The Fitness Interview Test (FIT):

A Structured Interview for Assessing Competency to Stand Trial

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# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>iv</td>
</tr>
<tr>
<td>Fitness/Competence to Stand Trial</td>
<td>1</td>
</tr>
<tr>
<td>Background</td>
<td>1</td>
</tr>
<tr>
<td>Assessment Procedure</td>
<td>9</td>
</tr>
<tr>
<td>Research on Fitness/Competence</td>
<td>12</td>
</tr>
<tr>
<td>Assessment of Mental Disorder</td>
<td>15</td>
</tr>
<tr>
<td>Definition of Mental Disorder in Law</td>
<td>15</td>
</tr>
<tr>
<td>Suggestions for Assessing Mental Disorder</td>
<td>16</td>
</tr>
<tr>
<td>About the Fitness Interview Test</td>
<td>20</td>
</tr>
<tr>
<td>Purpose</td>
<td>20</td>
</tr>
<tr>
<td>User Qualifications</td>
<td>20</td>
</tr>
<tr>
<td>Development</td>
<td>21</td>
</tr>
<tr>
<td>The FIT as a Screening Instrument</td>
<td>22</td>
</tr>
<tr>
<td>Research with the FIT</td>
<td>22</td>
</tr>
<tr>
<td>Use of the FIT with Juveniles</td>
<td>25</td>
</tr>
<tr>
<td>Format</td>
<td>28</td>
</tr>
<tr>
<td>The Rating Scale</td>
<td>29</td>
</tr>
<tr>
<td>The Final Judgment of Fitness/Competence</td>
<td>31</td>
</tr>
<tr>
<td>The Fitness Interview Test</td>
<td>33</td>
</tr>
<tr>
<td>Background Information</td>
<td>33</td>
</tr>
<tr>
<td>Section I</td>
<td></td>
</tr>
<tr>
<td>-arrest process</td>
<td>34</td>
</tr>
<tr>
<td>-current charges</td>
<td>35</td>
</tr>
<tr>
<td>-key participants</td>
<td>36</td>
</tr>
<tr>
<td>-legal process</td>
<td>37</td>
</tr>
<tr>
<td>-pleas</td>
<td>38</td>
</tr>
<tr>
<td>-court procedure</td>
<td>39</td>
</tr>
<tr>
<td>Section II</td>
<td></td>
</tr>
</tbody>
</table>
- possible penalties 40
- legal defenses 41
- likely outcome 42

Section III
- communicate facts 43
- relate to lawyer 44
- plan legal strategy 45
- engage in defense 46
- challenge witnesses 47
- testify relevantly 48
- manage behavior 49

References 50

Additional Suggested Sources 56

Appendix (Overall Assessment of Fitness) 58
This manual describes an interview and rating scale that can be used in evaluations of fitness (competency) to stand trial. The Fitness Interview Test (FIT) was originally created in 1984 for use in Canadian evaluations of fitness (Roesch, Webster, & Eaves, 1984). It was extensively revised in 1998 to reflect changes in Canadian law. When this version was published in 1998, we noted that while the FIT was designed for use in Canada, we believed that it could be useful as a guide in other jurisdictions that share similar legal precedence and clinical practice, notably the United States and Great Britain. This version, published by Psychology Resource Press, has been revised to include, in addition to the Canadian review, a review of U.S. law and procedure.

Support for the research on the development of the FIT was provided by two grants from the Social Sciences and Humanities Research Council (Grant #s 410-92-1475 and 410-96-1479) to the first author. This research was also supported, in part, by a fellowship from the Social Sciences and Humanities Council of Canada, a studentship from the British Columbia Health Research Foundation, a grant from the American Psychology-Law Society, and a grant from the American Academy of Forensic Psychology to the second author.

We would like to thank a number of people who have been involved in the research leading to the creation of the FIT. Kevin Douglas, Lindsay Jack, David Lyon, Maureen Olley, and Karen Whittemore conducted interviews that were used to determine the reliability and validity of the FIT. Jodi Viljoen conducted her dissertation research on the application of the FIT to juveniles, and we are indebted to her for this research as well as her contribution to the section of this manual on the use of the FIT in assessments of juveniles.
This manual will be revised as necessary to reflect developments in the law or forensic research and practice. We welcome any comments from users of the FIT that will help us improve future editions.

Included with this manual is a CD that contains the interview form in a couple of different formats so that evaluators can either make copies of the interview form or can complete the interview with the use of a computer word-processing program.
Fitness/Competence to Stand Trial

Background

It has been a generally accepted legal principle in English common law that mentally incompetent defendants should not be allowed to proceed with a trial (Blackstone, 1783; Frith’s Case, 1790; The Queen v. Berry, 1876). While both the United States and Canada base their laws governing fitness on English common law, each country’s law and procedures vary, so we will provide a review of the practice in each country.

United States

The modern standard for competency to stand trial in U.S. law was established in Dusky v. United States (1960). Although the exact wording varies, all states use a variant of the Dusky standard to define competency (Favole, 1983). In Dusky, the Supreme Court held that:

It is not enough for the district judge to find that ‘the defendant is oriented to time and place and has some recollection of events’, but that the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him. (p. 402)

Following Dusky, it is evident that evaluations of competency must focus on mental state in the context of the legal case faced by a defendant. This contextual perspective was summarized by Golding and Roesch (1988) as follows:

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1 The terms fitness and competence will be used interchangeably throughout this manual.
Mere presence of severe disturbance (a psychopathological criterion) is only a threshold issue—it must be further demonstrated that such severe disturbance in this defendant, facing these charges, in light of existing evidence, anticipating the substantial effort of a particular attorney with a relationship of known characteristics, results in the defendant being unable to rationally assist the attorney or to comprehend the nature of the proceedings and their likely outcome. (p. 79)

Based on a thorough review of case law, Bonnie (1992, 1993) outlined two types of competence, competence to assist counsel and decisional competence. Competency to assist counsel refers to the minimum capacities a defendant would need to assist in his or her defense, such as the capacity to understand the criminal charges and the role of defense counsel. These capacities are different from those capacities that may be needed to make decisions that arise in a particular case. Decisional competency refers to the ability to “understand and choose among alternative courses of action” (p. 556). In Bonnie’s view, it is possible that some defendants could be considered competent to assist their attorney but incompetent to make certain decisions that arise during the course of the defense, such as whether to enter a guilty plea, to waive constitutional rights, or to employ an insanity defense.

In Godinez v. Moran (1993), the United States Supreme Court held that the standard for the various types of competency (i.e., competency to plead guilty, to waive counsel, to stand trial) should be considered the same. Justice Thomas wrote for the majority:

The standard adopted by the Ninth Circuit is whether a defendant who seeks to plead guilty
or waive counsel has the capacity for ‘reasoned choice’ among the alternatives available to him. How this standard is different from (much less higher than) the Dusky standard -- whether the defendant has a ‘rational understanding’ of the proceedings -- is not readily apparent to us. ...While the decision to plead guilty is undeniably a profound one, it is no more complicated than the sum total of decisions that a defendant may be called upon to make during the course of a trial...Nor do we think that a defendant who waives his right to the assistance of counsel must be more competent than the defendant who does not, since there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning than the decision to waive other constitutional rights. (p. 2686)

In his dissent, Justice Blackmun noted that the “majority’s analysis is contrary to both common sense and long-standing case law” (p. 2691). He reasoned that competency cannot be considered in a vacuum, separate from its specific legal context. Justice Blackmun argued that “competency for one purpose does not necessarily translate to competency for another purpose” (p. 2694) and noted that prior Supreme Court cases have “required competency evaluations to be specifically tailored to the context and purpose of a proceeding” (p. 2694). What is egregiously missing from the majority’s opinion in Godinez however, is the fact that Moran’s competency to waive counsel or plead guilty to death penalty murder charges was never assessed by the forensic examiners, regardless of which standard (rational choice or rational understanding) was employed.

The Godinez holding has been subsequently criticized by legal scholars (Perlin, 1996) and courts alike. In the words of the Third Circuit Court of Appeals, “This difficult case
presents us with a window through which to view the real-world effects of the Supreme Court’s decision in Godinez v. Moran, and it is not a pretty sight” (Government of the Virgin Islands v. Charles, 1996).

The issue of competency may be raised at any point in the adjudication process and if a judge determines that a bona fide doubt about competency exists, an evaluation can be ordered (Drope v. Missouri, 1975; Pate v. Robinson, 1966). Information obtained during the course of the evaluation cannot be used against a defendant during the guilt phase of a trial or at sentencing. The majority of evaluated defendants are considered competent by evaluators, and if the court concurs, they are returned for trial or other legal proceedings. It is important to bear in mind that a judge must reach a decision about a defendant’s competency, and will, of course, consider the opinion expressed in a report. In practice, the court and evaluators are usually in agreement (Hart & Hare, 1992; Zapf, Hubbard, Cooper, Wheeles, & Ronan, 2004).

Defendants found incompetent are typically committed to an inpatient facility for treatment to restore competency. Treatment typically involves antipsychotic medications, which can be administered involuntarily if certain conditions are met (see Riggins v. Nevada, 1992; Sell v. United States, 2003), but can also involve specialized treatment programs designed to increase understanding of the legal process (e.g., Pendleton, 1980; Webster, Jenson, Stermac, Gardner, & Slomen, 1985), or that confront problems that hinder a defendant's ability to participate in the defense (Siegel & Elwork, 1990). Most incompetent defendants regain competency during the treatment period, but some defendants do not respond and remain incompetent (Nicholson, Barnard, Robbins, & Hankins, 1994). In Jackson v. Indiana (1972), the U.S. Supreme Court held that defendants committed solely on the basis of incompetency "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" (p. 738). Following Jackson, state statutes were revised to provide alternatives to inpatient treatment as well as limiting how long incompetent defendants could be held if they did not respond to treatment (Roesch & Golding, 1980). The length of confinement varies from state to state, with some states having specific time limits (e.g., 18 months) while other states base length of treatment on a proportion of the length of sentence which would have been given if the defendant was convicted. Evaluators should consult their state statutes to determine the practice in their jurisdiction.

Canada

Prior to 1992, the Canadian Criminal Code did not clearly specify the criteria for determining whether or not a defendant was unfit to stand trial. In 1992, the Criminal Code of Canada was amended. Bill C-30 made many changes to the legal procedures related to the determination of fitness to stand trial as well as criminal responsibility. Explicit guidelines were set out in Section 2, which included a definition as well as criteria for the determination of fitness to stand trial. Section 2 of the Criminal Code defines unfitness in the following manner:

Unfit to stand trial means unable on account of mental disorder to conduct a defense at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in particular, unable on account of mental disorder to

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2 The procedures related to fitness to stand trial are detailed here as they exist at the time of writing. The reader is cautioned to consult the Criminal Code of Canada to ensure that the statutes have not since been modified.

3 The words “in particular” are used here to convey that these criteria are not exclusive; hence this manual goes beyond these three criteria.
(a) Understand the nature or object of the proceedings

(b) Understand the possible consequences of the proceedings, or

(c) Communicate with counsel.

Since 1992, finer distinctions have been made with regard to these legal criteria. An Ontario court decision, R. v. Taylor (1992), that was decided at about the same time that the Criminal Code was revised, appears to narrow the definition contained in the Code. The Taylor decision held that the test to be applied in determining fitness is one of “limited cognitive capacity.” Briefly, it is only necessary that the defendant be able to recount to his or her attorney the necessary facts relating to the offence in such a way that the attorney can properly present a case. The Ontario Court of Appeal clearly indicated that it is not necessary that a defendant be able to act in his or her own best interests, presumably relying on the attorney to ensure those interests are met.

The revised Code also set out guidelines regarding assessment orders as well as the length of time for assessments and extensions. Section 672.11 indicates that the court may order an assessment of a defendant’s mental condition if it believes that such evidence is necessary to determine

(a) whether the defendant is unfit to stand trial;

(b) whether the defendant was, at the time of commission of the alleged offence, suffering from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1);

Therefore, it is theoretically possible for an accused to satisfy these three criteria and still be found unfit to stand trial.
(c) whether the balance of the mind of the defendant was disturbed at the time of the commission of the alleged offence, where the defendant is a female person charged with an offence arising out of the death of her newly-born child;

(d) the appropriate disposition to be made, where a verdict of not criminally responsible on account of mental disorder or unfit to stand trial has been rendered in respect of the defendant; or

(e) whether an order should be made under subsection 736.11(1) to detain the defendant in a treatment facility, where the defendant has been convicted of the offence.

The Code also states that the court may order an assessment at any stage of the proceedings upon its own application or that of either the defence or the prosecution (§ 672.12). With regard to the length of time for which an assessment can be ordered, it is stated in section 672.14 that

(1) An assessment order shall not be in force for more than thirty days.

(2) No assessment order to determine whether the defendant is unfit to stand trial shall be in force for more that five days, excluding holidays and the time required for the defendant to travel to and from the place where the assessment is to be made, unless the defendant and the prosecutor agree to a longer period not exceeding thirty days.

(3) Notwithstanding subsections (1) and (2), a court may make an assessment order that remains in force for sixty days where the court is satisfied that compelling circumstances exist that warrant it.
The Code also makes provisions for extensions of the assessment order if it is necessary to complete the assessment of the individual’s mental condition. The extensions are not to exceed 30 days in duration and that entire length of the remand including the extensions cannot exceed 60 days (§ 672.15). In some provinces, accused persons may be treated under provincial mental health legislation as involuntary patients.

Statements made by the accused person during an assessment is considered protected, meaning that they cannot be admitted into evidence in subsequent legal proceedings, except for some specific circumstances, such as a criminal responsibility hearing (§672.21).

There is also a section of the Code that deals with the issue of treatment during assessment orders which states that “no assessment order may direct that psychiatric or any other treatment of the accused be carried out, or direct that accused to submit to such treatment” (§ 672.19).

An accused person is presumed to be fit to stand trial unless the court is satisfied on the balance of probabilities that the accused is unfit to stand trial (§ 672.22). At any stage of the proceedings before a verdict is rendered, if the court has reasonable grounds to believe that the accused is unfit to stand trial, a trial on the issue of fitness may be directed (§ 672.23(1)). If an accused or the prosecutor makes an application under section 672.23(1) regarding the issue of fitness, the burden of proof lies with the party making the application (§ 672.23(2)).

Where a trial on the issue of fitness is directed and the accused is found fit to stand trial, the proceedings then continue as if the issue of fitness had never arisen (§ 672.28).

Where an accused is found unfit to stand trial, the proceedings are to be set aside until the accused becomes fit to stand trial (§ 672.31). Unfit individuals may be treated in
an institution or on an outpatient basis if they are not considered a threat. An inquiry is to be held every two years until the accused is either acquitted or tried to determine whether or not there is sufficient evidence to put the accused on trial (i.e., prima facie case) (§ 672.33). If it is determined that there is insufficient evidence to put the accused on trial then the accused is to be acquitted (§ 672.33(6)). Sometimes a case may be stayed if the prosecutor believes it is no longer in the public interest for a trial to continue. This would more likely be applied in less serious cases.

Assessment Procedures

While the laws in the United States and Canada have some substantive differences, the procedures for assessing fitness/competence are highly similar. The assessment procedure for evaluating a defendant’s competence to stand trial can be conceptualized as comprising two components. First, an assessment is made of the defendant’s mental state and a determination as to whether or not he or she has a mental disorder. Second, an assessment is made of the psycholegal abilities required of a defendant and a determination as to whether there is impairment on any of these psycholegal abilities. In order for a defendant to be considered incompetent to stand trial, he or she must have a mental disorder and the mental disorder must cause impairment on one or more of the necessary psycholegal abilities required of the defendant.

Of central concern to evaluators is the relationship between psycholegal abilities and mental disorder. It is obvious that not all persons who are mentally disordered are incompetent. But how do evaluators decide which ones are incompetent? The fact that the relationship between mental disorder and psycholegal abilities is not clear may contribute to inconsistent and idiosyncratic evaluations, depending to a great extent on personal definitions of competence/fitness.
The lack of specificity may also result in evaluations that focus disproportionately on mental status, ignoring the legal criteria. The problem is that it is not simply a presence of mental disorder, but how mental disorder (if present) affects a defendant's performance vis-à-vis the legal criteria.

The first step, therefore, in evaluating a defendant’s competence to stand trial is to determine if he or she has a mental disorder. A comprehensive assessment is required, with a detailed focus on mental status. This manual makes some suggestions as to how this could be assessed and provides some data from our research program (see section on Mental Disorder). Evaluators may choose to use personality and cognitive abilities testing as part of the assessment. Contacts with collateral sources may also be desirable.

The second step in evaluating a defendant’s competence to stand trial is to assess each of the psycholegal abilities required of the defendant being evaluated, keeping in mind that it is crucial that the evaluation should always consider the demands of the particular defendant’s case and how mental disorder might affect the defendant’s ability to proceed with his or her case (see Skeem & Golding, 1998). This manual provides a semi-structured interview that guides the evaluator through an assessment of each of these psycholegal abilities. Depending upon the jurisdiction in which the evaluation of competency to stand trial is being performed, the categorization of psycholegal abilities put forth in this manual may not directly map onto the abilities as they are set out in relevant statutes or laws. The evaluator is responsible for consulting the relevant statutes governing the definition and evaluation of competency to stand trial in the relevant jurisdiction.

The most common way to use this manual is to start at the beginning of the interview and work through to the end. The evaluator can probe and query as necessary to determine the
defendant’s understanding of the questions and to assess his or her cognitive capabilities.

Each page of the FIT lists a number of questions that get at the specific ability being assessed. The evaluator should ask all of these questions to obtain a full understanding of the defendant’s thoughts and abilities. The evaluator is free to tailor the questions to the individual being assessed in order to personalize the interview. For example, the evaluator could say to the defendant “Assume that you are going to plead guilty/not guilty” or “You mentioned that you intend to plead guilty/not guilty” before asking a question that explores what the defendant would do in a particular situation.

In certain cases a defendant may point out that a particular question is irrelevant to his or her case (e.g., may state that he or she will not have a jury trial when asked what the role of the jury is). This is, in itself, important information that can be used to assess the defendant’s knowledge and abilities (e.g., the fact that the defendant knows that he or she will not be having a jury trial gives the evaluator valuable information that can be used in assessing the particular individual’s abilities). In these cases the evaluator is free to ask the defendant to imagine that he or she is in the particular situation and then to ask the question again (e.g., say to the defendant “let’s suppose that you were to have a jury trial, in the courtroom during a trial what is the job of the jury”).

The FIT was designed as a clinical assessment instrument that guides the evaluator through a set of specific criteria. It leaves room for the evaluator to probe and query as necessary and to use his or her clinical judgment in assessing the defendant’s knowledge and abilities. In those jurisdictions where additional criteria are included in the definition and evaluation of competency to stand trial, the evaluator is responsible for including an assessment of these
in the evaluation that he/she conducts. This manual covers the vast majority of the relevant areas of inquiry; however, it does not purport to cover all relevant criteria from every jurisdiction. Evaluators should, of course, consult the relevant statutes in their jurisdiction to ensure that applicable laws and procedures are followed.

**Research on Fitness/Competence**

This manual is not intended to provide a comprehensive review of the research conducted on fitness/competence to stand trial. The reader is referred to the list of additional sources provided in the appendix at the back of this manual for more detailed information and reviews of the literature on competency to stand trial.

There has been an increasing amount of research conducted on the concept of competence to stand trial since the 1960s (Nicholson & Kugler, 1991). Some research on competence to stand trial has examined the characteristics that distinguish defendants found to be competent from those found to be incompetent to stand trial. Roesch and colleagues (1981), in a study conducted in British Columbia, found that defendants referred for fitness evaluations generally were largely "unemployed, single, and living alone" and that the majority had histories of "psychiatric problems and hospitalization" (p. 154). Specifically, unfit individuals were more likely than fit individuals to be single and either transient or living in a hotel at the time of arrest. Hart and Hare (1992) examined the power of demographic, clinical, and criminal variables in predicting fitness and determined that clinical variables, especially the diagnosis of a psychotic disorder, were the most effective predictors of fitness.

In studies conducted in Canada after the introduction of Bill C-30 these same characteristics of fitness remands have been found. Research by Roesch and his colleagues (Roesch et al., 1997; Zapf & Roesch, 1998) examined the characteristics of
fitness remands in British Columbia and found that the majority of the remanded individuals were single, unemployed, and living alone at the time of arrest. As well, individuals who were found unfit to stand trial were significantly less likely to have been given a diagnosis of a drug or alcohol use disorder and were four times more likely to have been given a diagnosis of a psychotic disorder.

Zapf and colleagues (Cox & Zapf, 2004; Cooper & Zapf, 2003; Hubbard & Zapf, 2003; Hubbard, Zapf, & Ronan, 2003) also found a similar pattern of characteristics in a sample of 468 individuals ordered to undergo evaluation of their competency to stand trial in the state of Alabama. The majority of these defendants were male (84%), unmarried (80%), and African American (58%). Less than 20% of the defendants were employed, 71% had previous contact with mental health services, and 76% had a criminal history. Similar to Canadian samples, those individuals who were incompetent to stand trial were significantly more likely to have psychotic disorders and significantly less likely to have drug or alcohol use disorders than were those that were competent to stand trial.

The percentage of defendants who are evaluated and found incompetent is quite low. In a study of six Canadian cities, Menzies, Webster, Butler, and Turner (1980) found that only 15% of remanded individuals were found to be unfit to stand trial (see also, Roesch & Golding, 1980). A retrospective study conducted in Toronto also found a 15% rate of unfitness in a sample of fitness remands (Rogers, Gillis, McMain, & Dickens, 1988). Roesch, Ogloff, and Golding (1993) reported a 15% rate of unfitness and Zapf and Roesch (1998) reported an 11% rate of unfitness. In the sample of individuals who were evaluated for competency to stand trial in Alabama, 19% were considered incompetent to stand trial (Cox & Zapf, 2004; Cooper & Zapf, 2003).
Several reasons have been cited to explain why the rate of incompetence is so low in samples of defendants referred for competency evaluations. First, as the jails are becoming increasingly overwhelmed with a growing number of mentally ill individuals, competency evaluation orders are sometimes used as a “backdoor” way of steering these individuals away from overcrowded penal institutions and into mental health facilities (Roesch & Golding, 1985). Second, these individuals are sometimes remanded for competency evaluations as a way of getting them into mental health facilities when they will not voluntarily commit themselves for treatment or when outpatient treatment is unavailable (Grisso, 1986). Finally, the competency evaluation is sometimes used as legal maneuver that allows prosecutors more time to prepare their cases and defense attorneys the opportunity to gain information that could be used to determine the feasibility of a later insanity plea or other alternatives to prosecution (e.g., diversion or certifiability) (Roesch & Golding, 1980).

The repercussions of this are that there are a large number of individuals sent for competency evaluations who are clearly competent to stand trial. It, therefore, makes sense to screen out those individuals for whom there is no question as to their competence to stand trial before they are remanded to an inpatient facility for a lengthy evaluation. This screening process results in a reduced cost and, at the same time, an increase in the protection of individual rights (i.e., because large numbers of individuals are not remanded for lengthy evaluations). The FIT has been recognized as a promising screening instrument (DeClue, 2003).
Assessment of Mental Disorder

Definition of Mental Disorder in Case Law

Canada. The term *mental disorder* is used in Canadian law as a prerequisite for legal interventions; however, the term is not explicitly defined. The actual term mental disorder has only a recent history in Canadian criminal law, beginning in 1992 with the amendments to the Canadian *Criminal Code* and the introduction of Bill C-30. Bill C-30 changed the terminology that was used from *insanity* to *mental disorder*. Because of the way that mental disorder is defined in the *Criminal Code*, much of the case law decided under previous legislation is applicable to the new provision.

A review of Canadian case law (Zapf, 1998) has shown that it is not so much the disorder per se that is important, but rather how the disorder affects the psycholegal abilities required of a defendant. Many different types of disorders have been considered to meet the prerequisite for legal intervention including physical disorders, personality disorders, and mental conditions aggravated by the ingestion of drugs and/or alcohol. All that is required is that the disorder be the cause of the defendant’s impairment on the required psycholegal abilities.

The following is a brief list of some of those disorders that have been determined to meet the prerequisite of *mental disorder* for certain legal interventions in Canadian criminal case law: Physical disorders such as brain damage (*R. v. Revelle*) and psychomotor epilepsy (*R. v. O’Brien*; *R. v. Gillis*); personality disorders (*Cooper v. The Queen*) including psychopathy (*R. v. Craig*; *R. v. Simpson*; *R. v. Kjeldsen*); drug and alcohol disorders such as mental condition aggravated by alcohol (*R. v. Harrinan*), episodic dyscontrol (*R. v. Rafuse*), ingestion of alcohol (*R. v. Hilton*),
delirium tremens (R. v. Malcolm), and toxic psychosis (R. v. Mallioux); and mental retardation (R. v. Whitehead).

United States. The situation in the USA is that there is wide variation between and within jurisdictions as to what qualifies as mental disorder. All of the disorders and conditions listed above have also been considered acceptable prerequisites for legal interventions in the US. Perhaps even more so than in Canada, US law allows for flexibility in determining which conditions “qualify” as mental disorders for the purposes of legal intervention. An evaluator should be familiar with the applicable statutes and laws in the relevant jurisdiction regarding what is to be considered a mental disorder or defect.

Suggestions for Assessing Mental Disorder

There are a number of commonly accepted methods that may be used to assess mental disorder, including structured interviews and rating scales such as the Structured Clinical Interview for the DSM-IV (SCID; First, Spitzer, Gibbon, & Williams, 1996) and the Brief Psychiatric Rating Scale (BPRS; Lukoff, Nuechterlein, & Ventura, 1986). In addition to interview data, it is common to collect information from a file review as well as collateral information (e.g., family members, previous mental health and criminal records).

Whatever clinical assessment (history and mental status) process is used, the following areas are crucial elements that need to be assessed and/or ruled out. It is important to relate the mental status items to the fitness elements (psycholegal abilities required of the defendant):

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4 See studies described under the Research with the FIT section
a) **Mental Retardation**

Mild mental retardation may not impair a person’s ability to instruct counsel, but severe intellectual deficit, whether inherited or acquired, may have an adverse effect on the defendant’s ability to communicate with counsel, or even to understand the nature and purpose of the proceeding (see *United States v. Duhon*, 2000, for a case in which it was held that a mentally retarded defendant’s memorization of basic legal terms was not sufficient to consider him competent. Rather, it was also required that the defendant could consult with his attorney and also have a rational understanding of the proceedings. See also, Appelbaum, 1994).

b) **Formal Thought Disorder**

Gross formal thought disorder, often accompanied by other psychotic features, can interfere with the ability to give coherent, relevant instructions to counsel. Motor or sensory aphasia may also need to be considered.

c) **Concentration Deficits**

These may be due to severe anxiety, hypomania, mania, organic brain dysfunction, severe attention deficit disorder, or other mental impairment. If severe, they might interfere with the defendant’s ability to follow the court process and to instruct counsel as the case unfolds.

d) **Rate of Thinking**

Flight of ideas can lead to such disorganization that a person cannot attend to matters at hand. Conversely, profound slowing (retardation) of thinking associated with depression can have the same effect.
e) **Delusions or Hallucinations**

It is not simply the presence or absence of delusions which is relevant but rather the degree of intrusiveness of abnormal ideation or perception. False ideas or hallucinatory experiences must interfere at least to some extent with the ability to think clearly and logically in the areas relevant to fitness to stand trial. Gross delusions may not inhibit the ability to instruct counsel if the subject of the delusions is irrelevant to their situation or the delusions are not generally intrusive. However, a delusion causing a defendant to be suspicious of counsel or of the court process itself might impair his or her ability to give appropriate instructions.

f) **Memory Deficits**

Benign senescence and impaired memory solely for the circumstances of the alleged offence (e.g., alcohol induced amnesia) will not impair ability to instruct counsel (see *Wilson v. United States*, 1968; *United States v. Swanson*, 1978). What is important here is impairment of registration or immediate recall of memories (e.g., in advanced dementia or Korsakoff’s Syndrome). Such impairment may affect the ability to stand trial in all major areas (knowing the charges, personal import, being able to instruct counsel, following the court process and instructing counsel).

A defendant may have clearly demonstrable pathology, but the symptoms or observable features may be completely irrelevant to the issue of fitness. Such features would include depersonalization, derealization, suicidal ideation, and poor insight. Even a person certifiable under mental health legislation may be considered competent to stand trial, though there does appear to be a strong relationship between incompetence and certifiability.
A precise diagnosis is not necessary to establish the presence of a ‘mental disorder’ (e.g., it would not be important to distinguish between schizophrenia, a schizophreniform psychosis or a drug-induced psychosis). What is important is that (a) there is a classifiable condition, and (b) there is severe functional impairment relevant to the fitness (psycholegal) abilities.
About The Fitness Interview Test

Purpose

This manual describes a method for evaluating competence to stand trial. The procedure involves a semi-structured interview, followed by the completion of a rating scale in which the evaluator assesses the degree of incapacity for each issue. The FIT, originally designed as a guide for evaluators of fitness to stand trial in Canada, has been modified to be applicable in other countries such as the United States and the United Kingdom. The definition of and procedures regarding fitness/competence in Canada, the United States, and the United Kingdom (as well as other countries in the British Commonwealth) share historical roots in English common law. The main purpose of the FIT is to function as a semi-structured interview to ensure that all important aspects of competence to stand trial are assessed and to increase the uniformity of fitness evaluations.

User Qualifications

Evaluations of competence to stand trial should be conducted by mental health professionals, typically psychologists and psychiatrists but also social workers and nurse practitioners in some jurisdictions (see Viljoen, Roesch, Ogloff, & Zapf, 2003 for a review of US and Canadian laws). Psychologists in Canada have been restricted from conducting competency evaluations, but a recent change in Canadian law (Bill C-10) provides that provinces may “now allow assessments by persons other than medical practitioners, if they are designated by an Attorney General as qualified to conduct an assessment of the mental condition of the accused (e.g., psychologists in addition to psychiatrists).” Evaluators in the US should consult their state statutes to obtain the legal standards for their jurisdiction. The FIT is, we believe, well-
suited to assist any professional qualified to conduct these evaluations.

Development

The Fitness Interview Test (FIT) is the result of an extensive revision of the original version first developed in 1984 by Roesch, Webster, and Eaves. Although the legal criteria are of central importance to an opinion about competence, it is nonetheless necessary that explicit attention be paid to clinical issues in the course of the competency evaluation. The items comprising the FIT focus on the legal issues, but obviously evaluators will also need to assess mental status using structured interviews or other methods for obtaining diagnostic information (as discussed previously).

It is important to keep in mind that the importance of any one item to the final decision about competence will vary from case to case. For example, it may be far more critical to the defense of a particular defendant that he or she be able to "testify relevantly" than for another defendant whose attorney does not intend to put him or her on the stand. For this reason, the FIT does not rely on a total score or cut-off score for making decisions about an individual’s competence to stand trial.

This instrument is designed to reflect the status of a defendant individual at the time of examination. It is not a predictive instrument. Our experience indicates that with the passage of time and variations in clinical status, even from day to day, a given defendant will vary in the specific scores attained. This is particularly true of defendants who are experiencing or recovering from an acute psychosis.

The FIT as a Screening Instrument

Although the FIT can be used as part of an initial inpatient evaluation, it is also designed for use as a screening
instrument. When used as a screening instrument, it is typically desirable to overestimate the rate of incompetence. Defendants who score at an “unfit” or a “questionably fit” level will then be referred for a more thorough evaluation of competence to stand trial. Of those defendants referred for a more detailed investigation of their competence, some percentage may be deemed competent to stand trial. The main purpose, therefore, of screening is to identify as early as possible those individuals who are clearly competent to proceed. This is so that they can continue their legal proceedings without delay or interruption. Systematic use of the FIT could serve to eliminate a large percentage of individuals from being detained for lengthy and expensive inpatient evaluations.

The FIT-R has been favorably reviewed (see Grisso 2003; Stafford, 2003), and DeClue (2003) notes “the FIT-R shows great promise for screening” (p. 309).

**Research with the FIT**

Research with the FIT has indicated that it demonstrates excellent utility as a screening instrument. In a study of fitness remands conducted by Zapf and Roesch (1997) the authors compared decisions about fitness made by the FIT with decisions made after an institution-based evaluation of fitness for 57 males. These authors found that the FIT shows perfect sensitivity and negative predictive power and concluded that it can reliably screen out those individuals who are clearly fit to stand trial before they are remanded to an inpatient facility for a fitness assessment.

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5 Sensitivity refers to the probability that the predictor variable is positive given a recommendation of unfit; negative predictive power refers to the probability of a recommendation of fit given that the predictor variable is negative.
It is important that a screening instrument not lead the evaluator to make false negative errors (i.e., evaluate someone as fit who is truly unfit) as these individuals would then be inappropriately sent to trial. The FIT made no false negative errors in this study. It is also expected that screening devices will overestimate the rate of unfitness in the sample, that is, make a number of false positive errors, as these individuals would then be sent on for a lengthier evaluation of fitness. The FIT judged 17.5% (10 of 57) of the sample to be possibly unfit compared to the institution-based assessment rate of 3.5% (2 of 57) and therefore had a 14% rate of false positive errors. This indicates that the FIT correctly identified 86.0% (49 of 57) defendants as either fit or unfit based on the assumption that the institution-based assessment decision was the “correct” one.

In practical terms, if the FIT had been used as a screening device, only 10 individuals would have been remanded for an inpatient fitness evaluation instead of the 57 who were remanded. Forty-seven of these individuals would have been screened out at some preliminary stage and would not have been detained. This is very important considering the amount of time (23 day average in our research) and money that would be saved and the number of individuals who would not have had any restriction to their liberty.

Zapf, Roesch, and Viljoen (2001) found this same pattern of results for two additional samples of 100 males each. In the first sample there was a high rate of agreement between decisions based on the FIT and the institution-based evaluation, \( \chi^2 (1, N = 100) = 5.04, p < .05 \). There was agreement between the FIT and the institution-based assessment on 87 of 100 cases (85 agreements of fit; 2 agreements of unfit) and disagreement on 13 cases, \( \phi = -.23, p < .05 \). In those 13 cases where there was disagreement, 11 of them were in the direction of the FIT indicating impairment and the institution-based decision indicating no impairment. The predictive efficiency of the FIT’s
recommendations of unfitness was as follows: sensitivity (SENS) = .50, specificity (SPEC) = .89, positive predictive power (PPP) = .15, negative predictive power (NPP) = .98, κ = .19, p < .05.

In the second sample, participants were chosen who were currently experiencing active psychotic symptomatology with the hope of increasing the rate of impaired individuals in this sample. With respect to the second sample, there was also a high rate of agreement between FIT decisions and institution-based evaluations, $\chi^2 (1, N = 100) = 11.77, p < .001$. There was agreement between the FIT and the institution-based evaluation on 74 of 100 cases (66 agreements of fit; 8 agreements of unfit) and disagreement on 26 cases, $\varphi = .34, p < .001$. In those 26 cases where there was disagreement, 24 were in the direction of the FIT indicating impairment and the institutional decision indicating no impairment. The predictive efficiency of the FIT’s recommendations of unfitness was as follows: sensitivity (SENS) = .80, specificity (SPEC) = .73, positive predictive power (PPP) = .25, negative predictive power (NPP) = .97, κ = .27, p < .001.

Viljoen, Roesch, and Zapf (2002) found that the average interrater reliability of the FIT for overall determination of fitness was .98, and intraclass correlations for items fell within the 80s and 90s. Reliability for sections was lower, and ranged from .54 to .70 for groups of raters. This study also found that physicians, forensic psychologists, nurses, and graduate students in psychology were able to conduct reliable fitness assessments using the FIT.

**Use of the FIT with Juveniles**

We are grateful to Jodi Viljoen, University of Nebraska, for contributing the material for this section.
The competency of adolescent defendants has become an increasingly salient issue as the juvenile justice system has moved away from a paternalistic rehabilitation model to a more punitive model (Grisso, 1997). Further, many states automatically transfer certain violent youth to adult court, while other youth can be transferred following a hearing (Kruh & Brodsky, 1997).

Legal standards for juvenile competency are often vague and inconsistent. In general, the *Dusky* standard of competency has been applied to youth tried in adult court (Redding & Frost, 2001). While competency standards for youth tried within juvenile court are more variable, many courts that have addressed this issue have required that adolescents tried in juvenile court must possess the legal capacities outlined in *Dusky*, namely factual and rational understanding, and the ability to communicate with counsel (*Dusky v. United States*, 1960; Redding & Frost, 2001). Therefore, the FIT, which is based on the *Dusky* standard, assesses legal capacities that are generally relevant to youth transferred to adult court, and often relevant to youth tried in juvenile court. Nevertheless, several important caveats should be kept in mind.

First, given the variable legal standards for juvenile competency, it is very important for evaluators to learn the standards for juvenile competency that are applied in their jurisdiction. Some jurisdictions may require that youth have different types of legal capacities than adults. If this is the case, it may be possible for evaluators to administer only the sections and items of the FIT which are most relevant. For instance, if a jurisdiction adopts a standard of factual understanding of legal proceedings, evaluators might administer only the Factual Understanding section of the FIT.

Other jurisdictions have held that lower *levels* of legal capacities may be required for juveniles tried in juvenile court (e.g., *Ohio v. Settles*, 1998). Because the FIT does not
use cut-off scores, evaluators in such jurisdictions can adjust their internal norms or standards about what constitutes a legal impairment. For instance, if a jurisdiction requires only that youth have legal capacities that are comparable to their same-age peers rather than adult levels of these capacities, evaluators can judge whether a particular youth appears similar to their peers.

We have used the FIT in a study of juveniles. Viljoen, Vincent, and Roesch (in press) administered the FIT to 152 youth aged 11 to 17 who were in a juvenile detention facility in the state of Washington. A second rater with similar training recoded 26 protocols. According to criteria proposed by Cicchetti, Showalter, and Tyrer (1985), the intraclass correlation coefficients (ICCs) were “good” for structured clinical ratings of legal capacities and overall competence on the FIT. Specifically, ICCs were .65 for Section 1 (Factual Understanding), .80 for Section 2 (Rational Understanding or Appreciation), .59 for Section 3 (Communication with Counsel), and .69 for the overall judgment of competence.

Also, the ICCs for items on the FIT (single raters) were generally “good” and fell between .60 and .75. Several items had ICCs had relatively low interrater reliability (i.e., Item 14: Capacity to Communicate Facts, Item 15: Capacity to Testify Relevantly, and Item 16: Capacity to Manage Behavior). The low interrater reliability for these items may be attributable to the study’s design. Although these particular items are rated primarily from clinical observations, the second rater in the Viljoen et al. study did not have access to clinical observation information but only written transcripts of examinees’ responses.

The FIT was developed based on a three-factor model of competency established by Dusky v. United States (1960). Research indicates that the factor structure of the FIT, when used with adolescent defendants, is consistent with this framework. In particular, Viljoen, Vincent, and Roesch (in
press) found that a three-factor model, interpreted as “understanding and reasoning about legal proceedings,” “appreciation of case-specific information,” and the “ability to communicate with counsel,” best fit the data. These factors had adequate internal consistency, and were united by a dominant unidimensional factor, which suggests that the three legal capacities measured by the FIT are related but distinct. Therefore, clinicians who use the FIT with juveniles should consider a youth’s performance on each of the three specific legal capacities measured by the FIT rather than solely his or her global performance.

In addition to finding support for the factor structure of the FIT with youth, research suggests that the FIT has adequate discriminant and convergent validity with youth. Specifically, as expected, our research finds a moderate relationship between the FIT, intellectual ability, and age (Viljoen & Roesch, in press). The FIT is also correlated with Grisso’s Instruments for Assessing Understanding and Appreciation of Miranda Rights, but at the same time it appears to measure a distinct set of capacities (Viljoen, Zapf, & Roesch, 2005).

It is important to note that competency assessment instruments such as the FIT comprise only one part of adolescent competency evaluations. While the FIT may be useful in assessing a youth’s functional legal capacities, evaluators should also assess for cognitive limitations, psychopathology, and developmental immaturity, since these factors could lead to legal impairments (Grisso et al., 2003; Viljoen & Roesch, in press). Courts in most jurisdictions have not yet determined whether developmental immaturity constitutes an adequate basis for a possible finding of incompetence (Grisso, 1997), however, at least one court has ruled that it is (In re Causey, 1978).

Legal standards of competency generally do not consider judgment or decision-making but instead focus on
understanding and ability to communicate with counsel. Recently, however, authors have argued that courts should consider youth’s judgment because psychosocial factors, such as peer influence, could mean that adolescents may make different and potentially riskier legal decisions than adults (Scott, Reppucci, & Woolard, 1995; Steinberg & Cauffman, 1996).

**Format**

The Fitness Interview Test (FIT) is designed as a semi-structured clinical assessment instrument to guide evaluators through a set of defined criteria for determining competence to stand trial. The FIT is divided into three sections that parallel the criteria for competence to stand trial as set out in most US state statutes as well as the *Criminal Code of Canada* (1985). Each section comprises a set of items regarding specific abilities. For each item there is a definition and a list of questions that should be asked. Answers to these questions should provide the information necessary to complete the rating for each item.

After material in all three sections has been covered, the evaluator then rates the defendant’s degree of impairment on each of the three sections and makes an overall determination of the defendant’s competence to stand trial (see Appendix).

The three sections are:

I. Understand the Nature or Object of the Proceedings: *Factual Knowledge of Criminal Procedure*

II. Understand the Possible Consequences of the Proceedings: *Appreciation of Personal Involvement in and Importance of the Proceedings*

III. Communicate with Counsel: *Ability to Participate in Defense*
The first section comprises six items that assess different aspects of the defendant’s understanding of the nature and object of the proceedings. These include the defendant’s understanding of the arrest process, the nature and severity of the current charges, the role of key participants in the courtroom, the legal process, the available pleas, and the court procedure.

The second section comprises three items that assess different aspects of the defendant’s understanding of the possible consequences of the proceedings. These include the defendant’s appreciation of the range and nature of possible penalties, the available legal defenses, and the likely outcome of his or her case.

Finally, the third section comprises seven items that assess the defendant’s ability to communicate with counsel. These include the defendant’s capacity to: communicate facts to his or her lawyer, relate to his or her lawyer, plan legal strategy, engage in his or her own defense, challenge prosecution witnesses, testify relevantly, and manage his or her courtroom behavior.

**The Rating Scale**

The FIT uses a 3-point scale to rate the degree of impairment for each item. The following provides a description of each point on the scale.

A score of two (2) indicates that for the item scored there is severe impairment of ability to meet the legal criteria

A score of one (1) indicates that for the item scored there is moderate impairment of ability to meet the legal criteria

A score of zero (0) indicates that for the item scored there is little or no impairment of ability to meet the legal criteria
Generally, if the defendant answers “I don’t know” to one or more of the questions, the evaluator can probe and query as necessary to try and determine the extent of the defendant’s knowledge and abilities. If the evaluator is unable to get a good sense of the defendant’s capabilities it is appropriate to give this item a rating of 1, indicating possible or mild impairment.

It is important to consider carefully the defendant’s abilities when scoring any particular item rather than only his or her answer to a particular question. For example, if an individual were to answer questions concerning what he or she thinks of lawyers or the court process with cynicism, it is not the specific answers per se that guide the scoring of the item, but rather whether or not the defendant has the particular ability being examined.

It is also appropriate for the evaluator to override a defendant’s answer to an item on the basis of considered clinical judgment when scoring an item. For example, if an defendant is having difficulty concentrating and talking to the evaluator yet denies having any communication difficulties that would interfere with his or her ability to communicate with a lawyer or testify in court, it is appropriate for the evaluator to score this item based on his or her observation of the defendant rather than on the defendant’s answer to the question.

It is important to consider each item carefully and separately and to resist the temptation to score it as a "2", for example, simply because the previous item was given that score. Each item must be considered independently of the defendant’s response to other items.

**The Final Judgment of Fitness/Competence**

Once the evaluator has completed the interview, he or she then makes a final judgment about the defendant’s
competence to stand trial (see the Appendix at the back of this manual). The first step in this final competency determination is to decide whether or not the individual has a mental disorder as defined in case law. As previously discussed in this manual, almost any disorder can be considered to be a mental disorder (in the legal sense) if it interferes sufficiently with the defendant’s performance on the required psycholegal abilities.

The second step in the final determination of a defendant’s competence to stand trial is to consider each of the three psycholegal abilities required of the defendant. The evaluator should decide whether or not the defendant is able to perform each of the three required psycholegal abilities (this is rated “Yes”, “Possibly”, or “No”).

The third step is to examine the previous information (presence of a mental disorder and performance on each of the three required abilities) and to come to a final determination about fitness. There are four possible outcomes.

1) The defendant has a mental disorder and is not impaired on any of the three required abilities. In this case the defendant would be considered competent to stand trial.

2) The defendant has a mental disorder and is impaired on one or more of the three required abilities. In this case the defendant would be considered potentially incompetent to stand trial. The usual course of action that would ensue would be for the evaluator to recommend that the defendant be referred for a more thorough evaluation of competence, or, if jurisdictional procedures do not allow for this, for the evaluator to perform a more thorough evaluation of those areas of deficiency highlighted by the FIT to come to a final opinion regarding the defendant’s competence.
3) The defendant does not have a mental disorder and is not impaired on any of the three required abilities. In this case the defendant would be considered competent to stand trial.

4) The defendant does not have a mental disorder and is impaired on one or more of the three required abilities. In this case, if the evaluator is sure that the defendant does not have a mental disorder, then the defendant would be considered competent to stand trial.

Technically, in order for a defendant to be considered incompetent to stand trial, the legal criteria require that the defendant’s mental disorder cause the defendant’s impairment on one or more of the psycholegal abilities. As the FIT was designed as a screening instrument wherein those defendants who are considered to be incompetent to stand trial will be referred for a more thorough evaluation of competence to stand trial, it is only necessary at the screening stage to establish the co-occurrence of mental disorder and psycholegal impairment. The more thorough (often inpatient) evaluation of competence would then serve to assess the causality of the defendant’s psycholegal impairment.

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7 This category occurs rarely. Evaluators need to be informed about the current statutes in the relevant jurisdiction with respect to the presence of mental disorder (and the conditions that fall under this umbrella term).
Background Information

1. Do you have a lawyer at this point?
   - Yes, own lawyer
   - Yes, legal aid
   - No, no lawyer at this time (skip to Question 4 below)
   - No, no response/unintelligible (skip to Question 4 below)

2. Have you discussed your case with your lawyer yet?
   - Yes
   - No (skip to Question 4 below)
   - No response/unintelligible (skip to Question 4 below)

3. Has your lawyer advised you how to plead?
   - Guilty
   - Not Guilty
   - Other (e.g., nolo contendre, NGRI, GBMI)
   - Has not advised
   - No response/unintelligible

4. (Regardless of what your lawyer has advised) Have you decided yet how you will plead?
   - Guilty
   - Not Guilty
   - Other (e.g., nolo contendre, NGRI, GBMI)
   - Not sure
   - No response/unintelligible
1. Understanding of arrest process

This item calls for an assessment of the defendant's awareness, not only of the physical process of arrest, but also the nature of the arrest process and a person's rights when arrested.

☐ Can you tell me how you came to be here (in jail)?

☐ What happened when the police came?

☐ Did the police read you your (Miranda/arrest) rights?

(Did they tell you that you had the right to remain silent, to talk to a lawyer?)

☐ Did you say anything to the police?

What did you tell them?

What do you think that the police might do with that information?

☐ Have you ever been arrested before?
2. Understanding of the nature and severity of current charges

This item calls for an assessment of the defendant's concrete understanding of the charges against him/her and, to a lesser extent, the seriousness of the charges. A literal knowledge of the specific charge is adequate.

☐ What are you charged with?

☐ What did the police arrest you for?

☐ How serious is that charge?

☐ Is it a major or minor offence?

☐ Do you think that people might be afraid of you because of what you are charged with?
Section I: Understand the Nature or Object of the Proceedings: *Factual Knowledge of Criminal Procedure*

3. Understanding of the role of key participants

This set of items calls for a minimal understanding of the adversarial process by the defendant, and also the role of the police, the court process, and the reasons why the assessment of competence is taking place. The defendant should be able to identify prosecuting attorney and prosecution witnesses as foe, defense counsel as friend, the judge and police as neutral, and the jury as determiners of guilt or innocence.

- Have you ever been in court before? How many times (roughly)?

In the courtroom during a trial, what is the job of:

- Your lawyer (defense counsel)?
- The prosecutor (District Attorney; “DA”; Crown Counsel)?
- The judge?
- The jury?
- The defendant (you)?
- The witnesses?
- The police?
- The psychiatrist (psychologist)?
Section I: Understand the Nature or Object of the Proceedings: Factual Knowledge of Criminal Procedure

4. Understanding of the legal process

This set of items calls for a minimal understanding of key issues in the legal process.

☐ Can you tell me what is meant by an oath (pledge)?

☐ What can be used as evidence in court?

☐ How many people are on a jury?

How are jurors selected?

How many jurors have to believe you are guilty for you to be convicted?

☐ How certain does the judge or jury have to be in order to find you guilty?

What does “beyond a reasonable doubt” mean?
5. Understanding of pleas

This set of items calls for a minimal understanding of possible pleas and their consequences.

- What does it mean when a person pleads not guilty?
- What happens in court to someone who pleads not guilty?
- What are the consequences of pleading not guilty?
- What things might a lawyer do when someone wants to plead not guilty?
- What does it mean when a person pleads guilty?
- What happens in court to someone who pleads guilty?
- What things might a lawyer do when someone wants to plead guilty?
- What rights do you waive (give up) when you plead guilty?
6. Understanding of court procedure

This item calls for an assessment of the degree to which the defendant understands the basic sequence of events in a trial and their importance for him/her, e.g., the different purposes of direct and cross-examination.

- Who is the only one at your trial who can call on you to testify?
- After your lawyer finishes asking you questions on the stand, who can ask you questions next?
- Why does the DA (prosecutor) ask you questions?
- What will the judge do if you plead guilty?
- What questions would you ask your lawyer before you decide whether or not to plead guilty?
Section II: Understand the Possible Consequences of the Proceedings:

Appreciation of Personal Involvement in and Importance of the Proceedings

7. Appreciation of range and nature of possible penalties

This item calls for an assessment of the defendant's concrete understanding and appreciation of the conditions and the duration of possible restrictions that could be imposed. A simplistic understanding suffices. Of concern here is that the defendant have at least a gross understanding of what is at risk and a motivation to protect him/herself consistent with the risk.

☐ Will you plead guilty or not guilty at your trial? Why?

☐ If you are found guilty as charged, what are the possible sentences the judge could give you?

☐ If a jail sentence is received, how long might it be?

☐ Where would you have to serve such a sentence?
Section II: Understand the Possible Consequences of the Proceedings: Appreciation of Personal Involvement in and Importance of the Proceedings

8. Appraisal of available legal defenses
This item calls for an assessment of the defendant's awareness of his/her possible legal defenses, and how consistent these are with the reality of his/her particular situation.

☐ How do you think you can be defended against these charges?

☐ How can you explain your way out of these charges?

☐ What do you think your lawyer should concentrate on in order to defend you best?
Section II: Understand the Possible Consequences of the Proceedings: Appreciation of Personal Involvement in and Importance of the Proceedings

9. Appraisal of likely outcome

This item calls for an assessment of how realistically the defendant perceives the likely outcome, and the degree to which impaired understanding contributes to a less adequate or inadequate participation in his/her defense. If the defendant irrationally perceives that there is little or no peril in his/her position and the case against him/her is strong, it might follow that s/he would have little or no motivation to protect him/herself.

☐ What do you think your chances are to be found not guilty?

☐ Does the court you are going to be tried in have authority over you?

☐ Do you have to abide by the court’s decision?
Section III: Communicate with Counsel: Ability to Participate in Defense

10. Capacity to communicate facts to lawyer
This item calls for an assessment of the defendant's capacity to give a consistent, rational, and relevant account of the motivational and external facts. Complex factors can enter into this determination, including intelligence, memory, and honesty.

☐ Tell me how you got arrested.

What do the police say that you did?

What actually happened?

What did you see, hear, do, or think?

☐ When and where did all this take place?

☐ Why did the police arrest you?

What did you say to them?
11. Capacity to relate to lawyer

This item calls for an assessment of the interpersonal capacity of the defendant to relate to the average lawyer. Involved is the ability to trust and to express opinions.

- What do you think about lawyers, in general?
- Would you trust your lawyer enough to tell him/her confidential information?
  Why/why not?

You’ve said you have a lawyer:

- How do you get along with your lawyer?
  Do you have confidence in your lawyer?
  Why/why not?

- Do you think s/he's trying to do a good job for you?
  Why/why not?

- Do you agree with the way s/he's handled your case so far?
  What about his/her plans to handle your case?
Section III: Communicate with Counsel: 
*Ability to Participate in Defense*

12. Capacity to plan legal strategy

This item calls for an assessment of the degree to which the defendant can understand and cooperate with his/her counsel in planning a strategy for the defense that is consistent with the reality of his/her circumstances. Strategic issues such as agreeing to enter a guilty plea to a lesser offence, or the decision as to whether or not the defendant should testify, may arise and require some participation from the defendant.

- If your lawyer can get the DA [prosecutor] to accept a plea bargain wherein you plead guilty to a less serious charge in return for the DA dropping a more serious charge, would you agree to it? Why/why not?
- If your lawyer decides that you should not testify, would you go along with him/her?
- What will you do if you disagree with your lawyer about how to handle your case?
- Should you talk with a lawyer before pleading guilty?
- What questions should you ask your lawyer if you are thinking about pleading guilty?
- Do you understand the consequences of being found incompetent to stand trial?
13. Capacity to engage in own defense

This item calls for an assessment of the defendant's motivation to adequately protect him/herself and appropriately utilize legal safeguards to this end. Of concern here is the pathological seeking of punishment and the deliberate failure by the defendant to avail him/herself of appropriate legal protections.

- Suppose your lawyer finds a way to get your charges dropped. Would that make you happy? Would you go along with his/her plans?
- Suppose the DA [prosecutor] makes some legal errors and your lawyer wants to appeal. Would that make you happy? Would you accept it? Why/why not?
- Suppose your lawyer can get the DA [prosecutor] to agree to a plea bargain in which you would probably get a shorter sentence than if you went to trial. Would that make you happy? Would you accept that? Why/why not?
Section III: Communicate with Counsel:  
*Ability to Participate in Defense*

14. Capacity to challenge prosecution witnesses

This item calls for an assessment of the defendant's capacity to recognize distortions in prosecution testimony. Relevant factors include attentiveness and memory. If false testimony is given, the degree to which the defendant will apprise his/her attorney of inaccuracies is important.

- Suppose a witness against you told a lie in the courtroom. What would you do?

- Is there anybody who is likely to tell lies about you in this case? Why/why not?
**Section III: Communicate with Counsel: Ability to Participate in Defense**

15. Capacity to testify relevantly

This item calls for an assessment of the defendant's ability to testify with coherence, relevance, and soundness of judgment. Affective as well as thought disorder considerations are of some relevance here, e.g., if the defendant is immobilized by anxiety or depression, or is manic, loose or regressed in his/her associations and responses.

- [I notice that you seem to be quite emotional (angry, anxious, agitated).] Do you think you will have any problems answering your lawyer’s questions or testifying in court?

- [You seem to be having some problems communicating (concentrating, talking, keeping on track).] Do you have any difficulties in communicating that will interfere with your ability to talk to your lawyer or testify in court?
Section III: Communicate with Counsel:
Ability to Participate in Defense

16. Capacity to manage courtroom behavior

This item calls for an assessment of the appropriateness of the current motor and verbal behavior of the defendant, and the degree to which this behavior would disrupt the conduct of a trial. Inappropriate or disruptive behavior must arise from a substantial degree of mental illness or mental retardation.

☐ Do you think it’s important to control yourself in the courtroom and not interrupt the proceedings?

☐ When is the only time you can speak in the courtroom?

☐ What do you think would happen if you spoke out, interrupted the court proceedings, or moved around in the courtroom without permission?
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# Fitness Interview Test: Coding Sheet

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<thead>
<tr>
<th>Name of Defendant:</th>
<th>_______________________________</th>
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<td>Date of Birth:</td>
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## Summary of Item Scores (0, 1, 2)

### Section I: Understand the Nature or Object of Proceedings
- **Item 1:** understanding of arrest process
- **Item 2:** understanding of current charges
- **Item 3:** understanding of the role of key participants
- **Item 4:** understanding of the legal process
- **Item 5:** understanding of pleas
- **Item 6:** understanding of the court procedure

### Section II: Understand the Possible Consequences
- **Item 7:** appreciation of the possible penalties
- **Item 8:** appraisal of available legal defenses
- **Item 9:** appraisal of likely outcome

### Section III: Communicate with Counsel
- **Item 10:** capacity to communicate facts
- **Item 11:** capacity to relate to lawyer
- **Item 12:** capacity to plan legal strategy
- **Item 13:** capacity to engage in defense
- **Item 14:** capacity to challenge witnesses
- **Item 15:** capacity to testify relevantly
- **Item 16:** capacity to manage courtroom behavior
Assessment of Mental Disorder
Rating (Y, P, N)

Mental disorder as defined in case law/statute? ______

Assessment of Legal Impairment
Rating (Y, P, N)

Section I
Understand Nature and Object of the Proceedings ______

Section II
Understand the Consequences of the Proceedings ______

Section III
Communicate with Counsel ______

OVERALL JUDGMENT OF COMPETENCE

COMPETENT       QUESTIONABLE       INCOMPETENT

Action to be taken

Refer for Further Evaluation: Y N

Comments/Other Recommendations:

Time: _______________  Date: _______________

Assessor's Signature: ________________________________