

ALABAMA DEPARTMENT OF MENTAL HEALTH OFFICE OF FORENSIC MENTAL HEALTH SERVICES (OFMHS)

AT A GLANCE SERIES | ISSUE 2 | JANUARY 2023

INTRODUCTION

The *At a Glance* series is a publication that introduces topics pertaining to forensic mental health. In addition to providing general information that is quick and easy to read, a list of resources is also provided for those who would like to learn more about the topic.

Visit our website to learn more about the OFMHS or the At a Glance Series

<https://mh.alabama.gov/forensic-mental-health-services/>



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of Mental Health
connecting mind and wellness

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Court Action following a Forensic Examination

FORENSIC EXAMINATIONS- COMPETENCY AND MENTAL STATE

While there are many types of Forensic Evaluations, this paper will focus on the two most common; Competence to Stand Trial (CST) and Mental State at the time of the alleged Offense (MSO). Both serve the judicial process. The court maintains the authority to order these evaluations and to find someone incompetent to proceed or Not Guilty by Reason of Mental Disease or Defect.

CST evaluations provide information on whether the defendant 1) has a sufficient PRESENT ability to assist his or her attorney to plan a defense and 2) a factual and rational understanding of the proceedings that they face. Competency is addressed in the Alabama Rules of Criminal Procedure, Rule 11 (<https://judicial.alabama.gov/library/CriminalProcedure>).

CST evaluations are not intended to be diagnostic assessments and are not used solely to facilitate access to mental health services. These examinations assist the court when determining whether the person meets the definition of incompetency, defined in Rule 11.1, and ensures that the defendant's constitutional rights are protected, e.g., right to due process, right to be represented by counsel, right to present evidence, and right to respond to accusers.

Mental health diagnoses, even when historical, may not be germane to the matter of competency. The presence of a psychiatric disorder, regardless of severity, is not sufficient basis for finding someone incompetent. For example, someone receiving ongoing treatment for schizophrenia may be found competent based on the definition of competency established in State law.

Ordering a CST evaluation does not warrant ordering an MSO evaluation. Evaluations should only be ordered when the evaluation is necessary to answer the legal question before the court.

MSO evaluations (see Alabama Code §13A-3-1) are used to determine whether the defendant, because of severe mental disease or defect, was unable to appreciate the nature and quality of the wrongfulness of his or her alleged act. The MSO evaluation is used only when the defendant wishes to enter a plea of Not Guilty by Reason of Mental Disease or Defect (NGRI).

The MSO evaluation addresses criminal responsibility and reconstructs the defendant’s previous mental condition and status around the time of the alleged offense. Similar to the CST, the MSO evaluation is not a diagnostic evaluation. The MSO should only be ordered when the defendant has raised a defense of “not guilty by reason of mental disease or defect,” also referred to as NGI or NGRI (see Rule 11.2(a)(2) as well as Rule 15).

A defendant cannot meaningfully participate in an MSO evaluation if they are not competent at the time of evaluation. Furthermore, a person cannot knowingly enter a plea, i.e., make a rational and informed decision about entering a plea of NGRI, when they are not competent to proceed.

WHO CAN ORDER THE EVALUATION AND WHEN ARE FORENSIC EVALUATIONS ORDERED

A Circuit Court Judge must issue an order for a Forensic Evaluation. Forensic Evaluations should be limited to defendants charged with a felony offense after an indictment has been returned by the Grand Jury. It would be inefficient to evaluate or attempt to restore a defendant whose charges could later be dismissed because of the Grand Jury’s decision.

CST evaluations may be ordered at any time during the proceedings when a concern about competency is raised while an MSO evaluation is only ordered when a defendant plans to plead NGRI. When an evaluation is ordered, all proceedings are suspended or held in abeyance until the defendant’s competency can be evaluated. For example, a defendant may present with difficulty communicating with their attorney due to delusional and disorganized thoughts. As a result, the court orders a CST evaluation before allowing the defendant to enter a plea.

Discretion should be used before ordering a Forensic Examination. Consider the following: the defendant’s presentation during various encounters, settings, or situations, the nature and quality of various interactions with the defendant across time, and whether there is “reasonable basis” for doubting the defendant’s competency.

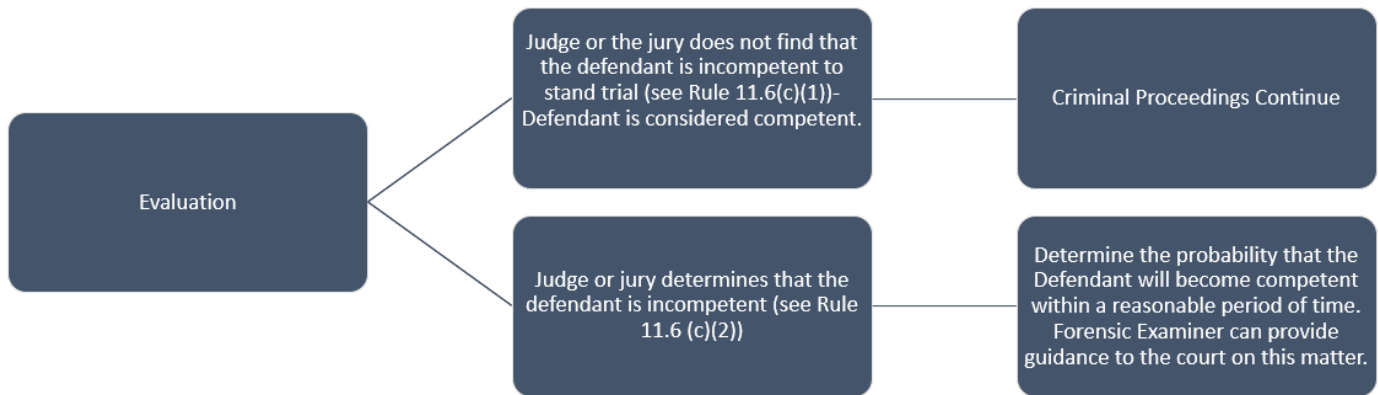
DISTINCTION BETWEEN CST AND MSO EVALUATIONS

CST evaluations look at the defendant’s **PRESENT (at the time of evaluation) ability to participate in their proceedings** and can be ordered at any point during the process outlined below. Conversely, **MSO evaluations examine the defendant’s condition in the past, at the time of the offense.** MSO evaluations are only used when a defendant intends to plead NGRI (see circled area below). Such evaluation is not needed when the defendant intends to plead guilty or not guilty.

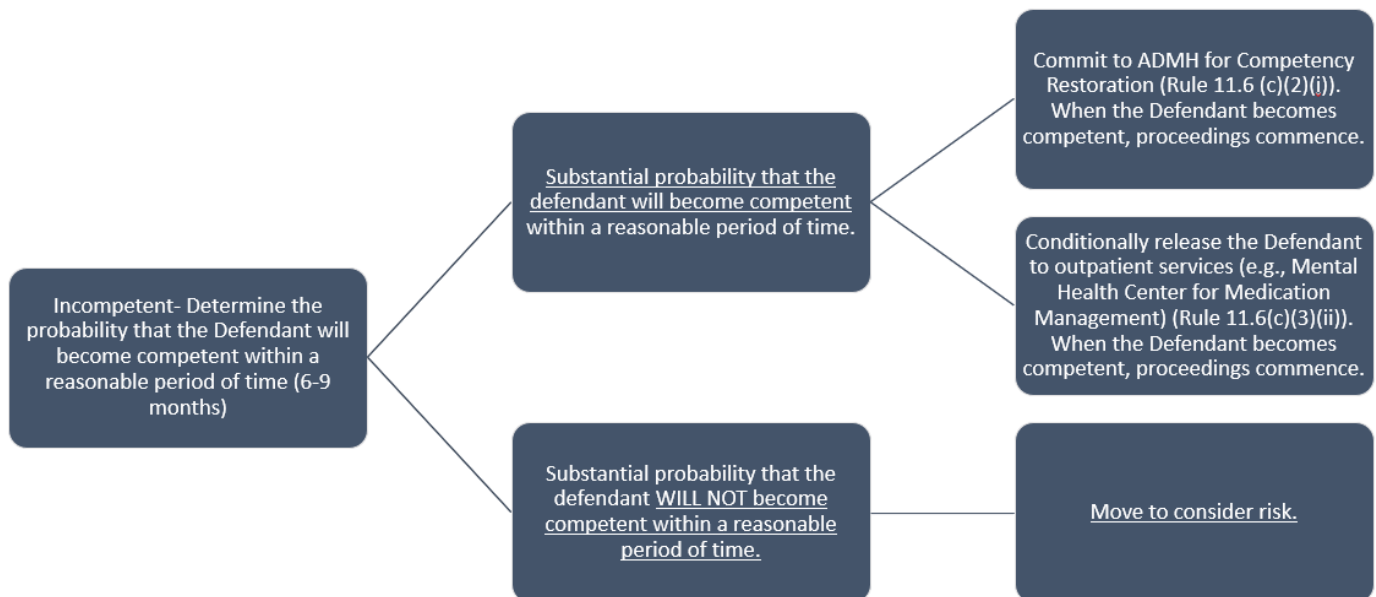


WHAT HAPPENS AFTER THE CST EVALUATION?

After the CST evaluation is complete, the court will determine whether the defendant is Incompetent or Competent to Stand Trial. If the defendant is deemed competent, then the proceedings resume.



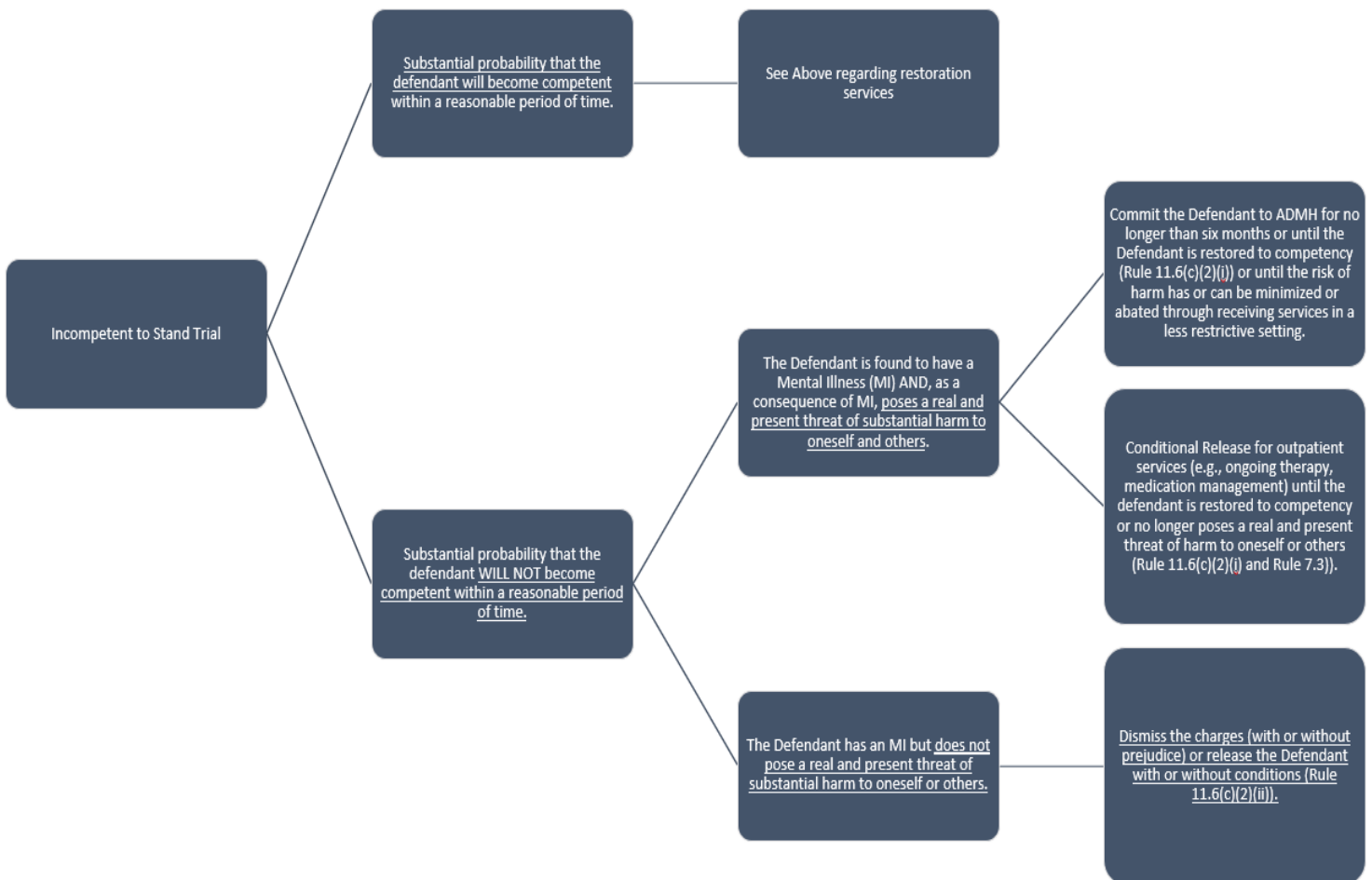
If the court finds the defendant incompetent, then the court determines whether the defendant will likely become competent or whether the defendant is unlikely to be restored to competency due to symptoms of their mental illness or condition. The Certified Forensic Examiner (CFE) should offer an opinion for the court on this matter. If the court determines that the defendant will likely become competent, then the court may either 1) commit the defendant to the custody of ADMH for the purposes of competency restoration or treatment or 2) may release the defendant with conditions that require the defendant to receive appropriate outpatient services to address the defendant's mental illness. In either case, after services are provided, an updated forensic examination report will assist the court with determining whether the defendant has been restored to competency or their progress toward becoming competent.



If the court finds that the Defendant has a mental illness AND determines that the Defendant will not become competent after receiving six to nine months of treatment, then the court must consider whether the Defendant poses a risk of harm to oneself or others. Refer to Rule 11.6 for information regarding hearings, subsequent orders, and requirements regarding periodic reviews. Note that a Defendant should be involuntarily committed when the person has an established mental illness and when the person poses a real and present threat of substantial harm to oneself or others (see https://judicial.alabama.gov/docs/library/rules/cr11_6.pdf). Rule 25.8 addresses Release with Conditions.

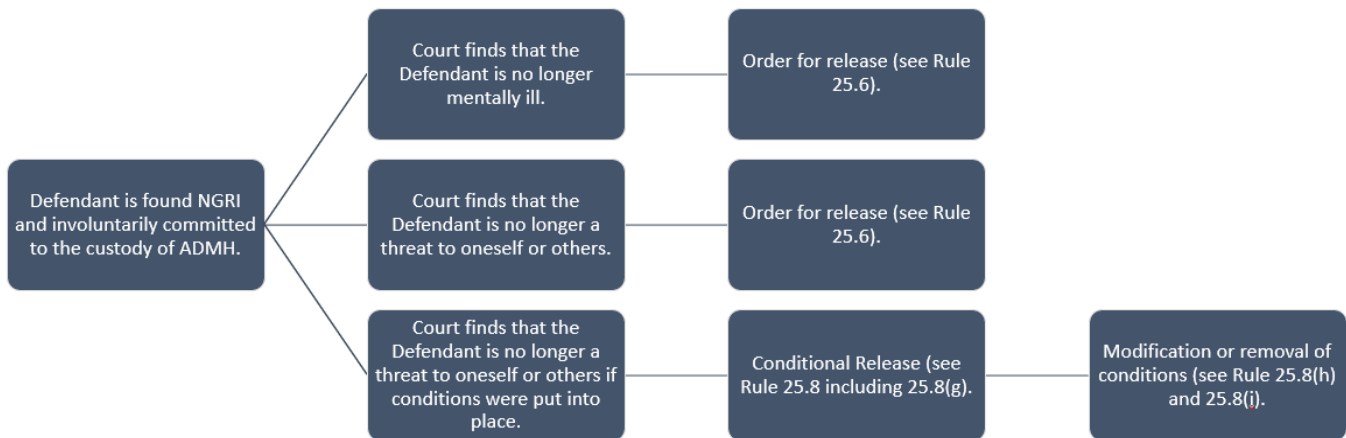
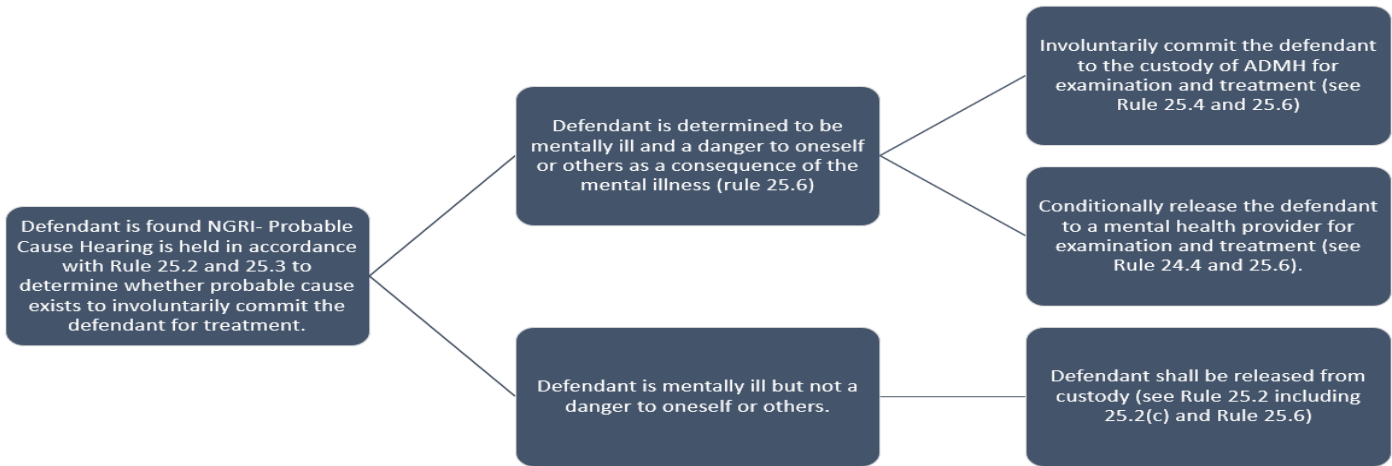
In some cases, a defendant may be safely and appropriately served in a setting other than an ADMH hospital. Contact the Office of Forensic Mental Health Services to explore alternative settings that may be able to serve a defendant.

Local Mental Health Centers are also available to provide outpatient mental health services.



WHAT HAPPENS AFTER A DEFENDENT IS FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT?

Alabama Rules of Criminal Procedures, Rule 25, establish procedures to be followed after a defendant is adjudicated NGRI. Rule 25.2 speaks to the initial temporary commitment for examination and treatment while Rule 25.3 speaks to the hearing. Note that Rule 25 addresses releasing a defendant from custody if the defendant is no longer a danger to themselves or others.



CONCLUSION

This document provides general information on differentiating between CST and MSO evaluations as both evaluation types answer very different questions for the court. This document also outlines various steps that may be taken after such evaluation is complete. This information serves as a companion to, and certainly does not replace, existing policy, rules, and laws. Review the information below for additional guidance on navigating the forensic examination process.

RESOURCES

Bench Guide to Forensic Criminal Cases- Alabama Department of Mental Health, Legal Division:

<https://mh.alabama.gov/wp-content/uploads/2021/11/Bench-Guide-to-Forensics-8-24-18.pdf>

<https://mh.alabama.gov/wp-content/uploads/2019/02/Forensics.WP.Forensics.Model-Orders.021419.pdf>

Mental Health Centers Map and Contact Information:

<https://mh.alabama.gov/wp-content/uploads/2022/01/CMHC-2021-MI-01.png>

<https://mh.alabama.gov/single-category-2/mental-illness/>

The Alabama Rules of Criminal Procedure:

<https://judicial.alabama.gov/library/CriminalProcedure>

Code of Alabama, section 13A-3-1:

<http://alisondb.legislature.state.al.us/alison/codeofalabama/1975/coatoc.htm>