

The Court



**FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES**

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Guidelines for Competency Education in the Community

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Module 1

General Preparation for Instruction

The contents of this manual provide general information associated with competency education. The manual, although informative, is only an overview of the capacities individuals need to demonstrate during the legal process in the criminal courts.

The Legal Process in the Circuit Courts

The legal process is a complex series of events based on laws and rules. The author presents the following explanation of the legal process to inform the instructor of competency education. The legal system is complex to lay persons and may be confusing and overwhelming to some persons with mental illness, thus instruction must be specialized.

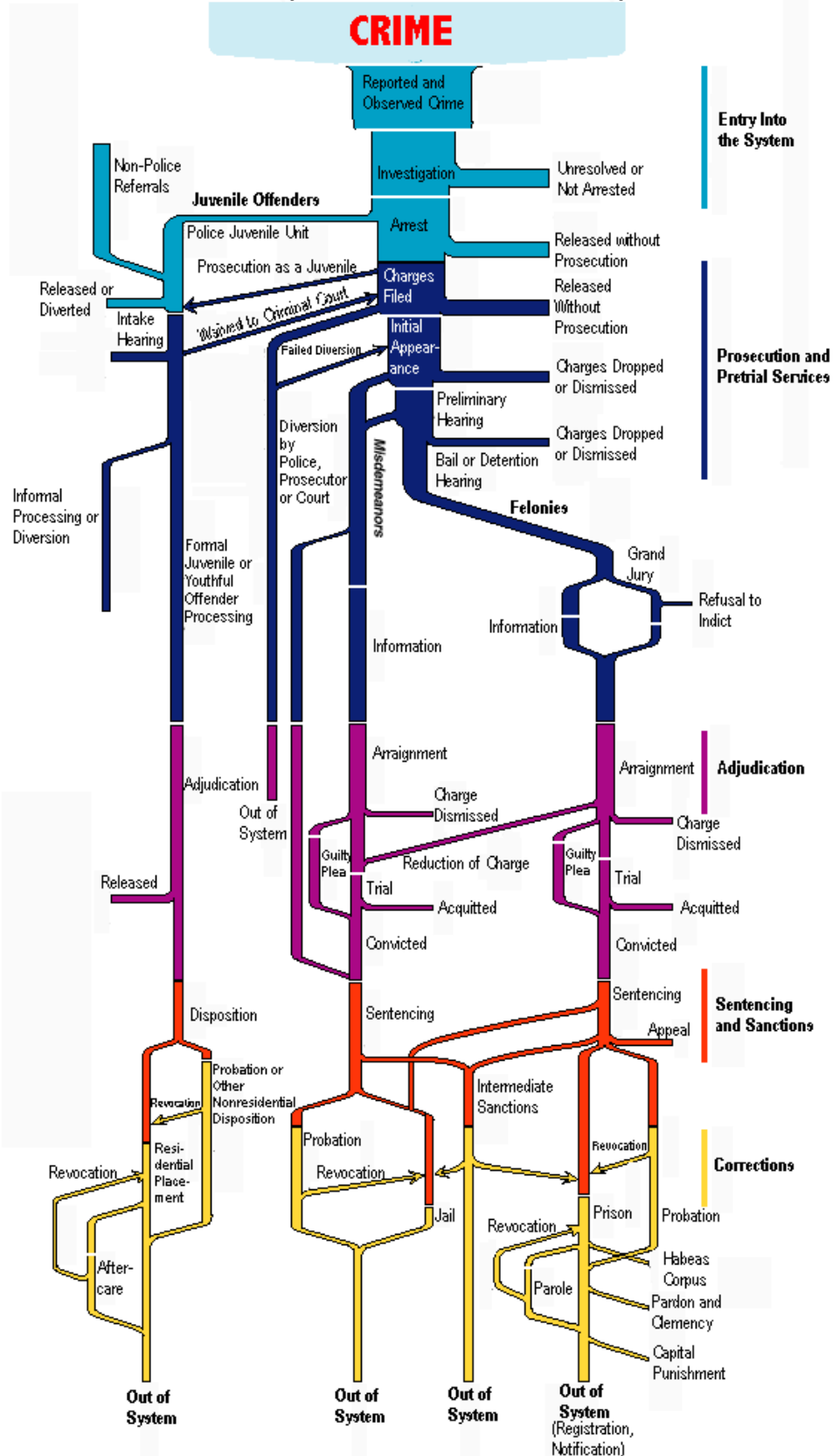
Entry to the criminal justice system begins with an investigated or observed crime and arrest. Individuals not released following arrest have charges filed by the arresting agency. Individuals have an initial appearance in front of a judge within 24 hours following arrest. If the Court maintains or holds charges the next procedure may be a preliminary hearing to determine bail or detention.

A Grand Jury reviews facts of the case from the perspective of a prosecutor. The court later manages the accused person's case through a process called arraignment. The court may decide on matters such as formal charges, bail, detention, and ask the accused person to enter pleas to charges (i.e., guilty, not guilty, not guilty by reason of insanity, or no contest).

Subsequent legal actions may include dropped, abandoned, or dismissed charges; entry in a pretrial intervention program; pleading guilty to lesser charges; a trial; a release from the Court upon a finding of not guilty; a finding of guilt and incarceration; probation; or a finding of not guilty by reason of insanity with the possibility of hospitalization.

The next page is a flowchart of the justice system. The Bureau of Justice Statistics designed the chart for the 30th Anniversary of the President's Commission on Law Enforcement and Justice Administration in 1997. You may access the chart on the internet at the following address:
www.criminology.fsu.edu/cjlinks/cj-flowchart.html

What is the Sequence of Events in the Criminal Justice System?



Terms Instructors Should Know

Remembering the following terms may help the instructor gain a base of knowledge needed to help persons restore competency. The instructor may refer to other sources for comparisons. The following terms and explanations are to build the skills of educators. (Explanations for participants are presented later in this document.) The reader may review various dictionaries, for example, the American Heritage Dictionary or Blacks Law Dictionary to compare or reference the following terms.

Accused or Defendant: The person charged with a crime.

Acquittal: A finding that the defendant is not criminally responsible.

Adjudication: A judgment made by the court.

Alleged Offense: The crime charged against a person.

Appeal: A defendant's legal challenge that alleges a legal outcome (such as guilt or sentencing) occurred outside the rules of established law.

Arraignment: A court appearance in which the defendant is formally charged with a crime and asked to respond by pleading guilty, not guilty or no contest (nolo contendere). Other matters often handled at the arraignment are the appointment of a lawyer to represent the defendant and the setting of bail.

Arrest: To seize and hold a person under the authority of law.

Bail: Security, usually a sum of money exchanged for the release of an arrested person as a guarantee of that person's appearance for trial.

Bailiff: A law enforcement officer in court who guards jurors and has charge of prisoners while they are in the courtroom. He or she will announce the judge and may swear people in to testify.

Capacity: The ability to receive, hold, or absorb. The power to learn or retain knowledge; mental ability.

Capias: A warrant for arrest.

Circuit Court: A criminal or felony court at the county level.

Clerk of Court: The person responsible for maintaining official records in a county.

Community Control: Intensive supervision while on house arrest.

Community Control II: Intensive supervision that requires the use of electronic monitoring in the community.

Competency Restoration: The process of helping an individual gain the skills needed to assist in his or her legal defense. Efforts to restore competency may include the administration of psychiatric medications, competency education, psychotherapy, and on rare occasions, medical treatment.

Conditional Release: May refer to a person released from either the Department of Corrections (DOC), the Department of Children and Families (DCF) or directly from a circuit court. Inmates in the DOC sentenced because of homicide, sexual offenses, robbery or other violent crimes against persons, and who have a prior stay in a state or federal correctional institution or have a history of adjudication as a Habitual Offender or Sexual Predator may gain a conditional release into society. The release occurs before the expiration of sentence. Former inmates must obey conditions until the expiration of their sentences. Violations may include new charges and sometimes incompetence to proceed before a return to court and possibly a correctional facility.

Conditional releases from a mental health treatment facility in the DCF may occur for persons Incompetent to Proceed or Not Guilty by Reason of Insanity. A Circuit Court may release the person into a community setting and require supervision. Violation may result in a return to a mental health treatment facility or jail, if additional criminal charges are evident.

Conditional releases may occur directly from circuit courts when individuals are incompetent to proceed or not guilty by reason of insanity and involuntary hospitalization is not indicated.

Competency Restoration: The process of helping a person regain or achieve the capacity to assist an attorney in his or her defense.

Contempt of Court: Open disrespect or willful disobedience of the authority of a court of law.

Conviction: The finding of a jury or judge that a person is guilty of a crime as charged.

Counts: The number of times the state charges that an offense occurred within a case. For example, five counts of Burglary.

County Court: A court established to process cases associated with misdemeanor infractions, such as DUI, Driving Without a License, Simple Battery, Littering, Petit Theft, etc.

Court : A person or body of persons whose task it is to hear and submit a decision on cases at law.

Court Reporter: A person who writes up and records the content of conversation during hearings or trials.

Courtroom: A room in which the proceedings of a court are held.

Crime: An act committed or omitted in violation of a law forbidding or commanding it. The court may impose penalties following conviction, such as a fine, probation or a term of imprisonment.

Defense Attorney: A person licensed to practice law in the state of Florida. The defense attorney represents the defendant or accused person. The attorney may be an employee of the Public Defender's Office or a private attorney, either hired by the accused or appointed by the court.

Detention: Holding a person in a designated setting until the Court has reached an outcome or a disposition of the person's case.

Evidence: Facts helpful in forming a conclusion or judgment.

Expert Witness: A witness acknowledged by the court as a person with special knowledge or facts relevant to the pending case. Expert witnesses may be psychologists, doctors, social workers, or even electricians and truck drivers if they have advanced knowledge in an area that may be helpful to establish or determine the specifics of a case.

Felony: Article X of the Florida Constitution defines a felony as "any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary." Felonies carry possible penalties of imprisonment in excess of one year.

First or Initial Appearance: In the State of Florida a person appears in front of a judge within 24 hours of arrest. The judge receives information regarding allegations against the person, determines whether there is cause to charge him and establishes legal representation for the defendant.

Forensic Commitment: The act of involuntarily placing an adult defendant in a secure facility due to incompetence to proceed or insanity and the need for care due to dangerousness or self-neglect. Placement occurs at the Circuit Court level under authority of Chapter 916, Florida Statutes. The person may reside in either a forensic facility for persons committed under authority of Chapter 916 or a civil facility that includes persons committed under Chapter 394, the Baker Act.

Grand Jury: A group of people from the community who hear and may see evidence against an individual. The Grand Jury decides if an individual's case should proceed to the trial stage.

Guilty (Plea): The act of a defendant admitting responsibility for a crime.

Guilty (Verdict): A decision from a judge or a jury that a defendant committed a crime beyond a reasonable doubt.

Hearing: A preliminary examination of an accused person's case.

Incarceration: The detainment of a person in a jail or correctional facility.

Incompetent to Proceed/Incompetent to Stand Trial: A mental illness or retardation renders the defendant incapable of effectively helping in his or her defense.

Indictment: A written statement charging a party with committing an offense. The statement is written by a prosecuting attorney and presented to a grand jury.

Involuntary Civil Commitment: Involuntary civil commitment is the involuntary placement of an adult person under Chapter 394, Florida Statutes (The Baker Act), for the purpose of treating a mental illness that renders the person dangerous or at risk of self-neglect. (For the purpose of this explanation, the definition excludes the commitment of sexually violent predators to receive sex offender treatment.) Persons committed under the authority of Chapter 394, F.S., reside in non-secure civil facilities.

Judge: The judge is the person of authority in a court. He or she is a neutral party who guides the legal process and ensures fair play. Judges may deliver verdicts when defendants waive a trial by jury.

Jury: A group of people (6 or 12) selected from the community who hear evidence at a trial and deliver a verdict of guilt or innocence.

Lawyer: A professional who gives legal advice and assistance to clients, and represents them in legal matters.

Mental Health Treatment Facility: Any one of several state operated or contracted treatment facilities under authority of the Florida Department of Children and Families. The facilities provide services for persons committed as Incompetent to Proceed or Not Guilty by Reason of Insanity, or persons lacking criminal charges but needing voluntary or involuntary care.

Misdemeanor: An offense less serious than a felony, punishable by a fine, probation or jail time under a year.

No Contest or Nolo Contendre (Plea): The defendant's reply to the court that he or she is not contesting or challenging a charge. Courts usually accept the plea of no contest as an admission of guilt.

Not Guilty (Verdict): The court adjudges that a defendant is not responsible for a crime as charged.

Not Guilty (Plea): A defendant's reply to a charge that he or she is not responsible or guilty.

Not Guilty by Reason of Insanity (Plea): The accused person's reply to the court that he or she committed the alleged offense, but the presence of a *mental infirmity, disease, or defect* which caused a lack of awareness that the behavior was inappropriate, or that the person did not appreciate the wrongfulness of his or her action.

Not Guilty by Reason of Insanity (Verdict): The decision of a court that the accused person committed the alleged offense because a mental illness, defect, or retardation caused a lack of awareness that the behavior was inappropriate. This verdict is considered an acquittal, but the court retains jurisdiction over the person and may commit he or she to a mental health treatment facility.

Oath: Something declared or promised (for example, to tell the truth).

Pardon: A pardon is the act of a governor or president using executive power to forgive the conviction of a person. The conviction no longer remains a fact of legal record. The result is the absence of any possible future penalties related to the conviction. The person receives the restoration of any lost civil rights, like voting or the right to own a firearm.

Parole: An inmate in a state correctional facility may gain release prior to the completion of his or her sentences, if his or her offense occurred prior

to October 1, 1983. The offender participates in community supervision. He or she must obey established conditions, or risk violations and be returned to a state correctional facility.

Perjury: Perjury is the deliberate or willful giving of false, misleading, or incomplete testimony while under oath.

Plea: A plea is the reply of an accused person to a criminal charge or indictment. Replies consist of guilty, not guilty, no contest, and not guilty by reason of insanity.

Plea Bargain: To make an agreement in which a defendant pleads guilty to a lesser charge and the prosecutor in return drops more serious charges, amends the initial charge to a lesser offense, or reduces the length of incarceration sought.

Pretrial Intervention: Persons charged with a non-violent felony in the third degree may be eligible for interventions such as victim restitution, counseling and community service. The completion of conditions results in the State Attorney's Office not prosecuting the case.

Pretrial Intervention – Drug Offender: Persons with second or third degree felony charges for buying or possessing illegal drugs, but with no histories of a felony conviction or participation in a pretrial program, may be eligible for substance abuse education and treatment. The period of education and treatment is at least one year. Failure to complete the program may result in the original charges being reinstated and future prosecution of those charges.

Probation: Probation is a court-ordered period of supervision in the community. The period of supervision cannot exceed the maximum sentence for the offense. The probationer must obey conditions established by the court. Failure to abide by these conditions may result in revocation and imposition of a sentence.

Sentence: The sentence is a set of court ordered penalties following convictions. The penalties may include a fine, probation or imprisonment.

Sex Offender Probation: Some sex offenders may be eligible for probation that requires special supervision and sex offender treatment. The offender must submit two specimens of blood for a DNA database maintained by the Florida Department of Law Enforcement.

Split Sentence: The court orders a defendant to serve a specific period of incarceration followed by probation.

State Attorney or Prosecutor: The State Attorney or Prosecutor represents society and attempts to demonstrate that allegations against a defendant are true.

Statute: A law enacted by a legislature.

Testify: To give statements under oath.

Trial: A legal proceeding to examine evidence and render judgment.

Verdict: The finding of a judge or jury in a trial. Findings consist of not guilty, guilty, or not guilty by reason of insanity. When a jury cannot agree on a verdict, the term *hung jury* may apply. In this case, a person is subject to a retrial on the original charge.

Witness: A person sworn under oath to provide information relevant to a case.

Writ of Habeas Corpus: The allegation of a detained person that the current hospitalization, detainment, or incarceration occurs without a legal basis.

The Law and Competency in the Criminal Courts

The case of *Dusky v. United States*, 363 U.S. 402 (1960) established the standard for the competency of defendants who experience mental illness or defects. The standard of competence is whether a defendant lacks the “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.” Incompetence may occur during any stage of legal proceedings.

The Florida laws and rules of criminal procedures establish the requirements for competency in the criminal courts. Chapter 916, Florida Statutes and Rule 3.211 require that the court consider the presence of a mental illness and its influence on the following capacities to:

- appreciate the charges or allegations;
- appreciate the range and nature of possible penalties;
- understand the adversarial nature of the legal process;
- disclose pertinent facts to the defense attorney;
- demonstrate appropriate courtroom behavior; and
- testify relevantly.

Situations that Limit or Impede Achievement

The educator may experience situations that may limit or impede the achievement of a participant. Below are some situations that may impede progress.

Problems of Instruction that may Impede Progress

- Failure to treat persons with dignity and respect;
- Impatience;
- Using words or materials that require comprehensive skills at a professional level;
- Overloading participants with knowledge;
- Inaccurate or inconsistent instruction;
- Poor observations;
- Giving advice as an attorney;
- Discussing the details of a defendant's crime in a group setting;
- Failure to recognize and adjust for possible cultural differences between the educator and participants;
- Failure to consult with legal experts or more experienced educators;
- Failure to establish and consistently enforce rules for participation;
- Failure to seek assistance for disabilities associated with hearing, reading, and speaking that the instructor cannot overcome;
- Personal disclosures and becoming too friendly;
- Failure to account for individual differences among participants; and
- Not avoiding the mixture of competency education and psychotherapy in the same sessions.

Problems of Defendants that may Impede Progress if Unaddressed

- Fluctuating or minimal motivation;
- Malingering or faking symptoms of illness;
- Sustained anger or frequent hostility or combativeness;
- Intellect significantly below average;
- Receptive or expressive aphasia (inability to interpret communications or inability to effectively communicate, due, for example, to a stroke or other trauma effecting the brain);
- Frequent attention seeking behavior;
- Preoccupation or excessive anxiety;
- Poor attention and concentration;
- Poor memory;
- Inconsistent compliance regarding psychiatric medications if applicable;
- Delusional beliefs;
- Paranoia that distorts the purpose of the competency education or level of comfort around others;
- Frequent or constant hallucinations that are distractive or bothersome;
- Language barrier - lack of English comprehension; and
- An unregulated medical problem such as diabetes in a severe stage.

Environmental and Systems Related Problems

- Scheduling sessions within an hour or two following the administration of heavily sedative medications, immediately after strenuous activities, while persons are experiencing acute symptoms;
- Overcrowded rooms, poor lighting, reduced air circulation, uncomfortable temperatures, uncomfortable seating, poor acoustics,

distractive visual events and sounds;

- Unsafe environment; and
- Lack of resources to help persons overcome severe disabilities associated with hearing, speaking, reading, or otherwise communicating.

Screening Referred Persons

The following considerations may prove helpful when screening potential persons for education.

Communications

- If no prior relationship exists between you or your employer and the defense attorney or the court, ensure communication with the defense attorney and gain permission to interview the client for possible services;
- Notify appropriate parties regarding the results of screening, whether the person is appropriate or not appropriate;
- Ensure that defense counsel has a copy of your educational program;
- Ask defense counsel what areas of competency restoration may require more than a general level of knowledge for restoration; and
- Notify your appropriate supervisor or other parties as appropriate when services are not available to correct the issues that prevent the restoration of competency.

Gathering Information

- Gain permission to access or receive copies of competency evaluation reports and the State Attorney's charges if not in possession or in route;
- Gain permission to access or receive copies of mental and medical health records in jails or other settings if possible and available within reason; and
- Obtain a list of the defendant's pending legal charges in the case or

cases associated with the adjudication of incompetence to proceed.

Interviewing the Defendant

- Consider appropriateness for a personal screening in terms of reported level of dangerousness and level of available security;
- Interview the potential participant;
- identify yourself
 - tell who you work for
 - report the reason for referral
 - explain the limits of confidentiality
 - consider willingness to participate
 - use the Student's Guidebook to help determine status regarding competence
 - consider willingness to participate
 - estimate appropriateness for enrollment in terms of competency, willingness to participate, medical status, mental and behavioral stability, and having access to a reasonably safe and secure environment to deliver services
 - estimate needs in terms of education, medical and psychiatric conditions, and language
- Avoid instructing persons who are:
 - in stupors, catatonic, or actively lacking alertness
 - immediately or imminently hostile, self-injurious, or physically aggressive
 - constantly mute and disinterested, or refusing to communicate through writing or other logical methods
 - constantly unable or unwilling to express thoughts
 - only speaking using words that have no logical association
 - rambling in conversation without redirection
 - constantly distractive
 - experiencing severe forms of depression, paranoia, grandiosity, or delusional beliefs that guide them away from having meaningful interactions with the educator.
- Consider the delay of enrollments until persons have gained some psychiatric stability;
- Reschedule interviews for screening as necessary; and

- Ask defense counsel for advice or assistance if necessary.

Module 2

Competency Education

The First Session

- Introduce yourself again, provide qualifications, and report which employer you represent;
- Explain why participants are in class. For example, *Laws are words that help how we live. Some laws tell us what to do. Some laws tell us things not to do. Somebody said you broke a law. You have a legal charge and a judge said you were not able to help an attorney. The judge had reports from mental health workers who said mental illness was a concern. You should know how to assist an attorney to help protect yourself;*
- Give an overview on the goals of competency education;
- Give an overview of what is necessary to complete the sessions in a successful manner, including how often they must attend;
- Inform participants that judges decide competency and you are attempting to help the participants;
- Explain the limits of confidentiality (documentation and access by third parties such as members of the court and appointed evaluators);
- Explain the procedures for the release of information to other parties;
- Establish the rules of conduct ;
- Address fears or uncertainties regarding participation, encourage participants that they don't need perfection to gain competence;
- Instruct participants to make themselves comfortable within reason; and
- Instructors should tell participants that success may rely on
 - Willingness to attend sessions (*classes*)
 - How well they listen and try to read

- Asking questions
- Answering questions
- Telling facts
- Staying on the topic
- Obeying rules
- Respecting others in the group
- Working with other persons trying to helping them
- Following psychiatric, medical, and legal advice from other professionals.

Module 3

What Instructors Should Know About Capacities of Competence

As previously mentioned, the case of *Dusky v. United States*, 363 U.S. 402 (1960) established the standard of competence is whether a defendant lacks the “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.” Incompetence may occur during any stage of legal proceedings.

The Florida laws and rules of criminal procedures establish minimum criteria to examine when addressing competency. Chapter 916, Florida Statutes and Rule 3.211 require that the court consider the presence of a mental illness and its influence on the following capacities to:

- appreciate the charges or allegations;
- appreciate the range and nature of possible penalties;
- understand the adversarial nature of the legal process;
- disclose pertinent facts to the defense attorney;
- demonstrate appropriate courtroom behavior; and
- testify relevantly.

Examples of a Defendant’s Status and General Suggestions for Instruction

1. APPRECIATION OF CHARGES: Only discuss the specific details of a defendant’s charges in individual sessions. While providing group services, the educator may use materials that require defendants to specify their charges in writing, but only if sufficient space is available to maintain confidentiality. During group discussions, only provide general examples of charges and associated events.

Each participant must demonstrate the capacity to associate pending charges in the court of jurisdiction. For example, charges may be Burglary and Battery on a Law Enforcement Officer. The defendant should learn to report the charges and give a logical interpretation of the charges. *For example, burglary means the prosecutor is saying I broke into a house. Battery on a Law Enforcement Officer means the prosecutor is saying I hit or touched a policeman.*

The educator may begin by asking “*What are your charges*”? If the defendant fails to understand the word *charges*, the educator may say, “*Tell what the police say you did*”. If the defendant provides a relevant version of events, the evaluator may ask for example “*What did the law call it when you broke into the house*”. Tell the defendant the associated charge if he lacks the knowledge. Ask the defendant to repeat the charge. The defendant gains appreciation when he generally describes reported events of the alleged crimes and the associated charge for each event. The defendant may have a factual understanding that his charge is burglary, but he may lack rational understanding if he believes the charge was related to a Burglary on the planet Mars for example.

2. APPRECIATION OF POSSIBLE PENALTIES: The educator should not disclose in a group session what specific penalties are pending for any defendant. The educator should discuss specifics in individual meetings. However, an instructor can discuss charges and degrees of felonies in general, and elicit group responses regarding associated penalties. The educator may have a defendant respond to or describe specific facts regarding his case if persons are together in a room that allows sufficient space to maintain privacy.

Each participant must demonstrate the capacity to appreciate the possible legal outcomes upon conviction or a finding of not guilty by reason of insanity. For example, defendants convicted of Burglary in the third degree must know that long-term incarceration may occur in a state correctional facility. The defendant needs to give general estimates of how long incarceration may occur for them. However, the defendant has impairment if he tells you the penalty for Burglary in the third degree is the death penalty or 50 years imprisonment. The defendant’s factual understanding has impairment because the maximum penalty is five years. If the defendant reports that the maximum penalty for Burglary is five years, but he believes the court will double his time because the Judge is a *demon* or *ghost* for example, then the defendant lacks rational understanding. Obviously, when estimating progress, the educator must estimate the authenticity of the defendant’s responses, whether such responses are indicative of mental illness or somebody attempting to fake illness to avoid prosecution.

Possible Felony Sentences.

Capital Felony - penalties include death penalty or life;

Life Felony - maximum is life;

1st Degree Felony - maximum is 30 years;

2nd Degree Felony - maximum is 15 years; and

3RD Degree Felony - maximum is 5 years.

10-20-Life (Guilty of misusing a firearm or destructive device. Ten year sentence for certain felonies or attempted felonies while possessing a firearm or destructive device. Twenty year sentence if a firearm is discharged. Twenty-five years to Life sentence if a gun is used and somebody is hurt or killed.)

Other Possible Criminal Sentences.

Probation;
Community Control;
Community Control II; and
Split sentences.

Not Guilty by Reason of Insanity. The court acquits a defendant of criminal responsibility when a defendant lacked the ability to appreciate the wrongful nature of their behavior due to mental illness at the time of the crime. Following acquittal, the court has the option of maintaining jurisdiction for the rest of the person's life, or give up jurisdiction and free the defendant of obligations. The court may order involuntary hospitalization if the defendant remains dangerous. One of the easiest explanations for insanity is to describe it as *the court is saying that a mental illness did not allow a person to know that a crime was the wrong thing to do.*

3. UNDERSTANDING THE ADVERSARIAL NATURE OF THE COURT:

The person needs the capacity to understand the adversarial nature of the court. There are two sides with different stories about what happened, but the court has rules to ensure a fair outcome. Give participants short but informative facts examples present below).

Charge – the charge is the name of a crime.

The Defendant - the person charged with a crime.

Court – a group of persons with different jobs to help decide what happened.

State Attorney - the state attorney (prosecutor) tells what laws the defendant may have broken or violated. The State Attorney gives the facts that show a defendant may be guilty.

Defense Attorney - the defense attorney helps the defendant, either to gain freedom or get the least penalty possible. The defense attorney helps you to answer the charge. Your answer is a plea.

You may plead:

Not Guilty – I did not do the crime.

Guilty – I did the crime.

Not Guilty by Reason of Insanity – I did the crime, but a mental illness kept me from knowing that the crime was a wrong thing to do at the time.

The Jury - the jury is a group of 6 to 12 people who listen to all the facts. The jury is not on anybody's side. The jury tells if the defendant is not guilty, guilty, or not guilty by reason of insanity.

Guilty means you did the crime.

Not Guilty means you did not do the crime.

Not Guilty by Reason of Insanity means you did the crime, but a mental illness kept you from knowing that the crime was wrong to do at the time.

The Judge - the judge is the person in control of the courtroom. The judge is not on anybody's side. The judge follows the law to make sure the defendant has a fair trial. The defendant may ask a judge to decide the outcome, guilty, not guilty, or not guilty by reason of insanity.

Witness: A witness tells what facts they know about a case.

Bailiff: The bailiff is a law enforcement officer who obeys the judge and helps keep order in the courtroom.

Court Reporter: The person in court who keeps a record of what people say.

Plea Bargain: The court may allow a deal sometimes, it's called a plea bargain. You may plead guilty or no contest and get less of a penalty.

Defendants need to have a factual and rational understanding in each of the previously mentioned areas. For example, the defendant may know his pending charge is murder. The defendant is able to say that the state attorney accuses him of intentionally killing somebody. He has factual understanding. However, he lacks rational understanding if he has beliefs due to mental illness, such as the murder charge is present because the *state attorney is working for Satan and the government to take his land*. The defendant needs to show rational judgment. For example, he may not agree that time served is a better plea bargain than five years jail time because *Satan will reward him for serving the jail time*.

4. THE DISCLOSURE OF PERTINENT INFORMATION TO AN ATTORNEY:

- a. Communication.** The objective is whether the defendant can communicate what happened during the alleged offenses to his attorney. The influence of mental illness that prohibits sustained and logical conversation renders the defendant without capacity. For example, the defendant is constantly mute, refuses to communicate through writing or other logical methods, is barely conscious, constantly cannot express his thoughts, only speaks using words that have no logical association, rambles in conversation without redirection, or is constantly distractive. A defendant may experience a severe form of depression, paranoia, grandiosity, or delusional belief that guides him away from having meaningful conversations with the educator. Persons in the previously mentioned situations are usually unable to demonstrate the capacity to disclose relevant information to an attorney. The persons are unable to demonstrate a factual and rational understanding regarding the necessity to communicate with an attorney. Educators are unlikely to enroll the previously mentioned persons. However, some persons have acute psychotic episodes during training and educators should know when to delay educational services.

State attorneys collect and document versions of alleged offenses, but accused persons may communicate different versions. Having a different version is satisfactory if the version is not the product of an active mental illness. If the person's version is a description of experienced mental illness at the time of an alleged offense, such a reply does not indicate a lack of capacity.

The defendant should have the capacity to report his whereabouts, possible interactions with others, and behaviors during the time of each alleged offense. Ask individuals to communicate the previously mentioned information in a confidential manner. Compare the person's description with arrest reports or other information. However, avoid reciting information to defendants from the reports or other documents. If the defendant reports a lack of memory or amnesia, these may not improve but are unnecessary for the restoration of competency or his legal defense. Defendants should be active participants, able to request clarification if unfamiliar legal terms are used, and recognize that the person they should seek for help is the defense attorney.

- b. Thoughts, Perceptions, and Emotions:** Ask persons what they think of their attorneys. Consider emphasizing and praising thoughts that are realistic and positive and indicate a willingness to assist an attorney. Consider whether beliefs are present that significantly impair

communications between the person and the attorney. Thoughts that label the attorney in a delusional and negative manner may impair the capacity to disclose pertinent information or to actively participate in the legal defense. Persons may have a factual understanding regarding the role of the defense attorney. However, persons may lack rational understanding when, for example, they believe that attorneys available to them are using some special powers against them or want to condemn or persecute them. On rare occasions, persons with illnesses may tell you they know special powers are in effect because they *have a feeling*. Whether the experienced feelings are the products of physical hallucinations or emotional disturbances may remain unknown, but attempt to reassure persons that the role of a defense attorney is to help them. Always weigh the risks versus potential gains should you decide to challenge beliefs.

5. CAPACITY TO MANIFEST APPROPRIATE BEHAVIOR: Emphasize physical appearance, cooperation, respectful interactions, quiet conduct, and to follow instructions. Explain the importance of each previously mentioned emphasis. Encourage compliance. Consider the use of similar guidelines for conduct in competency education classes. Praise persons for appropriate conduct. Inform persons that inappropriate behaviors may damage their cases or cause additional penalties, for example, delay of proceedings, contempt of court, removal from the hearing or trial, additional jail time, or fines.

The person may lack factual and rational understanding, for example, if grandiosity is part of his illness and he lacks awareness that rules apply to him. Some persons simply cannot control their behaviors including aggression, yelling, or crying. Consider the necessity of communicating the person's status to other professionals as appropriate.

6. CAPACITY TO TESTIFY RELEVANTLY:

Persons should have the capacity to...

- manifest appropriate behavior;
- state the purpose of testimony;
- listen and give relevant answers to questions; and
- maintain composure without severe behavioral or emotional reactions while questioned or challenged.

Give examples of appropriate behavior. Report the purpose of testimony (to help consider facts). Have the person practice how to listen and give

relevant answers to questions in general. Emphasize telling the truth as the person knows it. Praise positive responses. Persons must also know that they cannot be forced to testify. They have the right to refuse.

The person may lack factual understanding for example if they are unable to demonstrate awareness regarding the importance of relevant testimony and its possible influence on the outcome of the case. Persons may lack rational understanding, for example, when they understand the purpose of testimony but they believe that the rules of testimony don't apply to them or serves some ulterior purpose for other people. For example, a person may believe that his planned testimony is a method to have him divulge *state secrets* or *steal ideas* or *assassinate* him. He may believe that he can speak at any time because he is the *Great I AM*. Persons may lack the capacity for both factual and rational understanding for numerous reasons.

Module 4

The Basic Manual to Instruct Participants

The following module is for participants in competency education. In February 2007, the Mental Health Program Office in the Department of Children and Families distributed a competency education module entitled What About the Court Room? The module was written at an estimated grade level of three point eight (3.8) and provided basic information needed by most defendants. The following module is The Court. The module was written at an estimated grade level of four point seven (4.7). The module remains simple but is more expansive than the earlier version. The instructor or facilitator should not have significant problems determining the direction to guide persons.

The Court

Student's Guidebook

PART I

Note to instructors: Give each participant the Student's Guidebook for the Court. You may present PART I of this module to persons in a group format or to those receiving individual instruction.

Have the participants open the guide to PART I. Tell the page number. Read each paragraph aloud. Stop after each paragraph and ask students if they have questions. Do not hesitate to repeat and explain facts. You may have persons with advanced skills to read aloud for the group or to the instructor if in an individual session.

Introduction

Laws are words that help how we live. Some laws tell us what to do. Some laws tell us things not to do. Somebody said you broke a law. Now you need some help.

You have what is called a charge. The **State of Florida** is deciding what to do about your charge. The State has given your charge to a Court. A Court is a special place with people trusted to decide the outcome of your charge. The Court will decide if your charge is true or not. That is, the Court will decide if you broke the law or not.

You have rights. Rights are laws that protect you.

You have the right not to speak to the police. The police try to find out what happened when something went wrong, or when somebody says that you broke a law. The police can arrest you, put you in jail. The police can say what kind of crime they believe you did. Then they tell an attorney working for the state.

The law says that you are innocent unless somebody can prove that you are guilty. Guilty means that you did break a law, that you did the crime. Innocent means that you did not break a law, that you did not do the

crime. You cannot be punished unless somebody can prove in Court that you broke a law, that you did the crime.

You have the right to have somebody to help you with your case. This person is called an attorney. The attorney knows how to read the law, to find out what happened to you, and to get the best for you.

You have a right to a trial. A trial is a meeting in Court with other people to see if you broke a law.

Nobody can make you tell anything.

QUIZ for PART I

Note to instructors: Ask students to turn to the Quiz for PART I. Give them the page number. Instruct students that you will read each sentence two times before they can reply by checking “Yes” or “No.” After students reply to each sentence, repeat the sentence and give the appropriate answer. Collect each quiz. Briefly review the answers and give brief and simple explanations for missed items to all participants. Follow the same steps for each quiz in the Student Guide.

	Yes	No
1. Somebody said I broke a law.		
2. The State of Florida is trying to figure out what to do about my case or problem.		
3. I have rights.		
4. Rights are laws that protect me.		
5. I have a right to have an attorney help me.		
6. The police can make me talk to them.		
7. The law says that I am innocent unless I am proven Guilty.		
8. I have the right to a trial.		
9. Innocent means that I broke a law.		
10. The Court will decide if I broke the law.		

Now let's turn the page and take a closer look at things.

PART II

Note to instructors: Have the participants open the guide to PART II. Tell the page number. Read each paragraph aloud. Stop after each paragraph and ask students if they have questions. Do not hesitate to repeat and explain facts. You may have persons with advanced skills to read aloud for the group or to the instructor if in an individual session.

What are Charges?

The police say you broke a law and they told a prosecutor. A prosecutor is a lawyer that works for the State of Florida. The prosecutor collects or gathers facts about what the police say you did. Facts are things that people know. Prosecutors look at facts and see if they may prove a law was broken. Then they file charges with the Court.

Charges state what somebody may have done wrong. Charges are a special way of saying what crime somebody may have done.

Misdemeanor charges are important but they are not the most serious crimes. If you are found guilty of a misdemeanor, you can be kept in the jail for one year for some charges.

Felony charges are the biggest problems or most serious crimes. Felony charges can send you to a special state jail called a prison or a correctional facility. You have to be found guilty to go to a prison or correctional facility. Guilty means you admit to doing the charge, or that the prosecutor proved in Court that you did the charge or crime.

Some felony charges have to do with:

selling, making, or having street drugs;
trying to cheat somebody out of money or property;
taking money from somebody;
hitting or hurting somebody;
trying to kill somebody;
threatening to hit or hurt somebody;
trying to get away from the police;
driving while drunk;
sex behaviors that harm others;
having or using a weapon like a gun or knife;
setting something on fire;
going on somebody's property when they didn't say yes;
holding somebody against their will, and

lying in Court.

What are the Charges Against Me?

Please write your charges below. Ask for help if you cannot write or don't know your charges. **Note to the instructor: you may have each person respond to the following exercise in a group format where you can maintain confidentiality when they respond in writing. However, some persons will require individual assistance in private settings. Do not openly discuss charges or a person's version of events in a group format.**

List your charge(s)	Felony (F)/ Misdemeanor (M)	Possible Time in Jail or Prison

Disclosure of Relevant Facts to Defense Counsel

The instructor should have each person tell his or her version of events in a confidential setting. Explain to each person that you need to know how they may communicate with an attorney. You may begin by stating *Please tell me what happened when the law charged you with Burglary.* Document the following aspects of communications...

- Did the person give a logical version of events?
- Did the person mention his or her whereabouts at the time of each alleged offense?

- Did the person communicate who if anybody else was present at the time of each alleged offense?
- Did the person tell the approximate date for each alleged offense?
- Did the person communicate his or her actions and those of others if appropriate in a logical manner?
- Did the person tell a version of events based on the present influence of a mental illness?

PART III

The Court

Have the participants open the guide to PART III. Tell the page number. Read aloud each paragraph. Stop after each paragraph and ask students if they have questions. Do not hesitate to repeat and explain facts. You may have persons with advanced skills to read aloud for the group or to the instructor if in an individual session.

The Courtroom is a special place to decide about your charges.

The Defendant

The defendant is a person in the Courtroom. The defendant is the person with a charge or charges. You are the defendant at this time. You are trying to get out of trouble the best you can. And you have rights. Remember, rights are laws that protect you.

- You have the right to have an attorney.
- You have the right not to tell on yourself or say anything that makes you look guilty under oath.
- You have a right to see and hear the facts against you.
- You have a right to see people who are saying things against you.
- You have a right to be in the Courtroom.
- You have a right to have a group of people called a Jury listen to your case. (The Jury can say if you did the crime or not.)
- You have the right to choose the plea you enter in court.

The defendant tells his lawyer what happened.

The Defendant's Quiz

	Yes	No
1. I am the defendant.		
2. I am the one that has a charge.		
3. I have a right to have an attorney.		
4. I have a right to see and hear facts against me.		
5. I have a right to be in the Courtroom.		
6. I have a right to have a Jury listen to my case.		
7. I have a right not to tell on myself.		

Your Attorney

Your attorney is a special person called the Defense Attorney. Sometimes your attorney is called a Public Defender. You have a right to an attorney even if you cannot pay for one. The Court will put an attorney on your case. Your attorney will try to make sure your rights are not stepped on or violated. He or she will try to get the best for you in Court. Your attorney went to school to learn the law. They know how to help you. What you say to your attorney is secret. Here are some things you can do to help your attorney.

- Listen to your attorney.
- Don't argue with your attorney.
- Your attorney is going to ask you what happened, tell them.
- Don't hide anything from your attorney if they ask you.
- Work with your attorney to figure out what is best for you.
- Trust your attorney.

Defense Attorney Quiz

	Yes	No
1. I have the right to have an attorney.		
2. A defense attorney is in Court to help me.		
3. A defense attorney went to school to know the law.		
4. I should argue with my attorney.		
5. I should hide things from my attorney.		
6. I should listen to my attorney.		
7. I should tell my attorney what happened.		
9. I should trust my attorney.		

Pleas

Below are some things you should know to work with your attorney. The things below are called pleas. A plea is something you say to the Court that tells what you believe about the case.

- Not Guilty means I'm saying I did not do the crime.
- Guilty means saying I did the crime. Some persons have a deal to plead guilty to a lighter charge to get less time in jail or prison. The deal is called a plea bargain.
- No Contest means I'm not fighting the charges. It means that I do not want to say whether I did the crime or not. The Judge usually views the No Contest Plea as a guilty plea. Sometimes you receive less time in jail.

- Not Guilty by Reason of Insanity means I didn't know what I was doing at the time of the crime; or I didn't know that what I was doing was wrong.

The Plea Quiz

	Yes	No
1. Guilty means I did the crime.		
2. No Contest means I'm not fighting the charge.		
3. A Plea Bargain means working a deal for less time.		
4. Not Guilty means I'm saying that I did not do the crime.		
5. Not Guilty by Reason of Insanity means I didn't know what I was doing at the time of the crime; or I didn't know that what I was doing was wrong.		

The Other Side

- In Court, your attorney has to go up against somebody who is saying you are guilty.
- The person saying you are guilty is the Prosecutor.
- The prosecutor is a person who knows the law. He or she has looked at the facts.
- The prosecutor is trying to show or prove that you did the crime.
- The prosecutor is not on your side.

The Prosecutor Quiz

	Yes	No
1. The prosecutor is on my side.		
2. The prosecutor is trying to prove you did the charge.		

The Jury

- The Jury is a group of six or twelve people who listen to both sides of the story.
- The Jury decides if you did the crime or not after they listen to both sides. The Jury is not on anybody's side.
- Your attorney helped pick the Jury.
- If you don't want a Jury to decide what to do, you can have a Judge do it.

The Jury Quiz

	Yes	No
1. The Jury listens to both sides of the story.		
2. The Jury is on nobody's side.		
3. Your attorney helps to pick a jury.		
4. I have a right to have a Jury decide my case.		
5. The Jury has 6 or 12 people.		
6. I can have a Judge decide my case.		

The Judge

The Judge is a person who controls the Courtroom. He or she is the boss.
The Judge has many jobs:

- Keeping order in the Court. People who don't act right can be arrested and taken out of the Courtroom.
- Listening to your attorney and the prosecutor.
- Keeping things fair.
- Making decisions about when to do things.
- Telling everybody what needs to be done and when.
- Sometimes deciding if a person did a crime.
- The Judge tells me how much time I have in prison if I'm found guilty.
- The Judge is not on anybody's side (he or she is neutral).

Quiz About the Judge

	Yes	No
1. The Judge keeps things fair.		
2. The Judge says when to do things.		
3. The Judge tells me how much time I have in prison if I'm found guilty.		
4. The Judge can take sides in the Courtroom.		
5. The Judge is the boss of the Courtroom.		

Witnesses

Witnesses are people who come to the Courtroom. A witness tells what they know about your case. Sometimes what a witness has to say can help your case. Sometimes what a witness has to say can hurt your case.

The Witness Quiz

	Yes	No
1. A witness tells what they know about my case.		
2. Sometimes what a witness has to say may help my case.		
3. Sometimes what a witness has to say may hurt my case.		

The Bailiff

The Bailiff is a police officer in the courtroom. The Bailiff listens to the Judge and keeps everybody safe.

The Clerk

The Clerk is somebody that keeps a record of what happens in the Courtroom.

How I should behave in the courtroom?

- Dress neat and clean.
- Sit and remain quiet.
- Watch and listen.
- Whisper or write notes to your attorney if needed.
- If you are asked questions by the judge or lawyers, speak so people in the court room can hear you, but don't yell.
- Do not yell, jump up or down, make threats, you may have a new charge.

The Behavior Quiz

	Yes	No
1. I should jump and shout in the courtroom.		
2. I should watch and listen in the courtroom.		
3. I should yell when speaking to my attorney.		
4. I may whisper or write notes to my attorney.		
5. I should make threats in the courtroom.		
6. I may have a new charge if I act wrong.		

Note to the Instructor: The instructor should observe behaviors during class and collect other information to indicate current behavioral responses when possible.

People in the Court at a Jury Trial*



- 1 Judge
- 2 Clerk
- 3 Witness
- 4 Clerk
- 5 Defense Attorney
- 6 Defendant
- 7 Prosecutor
- 8 Prosecutor
- 9 Jury

*This page is from the Oregon State Hospital guide to restore competency revised on 12/08/2006.

PART IV

What Can Happen in the End?

- You cannot do time for the charge against you if a Judge or Jury says you didn't do the crime or are not guilty.
- You may have to go to a hospital and get some help if the Court said you were Not Guilty by Reason of Insanity.
- A number of things could happen if you are guilty.

The judge could order you to do time in these ways:

- By having you go to a prison or correctional facility for a long time (a prison or correctional facility is a place where people are held if they did crimes. You lose your freedom but you also have some rights);
- By having you go to a county jail for a stay less than a year;
- By having you go on probation (having somebody keep up with what you are doing in the community);
- By having you go someplace to get treatment for a problem;
- By having you work in the community;
- By having you pay a fine;
- By telling you that you can't go to certain places; and
- By having you take tests for alcohol and drugs.

Module 5

Advanced Exercises for Capacities of Competency

Note to Instructors: You may have persons participate in advanced exercises if necessary. The following exercises were adopted with some modifications from the Florida State Hospital CompKit and competency restoration modules from the Apalachee Center for Human Services, Inc.

Helpful Words to Know

Vocabulary Words	Acceptable Client Definitions
1) Courtroom	a) Where trial is held. b) Where you go to see if you are found guilty or not. c) Where the judge and everybody meets to decide if you are innocent or guilty.
2) Not Guilty/Innocent	a) You did not do the crime. b) Your charges are gone. c) You will be free because you didn't do anything wrong.
3) Trial	a) Meeting to see if you are guilty of crime (charge). b) Meeting with judge and jury to decide if you are guilty or not. c) Meeting with lawyer, judge, jury, witnesses to try to prove you are innocent.
4) Accuse	a) Blame. b) Charge someone. c) To say somebody did something wrong (bad).
5) Competent to Proceed	a) Able to understand court procedure. b) You understand about laws, trial, and how to help yourself. c) You know your rights and how to help your lawyer defend you.

- 6) Defense Attorney
 - a) Help someone.
 - b) Protect someone.
 - c) Your lawyer who helps you get out of trouble.
- 7) Jury
 - a) 6 or 12 people who listen to testimony (evidence) decide if you are guilty or not.
 - b) A number of people picked to listen and decide if you are innocent or guilty.
 - c) People who are not for you or against you; they just decide if you are guilty or not, 6 or 12 people
- 8) Misdemeanor
 - a) Small crime.
 - b) Not too serious crime.
 - c) You got a charge but it is not too bad like rape or murder.
- 9) Police (Sheriff)
 - a) Person or enforces laws and arrests people.
 - b) Officers of the law who can arrest you when you break the law.
 - c) People who keep the law and arrest you if you do bad things
- 10) Witness
 - a) Tells what he knows about the case.
 - b) Person who testifies against you or for you.
 - c) Someone called to tell what they know about the crime.
- 11) Testimony
 - a) What witnesses say about the case (crime).
 - b) What a person tells when he is on the stand under oath.
 - c) Telling the court what you know about the case (charges).
- 12) Bailiff
 - a) Helps the Judge keep order in the court, calls people up and swears them in.
 - b) Helps the Judge make sure people follow the rules in the court and behave.
- 13) Competency Hearing
 - a) Meeting with Judge, lawyers, and doctors to see if you know enough to help with your defense.
 - b) Meeting to see if you are able or understand enough to have a trial.

- | | |
|---|--|
| 14) Defendant | <ul style="list-style-type: none"> a) Person accused of committing a crime. b) Person blamed with a crime. c) Person charged with a crime. |
| 15) Sentence Reduction | <ul style="list-style-type: none"> a) Cutting down the time you have to pull (serve). b) The judge cuts the length of your prison time. |
| 16) Cross-Examination | <ul style="list-style-type: none"> a) Other lawyer (prosecutor) asks you questions. b) The lawyer who is against you asks questions to you. |
| 17) Appeal | <ul style="list-style-type: none"> a) Ask for a new trial, may not get it. b) Ask for another trial. c) Your lawyer tries to help you get another trial. |
| 18) Community | <ul style="list-style-type: none"> a) Where people live. b) Place like your neighborhood where people live. |
| 19) Court Reporter | <ul style="list-style-type: none"> a) Types everything said in a trial. b) Takes down everything that happens during court (trial). |
| 20) Probation | <ul style="list-style-type: none"> a) Not go to jail but do time at home. b) Stay at home but report to officer and do what he tells you. |
| 21) Not Competent or Incompetent to Proceed | <ul style="list-style-type: none"> a) Not able to understand about laws and court. b) Not able to help your lawyer or understand what to do. |
| 22) State Attorney | <ul style="list-style-type: none"> a) Person trained in law, tries to prove you guilty. b) Your lawyer. |
| 23) Judge | <ul style="list-style-type: none"> a) Listens to the case, tells jury about law and sentences you if you are guilty. b) He's not for you or against you, he listens and makes sure things go right. He can sentence you if you are found guilty. |
| 24) Guilty | <ul style="list-style-type: none"> a) Jury says you did the crime. b) Person committed the crime. |
| 25) Fine | <ul style="list-style-type: none"> a) When you have to pay money to get out of trouble. b) Money to pay as punishment for breaking the law. |

- 26) Laws
a) Rules we all have to go by.
b) Written rules to protect us and tell us how to act.
- 27) Felony
a) Big charge.
b) Serious charge like rape or murder.
c) Big crime with a long sentence.
- 28) Crime
a) Breaking the law.
b) When you do something against the law.
c) Murder, rape, grand theft, burglary, like that.
- 29) Prosecutor
a) Lawyer for the other side.
b) Person trying to convict you.
c) Lawyer trying to prove you did it.
- 30) Rights
a) Right to remain silent, right to have a lawyer, right to make a phone call.
b) Laws to protect us and keep it fair.
- 31) Evidence
a) Things taken at the scene of a crime to show what happened.
b) Things they have, like your fingerprints, a gun or knife to say you did it.
- 32) Sentence
a) After found guilty the judge decides punishment.
b) If the jury says you are guilty, the judge can give you prison time, fine, or probation.
- 33) Warrant
a) A piece of paper signed by the judge giving the police the right to arrest you or search you.
b) A search warrant and an arrest warrant, piece.
- 34) Verdict
a) Decision by the jury of guilty or innocent.
b) What the jury decides, if they think you are guilty or not.
- 35) Work Release
a) In jail, but put out to work.
b) Leave jail to work during the day.
- 36) Perjury
a) Lying in court.
b) Not telling the truth under oath.

Charges

1. My most serious charge is _____.
2. For crimes like the ones I am charged with, the maximum penalty or worse sentence may be _____.
3. If I admit to the court that I did the crime for which I was arrested, I am pleading _____.
4. If I don't admit whether I did or didn't commit the crime, I am pleading _____.
5. If I did not admit to the crime for which I am charged, I am pleading _____.
6. If because I was mentally ill, I committed a crime and I did not know the difference between right and wrong, I will be adjudicated _____.
7. When I am on probation, I can hang out at a bar and do drugs without getting into trouble.

True _____ False _____
8. I can move to another city while on probation, but only if I have the permission of my probation officer.

True _____ False _____
9. If I am found not guilty by reason of insanity, I may be hospitalized more than six months.

True _____ False _____
10. Pleading not guilty by reason of insanity is a great way to beat your charges, because no one can do anything to you as far as long lasting consequences.

True _____ False _____

Who is in Court?

1. Who can tell me what the Judge does? [group discussion]

The judge acts as a referee. The judge is responsible for keeping order in the courtroom and for ensuring the rules are fairly interpreted. If there is a jury and you are found guilty, the judge decides what punishment to give and if you will get jail or prison time. If there is no jury, the judge decides whether or not you committed the crime and if he/she decides you did, imposes the sentence on you. The judge is neutral, he/she is not for or against you. The judge's decisions are based on the facts presented.

2. Who can tell me who makes up the Jury and what their job is? [group discussion]

If you have a trial by jury, there will be six or 12 citizens from the county where the crime was committed, who are selected by your public defender and the State Attorney and will decide whether or not you are guilty of your charge. The people who make up the jury are ordinary people who are registered to vote and are not supposed to be on your side or the states side. The jury listens to everything that is said in court and then decides whether you are guilty or not guilty. The jury is neutral and is not for you or against you. The jury's decisions are based on the facts presented.

3. Who can tell me what the Public Defender/Defense Attorney does? [group discussion]

The Public Defender/Defense Attorney is your lawyer and his/her job is to show the judge and jury that you are not guilty of the charges against you. Should you be found guilty he/she will try to get you as light a punishment or sentence as possible. Your lawyer will speak for you in court and is the only person who can call you to testify on the witness stand. Before you go to court, your lawyer should talk to you and give you advice about what to do when you are in court.

4. Who can tell me what the States Attorney or Prosecutor does? [group discussion]

The State Attorney tries to prove to the judge and jury that you did the crime and if you are found guilty, he tries to see that you are punished and that you get a lot of time. Also, if your public defender has called on you to testify the state's attorney can then ask you questions. The state's attorney will try to make you look bad and ask questions to

make it seem like your previous testimony was not true. It is important to listen very carefully to the state's attorney's questions and be sure you understand what he is asking before you answer.

5. Who can tell me who can be a witness at your trial? [group discussion]

A witness is any person who has specific information about the crime. They may have seen you do the crime or they may know you did not do it. The police who arrested you may also be witness. Witnesses are required to come to court and tell what they know about the crime. It is important that you know who the witnesses are that can help your case and who the witnesses are that can hurt your case.

6. Who can tell me who the Defendant is in your case? [discussion]

You are the defendant. A defendant is the person who has been charged with the crime. When you are in the courtroom, you should listen carefully to everything that is said, so if something is said you don't understand you can ask your public defender what it means.

7. Who can tell me what two sides are represented in the courtroom? [discussion]

The state's side is represented by the State Attorney and your side is represented by the Public Defender or your private attorney. It is important to remember that once the police have become involved and charges have been filed, the State of Florida is bringing the charges against you, not an individual.

What About the Jury?

1. The names of persons who may serve on a jury can be found through_____.
- a. Motor Vehicle Registration
- b. The County tax collector's list
- c. people in jail
- d. people in church

2. The Jury consists of a group of _____ people from the community to hear a trial.
 - a. 5 to 6
 - b. 6 or 12
 - c. Voters Registration list
 - d. The phone book
3. A person cannot be on a Jury if they:
 - a. make fair decisions
 - b. have something against the defendant
 - c. have ideas about guilt before the case begins
 - d. both b and c
4. Juries give the verdict:
 - a. always
 - b. never
 - c. when they are present
 - d. only on Mondays
5. Who selects the Jury?
 - a. The State Attorney and Public Defender
 - b. The accused
 - c. The Bailiff
 - d. The Witness
6. The accused can only be convicted:
 - a. if most of the jury votes "guilty"
 - b. if the most of the jury and the judge votes "guilty"
 - c. if all of the jurors vote "guilty"
 - d. if the public defender says so

How Should I Behave in the Courtroom?

OBJECTIVE: To ensure each group member understands how to behave in the courtroom.

TECHNIQUES: Lectures, Question/Answer

When you appear in court, it is very important you behave in a calm,

respectful manner.

What will happen if you disrupt the courtroom proceedings by being loud, argumentative, demanding, etc.? [Group Discussion]

If you disrupt the courtroom, you can be physically removed from the courtroom which could cause your hearing to be postponed or to proceed without you. In addition, you could be charged with an additional charge.

Who can tell me what the charge is called? [Group Discussion]

You can be charged with Contempt of Court and if found guilty, you could face an additional six months of jail time.

Who can tell me how you should dress to go to court? [Group Discussion]

Fair, or not fair, first appearances are important. So, if you appear in court dirty, poorly groomed, and dressed in old ragged clothing, you won't make a good impression. Therefore, it is important when you appear in court to be clean, have your hair combed, your beard shaved or groomed, and wear your best clothes. You may even want to wear a tie and jacket, if you have one.

It is important to remember you cannot speak out in court, even if you hear something you do not agree with or you think is unfair.

Who can tell me what you should do in court if someone says something that is not true? [Group Discussion]

You should whisper quietly to your attorney or write a note.

Who can tell me when it is O.K. for you to speak in court? [Group Discussion]

You may speak in court if you have been called to testify by your attorney and your attorney and the State Attorney are asking questions or if the Judge ask you a question. Remember, your attorney is your spokesperson and he is representing your interests.

Quick Review

1. What is a trial?

A trial takes place in court. A trial is where it is decided if you are not guilty, guilty, or not guilty by reason of insanity of the charge.

2. Who represents you and defends you in court?

My lawyer. Another word for lawyer is attorney.

If I cannot afford to hire a private attorney, I will be represented in court by a public defender or a private lawyer appointed by the court at no cost.

3. What is the job of your lawyer?

He or she defends me against the charge (tries to get me off).

4. Who is against you in court?

The prosecutor (in Florida, called the state attorney) is against me.

5. What is the job of the state attorney?

He or she tries to prove me guilty of the charges, to convict me, to get me time.

6. What does the judge do?

The judge presides over the court. The judge keeps order and makes sure rules of law are obeyed. If there is no jury, the judge decides if I am guilty or not guilty. If I am guilty, the judge gives the sentence.

7. Which side is the judge on?

The judge is not on either side (neutral, impartial). The judge listens to evidence from both sides (my defense side, and the prosecution side against me).

8. What are the pleas?

Guilty	I did it as charged
Not Guilty	I did not do it—I am innocent
No Contest	I will not admit guilt, but I will not fight

the charge.
I'll leave it up to the court

Not Guilty By Reason
Of Insanity

I was not responsible for what I did
because I was mentally ill at the time.

9. What is plea bargaining?

You can make a plea bargain instead of going to trial. Your lawyer helps you set up a plea bargain and advises you if it is a good deal. You plead guilty or no contest to a less serious charge. In return, you get less time or a lesser penalty.

10. What is evidence?

Evidence is facts or witnesses or material things, which help prove that I did the crime or that I was innocent of the crime.

11. How do you defend a plea of not guilty?

I must have evidence or proof that I did not do the crime.

12. What is the jury? What do they do?

A jury is six or 12 people from the community who are chosen for jury duty.

13. What happens if you are found guilty?

I could be sentenced to prison, jail, or to probation. The choice is based on my charge and on my background.

14. What happens if you are found not guilty by reason of insanity?

I may be committed to a hospital for treatment of mental illness, or I could be placed on a conditional release.

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Competency to Stand Trial Training Resources

Plea Bargains

1. What is a plea bargain?

In a plea bargain, the defendant (through his or her lawyer) and the State Attorney agree to:

- a specific sentence by pleading guilty or no contest to a charge,
- a reduced sentence by pleading guilty or no contest to a lesser charge, or
- if there are several charges, the defendant may plea guilty to only one or some of the charges.

Many more cases end with a plea bargain than with a trial. However, you have the right to a trial if you want it.

2. Who has to agree to it?

To be binding, a plea bargain agreement has to be approved by each of the following:

- Defendant
- Prosecutor
- Judge

Exactly what sentence you may be offered depends on your legal situation.

Don't forget that if you accept a plea bargain, this will be recorded as a conviction, and it will be in your permanent criminal record.

3. How can a plea bargain help me?

- You may get a lighter sentence from a plea bargain than from a trial.
- If there is a lot of evidence against you, a plea bargain may result in a lighter sentence.
- A plea bargain settles your legal proceedings more quickly than awaiting a trial.

- The sentence you receive may be equal to the time you have been in jail plus in the hospital as incompetent to proceed.

4. What do I give up if I accept a plea agreement?

- You give up the right to a jury trial.
- You give up the right to confront your accusers.
- You give up the right to remain silent.
- You may have the same punishment and lose the same rights as if you had a trial and were convicted.
- A plea agreement requires you to plea guilty or no contest. If you plea guilty or no contest, you lose the right to appeal your conviction and sentence, even if you decide later that you could have gotten a better deal or done better in a trial.

5. Why does the State Attorney plea bargain?

- Save the expense of a trial.
- Finish a case where the defendant has already been locked up about as long, or longer, than they would get if found guilty in a trial.
- Get a defendant to testify against another defendant in the same or some other case.

6. What are the types of plea bargains?

There are two types of plea bargains:

- **Sentence plea bargain.** This is when the defendant is told, "If you plead guilty, then here is the exact sentence you'll get." It is the defendant's choice to accept or reject the plea bargain.
- **Charge bargain.** This is where the defendant is charged with a crime and is allowed to plead guilty to a lesser crime. When this happens, the sentence is up to the judge. The state's sentencing guidelines limit how severe the sentence can be, but the actual sentence is up to the judge. It is the defendant's choice to accept or reject the plea bargain.

7. What are the steps in a plea bargain?

1. Your lawyer tells you a plea bargain has been offered or you tell your lawyer you want to consider a plea bargain
2. Your lawyer is the one who negotiates for you with the State Attorney, but nothing is binding on you until you sign the plea agreement.
3. You review with your lawyer everything the State Attorney offers in the plea bargain.
4. If you think the State Attorney's offer is good for you, tell your lawyer you will agree to it. If the offer is not good to you, tell your lawyer you would like a better offer or else go to trial.
5. When you receive a plea bargain that looks okay, you and your lawyer need to carefully look at the written plea agreement before you sign it.
6. Talk to your lawyer about the plea before you agree to anything. If you have a good case and your lawyer thinks you have a real chance of winning, you might be better off standing trial.
7. After the judge accepts your plea bargain, be careful to do the things the bargain and the judge say you have to do. If you get probation or community control, you may have to do things like go to outpatient mental health, wear an electronic ankle monitor, be at home except when at work or mental health, not drink alcohol or use drugs, be tested for alcohol and drug use, go to your probation appointments, pay for your probation supervision, and not leave the county without permission from your probation officer. The judge may tell you to do other things, too.

8. How can I get the best plea bargain possible?

- Pay attention in your Competency class. The more you know about plea bargains, the more likely you will be able to get a good one.
- Go to class at the hospital and try to get along with people. This will help show people that you have been trying your best to do the right thing.
- Tell your lawyer about the good things you have done for yourself and for other people.
- Help your lawyer know as much about the alleged crime as possible so your lawyer can look for weaknesses in the case against you. Weaknesses can be things like the absence of evidence against you and witnesses who contradict each other.

- Explain to your lawyer how bad it will be for your family if you go to prison, like if you help pay bills, you're helping raise your children, and you take care of your sick mother.
- A plea bargain is a compromise between you and the State Attorney. The State Attorney may want you to go prison for a very long sentence, followed by probation for a very long time. You may want to be set free without prison or probation. Getting an acceptable plea usually means both you and the State Attorney have to be willing to compromise.

9. If I plea bargain, what should I watch out for?

- Decide if the plea bargain is better for you than going to trial.
- The paper you are asked to sign must be exactly what you agree to. Read the paper carefully or have someone you trust read it carefully.
- Be sure you can live with the things that you are required to do or that will happen to you if you sign the agreement. If you don't do everything you agree to do, the State Attorney can ask the judge to revoke the bargain and order you to stand trial.
- Whether you committed the crime or not, don't believe it if someone tells you that you have to take a plea bargain. It is your choice. Only agree to do a plea bargain and to accept a plea agreement if you are sure this is your best course of action.
- A plea of guilty or no contest at your arraignment or at your trial is not the same thing as a plea bargain. If you plea guilty or no contest at an arraignment or at trial, the State Attorney can ask for any sentence they want, and the judge can give you any sentence he or she wants.

From the FLORIDA STATE HOSPITAL

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Competency to Stand Trial Training Resources

Staying Free

After you go to court, the following things might happen as a result of a trial or a plea bargain:

- **Not guilty.** You can be found not guilty and set free.
- **Time served.** You could be found guilty, get a sentence of time served, and set free.
- **Probation.** You could be found guilty, get a sentence of probation, and let out of jail. Probation lets you live in the community, maybe at home, or with a family member, or in a group home. You have to follow rules created by the judge and report regularly to a probation officer, who can visit you unexpectedly where you live.
- **Community control.** Community control is a type of probation. You could be found guilty, get a sentence of community control, and let out of jail. You might have to do things like wear an electronic device at all times, follow a pre-set schedule of when and where you can go when you leave home, and do community service,.
- **Jail.** You could be found guilty, be sentenced to some months in jail, and after release from jail be set free or released on probation or community control.
- **Prison.** You could be found guilty, be sentenced to some years in prison, and after prison, set free or released on probation or community control.

After you are set free, it is up to you to stay free. This is true if you are on probation or not on probation.

What do I have to do if I get probation?

The judge can order you to do many things if you are on probation. Some things the judge could order are:

- Wear an electronic ankle monitor.
- Be at home except when you're at:
 - work
 - school,
 - church,
 - a doctor's appointment,
 - a mental health appointment, or
 - the probation office.
- Be tested for alcohol and drug use any time your probation officer says to.
- See your probation officer whenever when told.
- Go to mental health or substance abuse treatment.
- Get and keep a job.
- Pay restitution (fees that you pay to the court for the victim for injury, loss or damage).
- Pay court costs.
- Pay for your probation supervision

The judge and your probation officer may tell you some other things you have to do.

If you are on probation and you don't do what you're supposed to do, you will be arrested and go to jail.

What are things I can't do if I get probation?

The judge can order you to not do many things if you're on probation. Some of the things the judge can order are:

- You can't drink alcohol.
- You can't use drugs.

- You can't touch a gun.
- You can't go in a bar, even if you're not drinking.
- You can't move to another address without permission from your probation officer.
- You can't leave the county without permission from your probation officer.
- You can't go near the victim of the crime you were convicted of, or near the victim's home, or near the victim's family, or near a certain business, or near a school.

The judge and your probation officer may tell you some other things that you will not be allowed to do.

If you are on probation and you do something you're not supposed to do, you will be arrested and go to jail.

Probation or no probation, what do I have to do to stay free?

Be smart and stay free

- **Be thoughtful.** Think before you act or say something. If you do unwise things, you will get in trouble, the police will arrest you, and they will take you to jail. An unwise thing is holding a bag because somebody says to you "Do not look in the bag" and "I will give you \$20 to stand there with it in your hand while I go see somebody." The police don't care if you don't know drugs, stolen property, or a gun is in the bag. The guy who told you to hold the bag might even want you to go to jail!
- **Have nice friends.** Hang around with people who have jobs, care for their family, obey the law, and don't do drugs. Talk to your family.
- **Find somebody who will listen to you.** Talking about your thoughts to somebody you can trust can help you reach good decisions.
- **Obey the law.** If the police see you break the law they will arrest you and take you to jail. If a citizen notices you break the law or thinks you are "acting suspicious," the citizen will tell the police. Then the police will come, arrest you and take you to jail. If you threaten family members, steal from them, or bring drugs home, a family member

might tell the police, or tell somebody else who will tell the police. Then the police will arrest you and take you to jail.

- **Meet the conditions of your probation.** Do everything the judge and probation officer say.

Get a life and stay free

- **Get a regular life.** Find a job you can do and stick with it. Practice a regular daily routine. Don't overspend money or credit. Ask for help. Keep your emergency phone numbers.
- **Stay healthy.** Go to your doctor and mental health appointments. Take your medication. Don't take other people's medication. Tell the doctor or the nurse if you have problems. Call the emergency telephone number if you have an emergency. Eat healthy food. Go outside in the daytime.
- **Don't use drugs.** If you do drugs, sooner or later you'll do something stupid, get robbed, hurt, arrested, overdose, killed, or violate probation. Don't take street drugs or abuse your prescriptions.
- **Stay away from people who sell drugs and use drugs.** People who do drugs and sell drugs act stupid and get in trouble. They might try to cut a deal with the police by telling them you use or sell drugs even if you don't. If police have seen you with people who use and sell drugs, they will think you use or sell drugs even if nobody says you do.
- **Don't carry a gun or knife.** Carrying a knife or gun makes it look like you're ready to hurt, kill or rob somebody. If the police find out you have a knife or a gun on you, they will arrest you and take you to jail.
- **Don't wander around at night.** If a citizen sees you wandering around at night and thinks you are acting suspicious, they will tell the police and you'll get arrested. Or the police might see you wandering around at night and think you're on your way to rob or attack somebody, get drugs, or sell drugs, and they will arrest you and take you to jail.

Treat police nice and stay free

- **Don't break the law.**

- **Remember that you have a record.** The police will not believe you if you say you did nothing wrong. They will arrest you and take you to jail.
- **Show the police you respect them.** If the police think you are lying or you don't respect them, they might arrest you and take you to jail. When they ask you a question or tell you to do something,
 - stand straight.
 - face the police when they are talking to you.
 - don't keep looking around.
 - look the police in the eye.
 - answer every question they ask.
- **Obey the police.** Do what the police say when:
 - They stop you for a reason or no reason.
 - You have been good, very good, bad, or very bad.
 - They are making you late to do something or not.
 - The police are nice to you or rude to you.
- **When you see or talk to the police, NEVER do not-so-smart things:**
 - Don't touch police with your hand, not even a finger.
 - Don't grab the police by the arm, hand, or anywhere else.
 - Don't put your hand in you pocket or in your shirt like you're going to pull something out.
 - Don't call the police a rude word.
 - Don't tell the police they are stupid or they don't know what they're talking about.
 - Don't tell the police they are not doing their job right.
 - Don't walk away from the police when they're talking to you.