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Rationale for separating Competence to Stand Trial and Criminal Responsibility evaluations:

- 1) An incompetent defendant cannot participate effectively in an evaluation to determine sanity at the time of the crime.
 - An incompetent defendant may have psychotic, illogical reasoning, or irrational self-defeating goals and not be able to participate effectively in a Criminal Responsibility evaluation or choose a defense strategy (NGRI) with his or her attorney.
 - A defendant who is Not Competent to Stand Trial is likely not able to bring forward exculpatory evidence effectively or recount a clear and logical narrative of his or her state of mind at the time of the crime.
 - Separation of Competency to Stand Trial and Criminal Responsibility Evaluation ensures the fairness of the adversarial process and dignity of the court process.
- 2) Consensus recommendation in the field of forensic psychiatry is to separate Competence to Stand Trial and Criminal Responsibility Evaluations:
 - “When the defendant asserts that they did not commit the crime in question – an imposed insanity defense (or election of an insanity defense coupled with competency) robs them of the ability to bring exculpatory evidence to bear.
 - In addition, some defendants are not willing to admit that they committed the act in question, a presupposition to the insanity defense. If the state has only equivocal evidence, it may be prudent to decline an insanity defense.
 - If an insanity plea is successful, the defendant is likely to lose his freedom for an indefinite time.)” (Reisner et al 2013.)
 - The American Academy of Psychiatry and the Law (AAPL), the professional society of forensic psychiatrists issues guidelines for the practice of forensic psychiatry. AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial recommends that in a combined Competence to Stand Trial and Criminal Responsibility Evaluation, that the evaluation be suspended if the evaluator’s recommendation is Not Competent, and a Criminal Responsibility evaluation *only* be preformed if the psychiatrist is working for the defense and under the attorney-client privilege, in order to protect the defendant who lacks capacity to make decisions regarding his or her legal case. (Mossman et al 2007)
3. Evaluators’ practice is influenced by having combined competence to stand trial and sanity evaluations.

- A 2015 study by Preeti et al examined 5,731 forensic evaluations found that evaluation structure (whether Competence to Stand trial evaluations were performed separately or combined with Criminal Responsibility Evaluations) influenced the outcome of the report.

Preeti et al: “In CST-only evaluations, opinions of incompetency were associated with defendants’ medication noncompliance at the time of the offense, being charged with a nonviolent offense, and the evaluator receiving defendants’ criminal records. These variables were not associated with an incompetency opinion in joint evaluations. In joint evaluations, the absence of prior conviction was related to an opinion of incompetency; this was not the case for CST-only evaluations.”

References:

The Vermont Statutes Online. Title 13: Crimes And Criminal Procedure. Chapter 157: Insanity As A Defense. Accessed at <https://legislature.vermont.gov/statutes/fullchapter/13/157> on 12/9/19.

AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial. Douglas Mossman, MD, Stephen G. Noffsinger, MD, Peter Ash, MD, Richard L. Frierson, MD, Joan Gerbasi, JD, MD, Maureen Hackett, MD, Catherine F. Lewis, MD, Debra A. Pinals, MD, Charles L. Scott, MD, Karl G. Sieg, MD, Barry W. Wall, MD, and Howard V. Zonana, MD. JAAPL, Volume 35, Number 4, 2007 Supplement.

Miller RD: *Hendricks v. People*: forcing the insanity defense on an unwilling defendant. J Am Acad Psychiatry Law 30:295–7, 2002.

Miller RD, Olin J, Johnson D, et al: Forcing the insanity defense on unwilling defendants: best interests and the dignity of the law. J Psychiatry Law 24:487–509, 1996.

Preeti C, Warren J, Kois L, Wellbeloved-Stone J. The significance of combining evaluations of competency to stand trial and sanity at the time of the offense. Psychology, Public Policy, and Law, Vol 21(1), Feb 2015, 50-59

Reisner AD, Piel J, Makey M. Competency to Stand Trial and Defendants Who Lack Insight Into Their Mental Illness. J Am Acad Psychiatry Law. March 2013, 41 (1) 85-91.

Resnick P: The political offender: forensic psychiatric considerations. Bull Am Acad Psychiatry Law 6:388–97, 1979.