

# Competency Exam Overview

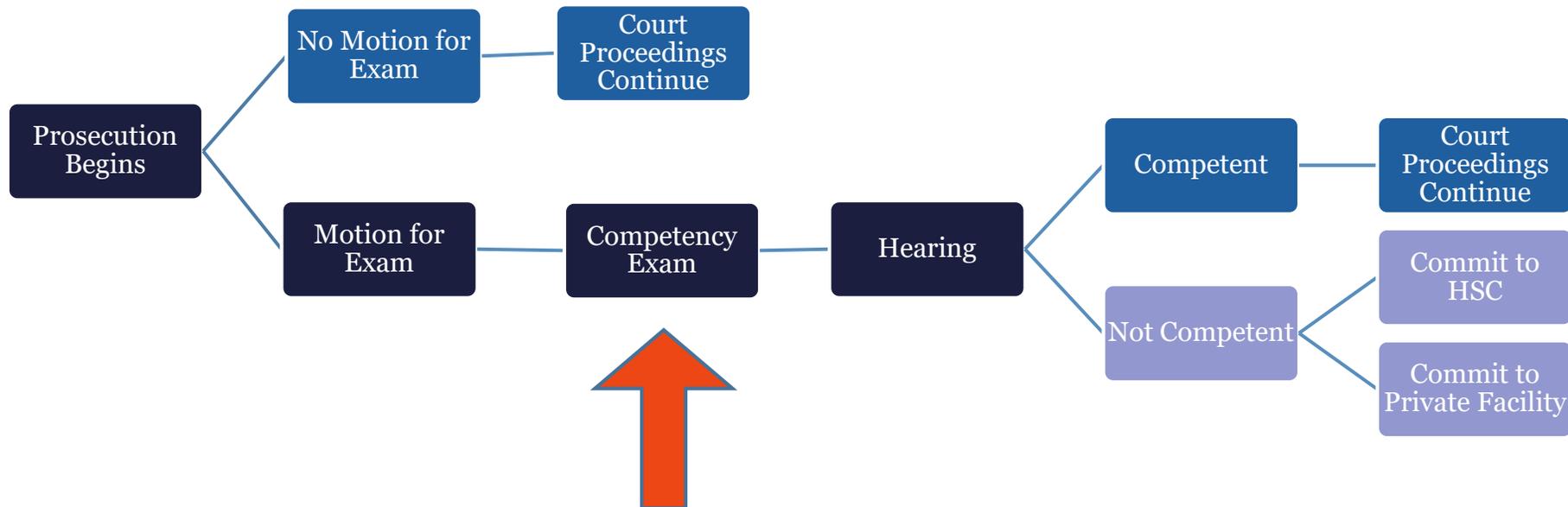
Improving Criminal Justice Responses for  
Persons with Mental Illness

# What is competency?

- Competency process is used to determine ability of the defendant to understand the nature and consequences of the proceedings and aid in own defense
- While mentally incompetent, a person cannot be tried, sentenced, or punished for any public offense.

# Who orders the exam and when does it occur?

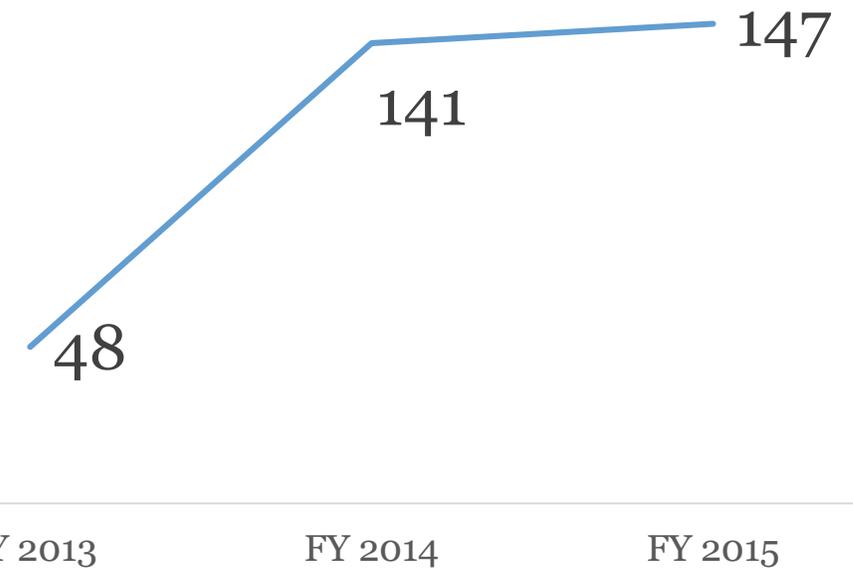
- The prosecution, defense, or court may raise a motion for a hearing to determine competency, and may be brought at any time after commencement of prosecution and prior to sentencing.



# Why was it necessary to address the issue of competency in HB 1183?

- Court orders regarding competency evaluations tripled in a 3-year period, while multi-purpose evaluations and wait times for evaluations drove higher costs.

Competency Evaluations  
Ordered



## Why was it necessary to address the issue of competency in HB 1183?

- Inmates with orders for forensic evaluation stayed far longer than the pretrial and convicted populations analyzed.
- For example, in FY15 Pennington County identified 10 inmates who had competency evaluations ordered. They stayed in jail an average of 223 days.
- Only psychiatrists or psychologists could perform competency exams, which increased the wait times.

# How does HB 1183 ensure speedier court processing and shorter jail stays?

- Reallocate funds used at the Human Services Center for the costs associated with forensic evaluations to establish a contract with the SD Association of County Commissioners to create a fund for the purpose of assisting counties with the cost of court-ordered competency evaluations.
- Sets a 21-day timeframe for completion of competency evaluations and expands the types of professionals who can perform these examinations.
- Adds to the list of professionals who are able to complete the exam.

# The following professionals may now conduct an evaluation:

1. A licensed or certified psychiatrist;
2. A licensed clinical psychologist;
3. \* A certified social worker with competency evaluation training;
4. \* Certified nurse practitioner or clinical nurse specialist with current psychiatric certification and competency evaluation training;
5. \* Licensed professional counselor-mental health with training

\*Added as a result of 1183

Now, there are currently 30 licensed professionals available to conduct court ordered competency evaluations.

- Rapid City (9)
- Sioux Falls (8)
- Yankton (4)
- Watertown (3)
- Lemmon
- Mansfield
- Mitchell
- Jamestown, North Dakota
- Marshall, Minnesota

# Oversight Council

Improving Criminal Justice Responses for  
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# How is the Oversight Council involved with competency exam payments?

## Review

- Review task force recommendations, track implementation and evaluate compliance
- Review data and reporting required by this Act
- Review compliance with the training required by this Act
- Review the recommendations of the crisis intervention team training review team
- Review the crisis response grants distributed
- Review DCI's development of training on mental illness
- Review the payments to counties for mental competency examinations and reports

# Evaluations Eligible for Reimbursement

Eric Erickson



# Which Evaluations are covered?

“Evaluation” means a mental health evaluation court-ordered pursuant to SDCL §23-10A-3, as the same may be amended from time-to-time, conducted for the purpose of determining a defendant’s ability to understand the nature and consequences of the proceeding against the defendant or to assist properly in the defendant’s defense.

\*Note the limitation on which evaluations are covered.

# Authorized Evaluators

“Authorized Evaluator” means a medical professional with the qualifications set forth in SDCL §23A-46-1 and included on the list of evaluators maintained by the Department of Social Services pursuant to SDCL § 23A-46-1.1 (2017).

Following each funding period the SDACC will provide a list of the Authorized Evaluators utilized by the counties and the cost of each Provider.

# Eligible Expenses

Costs eligible for reimbursement from the CEF Fund include the costs paid by a county to an Authorized Evaluator for an Evaluation, and properly submitted to the Board for reimbursement hereunder, provided said costs do not exceed the Maximum Fees and are not otherwise ineligible under these rules or applicable statute.

## Maximum Fees.

The amount of fees reimbursed to a county, or considered in determining the county's portion of the Fund, paid to an Authorized Evaluator may not exceed \$1,500.00 per Evaluation.

Notwithstanding the foregoing, the Board, by a two-thirds (2/3) majority may approve higher amounts in the event of extraordinary circumstances or surplus funds.

# Repayment

If a county receives CEF funds and that county subsequently recovers all of the Evaluation costs from either the defendant or some other source within one year of the county's receipt of the CEF funds for such defendant, the county shall repay the amount recovered to the SDACC to be deposited in the Fund.

# Distribution of the Fund

At the end of each Funding Period, the Board shall utilize the available Fund to reimburse counties for the amount of their approved claims. In the event the amount available from the Fund is less than the total amount of approved claims, the available amount of the Fund shall be distributed as follows:

The total amount of claims approved for each county shall be divided by the total amount of claims approved for all counties to determine the percentage of the available Fund to be allocated to such county. Each county shall then receive its portion of the Fund.

## Sample Calculation using the formula:

### Sample Calculation of County A's Percentage of the Fund:

County A's approved claims ÷ total approved claims = County A's percentage. As an example:

\$3,000.00 (County A's approved claims) ÷ \$200,000.00 (total approved claims) = .015 (county's A's percentage).

### Calculation of County A's payment from the Fund:

\$114,500 (Available Fund) X .015 (County A's percentage) = \$1,717.50  
(Paid to County A)

# Summary of the Competency Exam Claims

Bob Wilcox



# How many competency exam reimbursement claims have been processed?

- 41 total claims
  - 22 are “good”
  - 19 are not payable on their face
- Of those 19 claims that are not payable on their face:
  - 3 were not competency exams.
  - 6 are unclear if the exam was a competency exam or something else
  - 10 are for competency exams plus something else, but the bill was not clear as to how much the competency exam cost
- The 22 “good” claims totals \$21,362