



COMPETENCY/NGI

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OBJECTIVES

- ❖ Raising Competency
- ❖ Handling the Report
- ❖ Involuntary Medication Order Basics
- ❖ NGI Basics

RAISING COMPETENCY

- *State v. Johnson* – must raise competency whenever reason to doubt
 - ← Strategy cannot play role in decision
- Only time the client has no say whether it happens
- Before an examination may be ordered, PC has to be found
- Judges may try to make you explain the reason, keep it generic – confidentiality/may not be raised strategically
- Examination handled by Wisconsin Forensic Unit

WHAT THE CLIENT WANTS/HEARING

- Once you get the report, as with everything—discuss it with the client
- Determine whether to get a new report/contest current report/agree with current report
- Regardless of your thoughts, you argue for what the client wants

CONTESTED HEARINGS

- Hearing should begin with the court asking your client's position
- If report says client not competent:
 - ← If client is claiming competent, the State **should** be contesting absent a good reason not to – nothing statutorily requiring this
- Evaluating Doctor will testify – court will decide
- Currently, medication should never be ordered at the initial hearing

IMMEDIATE EFFECT

- If found incompetent and OCRP not in report, ask the court to order DHS evaluate client for participation
- Once found incompetent, proceedings are suspended and client is committed to custody of DHS for up to 12 months—depends on charge
 - ↳ Secondary commitments may change the limits – no more than 18 months cumulative
- There is nothing explaining what it means for proceedings to be suspended
- Client will be treated either inpatient or outpatient (OCRP)

INVOLUNTARY MEDICATION ORDER

971.14(5)(am)

- Doctor must explain advantages and disadvantages of and alternatives to **particular** medication and treatment

Client must be either:

- incapable of expressing an understanding or,
- substantially incapable of applying an understanding in order to make informed choice

IMPORTANT CASES

- *Virgil D.* - 189 Wis. 2d 1, 15, 524 N.W.2d 894 (1994)
 - ← – discusses factors the court should be considering
- *Melanie L.* 2013 WI 67, 349 Wis. 2d 148, 833 N.W.2d 607
 - ← – outlines what the explanation from the doctor should look like – frequency

CONSTITUTIONAL REQUIREMENTS

Sell v. United States, 539 U.S. 166, 180-81 (2003).

- Before ordering involuntary medications, the court must find:
- (1) the government has an important interest in proceeding to trial;
- (2) involuntary medication will significantly further that interest;
- (3) involuntary medication is necessary to further that interest; and
- (4) involuntary medication is medically appropriate.

Should not be based solely on dangerousness grounds – Chapter 51

INDIVIDUALIZED TREATMENT PLAN

Must contain:

- Medication(s)
 - ↑ Should not be a long list; purpose is to have court approve
- Dosages
 - ↑ Amount AND Frequency
- Length of treatment
 - ↑ Should not be timed to the competency reports

MEDICATION TREATMENT TO BE PROVIDED

The following oral medications are proposed for treatment either in combination or in succession to restore the defendant's competency to stand trial: See additional materials (attached)

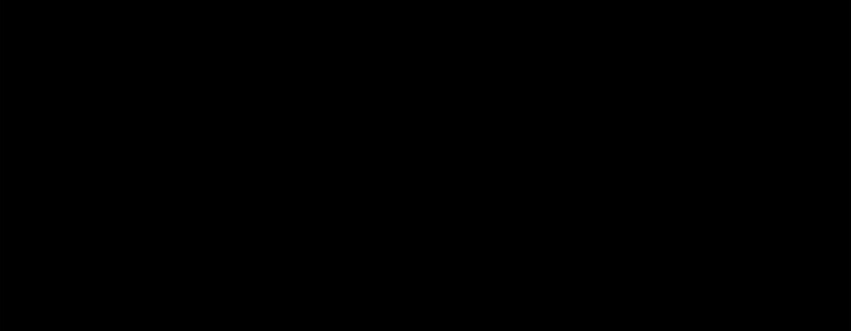
Name of Medication	Purpose	Dose Range
Olanzapine	Psychosis	5-40 mg
Aripiprazole	Psychosis	5-30 mg, long acting injection 300-400 mg
Risperidone	Psychosis	2-8 mg
Paliperidone	Psychosis	3-12 mg, long acting injection 156-234 mg
Haloperidol	Psychosis	5-20 mg
Quetiapine	Psychosis	50-800 mg
Clozapine	Psychosis	50-600 mg

The following medications are proposed to be given by injection if the defendant is unable or unwilling to take the proposed oral medication:

Name of Medication	Purpose	Dose Range
Haloperidol	Psychosis	5-10 mg
Lorazepam	Agitation	1-4 mg

Treatment will be provided by a physician. Additional medications to address side effects or allergic reactions will be provided when necessary. The defendant may consent to treatment with alternative medications in lieu of or in addition to involuntary medication when such treatment is medically appropriate. Medication(s) may also be given in an emergency situation in which the medication or treatment is necessary to prevent serious physical harm to the subject or to others.

The effects of treatment and progress towards competency restoration will be reported to the court as statutorily required at 3 months after commitment, 6 months after commitment, 9 months after commitment and within 30 days prior to the expiration of commitment. Progress reports will be provided earlier should treatment be successful prior to the statutorily required timeframe.



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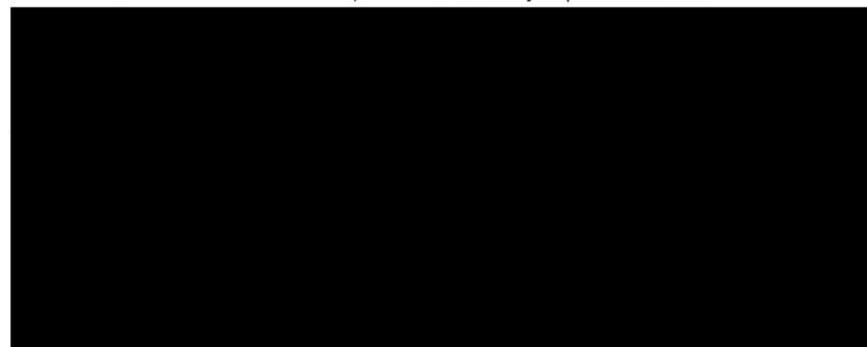
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REQUESTING A STAY

- If the court orders involuntary medications unlawfully, ask for a stay
- Stay Factors:
 - ← a strong showing that they are likely to succeed on the merits of his appeal;
 - ← a showing that unless the stay is granted they will suffer irreparable harm;
 - ← a showing that no substantial harm will come to other interested parties; and
 - ← a showing that a stay will do no harm to the public interest.
- Ask court to delay signing the order
- Also argue that an automatic stay is set to be implemented in July, so courts should be ordering at least temporary stays in the meantime

NGI

- ❖ Unlike Competency – strategic decision
- ❖ Consult with your client
- ❖ Governed by 971.15 : A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law.



PLEA

- To Plea or not to Plea
- Entering a plea early
- You can change a not guilty plea to not guilty & NGI, but must do so well in advance of trial.
 - ← ***State v. Kazez***, 192 Wis. 2d 213, 531 N.W.2d 332 (Ct. App. 1995).
- Make sure you join the NGI plea w/ a plea of not guilty!

REPORT: BEGIN AND END

- Judge may order 1-3 court appointed examiners
- We may recommend an expert to the court
- We may request our own expert
- The state can retain their own expert
- State doesn't have to stipulate to the NGI finding
- If they do agree, negotiate

BIFURCATED TRIAL

- Guilt phase – normal trial (Stipulate?)
- Mental Responsibility phase – duel of the experts
 - ← 5/6 verdict needed
 - ← Burden shifts to us to prove
 - ← Greater weight of the evidence burden
- Court trial vs Jury Trial?
- Same jury for both phases



COMMITMENT

- Court enters as soon as possible after NGI finding
- Length of commitment governed by 971.17(1)
- Institutional Care v. Conditional Release
 - Court may order DHS evaluation to determine
- If the client is deemed currently dangerous by clear and convincing evidence – institution
- If not then may order conditional release with conditions



PETITION FOR CONDITIONAL RELEASE

- If inpatient, can petition for conditional release every 6 months.
- Within 20 days appoint one or more examiners
- Examiner will give report 30 days after appointment
- Court will appoint an attorney (call us)
- Make sure the doctor uses the right standard.
 - ← “that the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage if conditionally released.” Wis. Stat. §971.17(4)(d).

HEARING/WITHDRAW

- Withdrawing the motion – preserves right to petition before 6 months
- Can retain our own evaluator
- Hearing to be held within 30 days unless waiver of time limits
- If court determines inpatient no longer appropriate, then conditional release plan is developed within 60 days
 - ← “The court shall grant the petition unless it finds by clear and convincing evidence...” Wis. Stat. §971.17(4)(d)

REVOCAATION

- Client may be taken into custody upon allegation that conditions have been violated
- Department may submit a statement of probable cause and a petition to revoke an order for conditional release
- Hearing within 30 days
- State has the burden by clear and convincing evidence

END OF COMMITMENT

- When client is on conditional release may petition for termination every 6 months
- 60 days before expiration DHS notifies the court
- County may proceed against client with 51/55

QUESTIONS

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