

INTRODUCTION

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I am pleased to have the opportunity to introduce this important new guide for specialized training for forensic evaluations. The timing simply could not be better for publication of such a reference. In April 2003 the Texas Legislature enacted S.B. 1057, which includes a complete overhaul of the criminal competency process in Texas. Governor Perry signed the bill into law on May 14, 2003, and the statute became effective on January 1, 2004. This enactment was the end result of a legislative process that began during the 2001 Regular Session of the Texas Legislature. During that session, legislation was enacted to create a Task Force to review the competency evaluation process in Texas. In the ensuing months a Task Force was assembled that included forensic psychiatrists, a forensic psychologist (who is also one of the authors of this guide), and representatives of the judiciary, criminal prosecutors, criminal defense lawyers, academia, and other interest groups. The Task Force, ably led by Senator Robert Duncan and former Representative Patricia Gray, held a number of hearings and worked in excess of a year to hammer out recommendations for the 2003 Legislature. Early in the process, it became clear that the scope of the Task Force's work should include a comprehensive re-write of the entire array of Texas competency statutes. The Task Force's legislative recommendations have now been enacted through the passage of S.B. 1057.

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With regard to expert evaluations, S.B. 1057 will impact Texas law in several ways. First, the statute includes additional requirements for the qualification of experts. Prior law said very little about the necessary credentials for judicial appointments of experts to conduct competency evaluations. Under the new statute, appointments will generally be limited to either psychiatrists or psychologists with doctoral degrees in psychology who have additional certifications, experience, or training. For example, certification by either the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry, or the American Board of Professional Psychology in forensic psychology will suffice. Alternatively, a physician or Ph.D.-level psychologist with certain experience or training can qualify. The requisite experience or training must consist of (1) at least 24 hours of specialized forensic training relating to incompetence or insanity evaluations; (2) for an appointment made before January 1, 2005, at least five years of experience before January 1, 2004, in performing criminal forensic evaluations for courts; or (3) for an appointment made on or after January 1, 2005, at least five years of experience before January 1, 2004, in performing criminal forensic evaluations for courts and eight or more hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment and documented with the court. In addition, all appointed psychiatric or psychological experts must have completed at least six hours of continuing education courses in forensic psychiatry or psychology, as appropriate, in either of the usual reporting periods in the 24 months preceding the appointment. Finally, the statute includes an exception in which a court may appoint as an expert a psychiatrist or psychologist who does not meet these usual requirements, but only if exigent circumstances require the court to base the appointment on professional training or experience that directly provides the expert with expertise to examine the defendant that would not ordinarily be possessed by a psychiatrist or psychologist who otherwise meets the statute's requirements.

S.B. 1057 will also impact Texas law with regard to its provisions relating to various factors that must be considered in a

competency evaluation, as well as information that must be included in the expert's report. For example, the new statute delineates with specificity an array of functional factors relating to competency that the expert must consider. These include assessing the capacity of the defendant during criminal proceedings to:

- (1) rationally understand the charges and the potential consequences of the pending criminal proceedings;
- (2) disclose to counsel pertinent facts, events, and states of mind;
- (3) engage in a reasoned choice of legal strategies and options;
- (4) understand the adversarial nature of criminal proceedings;
- (5) exhibit appropriate courtroom behavior; and
- (6) testify.

The expert must also assess the following matters:

- (1) whether the defendant has a diagnosable mental illness or is a person with mental retardation;
- (2) the impact of the mental illness or mental retardation, if existent, on the defendant's capacity to engage with counsel in a reasonable and rational manner; and
- (3) if the defendant is taking psychoactive or other medication:
 - (a) whether the medication is necessary to maintain the defendant's competency; and
 - (b) the effect, if any, of the medication on the defendant's appearance, demeanor, or ability to participate in the proceedings.

S.B. 1057 requires the expert to include a written assessment of the foregoing matters in the report to the court, and to discuss any deficits resulting from a defendant's mental illness or mental retardation that impact the various factors described above. The expert's report also needs to describe, in general terms, the procedures, techniques, and tests used in the examination and

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the purpose of each. Moreover, each report will need to set forth clinical observations, findings, and opinions on each specific issue referred to the expert by the court, and state specifically any issues on which the expert could not provide an opinion. In addition, the report should describe prospective treatment options, if any, appropriate for the defendant. Also, the new law makes clear that an expert's report may not state the expert's opinion on the defendant's sanity at the time of the alleged offense, if the expert has opined that the defendant is incompetent to proceed. Finally, the new statute requires the application of these various provisions for both adult and juvenile evaluations.

Through its total re-write of the state's criminal competency statutes, S.B. 1057 addresses far more issues than just the evaluation process. However, through the codification of the various factors for evaluations and reports, and the imposition of additional training requirements for evaluators, the statute should well-serve the state's criminal justice system by assuring more uniform evaluation reports by a well-trained cadre of experts. And, regarding these themes of training and expertise, I am delighted to commend to your study this excellent new training guide in the form of a Special Issue of Applied Psychology in Criminal Justice.