



DISTRICT OF COLUMBIA
COURT SERVICES AND OFFENDER SUPERVISION AGENCY &
PRETRIAL SERVICES AGENCY
RESEARCH REVIEW COMMITTEE

RECOMMENDATION STATEMENT

DATE: April 14, 2008

I. RESEARCH PROPOSAL SUMMARY

Principal Researcher: Sahair Monfared, Doctoral Clinical Psychology Student at American School of Psychology, Argosy University

Title: Outpatient Competency Restoration Program for the District of Columbia

Institution: Argosy University, Washington, DC

Description: This study will review the success and effectiveness of the outpatient restoration program for the District of Columbia Superior Court during its first year of operation; specifically with regard to restoring competence to mentally retarded or cognitively limited defendants.

This study applies to PSA only.

Type of Data and Analysis: This study will use archival data from DMH, including age, gender, current psychiatric diagnosis, past exposures to competency restoration programs, duration in the outpatient restoration program, and outcome of competency upon the completion of the program. The researcher requests that PSA provide matching criminal history information for the sample cases to determine rearrest and charge.

Subjects: The researcher requests that PSA provide coded data for 41 individuals who were Department of Mental Health (DMH) clients between July 2005 and July 2006.

II. RECOMMENDATION

The RRC recommendation for this study:

Support Support with Conditions Do Not Support

The RRC finds that the proposed project is considered non-agency research as defined in Research and Evaluation Policy Statement 1201. The RRC recommends support of this request within the scope of the conditions described below.

**CSOSA/PSA RESEARCH REVIEW COMMITTEE
REVIEW RECOMMENDATION STATEMENT**

As stated, the researcher will provide PSA the dataset with personal identifiers, PSA will merge this dataset to its defendant records to extract criminal history data and append it to the merged records, and then submit to the researcher a merged data set with newly created identifiers.

Although the cases will be de-identified, with only 41 cases and more than 2-3 variables, the researcher still will have the ability to identify clients. If we assume that the researcher may have some familiarity with the sample defendants, it likely would enable her to identify cases with education level, housing status (homeless, in a shelter, full time address, etc.), rearrest and recidivism data. This is especially sensitive because it involves mental health data.

PSA's routine uses do not include a routine use that authorizes the disclosure of PSA confidential information for the purposes outlined in the study without the consent of the subject. As such, approval of this study would require the express written consent of the subject authorizing disclosure of their confidential information for the use articulated in the study.

Therefore, to account for these concerns and to accommodate the request of the researcher, the RRC proposes the following:

- The researcher will provide PSA the analysis dataset with personal identifiers. PSA will merge this analysis dataset to its defendant records. Thereafter, PSA will extract criminal history data and append it to the merged records. The final data set will be submitted to the researcher with a newly created record identifier and PSA will have recoded the variables that would allow clients to be identified. The researcher will receive an aggregate data set that no longer will allow for integration with the researcher's original client data set.

III. SUPPORTING INFORMATION

Regulatory:

The proposed research shows no evidence of non-compliance with the Agency's Research and Evaluation Policy Statement 1201.

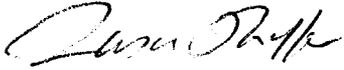
This request is for aggregate data that does not contain any personal identifiers and, therefore, presents no potential human subject concerns.

Other Considerations:

Given the small number of cases and the limited data being requested, this would take less than 3 hours of an analyst's time to generate. The file would be small enough to send as an e-mail attachment, so Agency resources needed are quite minimal.

**CSOSA/PSA RESEARCH REVIEW COMMITTEE
REVIEW RECOMMENDATION STATEMENT**

I **ACCEPT** the RRC recommendation



I **DO NOT ACCEPT** the RRC recommendation

Susan W. Shaffer, Director, DC Pretrial Services Agency

Comments:

**Research Review Committee (RRC) Submission
D.C. Pretrial Services Agency**

Name, Agency and Agency component:

Sahair Kaboli-Monfared

Doctoral Clinical Psychology Student at American School of Psychology

Title of the study:

Outpatient Competency Restoration Program for the District of Columbia

Purpose of the project:

This study will review the effectiveness and successfulness of the outpatient restoration program for the District of Columbia Superior Court during its first year of operation. In particular, this study will examine the effectiveness of this program in restoring competence to mentally retarded or cognitively limited defendants.

Location of the project:

633 Indiana Ave NW

Washington DC 20001

Duration of the study:

June 2005 to September 2007

Methods to be employed:

Data will be released to doctoral student by Pretrial Services Agency using coding.

Sample size required and/or time frame for sample collection:

The following data will be requested for 41 clients. Docket numbers, along with a code, will be provided for each client to Pretrial Services Agency. Pretrial will retrieve the data and return it to Sahair Monfared using the provided code only.

<u>Level of Education</u>	<u>Current Housing</u>	<u>Duration in MH services</u>	<u>Meds?</u>	<u>Rearrest in program</u>	<u>If yes, Charge?</u>	<u>Rearrest after program</u>	<u>If yes, Charge?</u>
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Agency resources needed to support the study and description of the support needs:

PRISM will be needed to gather the requested data.

Indication of risk or discomfort to subjects as a result of participation:

Very low. No identifying information will be released to Sahair Monfared.

DOES THE RESEARCH PLANNED IN THIS PROJECT INVOLVE:

Yes No

- | | | |
|--|--------------------------|---|
| 1. Major changes in diet or exercise: | <input type="checkbox"/> | X |
| 2. Administration of physical stimuli other than auditory and visual stimuli associated with normal classroom situations: | <input type="checkbox"/> | X |
| 3. Deprivation of physiological requirements such as nutrition or sleep, manipulation of psychological and/or social variables | <input type="checkbox"/> | X |

(e.g., sensory deprivation, social isolation, psychological stresses, deception, etc.):

- | | | |
|--|--------------------------|---|
| 4. Use of deceptive techniques without the knowledge of subject (e.g., placebo, single blind, double blind, or control group): | <input type="checkbox"/> | X |
| 5. Possible invasion of privacy of subject or family, including use of personal or medical information: | <input type="checkbox"/> | X |
| 6. Any probing of information that might be considered personal or sensitive: | <input type="checkbox"/> | X |
| 7. Presentation to the subject of any materials that they might find to be offensive, threatening, or degrading: | <input type="checkbox"/> | X |
| 8. Other possible risks: | <input type="checkbox"/> | X |

Anticipated results:

The results of this research will be provided to the Department of Mental Health, Pretrial Services Agency, and Argosy University. Results may also be submitted for publication in the future.

List of deliverables to the Agency:

The purpose of this research is to review the District of Columbia's recent outpatient program and with the findings from this review and an analysis of the existing literature propose an outpatient restoration program to address the needs of defendants who were found incompetent to stand trial based on cognitive limitations.

Review of the related literature:

In 1960 the U.S. Supreme Court articulated that competence to stand trial requires that a defendant must have a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him" (*Dusky v. United States*, 1960, 789). The U.S. Supreme Court further ruled in 1966 in *Pate v. Robinson* that judicial hearing were required when a sufficient doubt exists regarding a defendant's competence to stand trial (*Cruise & Rogers*, 1998).

In 1972 the U.S. Supreme Court addressed the issue of indefinite commitments to restore competence in *Jackson v. Indiana*. The Court ruled "...a person charged by a state with a criminal offense who committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the state must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant" (1858). These ruling, however, have been interpreted differently by different states.

Other significant rulings regarding competency to stand trial occurred in the 1990s. In the ruling of *Riggins v. Nevada* (1992) the U.S. Supreme Court stated that incompetent defendants were able to receive forced administration of antipsychotic medication in order to expedite the Sixth Amendment and due process rights. However, due process rights does not require allocating the burden of proof to the state in the competency hearing (*Cruise et al.*, 1998). Furthermore, in *Godinez v. Moran* (1993) the U.S. Supreme Court found that due process does not require different standards for

competence to plead guilty and competence to stand trial. Additionally, a defendant's fundamental civil rights outweighs the state's interest in efficiency to prosecute (*Cooper v. Oklahoma*, 1996).

Elements of Competency

To ensure that the constitutional rights of mentally ill defendants are preserved the Supreme Court articulated criteria for competency to stand trial. *Dusky v. United States* (1960) helped established minimal requirements for competency before judicial actions can proceed in a criminal case. The Supreme Court requires that a defendant have a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him" (*Dusky v. United States*, 1960, 789). However, the determination of these two criteria is not clearly defined and can be interpreted different by different jurisdictions. Friedman's (2005) interpretation of the Supreme Court ruling states that a defendant cannot be subject to criminal prosecution if he or she lacks the capacity to either: a) understand the criminal proceeding in which he or she is involved or b) to "assist in preparing a defense to the underlying charges" (p.1). These criteria for competence are further elaborated to state that the defendant has the mental capacity to "appreciate his presence in relation to time, place, and things" and that his "elementary mental processes" are such that he comprehends:

- a) that he is in court charge with a criminal offense,
- b) that a judge is present,
- c) that a prosecutor who will try to convict him is also present,
- d) that a defense attorney who will try to defend him is also present,
- e) that he will be expected to relate the facts giving rise to the criminal charge(s), "to the best of his mental ability" if he chooses to testify, and understand the right to not testify,
- f) the function of any jury that may be present,
- g) that he has the opportunity to plead, the ramification of pleading, and the plea process,
- h) that he has the ability to participate in an adequate presentation of his own defense (Friedman, 2005).

It has been estimated that 99.6% of the time the court will agree with the decision of the evaluator (Zapf & Viljoen, 2003). Thus, the determination of whether a defendant is competent or incompetent should be accurate and comprehensive. To assist with their determinations, psychologists may use numerous assessment instruments. Each assessment instrument can have a unique contribution to the evaluation process. The selection of these instruments should be based on the overall contribution of the instrument to each particular evaluation. Zapf et al. found that the Interdisciplinary Fitness Interview (IFI) and the Fitness Interview Test (FIT) "provide structure to the evaluation process and serve to reduce the chances that specific areas of inquiry will be overlooked by the evaluator" (Zapf et al., p. 364).

Nicholson and Kugler (1991) completed a study to determine the characteristics of incompetent defendants. They concluded that the characteristics most strongly related to incompetency were "a) poor performance on psychological tests or interviews specially designed to assess defendants' legally relevant functional abilities, b) a psychotic diagnosis, and c) psychiatric symptoms reflective of severe psychopathology" (Nicholson & Kugler, 1991, p. 355). Additionally, incompetent defendants often have a diagnosis of psychotic disorder or a nonpsychotic affective disorder, as well as a low

measured IQ (Ustad, Rogers, Sewell, & Guarnaccia, 1996). Traditionally, the courts have managed individuals with these characteristics through hospital commitment and involuntary medication. Nicholson, Barnard, Robbins, and Hankins (1994) found that almost 90% of these defendants were restored to competency within 7 months. But what happens if a defendant is incompetent and does not have these characteristics? How are defendants who were found incompetent based on cognitive limitations restored to competency?

Mentally Retarded Defendants

Diagnosis

Two basic criteria must be met in order to meet the diagnose of mental retardation according to the *Diagnostic and statistical manual of mental disorders* (4th ed., text revision; American Psychiatric Association, 2000). The first criteria addressed an individual's intelligence level. Mentally retarded individuals must be functioning intellectually below average. In practical terms, this means an IQ of less than 70. Secondly, the individual's ability to adapt to demands of normal life is impaired more than expected for age and cultural groups in two or more of the following areas: communicating, caring for self, living at home, relating to others, using community resources, directing self, academic functioning, working, using free time, health, and safety. Both of these criteria must have begun before the age of 18.

Criminal Cases

Smith and Broughton (1994) indicated that the number of defendants with mental retardation evaluated for competency has increased significantly over the years. Furthermore, they concluded that these defendants tend to commit crimes against people more than those against property. Sixty-six percent of the time the evaluation of mentally retarded defendants indicated that the defendant was competent to stand trial and 87% of the time they were criminally responsible (Smith & Broughton). Despite these findings, little attention has been paid to restoring the competency of mentally retarded defendants.

Restoration Programs

Courts frequently order incompetent defendants to psychiatric hospitalization for treatment and education designed to restore the defendants to competency. However, little information is known about the effectiveness of these restoration programs in the restoration of an individual's competency (Noffsinger & Northfield, 2001). The average time between the initial and restoration assessments are slightly more than 3 months (Hoge et al., 1996). Defendants whose competencies were restored performed better "on measures of psychopathology, estimated verbal IQ, and understanding of legally relevant information when re-assessed than when initially evaluated" (Mumley, Tiollbrook, & Grisso, 2003, p. 346). As well, restored defendants' performance on measure of legal understanding was comparable to that of competent individuals (Mumley et al., 2003). In spite of these findings, outpatient restoration programs are rare and are offered to individuals who do not require hospitalization on clinical or public safety grounds (Miller, 2003). Mentally retarded defendants are among the individuals able to participate in outpatient restoration programs.

One such outpatient restoration program is in Florida and is designed to help restore the competency of mentally retarded defendants. "This five-month program included competence training classes characterized by didactic and experiential learning components" (Mumley et al., 2003, p. 346). Ho (1999) found that after defendants completed this restoration program, the majority remained incompetent to stand trial (76%).

Detailed description of the research method:

Although research is limited on outpatient restoration program, a literature review will be conducted using available data from journal articles. The literature review will be reviewed for effectiveness and successfulness of restoring competence to incompetent defendants. In particular, the outpatient competency restoration program in the District of Columbia will be examined. This study will use archival data from the Department of Mental Health to examine the efficacy of this program during the first year of operation. Appropriate demographic data will be collected to assist in this determination. These including age, gender, current psychiatric diagnosis, past exposures to competency restoration programs, duration in the outpatient restoration program, and outcome of competency upon the completion of the program. Specific attention will be given to the efficiency of the restoration program for the mentally retarded and cognitively limited incompetent defendants. Approval from the Institutional Review Board (IRB) of the Department of Mental Health will be obtained before data collection is begun. Based on the findings, a treatment modality will be suggested to help restore competence to mentally retarded defendants.

Significance and benefits of anticipated results:

To propose an outpatient restoration program to address the needs of defendants who were found incompetent to stand trial based on cognitive limitations.

Specific resources required from the Agency:

The use of PRISM

Description of all possible risks, discomforts and benefits to individual subjects:

DOES THE RESEARCH PLANNED IN THIS PROJECT INVOLVE:	Yes	No
1. Major changes in diet or exercise:	<input type="checkbox"/>	X
2. Administration of physical stimuli other than auditory and visual stimuli associated with normal classroom situations:	<input type="checkbox"/>	X
3. Deprivation of physiological requirements such as nutrition or sleep, manipulation of psychological and/or social variables (e.g., sensory deprivation, social isolation, psychological stresses, deception, etc.):	<input type="checkbox"/>	X
4. Use of deceptive techniques without the knowledge of subject (e.g., placebo, single blind, double blind, or control group):	<input type="checkbox"/>	X
5. Possible invasion of privacy of subject or family, including use of personal or medical information:	<input type="checkbox"/>	X
6. Any probing of information that might be considered personal or sensitive:	<input type="checkbox"/>	X
7. Presentation to the subject of any materials that they might find to be offensive, threatening, or degrading:	<input type="checkbox"/>	X
8. Other possible risks:	<input type="checkbox"/>	X

Description of steps taken to minimize risk or discomfort:

Pretrial Services Agency will not release any identifying information about the participants. All information will be released using a coding system to ensure the confidentiality of the participants.

Description of physical and/or administrative procedures to be followed:

Pretrial Services Agency will receive the following data sheet:

<u>Code</u>	<u>Docket #</u>	<u>Level of Education</u>	<u>Current Housing</u>	<u>Duration in MH services</u>	<u>Meds?</u>	<u>Rearrest in program</u>	<u>If yes, Charge?</u>	<u>Reassess After program</u>	<u>If yes, Charge?</u>
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Pretrial Services Agency will collect the necessity data and return it in the following form:

<u>Code</u>	<u>Level of Education</u>	<u>Current Housing</u>	<u>Duration in MH services</u>	<u>Meds?</u>	<u>Rearrest in program</u>	<u>If yes, Charge?</u>	<u>Reassess After program</u>	<u>If yes, Charge?</u>
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No identifying information will be released by Pretrial Services Agency.

Description of any anticipated effects of the research project on Agency programs and operations:

Pretrial Services Agency will be able to assist the Courts in establishing guidelines for individuals who will be eligible to participate in outpatient competency restoration program in the District of Columbia.

Statement indicated that copies of deliverables will be provided to PSA:

A copy of the final document that states the results of the finding will be provided to Pretrial Services Agency.

Statement that copies of datasets will be provided to PSA.

A copy of the final document that states the results of the finding will be provided to Pretrial Services Agency.