OF ANTI-PSYCHOTIC MEDICATION

If you are appointed to evaluate whether a defendant found incompetent by the court should be subjected to an order for the involuntary administration of anti-psychotic medication, you will need to consider and your report should address the following issues:

- Whether the defendant lacks capacity to make decisions regarding medication, whether the defendant's mental disorder requires treatment with antipsychotic drugs, and if untreated with medication, it is probable that serious harm will result to the defendant;
- Whether the defendant is a danger to others;
- If the defendant is charged with a serious crime, whether involuntary administration of medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to assist in his/her defense; alternative treatments are unlikely to have the same results, and antipsychotic medication is in the defendant's best medical interest.

3.4 EC 1017- DEFENSE COUNSEL REPORT OF POSSIBLE MENTAL DEFENSES

Reports pursuant to EC 1017 are prepared for the purpose of assisting defense counsel on the question of whether or not a particular mental defense should be pursued. Your report should address information that will assist defense counsel in advising the defendant whether to enter or withdraw a plea based on insanity, or to present a defense based on his/her mental or emotional condition.

These reports are confidential, and should be sent directly to defense counsel. Do not send a copy to the Court or the District Attorney.

3.5 PC 1026 and PC 1027- NOT GUILTY BY REASON OF INSANITY PLEA

Under California law, an accused is not guilty by reason of insanity if s/he was incapable of knowing or understanding the nature and quality of his/her act, and of distinguishing right from wrong at the time of the commission of the offense.

Pursuant to W&I Code 702.3(d), the provisions of PC 1026 and 1027 shall apply to juvenile proceedings.

3.6 W & I Code section 6605 and 6608 SVP EVALUATIONS

If you are appointed under W & I Code section 6605 or 6608 you will be asked to evaluate a person who has been previously committed as a Sexually Violent Predator (SVP) and to submit a report addressing the following issues:

- Whether the person *currently* meets the statutory definition of an SVP;
- Whether conditional release to a less restrictive alternative *or* an unconditional release is in the best interest of the person, and
- Whether conditions can be imposed on the person’s release that would adequately protect the community.

“Sexually violent predator” is defined at W & I Code section 6600(a)(1) as a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

Your report should attempt to answer whether: 1) the person’s condition has so changed that the person no longer meets the definition of a sexually violent predator, or 2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community.

3.7 All Other Code Sections

For all other statutory reports, refer to the language in the code section for information that must be addressed and timeline for report submission.

SECTION 4: SUMMARY OF STANDARDS FOR REPORT CONTENT

All reports, except EC 1017 reports, may be faxed to Adult: 408-808-6892 or Juvenile: 408-808-6290. Original reports must be on file with the Court. Mailing instructions are included in your appointment letter. The court is in the process of creating an online reporting system, once operational, all reports, except EC 1017 reports, shall be submitted through the online reporting system. These reports will follow the Standard Report Format (See Court’s Website) for use in this Court, and shall contain the following minimal information:

- (1) Name of defendant and court docket number;
- (2) The statute authorizing evaluation of the defendant (include in subject line and body of report);
- (3) Evaluation background details to include:
 - i Place, date, and duration of the examination (see subsection d, below);
 - ii All records and collateral material reviewed;
 - iii A list of all tests administered;
 - iv A statement indicating the defendant was informed of the purpose of the evaluation;
 - v A statement indicating that the defendant was advised that the evaluation is not confidential (except for 1017 reports);
- (4) A statement of the current legal status, including:

- i Patient's current legal situation (factual summary of the underlying allegations);
 - ii Date of arrest;
 - iii Specific charges against patient;
 - iv Any findings from previous psychological or psychiatric evaluations.
- (5) Statement of past legal history;
 - (6) Statement of drug and alcohol history;
 - (7) Indication of pertinent social, educational, developmental, or legal-psychiatric history.
 - (8) Statement on mental status examination;
 - (9) Discussion of findings;
 - (10) Statement of conclusions and recommendations (including any recommendations for further testing or follow-up examinations);
 - (11) Recommendation for the use of anti-psychotic medication.

The evaluator should be familiar with the statute forming the basis of the referral, and the evaluator's findings and conclusions should address the legal question presented.

The interview of the defendant shall be of a length that would allow the examiner to adequately testify to the conclusions made in the report. Interviews of less than 45 minutes duration should be justified in the reports. (e.g., the client was floridly psychotic and completely unable to cooperate, or was mute.)

While no minimum or maximum length is required, reports of 4 to 6 pages are considered standard. Reports that are shorter should be justified in the body of text. All sections of the standard report format must be addressed.

Careful discussion of the reasons supporting your conclusions is critical. For example, if you conclude that the defendant is malingering, your report must clearly state the reasons for your conclusion.

Complex psychological concepts and terms should be defined and explained in the body of the report.

4.1. TESTING STANDARDS

The court does not require testing for competency reports, however, if testing is necessary to determine competency the court recommends the use of the following tests:

- a. Wechsler Abbreviated Scale of Intelligence – 2nd Edition (WASI-II)
- b. Wechsler Adult Intelligence Scale, 4th Edition (WAIS-IV)
- c. Wechsler Intelligence Scale for Children – 4th Edition (WISC-IV)
- d. Georgia Competency Test
- e. Tool for Real-time Assessment of Information Literacy Skills (TRAILS)