

CRIMINAL RESPONSIBILITY REPORT WRITING GUIDELINES

Introduction:

This checklist is designed as a guideline for completing Criminal Responsibility Evaluations pursuant to M.G.L. chapter 123 §15(b). It is best used as a reference point for checking your work to determine whether you have included the necessary elements in your report

IDENTIFYING INFORMATION

- Name
- Gender
- Referring Court
- Date(s) of Alleged Offense(s)
- Place of Evaluation (if applicable) which led to this court-ordered evaluation
- Type(s) of Evaluation (i.e., CST, CR, Aid in Sentencing, etc.)
- Statute/Legal Authority for Evaluation
- Place and Date of Admission (if inpatient 15B)
- Brief (typically one sentence) description of what the defendant is alleged to have done
- Date of Birth
- Age at Evaluation
- Charge(s)
- Date of Arrest

LEGAL CRITERIA - McHoul- verbatim

WARNING OF LIMITS OF CONFIDENTIALITY When writing this portion of the evaluation, write what you actually gave as a warning to this defendant.

Did you indicate that you informed the defendant

- About your professional status as a court-ordered examiner
- That you are performing a court-ordered evaluation
- That the evaluation was ordered to assist in the Court's determination of the defendant's mental state at the time(s) of the alleged offense(s)
- That the evaluation was ordered to assist in the Court's determination of the defendant's need for mental health treatment
- That the information would be revealed to the Court in the form of a report and possibly testimony and in that sense will not be confidential
- That the defendant could refuse to participate in the interview, but in that event you would still be providing a report to the Court based on your observations and other sources of information
- That the defendant could refuse to answer questions selectively
- That the defendant could stop the interview at any time

Did you indicate that

- You attempted to briefly assess the defendant's understanding of the warning with questions (or requests to paraphrase) and include examples of his/her responses which suggest(s) their understanding or confusion
- You attempted to educate the defendant about the warning (if he/she did not appear to adequately understand it) and briefly describe your efforts to do so
- You attempted to reassess the defendant's understanding of the warning with questions (or requests to paraphrase) and include examples of his/her responses which suggest(s) their understanding or confusion
- Your impression of whether or not the defendant adequately understood the warning

SOURCES OF INFORMATION

- ___ Indicate dates and duration of all interviews with the defendant
- ___ Indicate date(s) of contact (or attempts to contact) defendant's attorney
- ___ For all others interviewed, indicate names, dates of contact and relation to the defendant
- ___ For family members of the defendant, indicate they were informed that information shared which is relevant to the evaluation will be reported to the Court
- ___ Identify all records that you reviewed for the purpose of this evaluation

RELEVANT HISTORY

It is important to organize this section carefully, so that it is "reader friendly." Usually a chronological account of the person's life works well; in some cases it might be better to break out some subsections such as "History of Substance Use" or "Mental Health History."

- ___ Information provided is both relevant and sufficient to support your subsequent opinions regarding the presence or absence of mental illness, your diagnostic impression, and opinions such as likeliness of serious harm to self or others by reason of mental illness. In addition, be sure to keep in mind the purpose of the report, and do not include information that is unnecessary, potentially prejudicial, etc.
- ___ Includes a brief description of any significant points regarding the defendant's history of family socialization and his/her personality development
- ___ Includes a history of social adaptations to school, work, peer relations, marriage, etc.
- ___ Includes any history of past mental difficulties, treatment, and response to treatment or report of no such history
- ___ History of suicidal ideation/attempts or no such history
- ___ Includes any history of substance abuse or report of no such history
- ___ Includes any history of criminal justice involvement or report of no such history
- ___ Includes any history of violence/threats toward others and/or self or report of no such history
- ___ Includes relevant medical history
- ___ Includes results of any special diagnostic evaluations (if applicable)
- ___ Multiple sources of information were sought to corroborate above histories and any significant discrepancies or single source information, which cannot be corroborated are noted.
- ___ If specific interviewees (i.e., defendant, a family member, etc.) are thought to be unreliable informants, this is pointed out at the beginning of this section

CIRCUMSTANCES OF REFERRAL

- ___ Includes a summary description of the observations made by others (attorneys, clinicians, court-personnel, family members, etc.) which elicited or are relevant to the referral for this court-ordered evaluation
- ___ If a Section 15(a) evaluation was conducted, the evaluator, date of evaluation, and observations and inferences relevant to this court-ordered evaluation are included

COURSE OF HOSPITALIZATION (if hospitalized during current evaluation)

- ___ A summary of the course of the defendant's current hospitalization (particularly important if you need to rule in/out malingering)

Additional Information Related to the Alleged Offense:

- _____ Reports of others persons' accounts of the events surrounding the alleged offense (when relevant) and/or direct observations of the defendant are included.
- _____ Additional information related to the defendant's mental condition in the hours or days prior to, during and immediately after the alleged offense is included. This information focuses on descriptions of the defendant's behavior (any problem-solving behavior, exercise of volitional control, irrational behavior, substance use, efforts to conceal actions, etc.) on that date and other observations which allow for inferences about the defendant's state of mind at the time of the alleged crime (this may also include data from the 15a report).

CLINICAL IMPRESSIONS REGARDING CRIMINAL RESPONSIBILITY

Inferences and opinions regarding CR do not appear prior to this section. This section interprets the information from the previous sections, with regard to its relevance for the question of the defendant's criminal responsibility for the alleged offense(s). Opinions and supporting data and rationales are offered regarding the following:

- _____ Whether or not the defendant had a mental illness or defect at the time of the alleged offense, and
- _____ Whether his or her ability to appreciate the illegal (wrongful) nature of what he/she was doing ("cognitive prong") was significantly impaired due to a mental illness or defect
- _____ Whether his or her ability to conform his or her conduct (exercise self control) to the requirements of the law ("volitional prong") was significantly impaired due to a mental illness or defect
- _____ Whether there's evidence that intoxication of any kind significantly impacted the defendant's actions at the time of the alleged offense
- _____ For each of these opinions, supporting data are identified from the earlier sections and the inferences (logical connections) linking these data to your opinions are explained
- _____ Rather than offering an ultimate opinion regarding CR ("the defendant is/is not CR") or using the exact language of the statute ("lacked substantial capacity"), the examiner's opinions regarding the cognitive and volitional prongs are stated in the following form - "the symptoms of the defendant's (mental illness/mental defect) (did/did not) significantly impair his/her capacity to (appreciate the wrongfulness of his or her actions/conform his or her conduct to the requirements of the law) at the time of the alleged offense"
- _____ If the examiner cannot reasonably form a confident opinion about one or more of the three matters noted above, the reasons for this inability are explained (i.e., the defendant's unwillingness/inability to provide a comprehensible account of his/her behavior, the absence of corollary accounts of the defendant's actions and mental state at that time, the inherent difficulty in forming retrospective assessments about complex clinical material, etc.)

CLINICAL IMPRESSIONS REGARDING NEED FOR CARE AND TREATMENT

Note: In this section it is important that you make clear to the court your clinical opinion on the defendant's need for hospitalization and clinical care and treatment. Other recommendations can be made consistent with the following guidelines:

An opinion and supporting data and rationales are offered regarding:

- Whether the person is mentally ill (as defined by state regulation) or mentally retarded
- Whether the person requires inpatient psychiatric hospitalization
- If so whether the person requires strict security
- The rationale for these recommendations should be explicitly articulated, including reasoning around likelihood of serious harm to self/others
- If recommendations for treatment other than inpatient hospitalization are offered, then you should include specifics about where that treatment can be obtained
- Recommendations (both for hospitalization and community treatment) should be consistent with the person's legal status (e.g., recommendations for immediate disposition upon return to court versus recommendations for when the case will be ultimately adjudicated.)

In some cases it is desirable to offer the court more than one dispositional option, depending on the legal outcome of the case. However, offering too long of a laundry list, without clarifying your recommendation may be confusing to the court. In choosing what to include in this section, the following guidelines are recommended:

You should first make clear to the court your specific recommendations consistent with your forensic opinion (e.g., if you are recommending that the defendant meets criteria for being found Not Guilty by Reason of Insanity and requires hospitalization, then you should recommend further observation pursuant to §16(a)).

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It is usually advisable to offer the court alternative dispositional recommendations for hospitalization if the court finds contrary to your recommendations about criminal responsibility (e.g., if you are recommending that the defendant meets criteria for being found Not Guilty by Reason of Insanity, you can include a recommendation for how the defendant could be hospitalized if the court nevertheless adjudicates him/her criminally responsible – such as §15(e), §18(a), §12(e), §§7&8).

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It is not advisable to offer dispositional recommendations that conflict with your clinical opinion about need for hospitalization - e.g., if you recommend inpatient commitment, it is not helpful to then add that if the court chooses to release the defendant then outpatient services may be obtained at a local community mental center.

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In this section, risk of harm to self and others should be addressed even if you think that this is not due to mental illness (e.g., substance abuse, personality disorder).

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Note: There are situations where the data do not suggest that the defendant poses a risk of harm to self or others but you think that the person could nevertheless benefit from treatment. In making recommendations in such cases, please be aware that some courts will impose this treatment as a condition of probation. Therefore, when making such recommendations, you should take into account the advantages and disadvantages of such enforced treatment.