

CHECKLIST FOR DEFENDANTS WITH MENTAL HEALTH ISSUES IN DALLAS

(see below for more information and for defense attorneys outside Dallas County)

(1) What is the diagnosed mental illness?

The defense attorney should get documentation from a doctor indicating:

- a. the diagnosis
- b. the prognosis
- c. the current condition

(2) If you have no other information regarding his mental illness, you might contact the county mental health coordinator at 214-875-2323

The Mental Health Coordinator can see if the defendant has been a client of some service providers (i.e. has a mental illness) and give the defendant a referral to insure that the person has a place to stay and medication, if and when, they are released.

(3) After you have determined the diagnosed mental illness, (and it is a probation eligible, non-violent offense) contact ADAPT: ACS1115Referrals@adapt.us OR Phone: 214-761-1300

And advise them that you would like the defendant evaluated. They can evaluate which programs would benefit him if he is released on probation.

(4) CATS evaluation - You may want to request a CATS evaluation, but the ADAPT report should be sufficient. The CATS evaluation will indicate whether the person is eligible for the MIMR (Mental Illness Mental Retardation) caseload. The defense attorney can initiate this or the prosecutor can send a rec to probation indicating that a CATS evaluation is requested. When you have this you will be in a better position to evaluate the case.

By putting the case on the mental health caseload, i.e. psychologists in CATS approval for it and getting the coordinator or mental health public defender's case-managers involved, they may be able to get the defendant in a program that will keep him medication compliant (depending on the nature of the offense). Also, the Mental Health Coordinator monitors people in our jail with mental illnesses. This ensures that they do not languish in the jail when they should be in another program or facility, i.e. avoids liability.

Notify the Mental Health Division prosecutors for severe cases, incompetency or insanity issues. One third of the people in the Dallas jail have a diagnosed mental illness and therefore the Mental Health Division cannot take all the cases. The prosecutors in the Dallas District Attorney's Office have received training in mental illness and can do the same things that attorneys in the Mental Health Division would do. A checklist for them is on our K drive.

MENTAL HEALTH CHECKLIST FOR DEFENSE ATTORNEYS

MENTAL ILLNESS

1. Ask the client questions to determine the mental illness diagnosis.

Interview the client as soon as possible.

Ask about the facts of the case.

Ask a client whether he or she has been treated for any type of mental illness.

Ask if they have ever been prescribed any psychiatric medications.

Review medical records (all of the relevant medical, psychological, and intellectual testing records) if available. You have a right to these.

Ask whether he or she took special classes in school.

Talk to the family.

Interview witnesses.

To the extent possible, explain the law. Inform the client of their legal options regarding disposition of the case and right to a jury trial or a trial before the court and the right to be present at hearings. Review with the client the certificates of current physical, medical, and intellectual examinations. Do they seem to understand this?

2. Is the client competent? (see below)

3. Get the client out of jail on bond, if possible. Review Tex. Code Crim. Proc. art. 16.22 and 17.032 (Early Identification and Release of Mentally Ill).ⁱ

4. Familiarize yourself with options available in your community. Talk to mental health professionals, public defenders that specialize in mental health, etc.. For a list of approximately 300 community resources available in the Dallas area visit www.dallasda.com and click on "Community Prosecution".

5. Mentally ill individuals can be placed on probation or promised conditional dismissals with requirements including but not limited to:

(1) stay on their medications;

(2) not consume illegal drugs or alcohol (imperative as this exacerbates the mental condition and diminishes and conflicts with the effect of prescribed medications);

(3) see mental health professionals; and

(4) see case managers who can obtain supportive housing, transportation, etc. for them.

6. An attorney who is appointed or retained to represent a special needs offender or a juvenile with a mental impairment can disclose medical information for the purposes of continuity of care. Tex. Health & Safety Code § 614.017

7. If your client was arrested without a warrant, look at the Texas Health and Safety Code section 573.001 which requires that apprehended persons with mental illness be taken to a mental health facility instead of a jail facility in certain situations. Jail personnel may have the authority to divert the client to a mental health facility. Ask detention personnel if the client can be moved to a medical facility, if appropriate.

8. Familiarize yourself with civil commitments if applicable.

9. Familiarize yourself with “Duties of Attorney” Tex. Health & Safety Code 574.004 (see below).

10. Explain your client’s absence to the court at meetings or hearings. Determine if you need an independent psychiatric evaluation.

COMPETENCY

1. Consider an Evaluation for Incompetency. This may be the best way to begin treatment services for the client. Review 46B of the Texas Code of Criminal Procedure
2. If the client is incompetent, ask the court coordinator to have the client evaluated by a doctor:

*When a doctor has determined that an individual is incompetent, the certificates of medical examination are valid for 30 days. Health and Safety Code § 574.066(c). **HAVE A COMPETENCY HEARING WITHIN 30 DAYS OF THE DAY OF THE EVALUATION** (not the day of the report). Failure to do so will result in unnecessary delays and incarceration for the client, the wrath of the judge and unnecessary expenses to the taxpayer

*Consider Outpatient Competency Restoration “OCR”. “The court *shall* order a defendant released on bail under Subsection (a) to participate in an outpatient treatment program for a period not to exceed 120 days.” Tex. Code Crim. Proc. art. 46B.072 (b) (emphasis added).

*If appropriate, ask the prosecutor about a Civil Commitment in return for a dismissal. A prosecutor may agree to dismiss the case based on the client’s mental health commitment.

* Misdemeanor cases shall be dismissed if the defendant is not tried before the second anniversary of the date on which the order of commitment was entered. Tex. Code Crim. Proc. art. 46B.010.

INSANITY

1. Consider an evaluation for insanity. Review 46C of the Texas Code of Criminal Procedure
2. If the client was insane at the time of the offense:
 - * give timely Notice of Insanity to the State no less than 20 days prior to the trial. Tex. Code Crim. Proc. art. 46C.051(b)(2).

*Advise the client that the court will continue to have jurisdiction over the client. ⁱⁱ

Conclusion: Familiarize yourself with mental health issues and the many specific deadlines by reading the following suggested articles and/or books:

Mental Illness, Your Client and the Criminal Law, Texas Tech University School of Law (2005). This book is a very valuable resource for defense attorneys and prosecutors and has a helpful guide indicating which medications are prescribed for different mental illnesses (to obtain free copies of this book go to <http://www.texasappleseed.net> or e-mail info@texasappleseed.net).

Mental Health – Therapeutic Justice, by Cindy Stormer, Advanced Criminal Law, State Bar of Texas 2013.

Texas Criminal Procedure and the Offender with Mental Illness by Brian D. Shannon and Daniel H. Benson.

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