



REQUEST FOR EXPERTS AND ISSUES OF  
COMPETENCY, NGRI, DIMINISHED  
CAPACITY, MENTAL HEALTH COURT

OCTOBER 19, 2023

JUDGE STEPHEN WALLACE

# DIMINISHED CAPACITY

EVIDENCE OF AN ABNORMAL MENTAL CONDITION NOT AMOUNTING TO LEGAL INSANITY BUT TENDING TO PROVE THAT THE DEFENDANT COULD NOT OR DID NOT ENTERTAIN THE SPECIFIC INTENT ESSENTIAL SUCH AS INTOXICATION, ADDICTION, TRAUMA, OR MENTAL DISEASE OR DISABILITY.

RECOGNIZED IN SOME JURISDICTIONS, **BUT NOT ALABAMA;**

UNLIKE **DIMINISHED CAPACITY**, **BATTERED-WOMAN SYNDROME** HAS BEEN RECOGNIZED BY ALABAMA COURTS. SEE, E.G., HARRINGTON V. STATE, 858 SO. 2D 278, 294 (ALA. CRIM. APP. 2002); BONNER V. STATE, 740 SO. 2D 439 (ALA. CRIM. APP. 1998); EX PARTE HANEY, 603 SO. 2D 412 (ALA. 1992). THIS COURT ALSO HELD IN W.R.C. V. STATE, 69 SO. 3D 933 (ALA. CRIM. APP. 2010), TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING EXPERT TESTIMONY THAT WAS “GENERAL IN NATURE” TO ASSIST THE JURY IN UNDERSTANDING POSSIBLE REASONS FOR A 10-YEAR DELAY IN REPORTING CHILD SEXUAL ABUSE. CARTWRIGHT V. STATE, 2020 WL 597420 (2020).

# FEATURES CRIMINAL JUSTICE SYSTEM

- INDIGENT POPULATION – JAILED FOR POVERTY
- SUBSTANCE ABUSE
- MENTAL HEALTH
- LACK OF RESOURCES (Housing, Transportation, Education, Employment, Health Insurance)



# CLIENT PATH THROUGH CRIMINAL JUSTICE SYSTEM

- Arrest-felony arrest generally prevents (civil commitment) process
- Jail Screening upon arrest-(If concerned about client's mental state, move quickly to have them assessed, apply for MHC, request evaluation.) DO NOT WAIT UNTIL CIRCUIT COURT
- Application to MHC (voluntary)
  - May consider forensic evaluation track to determine competency and mental state at the time of offense
- Verification of serious mental health illness diagnosis
- Plea or deferred sentence
- Charge can be reduced or dismissed upon successful completion

# FEATURES OF MHC V. ADMH COMMITMENT (NOT MUTUALLY EXCLUSIVE)

- Mental Health Court

- Lower-level offenses (drug and theft related offenses)
- Requires a SMI diagnosis, but not necessarily related to the conduct
- Less restrictive conditions (probation)
- Quicker resolution w/ definitive end
- Less services primarily referral to local mental health provider

- Incompetency/NGRI – Commitment

- More severe offenses (murder, robbery, rape)
- Must include a SMI, plus compromise competency/mental state time offense
- More restrictive conditions (commitment)
- Slower resolution w/ possible lifetime supervision by the court
- More services including group home placement and inpatient commitment

# MENTAL HEALTH EXPERTS

## AKE V. OKLAHOMA, 470 U.S. 68 (1985)

- In the seminal case on **experts** and mental health **experts**, in particular, the Supreme Court, through Justice Marshall, held that when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, due process requires that a state provide access to a psychiatrist's **assistance** on this issue, if a defendant cannot otherwise afford one.



# REQUEST FOR EXPERT ASSISTANCE- DISCRETIONARY (BEFORE CIRCUIT CT.)

“[D]EFENDANTS MAY BE ELIGIBLE TO RECEIVE FUNDS TO HIRE CERTAIN **EXPERTS** TO FACILITATE THE FORMULATION AND PRESENTATION OF A DEFENSE. [AKE V. OKLAHOMA, 470 U.S. 68, 105 S. CT. 1087, 84 L.ED. 2D 53 \(1985\).](#) [BECKWORTH V. STATE, 946 SO. 2D 490, 503 \(ALA. CRIM. APP. 2005\).](#) BUT THOSE “FUNDS ... ARE NOT TO BE GRANTED AUTOMATICALLY UPON **REQUEST.**”

“RATHER, THE GRANT OR DENIAL OF SUCH FUNDS IS A MATTER FOR THE TRIAL COURT'S **DISCRETION** AND IS BASED ON THE ALLEGATIONS IN THE **REQUEST** FOR FUNDS TO HIRE THE **EXPERT.**” [ID.](#)

## REQUEST FOR EXPERT ASSISTANCE – APPLIES TO BOTH PSYCHIATRIC AND NONPSYCHIATRIC

“[F]OR AN INDIGENT DEFENDANT TO BE ENTITLED TO **EXPERT ASSISTANCE** AT PUBLIC EXPENSE, HE MUST SHOW A **REASONABLE PROBABILITY (MORE THAN A MERE POSSIBILITY)** THAT THE **EXPERT** WOULD BE OF **ASSISTANCE** IN THE DEFENSE AND THAT THE DENIAL OF **EXPERT ASSISTANCE** WOULD RESULT IN A **FUNDAMENTALLY UNFAIR** TRIAL. TO MEET THIS STANDARD, THE INDIGENT DEFENDANT MUST SHOW, WITH REASONABLE SPECIFICITY, THAT THE **EXPERT** IS **ABSOLUTELY NECESSARY** TO ANSWER A SUBSTANTIAL ISSUE OR QUESTION RAISED BY THE STATE OR TO SUPPORT A CRITICAL ELEMENT OF THE DEFENSE. IF THE INDIGENT DEFENDANT MEETS THIS STANDARD, THEN THE TRIAL COURT CAN AUTHORIZE THE HIRING OF AN **EXPERT** AT PUBLIC EXPENSE.”

UNDER THIS BURDEN, A DEFENDANT “MUST SHOW MORE THAN A MERE POSSIBILITY THAT HE OR SHE WILL RECEIVE USEFUL **ASSISTANCE** FROM THE **EXPERT**.” **EX PARTE DOBYNE, 672 SO. 2D 1354, 1357 (ALA. 1995)**. SMITH DID NOT SATISFY HIS BURDEN.



# EXAMPLES – EXPERT ASSISTANCE – ABUSE OF DISCRETION

COURT RULED NOT ENTITLED TO **PRISON** EXPERT. SMITH V. STATE, CR-17-1014, 9/2/22;

DEFENDANT WAS NOT ENTITLED TO **POLLING EXPERT** AT PUBLIC EXPENSE (VOIR DIRE WAS EXTENSIVE);

OR **BLOOD-SPATTER, CRIME SCENE INVESTIGATION** NOT ENTITLED TO MERELY SHOW POLICE INVESTIGATION FLAWED. FLOYD V. STATE, 289 SO.3D 337 (ALA. CRIM. 2017);

NOT ENTITLED TO DNA EXPERT BASED ON MERE POSSIBILITY THAT TESTING MAY REVEAL THAT A PIECE OF EVIDENCE CONTAINED THE DNA OF ANOTHER PERSON. D.B. V. STATE, 861 SO.2D 4, (ALA. CT. CRIM. 2003)

GENERAL TESTIMONY OF **PRISON-PSYCHOLOGY** EXPERT WAS NOT RELEVANT TO SPECIFIC CLAIM OF SELF-DEFENSE. PERAITA V. STATE, 897 SO.2D 1161 (ALA. CRIM. APP. 2003);

“ ‘ “ALTHOUGH [THE UNITED STATES] SUPREME COURT HAS NOT SPECIFICALLY STATED WHAT ‘THRESHOLD SHOWING’ MUST BE MADE BY THE INDIGENT DEFENDANT WITH THE REGARD TO THE NEED FOR AN **EXPERT**, THE COURT REFUSED TO REQUIRE THE STATE TO PAY FOR CERTAIN **EXPERTS** WHEN THE INDIGENT DEFENDANT ‘**OFFERED LITTLE MORE THAN UNDEVELOPED ASSERTIONS THAT THE REQUESTED ASSISTANCE** WOULD BE BENEFICIAL.’ CALDWELL V. MISSISSIPPI, 472 U.S. 320 AT 323, 105 S.CT. 2633 AT 2637, 86 L.ED.2D 231 (1985).; IN [EX PARTE] MOODY, [684 SO.2D 114 (ALA.1996)] ]

# SEEKING FORENSIC EVALUATION

- Forensic Evaluations
  - Competence to Proceed-Competency to Stand Trial (CST) (**Present**)
  - Mental State at the time of the Offense (MSO)
    - **Past** mental state
    - Reconstructing the defendants mental state at the time of the alleged offense. (Rule 11.2 & AL Code §13A-3-1)
  - Risk Assessments, *Atkins*' testing
  - Standardized measures of intellectual and cognitive functioning
  - Treatment
  - Medication Management & Treatment



# COMPETENCY TO STAND TRIAL (CST)

- **The general assumption is that defendants are competent. Competency is a low legal bar.**
- The matter of “competency” considers a defendant’s current mental state and functional capacities.
- Competency defined (11.1): A defendant is incompetent to stand trial or to be sentenced for an offense if the defendant:
  - Lacks sufficient present ability to assist with planning his or her defense by consulting with counsel
  - Reasonable degree of rational understanding of the facts and the legal proceedings against the defendant.
- **The mere presence of a “mental disorder,” whatever its severity, is not a sufficient basis for finding someone incompetent.**
- The majority of defendants evaluated for competency are deemed competent to proceed. Research suggests that only around 25% to 30% of defendants evaluated are later deemed incompetent.





# COMPETENCY TO STAND TRIAL (CST)

- Defendants with the following conditions are less likely to be restored to competency:
  - Schizophrenia Spectrum Disorder
  - Schizoaffective Disorder
  - Intellectual Disability (ID) or ID with a co-occurring Developmental Disability such as Autism Spectrum Disorder (ASD)
  - Dementia or a similar neurocognitive disorder
  - Severe Traumatic Brain Injury
  - Chronic refractory psychiatric condition that has necessitated multiple hospitalizations
- Competency is based on capacity or ability, not willingness to participate in the proceedings.
- Competency addresses current capacity and is impacted by individual factors- the characteristics of the particular defendant, during the present period of time, faced with certain circumstances, particular charge(s), existing evidence, with a particular attorney...



# COURT ACTION FOLLOWING THE FORENSIC EXAMINATION: DEFENDANT IS COMPETENT TO STAND TRIAL



# COURT ACTION FOLLOWING THE FORENSIC EXAMINATION: DEFENDANT IS CURRENTLY NOT COMPETENT BUT MAY BECOME COMPETENT

Incompetent to Stand  
Trial

Substantial probability  
that the defendant WILL  
become competent within  
a reasonable period of  
time.

Commit to ADMH for  
Competency Restoration  
(Rule 11.6(c)(2)(i))

Conditional Release for  
Outpatient Services (e.g.,  
Mental Health Center for  
medication management)  
(Rule 11.6(c)(3)(ii))

Substantial probability  
that the defendant WILL  
NOT become competent  
within a reasonable  
period of time.

See next slide



# COURT ACTION FOLLOWING THE FORENSIC EXAMINATION: DEFENDANT IS CURRENTLY NOT COMPETENT AND UNLIKELY TO BECOME COMPETENT

Incompetent to Stand Trial

Substantial probability that the defendant WILL become competent within a reasonable period of time.

See prior slide

Substantial probability that the defendant WILL NOT become competent within a reasonable period of time (Rule 11.6(c)(2))

Mentally ill (MI) and as a consequence of MI, poses a real and present threat of substantial harm to oneself or others.

Commit to the ADMH for no longer than six months or until restored (Rule 11.6(C)(2)(i))

Conditional Release for outpatient services (e.g., ongoing therapy, medication management) (Rule 11.6(c)(2)(i) and Rule 7.3)

The person does not pose a real and present threat of substantial harm to oneself or others.

Dismiss charges (with or without prejudice) or release, with or without conditions (Rule 11.6(c)(2)(ii))

# MENTAL STATE AT THE TIME OF THE OFFENSE (MSO); INSANITY

## Ala. Code 1975, § 13A-3-1

The defendant must prove by clear and convincing evidence each of the following elements:

- (1) The defendant was suffering from a severe mental disease or defect at the time of the offense; **(AND)**
- (2) As a result of the severe mental disease or defect, the defendant was:
  - (a) Unable to appreciate the nature and quality of his/her acts; **[OR]**
  - (b) Unable to appreciate the wrongfulness of his/her acts.

The **defendant has the burden** of proving that he/she has a severe mental disease or defect by clear and convincing evidence. Clear and convincing evidence means that it is highly probable that the defendant had a severe mental disease or defect at the time of the crime. Proof by clear and convincing evidence is a lower standard of proof than proof beyond a reasonable doubt.

# MENTAL HEALTH COURT

- Individuals who are seriously mentally ill and involved in criminal justice system (felony). (Schizophrenia, Major Depression, Bi-Polar, PTSD, TBI)
- Implemented in March, 2015, MHC assists offenders in achieving long term stability by connecting them to treatment providers in the community.
- MHC includes case management, risk and needs assessments, mental health referrals, substance abuse treatment, medication assistance, disability enrollment, and assistance with housing and transportation.



# MENTAL HEALTH COURT-BIRMINGHAM DIVISION (2022)

**125 - ENROLLED 2022**

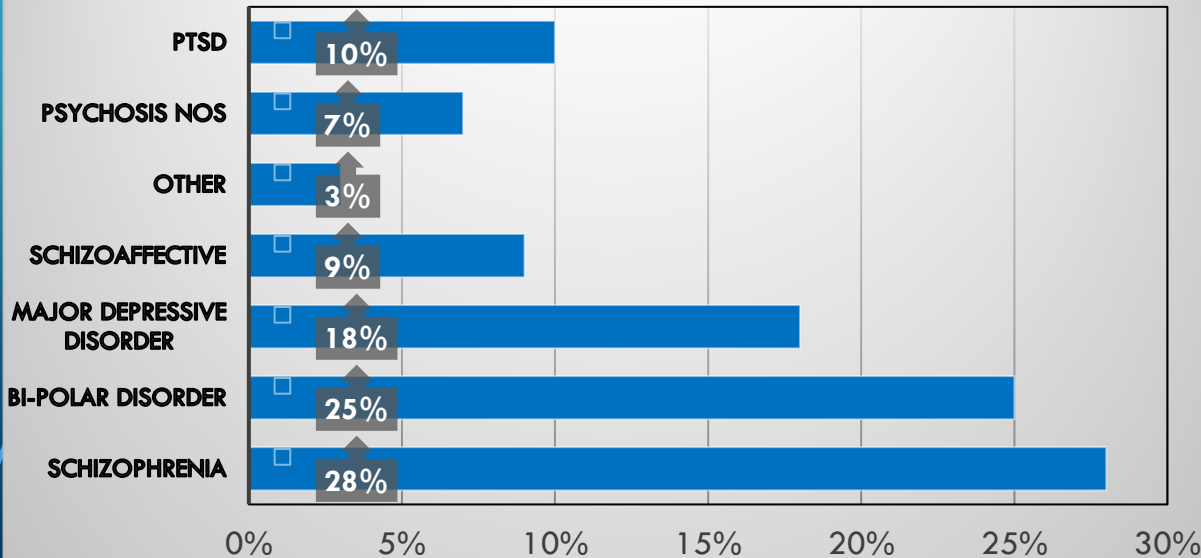
**69 - DAILY MENTAL HEALTH COURT POPULATION 2022**

**178 - TOTAL NUMBER OF DEFENDANTS RECEIVING MENTAL HEALTH CT.**

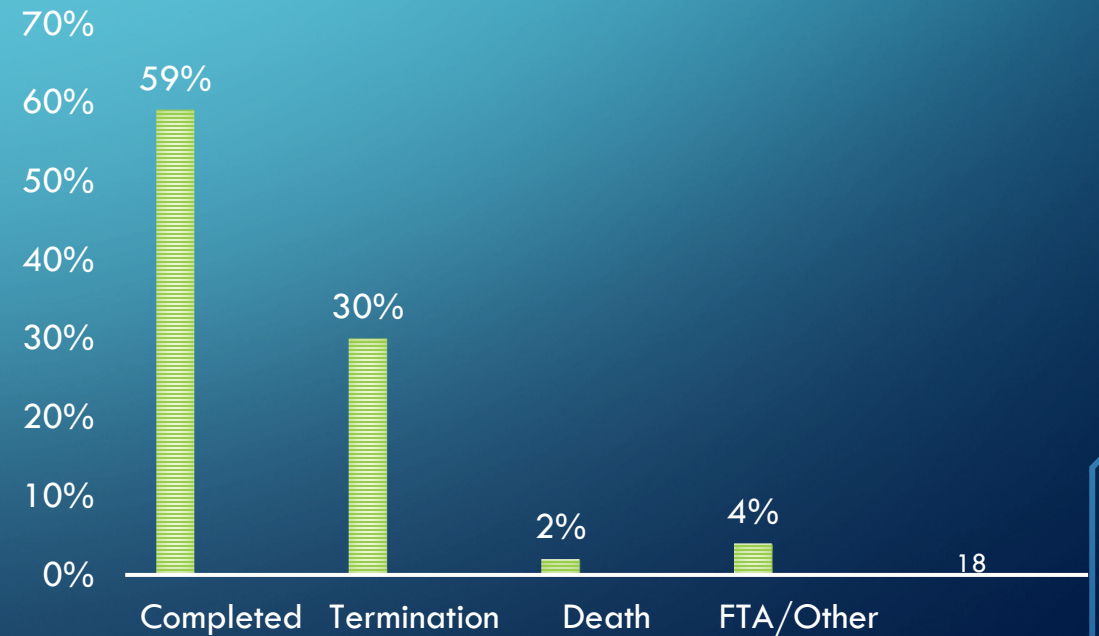
**SERVICES- 59% - COMPLETION RATE**

**INCLUDES: CASE MANAGEMENT, RISK AND NEEDS ASSESSMENTS, MENTAL HEALTH REFERRALS, SUBSTANCE ABUSE ASSESSMENT, HOUSING, TRANSPORTATION, DISABILITY ENROLLMENT**

## PRIMARY DIAGNOSIS - CO-OCCURRING 56%



## MHC OUTCOMES





THE END



# VOLUNTARY INTOXICATION

VOLUNTARY INTOXICATION DOES NOT EXCUSE A CRIME, BUT ITS EXCESSIVENESS MAY PRODUCE SUCH A MENTAL CONDITION AS TO RENDER THE INTOXICATED PERSON INCAPABLE OF FORMING A SPECIFIC INTENT.

FACT FINDER IS TO DETERMINE WHETHER THE PERSON WAS INTOXICATED AT THE TIME OF THE OFFENSE; AND SECOND, WHETHER THE DEFENDANT WAS INCAPABLE OF FORMING THE REQUIRED INTENT TO COMMIT SAID CRIME.



# FATAL POLICE SHOOTINGS 2015-2021

- In 2021, there were at least 1,055 fatal police shootings, compared to 1,020 in 2020.
- According to data from the Washington Post's database, but largely on par with past years of around 1,000 shootings – since tracking began in 2015.
- Although half of the people shot and killed by police are White, Black Americans are shot at a disproportionate rate. They account for less than 13 percent of the U.S. population, but are killed by police at more than twice the rate of White Americans. Hispanic Americans are also killed by police at a disproportionate rate.
- Overall, from 2015 to the present, the victim in 20% – 25% of all fatal police shootings was an individual suffering from a mental illness. (CRT TRAINING)