

Court Ordered Competency Evaluations



What is a Court Ordered Competency Evaluation?

A competency evaluation is a court ordered mental health assessment to determine the ability of the defendant to understand the nature and consequences of the court proceedings.

[SDCL 23A-10A](#)

When and how are they requested?

The defendant, judge, or lawyer can request an evaluation whenever there are questions about a defendant's mental state.

[SDCL 23A-10A-3](#)

Who conducts the evaluation?

Evaluations are completed by licensed professionals qualified to conduct court ordered competency evaluations.

[SDCL 23A-46-1](#)

Who contacts the licensed professional for availability?

The court and/or attorney would contact an evaluator when an evaluation was needed. Individual evaluators would then decide if they're available to take on that case. Evaluators have full control over how far they wish to travel to complete evaluations and how many evaluations they complete.

Who pays for the evaluation to be conducted?

DSS is not responsible for payment or reimbursement to complete these evaluations. Individual providers set their own evaluation rates and will work directly with the attorney and/or court for scheduling and payment.

What happens during the evaluation?

The licensed professional conducts an evaluation of the defendant and files a report with the court. The examination must be completed within 21 days after the court order, and this is a private service that the licensed professional is offering to the court.

[SDCL 23A-46-2](#)

How much time is necessary to complete the evaluation?

The time necessary to complete an evaluation will be different depending on the nature of the case and the client's history. There will be varying records to review, clinical interviews, and report writing. There may also be time in court if testimony is needed.

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What happens after an evaluation is completed?

The licensed professional submits a report recommending whether the defendant is competent to stand trial. If found not competent by the court, the defendant would be ordered to complete a restoration program as defined in 23A-10A-13.1, in which treatment can occur in an inpatient, outpatient, or jail-based setting.

[SDCL 23A-10A-4](#)

What does it mean to be restored to competency?

The restoration process ensures the defendant understands the court process, the charges brought against them and is able to participate in their defense. Court proceedings would then resume after the defendant is found competent.

[SDCL 23A-10A-4.1](#)

What is the Department of Social Services responsible for?

DSS is responsible for maintaining an up-to-date list of individuals who are qualified and willing to provide the services. DSS cannot guarantee clients or referrals for this service.

What is the process to become a competency evaluator?

Here is a link outlining the process:

https://dss.sd.gov/docs/behavioralhealth/HSC/program/Process_for_competency_evaluations.pdf