BOARD OF PAROLE HEARINGS

MENTALLY DISORDERED OFFENDER EVALUATOR HANDBOOK FOR PENAL CODE SECTION 2962

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MENTALLY DISORDERED OFFENDER
EVALUATOR HANDBOOK FOR PENAL CODE SECTION 2962

INTRODUCTION:

The Mentally Disordered Offender (MDO) Act is *currently* codified as Penal Code sections 2960, 2962, 2964, 2968, 2970, 2972, 2976, 2978, 2980 and 2981. It may be cited as Penal Code sections 2960 et seq. The penal codes are as follows:

Penal Code § 2960

The Legislature finds that there are prisoners who have a treatable, severe mental disorder that was one of the causes of, or was an aggravating factor in the commission of the crime for which they were incarcerated.

Secondly, the Legislature finds that if the severe mental disorders of those prisoners are not in remission or cannot be kept in remission at the time of their parole or upon termination of parole, there is a danger to society, and the state has a compelling interest in protecting the public.

Thirdly, the Legislature finds that in order to protect the public from those persons it is necessary to provide mental health treatment until the severe mental disorder which was one of the causes of or was an aggravating factor in the person's prior criminal behavior is in remission and can be kept in remission.

The Legislature further finds and declares the Department of Corrections and Rehabilitation should evaluate each prisoner for severe mental disorders during the first year of the prisoner's sentence, and that severely mentally disordered prisoners should be provided with an appropriate level of mental health treatment while in prison and when returned to the community.

Penal Code § 2962

As a condition of parole, a prisoner who meets the following criteria shall be required to be treated by the State Department of State Hospitals, and the State Department of State Hospitals shall provide the necessary treatment:

Section (a)

(1) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment.

(2) The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

(3) The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Parole Hearings or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

Section (b)

The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.

Section (c)

The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

Section (d)

(1) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of State Hospitals have evaluated the prisoner at a facility of the Department of Corrections and Rehabilitation, and a chief psychiatrist of the Department of Corrections and Rehabilitation has certified to the Board of Parole Hearings that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that

by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others. For prisoners being treated by the State Department of State Hospitals pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections and Rehabilitation, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections and Rehabilitation.

(Difference of Opinion)

(2) If the professionals doing the evaluation pursuant to paragraph (1) *do not concur that:*

(A) The prisoner has a severe mental disorder,

(B) The disorder is not in remission or cannot be kept in remission without treatment, or

(C) The severe mental disorder was a cause of, or aggravated, the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Parole Hearings pursuant to this paragraph, then the Board of Parole Hearings shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) If at least one of the independent professionals who evaluate the prisoner pursuant to paragraph (2) concurs with the chief psychiatrist's certification of the issues described in paragraph (2), this subdivision shall be applicable to the prisoner.

The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets certain criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand that information.

Section (e)

The crime referred to in subdivision (b) meets both of the following criteria:

(1) The defendant received a determinate sentence pursuant to Section 1170 for the crime.

(2) The crime is one of the following:

(A) Voluntary manslaughter.
(B) Mayhem.
(C) Kidnapping in violation of Section 207.

(D) Any robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of the carjacking.

(F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(G) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(H) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(I) Lewd acts on a child under the age of 14 years in violation of Section 288.

(J) Continuous sexual abuse in violation of Section 288.5.

(K) The offense described in subdivision (a) of Section 289 where the act was accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(L) Arson in violation of subdivision (a) of Section 451, or arson in violation of any other provision of Section 451 or in violation of Section 455 where the act posed a substantial danger of physical harm to others.

(M) Any felony in which the defendant used a firearm which use was charged and proved as provided in Section 12022.5, 12022.53, or 12022.55. (N) A violation of Section 18745.

(O) Attempted murder.

(P) A crime not enumerated in subparagraphs (A) to (O), inclusive, in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (4) of subdivision (f) of Section 243.

(Q) A crime in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used. For purposes of this subparagraph, substantial physical harm shall not require proof that the threatened act was likely to cause great or serious bodily injury.

Section (f)

As used in this chapter, "substantial danger of physical harm" does not require proof of a recent overt act.

Penal Code § 2963

(a) Upon a showing of good cause, the Board of Parole Hearings may order that a person remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation pursuant to paragraph (1) of

subdivision (d) of Section 2962 and any additional evaluations pursuant to paragraph (2) of subdivision (d) of Section 2962.

(b) For purposes of this section, good cause means circumstances where there is a recalculation of credits or a restoration of denied or lost credits, a resentencing by a court, the receipt of the prisoner into custody, or equivalent exigent circumstances which result in there being less than 45 days prior to the person's scheduled release date for the evaluations described in subdivision (d) of Section 2962.

(Certifications Evaluations)

Penal Code § 2966

(a) A prisoner may request a hearing before the Board of Parole Hearings, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing, the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, *the board shall appoint two independent professionals as provided for in Section 2978.*

The court may, upon stipulation of both parties, receive in evidence the affidavit or declaration of any psychiatrist, psychologist, or other professional person who was involved in the certification and hearing process, or any professional person involved in the evaluation or treatment of the petitioner during the certification process.

Penal Code § 2978

(a) Any independent professionals appointed by the Board of Parole Hearings for purposes of this article shall not be state government employees; shall have at least five years of experience in the diagnosis and treatment of mental disorders; and shall include psychiatrists, and licensed psychologists who have a doctoral degree in psychology.

(b) On July 1 of each year the Department of Corrections and Rehabilitation and the State Department of State Hospitals shall submit to the Board of Parole Hearings a list of 20 or more independent professionals on which both departments concur.

The professionals shall not be state government employees and shall have at least five years of experience in the diagnosis and treatment of mental disorders and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. For purposes of this article, when the Board of Parole Hearings receives the list, it shall only appoint independent professionals from the list. The list shall not be binding on the Board of Parole Hearings until it

has received the list, and shall not be binding after June 30 following receipt of the list.

Penal Code § 2980

This article applies to persons who committed their crimes on and after January 1, 1986. 2981.

Penal Code § 2981

For the purpose of proving the fact that a prisoner has received 90 days or more of treatment within the year prior to the prisoner's parole or release, the records or copies of records of any state penitentiary, county jail, federal penitentiary, or state hospital in which that person has been confined, when the records or copies thereof have been certified by the official custodian of those records, may be admitted as evidence.

History and Procedure

Penal Code section 2974 addresses the related topic of applicability of the Lantermann-Petris-Short (LPS) Act to the California Department of Corrections CDCR. The LPS Act is codified as Welfare and Institutions Code sections 5100 and pre-existed the MDO Act. The LPS Act is not considered part of the MDO Act despite the Penal Code section number for LPS being within the Penal Code section range of numbers.

Standards of Proof

The statute sets forth a standard of proof for the reviewing authorities for MDO evaluations. These include the CDCR Chief Forensic Psychiatrist, the BPH and the Superior Court. The Chief Forensic Psychiatrist and the BPH apply a legal standard of “Preponderance of the evidence” standard and the Superior court applies a “beyond a reasonable doubt” standard.

However, the “standard of proof” concept does not strictly apply to an expert witness in general or to the MDO evaluator. A “standard of proof” applies to the decision-maker or “trier of fact.” In MDO, the decision-makers or triers of fact are the BPH or the Superior Court (judicial or unanimous jury). The MDO evaluator is not a “decision maker” or “trier of fact” in the legal sense. Therefore, neither the preponderance-of-evidence standard nor the beyond-a-reasonable-doubt standard applies to the MDO evaluator.

Case Referral to the Board of Parole Hearings

Prior to release to parole, mentally ill prisoners meeting initial screening are evaluated by CDCR and the Department of State Hospital (DSH). One evaluator

must find positive on all six statutory criteria. Both CDCR and DSH evaluators must agree on Criteria 1, 3 and 4 in order for an inmate to be certified. If there is a difference of opinion (DOP) on these three criteria, independent evaluations are ordered by BPH. At least one independent evaluator must find positive on all six criteria. If neither of the evaluators find positive on all six criteria, the prisoner is not certified as MDO and is referred to an outpatient treatment clinic upon parole. Differences of opinion between CDCR and DSH evaluators on criteria 2, 5, and 6 do not preclude MDO certification by BPH and do not require independent evaluations.

Following certification by BPH, the prisoner is served with a special condition of parole requiring treatment as an MDO. All treatment will be inpatient until it is determined that the parolee can be safely and effectively treated in the community.

Following admission to the State Hospital, a series of due process hearings are provided to the parolee. The Certification Hearing is conducted by BPH Deputy Commissioners for the purpose of proving the six statutory criteria have been met. If the parolee has not been placed in outpatient treatment within 60 days after admission, the parolee may request a Placement Hearing from BPH to determine if the parolee can be safely and effectively treated in the community. The BPH conducts an Annual Review Hearing to determine if: the prisoner has a severe mental disorder, is in remission and can be kept in remission, is dangerous due to severe mental disorder, and can be safely and effectively treated in the community. The parolee or his/her attorney has the right to request independent evaluations for all hearings. The parolee also has the right to petition the Superior Court to review the Certification and Annual Review Hearings.

Independent evaluators will be contacted by MDO staff when services are needed to resolve a DOP or when a parolee or his/her attorney requests independent evaluations for a hearing.

The MDO Evaluation

The reports that the BPH evaluators generate will be a primary resource for BPH staff, Deputy Commissioners and district attorneys to determine the appropriate disposition of an MDO case. They will be read by BPH Deputy Commissioners, attorneys and judges, and may be presented to juries in the form of expert testimony. These evaluations need to provide more than just summary professional conclusions. Key facts must be included in the body of the evaluation and must clearly state the reasoning that led the evaluator to his or her conclusions.

The evaluation is properly completed when it clearly describes how each of the criteria is met, or is not met. It must comport with the MDO statute, be internally

consistent, and be written in a length and style that will allow parties at later legal proceedings to understand the evaluator's reasoning and conclusions. With the exception of diagnostic terms, evaluators should avoid unnecessary technical language from psychology, psychiatry and the law.

The length of the evaluation report need be no longer than that needed to document, explain and support the conclusion on each criterion. Most reports may be comprehensively prepared in 7 to 10 pages. Generally, if a criterion is a "close call," more documentation and discussion may be needed to credibly support how you reached the conclusion and support it in court testimony.

The evaluator is advised to comply with the recommended evaluation format in this handbook.

Difference of Opinion (DOP)

A Difference of Opinion exists when the CDCR doctor (1st evaluator) and DSH doctor (2nd evaluator) do not agree. BPH hires two independent evaluators to break the tie. If both independent evaluators agree, the inmate will be sent to DSH-Atascadero or DSH-Patton or he/she will parole to the "street" depending upon their findings. If the independent evaluators disagree, the inmate will be sent to DSH-Atascadero or DSH-Patton. (It only takes one positive DOP evaluation.) Both DOP evaluations take place even if the first evaluator finds positive as defined in 2962. In addition, should the case go to court, both evaluators may be subpoenaed to present their opinion.

The Clinical Interview

The evaluator should begin the interview by describing the interview process and responding to questions from the inmate. The evaluator has an ethical obligation to inform the inmate/patient of the purpose of the evaluation, issues of confidentiality and mandated reporting. A typical introduction and explanation of informed disclosure for MDO purposes may include,

> **"My name is Dr. _____. I have been asked by the Board of Parole Hearings to prepare an evaluation for purposes of considering conditions of your parole and whether you may be paroled to the community or to a State Hospital. This evaluation is not confidential and everything we talk about may be included in this written evaluation. I may later be required to testify in your case if it goes to court. When I complete the evaluation it will be forwarded to the Board of Parole Hearings. Do you have any questions?"**

Inform the inmate/patient that the clinical interview is voluntary and if they decline to be interviewed a written evaluation will be conducted by reviewing the records.

Do not share your conclusions with the inmate. In addition, you are not required to share your findings with institution staff upon your exit from the facility. The BPH/MDO unit will provide the final results to the institution staff when appropriate.

Subpoenas and Court Testimony

These guidelines are updated as new appellate law becomes available that may change or modify how the evaluator addresses each of the six criteria. When court testimony is required the evaluator will receive a subpoena from the District Attorney, Public Defender, or private attorney. Requests for reimbursement for court appearances should be directed to the subpoenaing party.

MDO STATUTORY CRITERION SUMMARY

The following six criteria were created by mutual agreement to standardize report writing between Department of Corrections (CDCR) evaluators, Department of State Hospitals (DSH) evaluators, and Board of Parole Hearings (BPH) independent evaluators.

Criterion 1: PRESENCE OF A SEVERE MENTAL DISORDER

The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

Four subsections in Criterion #1.(Use these headings in your evaluation):

1. HISTORY: A chronological history of the severe mental disorder touching upon the age at onset, what inpatient or outpatient treatments, if any, have been provided and a chronology of the symptoms. Sources for this information should be cited. If the inmate is the source, then a statement about his or her reliability as an historian and why you believe, or do not believe, the history should be included. Note whether or not SSI benefits (Supplemental Security Income) have been awarded to the inmate and at what age.

    - Alcohol and other substance abuse history should be included in this section

2. MENTAL STATUS EXAMINATION: This should include description of orientation, alertness, memory, intelligence, psychomotor abnormalities, abnormal involuntary movements, eye contact/facial kinetics, characteristics of speech, intactness of gross receptive language, process of thought, any delusions or hallucinations, and current affective state. Address inmate cooperation in the interview. Do the following:

   - Use direct quotes of the inmates description of symptoms and mental status
   - Note observations of the inmate's insight into mental illness
   - Note inmate's perception of need for treatment
   - Note inmate's perception of need for medication, how they help and compliance with medications if released? (Insight and Judgment.)

3. CURRENT DIAGNOSTIC IMPRESSIONS: Use the Diagnostic and Statistical Manual, 5th Edition (DSM-5).
   - The diagnosis of Psychotic Disorder, NOS, used frequently in the DSM-IV and in past MDO reports, is not used in the DSM-5.

   - Polysubstance Dependence/Abuse is not used in the DSM-5.

   - For forensic evaluations such as MDO evaluations, it is not appropriate to use "rule-out" (r/o) nor "deferred" diagnoses. The forensic evaluator should reach a diagnostic conclusion that is as specific as possible.

   - If Criterion Three is positive, Criterion One should also be positive.

   - If you note suicidality or other acute symptoms of concern of which the treatment staff may not be aware, notify institution's treatment staff.

   - You are a mandated reporter of child and elder abuse.

   - You are a mandated reporter of the Tarasoff Act.

4. CONCLUSION: Your conclusion about whether or not this criterion is met may include a statement that you based it upon review of available records (which means that if you have other records at a later time, you have given yourself an option of revising your opinion) and the current Mental Status Examination. A brief summary of the prominent symptoms that the inmate has demonstrated over the course of time should follow with special attention to how they relate to thought, perception of reality, emotional process, judgment, or grossly impaired behavior. You should conclude this section with the statement, This is the Statutory conclusion and it is a important to phrase it in the language if the statute itself.

The term “severe mental disorder” would encompass major mental disorders that involve

- Thought disorder
- Cognitive deficits
- Delusions and/or hallucinations
- Disturbance of mood or impulse control.

The disorder need only involve one of these areas to qualify. Examples of severe mental disorders may include

- Schizophrenia
- Bipolar disorder
- Major depressive disorder
- Posttraumatic stress disorder
- Anxiety disorder of clinical significance
- Personality change due to brain disorder
- Substance induced psychotic disorder with hallucinations/delusions
- Dementia.

Pursuant to People v. Starr, the Court has concluded that pedophilia is a severe mental disorder.

With regard to the “brain disorders” (DSM-IV no longer uses the term “organic brain disorder), it is notable that this statute specifically mentions “acute brain syndrome.” It does not exclude *chronic* brain syndrome as long as the latter is *acquired* rather than developmental (e.g., ADHD) and may be palliated by psychotropic medications and/or psychosocial treatment.

Specifically EXCLUDED by statute are the following:

- Personality Disorders
- Adjustment Disorders
- Epilepsy
- Mental retardation or other development disabilities
- Substance Abuse or Dependence Disorders

If the evaluator determines that the symptoms an inmate experiences are a result of substance intoxication, withdrawal, or recent abstinence then Criterion #1 is negative. In this case the evaluator should be convinced that the symptoms are not a result of some other coexisting mood or psychotic disorder. A diagnosis of Sympathomimetic-Induced Psychotic Disorder (or Sympathomimetic-Induced Mood Disorder; or what ever substance is involved) would be a positive finding on Criterion #1

This Criterion should summarize the inmate’s past mental health history not chronicle every mental health contact. Be sure to reference your sources of information.

Do not use terms "HIV" or "AIDS." If any of these is an issue in the narrative or on AXIS III, use the term "chronic viral illness."

> **"Therefore, a/the diagnosis(es) _____ of and its associated symptoms would fall within the statutory definition of a severe mental disorder, meaning an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process or judgment, or which grossly impairs behavior."**

Criterion 2: CRIME INVOLVED USE, THREAT, OR IMPLIED THREAT OF FORCE OR VIOLENCE OR CAUSED SERIOUS BODILY INJURY

For your convenience, each case has been screened by a peace officer to determine if the offense for which this inmate is currently serving a prison term meets the criteria of Penal Code § 2962(e). If the clinician disagrees with the peace officer's findings, a thorough explanation must be noted.

The role of the clinician is to briefly summarize the circumstances of the commitment offense(s). The Legal Status Summary in the Central File will identify these convictions and the Probation Officer's Report (POR) will provide an offense description. If no POR exists, normally arrest or crime reports will be available. The Cumulative Case Summary also contains a synopsis of the crime(s) that may be utilized. The evaluator must include the date of each crime in the summary.

The inmate's version of the crime and causative factors should be obtained during the course of the interview, and conveyed at least briefly under Criterion Two. His or her version of the crime is important information in Criterion Three

Do not include reference to prior (unrelated) criminal activity in your evaluation for Criterion Two. The conclusion for Criterion Two must be based on the crime(s) for which the individual was committed to CDCR. Prior criminal history should be addressed in Criterion Six when discussing whether the inmate represents a substantial danger of physical harm to others by reason of a severe mental disorder.

Criterion 3: SEVERE MENTAL DISORDER WAS ONE OF THE CAUSES OF OR WAS AN AGGRAVATING FACTOR IN THE COMMISSION OF THE CRIME FOR WHICH THE INMATE WAS SENTENCED TO PRISON

Discussion of the meaning of "Cause or aggravating factor in the crime."

This criterion does **NOT** require that the severe mental disorder be the predominant cause of the crime or that the inmate has been found "legally insane." The term "aggravating" simply means an intensifying or worsening factor. Therefore, if the mental illness has only the **SLIGHTEST** contribution to the crime, it qualifies. However, it must be an active contributor to the crime. The mere coexistence of mental illness at the time of the crime is insufficient to meet this criterion. There must be some way in which the mental disorder, through impairment of thinking, perception of reality, emotional process or judgment, worsened or aggravated the commission of the crime.

The evaluator should review each crime cited under Criterion Two and address the following six issues:

1. HISTORY: Determine, if possible, any history of mental illness prior to the offense. Otherwise, you are left with a question of whether mental illness arose after and because of incarceration. If the inmate did have a history of mental illness prior to the offense, was he or she on psychotropic medications, from where, what kind, how much? Were they taking their medications or was their medication compliance irregular or had they terminated their medications before the offense? What was the effect on their behavior? Was the inmate subject to commitment for evaluation of insanity after the offense? Were they deemed incompetent to stand trial after the offense? Was the inmate placed on a Keyhea (PC 2602) order for danger to self or others or for being gravely disabled after the offense in CDCR?

2. RECORDS: Is there any indication in the records that he or she made any statements to arresting officers, investigating detectives, or probation officers which suggest that, close in proximity to the offense, he or she was experiencing active mental illness? Was he or she found to be incompetent to stand trial for the offense? If so, how close in proximity to the time of the crime was he or she identified as incompetent? If court evaluators' reports are available, you may quote them to substantiate the inmate's mental state at the time of those evaluations, and their opinions about the contribution of mental illness to the crime(s).

3. STATEMENTS: During the inmate clinical interview, did the inmate make any specific statements about why he or she committed the crime which suggested that he or she had an active contributing mental disorder? The closer in proximity to the time of the crime the stronger the association of the mental disorder to the crime. If he or she has been evaluated for competency and the reports are available, you may quote from them regarding any statements that have a bearing on this issue.

4. CIRCUMSTANCES OF OFFENSE: Look at the events of the crime themselves as described. Is there any suggestion of impaired thinking or judgment that contributed to the inmate's irrational behavior? Is there any indication that he or she was responding to hallucinations or operating under a delusional belief as to suggest impairment of reality? Sometimes impairment of reality is suggested by a misperception that the victim enjoyed the crime or some other indication of distorted perception. Was there any impairment in the inmate's emotions such that he or she committed the crime because he or she was depressed or manic or simply had impaired impulse control (even from dementia or other organic mental disorder)? Was there any indication of poor judgment such that after committing the crime, he or she made no attempt to flee the vicinity. Did the inmate perpetrate the crime upon someone who knew his identity or where he or she lived such that he could be easily appended?

5. BEHAVIOR DURING INCARCERATION: Has the inmate perpetrated similar actions after his or her incarceration during a period of time in which mental disorder was observed to be active? This factor also helps rebut any argument that alcohol or drug intoxication was a factor in the crime.

6. ALCOHOL/DRUGS: In evaluating whether or not alcohol/drugs were a contributor if the inmate claims this, you will need to go back and look at previous statements. Has he or she consistently been reporting the same, or is this only an explanation that has surfaced now the he or she is being considered under PC 2960? Is there any indication of blood alcohol levels or toxicology tests that would support the inmate's version of the story? In questioning the inmate about substance usage, try to determine if he or she took a more substantial than normal dosage of drugs/alcohol on the date of the offense to produce an intoxicating effect. Finally, even if he or she was intoxicated, mental illness still may have been a contributing factor

Criterion 4: SEVERE MENTAL DISORDER THAT IS NOT IN REMISSION OR CANNOT BE KEPT IN REMISSION WITHOUT TREATMENT.

The criterion is divided into two separate parts.

A. Remission: PC 2962 defines remission as a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support.

Review the Medical Records and your Mental Status Examination (outlined in Criterion One) and determine the recentcy of the inmate's psychiatric symptoms. With regard to clinical remission, the time factor is important. The statute does not define a time period. A minimum of six months of remission has been used

as a reasonable amount of time to determine if the remission is, in fact, stable. Your determination about remission should examine the six months prior to your evaluation. In this section write the following conclusion: You have already discussed records and current mental status under Criterion One, and there is no need to repeat them in this section.

B. Recent violence or failure to following treatment. (This is factual based only and not left to evaluator's analysis. i.e. CDCR 115, PC 2602, Keyhea, Qawi, CDCR/DSH refusal of treatment documentation.)

According to PC 2962, a positive finding for criteria for 4B requires that the mental illness "cannot be kept in remission without treatment" if the severe mental disorder has been in remission, but he or she has within the last year either been physically violent (except in self-defense), made a serious threat of substantial physical harm upon the person of another, intentionally caused property damage, or not voluntarily followed a treatment plan.

Pursuant to MDO law, a person "cannot be kept in remission without treatment" if during the **year prior** to the question being before the Board of Parole Hearings or a trial court, he or she has been in remission and:

- He or she has been *physically violent* except in self-defense
- He or she has *made a serious threat* of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety, or the safety of his or her immediate family
- He or she has intentionally *caused property damage*
- He or she has *not voluntarily followed the treatment plan*.

In People v. Beeson, the Court provides some definition to the "reasonable person" standard. By establishing through substantial evidence that the defendant had failed to voluntarily follow the treatment plan, the Court found that he could not be kept in remission. The defendant was inconsistent in acknowledging his mental illness and the need for medication and treatment. The Court found that a reasonable person whose mental illness can be kept in remission must, at minimum, acknowledge if possible the seriousness of his mental illness and cooperate with all mandatory components of his treatment plan. The defendant was also sporadic or inconsistent in his attendance and level of participation at group meetings and failed to fully cooperate during his psychological evaluation. In addition, he was resistant in developing a relapse prevention plan and refused to address issues of his illness and relapse prevention plan with the social worker. Since the defendant failed to voluntarily follow the treatment plan, the Court concluded that a reasonable jury would have

relied on the DSH doctor's opinion that if released to the community, the defendant would cease taking his medication, would decompensate, and revert back to aggressive or violent behavior.

For evaluators, the date which you set the "year prior" cannot be either the BPH hearing or appeals trials because these dates will be unknown to you at the time you see him or her. For this reason, it is best to use the time frame of one year prior to the your evaluation.

Review of the CDCR Central File will provide information about rules violations. DSH-Atascadero records will contain information about the patient's behavior and treatment compliance in the Interdisciplinary Notes (IDN'S). Patient misbehavior will be noted in the IDN's as "behavior notes." This will tell you whether or not there have been acts of violence, serious threats of substantial physical harm or destruction of property.

1. PHYSICAL VIOLENCE: Involvement in violence due to "Self-defense" is excluded by statute. You must therefore consider the description of the incidents of violence, and in cases where it is not possible to determine the aggressor (e.g., CDCR-115s for "mutual combat"), the level of proof is not met.

2. THREATS: The inmate must threaten a specific person or persons, even if that person is not immediately present (i.e., the inmate has told somebody that he or she intends to harm somebody else). It is not sufficient that the inmate while standing in the middle of the yard, screams, "I'm going to kill everyone in the world."

3. PROPERTY DAMAGE: It is important to note that this must be "intentionally caused." Accidentally breaking a window or a piece of state property would not qualify. Therefore, you must review the description to determine whether or not it was an intentional destruction.

4. VOLUNTARILY FOLLOWING TREATMENT PLAN: According to the MDO law the standard "shall be whether the person has acted as a reasonable person would in following he treatment plan." If the inmate has had a *Keyhea (PC 2602)* hearing resulting in an order for involuntary medication within the qualifying time period, then this matter is settled. A Court of Law has already determined that the refusal of medications is unreasonable. Otherwise, you have to review the Treatment Record (CDCR and DSH-Atascadero/Patton) and see if the inmate's reasons for refusal are rational and reasonable and if the physicians have made attempts to explain why he or she needs the medications. If an inmate has been receiving SSI benefits for mental illness, for example, that means he or she has an acknowledgment of mental illness. In that case,

he or she would be expected to take medications that would improve symptoms of mental illness.

Criterion 5: THE INMATE HAS BEEN IN PSYCHIATRIC TREATMENT FOR THE SEVERE MENTAL DISORDER FOR 90 DAYS OR MORE WITHIN THE YEAR PRIOR TO PAROLE OR RELEASE DATE.

The treatment in question is defined by statue as either or both psychotropic medication or psychosocial support. The 90 days need not be continuous. Time should be calculated from one year prior to the EPRD. Document the starting dates of treatment to make sure that at least 90 days of treatment will have been offered by the time of the EPRD. The evaluator should specify in his/her report the **beginning and ending dates** (if applicable) of treatment or that treatment is continuing to the present time. If treatment was ordered but the inmate refused treatment, the time the inmate **should have been** in treatment counts towards the 90 days. When determining the dates of treatment, only treatment occurring **post-conviction** counts toward the 90 days. Therefore, treatment occurring in a county jail prior to the inmate/patient's conviction cannot be considered, but treatment occurring in a county jail **after** the conviction can be considered. (Achrem Decision)

In describing the treatment, it is not necessary to go into detail as far as what particular psychosocial treatment groups the inmate is attending. Document what psychotropic medications have been prescribed, when they were prescribed, and some estimate as to the inmate's compliance with such medications. Information concerning treatment in Parole Outpatient Clinics may be obtained from the inmate or the records.

Criterion 6: BY REASON OF THE SEVERE MENTAL DISORDER, THE INMATE REPRESENTS A SUBSTANTIAL DANGER OF PHYSICAL HARM TO OTHERS.

This criterion is your determination of the degree of danger of physical harm, or future violence the inmate represents if released to the community. This determination should be made by reviewing the empirically or research derived risk factors that predict future violence. Although there a number of actuarial instruments that provide levels of risk of future violence and associated probabilities, for the purpose of the MDO evaluation you are advised to use an empirically guided approach. That is to determine the presence or absence of the risk factors listed below. In general, risk of future violence is increased when more risk factors are present and risk is decreased in the absence of these risk factors. The weight or importance of any single risk factor for any individual may be variable and influential in determining increased or decreased risk. Therefore

the evaluator should consider both the presence or absence of the risk factors that predict future violence as well as the weight of any particular factor.

In every case there may be situational factors that increase the inmate's risk of future violence such as the inmate's stated intention to reoffend violently or an organic condition that is associated with violent behavior. The following case factors should be considered.

1. HISTORY OF VIOLENCE: Is there a prior history of forceful or violent offenses? Is there any indication that any of these were related to mental illness? If the controlling offense was not a one-time fluke, but instead reflects a habitual pattern or propensity for violent behavior, especially related to mental illness, then this increases the inmate's risk of dangerousness.

2. PRIOR PERFORMANCE ON SUPERVISED RELEASE (PROBATION, PAROLE, CONDITIONAL RELEASE): What is the prior history of performance on probation or parole, if any? Was the inmate arrested while on parole? What for? Was he or she compliant with mental health treatment? Did he or she refuse mediations, and if so, are they the same ones he or she is now taking while incarcerated? Did he or she abuse drugs? Past history of parole failures also suggests increased risk for future parole failures.

3. COMPLIANCE WITH TREATMENT: While incarcerated, has the inmate been violent, aggressive, or non-compliant with treatment? If the inmate were non-compliant in a controlled setting, why would an Evaluator conclude that the inmate would be compliant in a less controlled setting?

4. INSIGHT: What is the inmate's insight into his or her mental illness and need for treatment? Does he or she have an understanding of his or her illness, is he or she able to formulate coping mechanisms and strategies for dealing with potential problem situations? Can he or she seek help when ill and identify warning signs and stressors? What insight does the inmate have into the qualifying offenses? Does he or she understand why he or she did them and what he or she might have done differently? Is there any remorse? If not, then he or she must believe himself or herself to be justified in what he or she did and therefore is at increased risk for doing it again.

5. SUBSTANCE ABUSE: Research has established that the dangerousness of the presence of a mental illness increases with the co-existence of a substance abuse problem.

6. REMISSION: Is the mental illness that contributed to the qualifying offense currently in remission? This is the most basic bottom line.

7. ENVIRONMENTAL RISK FACTORS: What are the plans of the inmate? With whom will he or she be living? Other aspects of the residence? Exposure to potential victims, exposure to an environment of substance abuse. Have co-habitants visited during the incarceration and are they supportive of the inmate's plans to return?

The time frame for prediction of dangerousness is specified in the MDO law as sometime in the "future." No specific time frame has been established. This standard is **not** a prediction over the short term such as current, present or imminent dangerousness.

Evaluations must be submitted to the BPH mailbox either in pdf format (Adobe Acrobat) or password protected. If you are submitting a protected document, restrictions must be set only to editing the document, not opening the document.
Submit DOP Certification evaluations to: BPH.MDOEvaluation@cdcr.ca.gov.
Submit Certification, Placement, Annual Hearing evaluations to: CDCRBPHMDOHearings@cdcr.ca.gov.

Independent evaluations must indicate the type of report and address only the criteria being considered at the hearing as follows:

Certification Hearing: All six criteria as previously noted.

Placement Hearing: Only whether or not the individual can be safely and effectively treated in the community.

Annual Hearing: Criteria One, Four (A&B), Six, and safe and effective treatment in the community.

Again, all findings must be substantiated as previously described.
Report templates of each type of evaluation (DOP, Certification, Placement, and Annual) are provided in the following section.

REPORT WRITING FORMAT:

The evaluator should use his/her own letterhead. BPH letterhead should not be used on independent evaluations.

1. Difference of Opinion (DOP):

(NOTE: Bold print is mandatory)

MENTALLY DISORDERED OFFENDER
EVALUATION PURSUANT TO PC SECTION 2962

I. IDENTIFYING DATA

INMATE NAME:
CDCR NUMBER:
DATE OF BIRTH:
RELEASE DATE (EPRD):
TYPE OF REPORT: Difference of Opinion
EVALUATION DATE:
QUALIFYING OFFENSE DATE:
EVALUATOR:
FACILITY:
SUMMARY OF CRITERIA: (Example: 1, 2, 3, 4, 5, 6)

(NOTE: The inmate's name, CDCR number, evaluation date, and page number are required on subsequent pages in a header.)

SOURCE OF INFORMATION:

I informed the inmate-patient that the interview is not confidential or for treatment and that I would submit a report with the results of the evaluation to the Board of Parole Hearings to assist in determining eligibility for the Mentally Disordered Offender (MDO) Program, which may include the possibility of psychiatric hospitalization. The inmate-patient appeared to understand the nature of the evaluation and the possible consequences of the interview to the best of his ability.

For reasons not limited to the possibility that an individual being evaluated for the MDO program may have a mental disability or condition that may qualify under the Americans with Disabilities Act, a licensed psychologist conducted the evaluation.

I reviewed the Disability Effective Communication System (DECS) and I determined that (no) modifications or accommodations to interview this inmate-patient. The inmate is classified as NCF dated _____ with a TABE score of _____ dated _____.

Both the available prison Central file and Unit Health Record were reviewed.

II. PC 2962 CRITERIA

CRITERION ONE – PRESENCE OF A SEVERE MENTAL DISORDER

(a) The inmate does have a severe mental disorder. (YES – MEETS CRITERION ONE.)

Or

(b) The inmate does not have a severe mental disorder. (NO – DOES NOT MEET CRITERION ONE.)

The term "severe mental disorder" is defined by statute as "an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely."

A. History

Criminal History:

Mr. _____ is ____-year-old, *ethnic background, male/female* committed from _____ County. His qualifying offense is a violation of Penal Code § _____, _____. The offense occurred on _____. (Penal Code § _____, _____. This offense occurred on_____.) Mr._____was convicted on _____. He was sentenced to a _____ year, _____month prison term. He entered into CDCR at _____ on_____. He arrived at _____ on _____.

Address Gang Affiliation.
Review of California Law Enforcement Tracking System (CLETS), Probation Officer's Report (POR), and Institutional Staff Recommendation Summary (ISRS).

Relevant Social History:

Substance Abuse History:

Mental Health History:

Review of Mental Health Records:

B. Current Medication:

C. Medical and Psychological Complaints: (By inmate/patient)

D. Mental Status:

E. Diagnostic Impression (DSM 5):

F. Conclusion: "Therefore in my opinion, the inmate does/does not have symptoms of a nature of extent that qualifies as a severe mental disorder under PC 2962, meaning an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process or judgment, or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely."

CRITERION TWO – CRIME INVOLVED USE, THREAT, OR IMPLIED THREAT OF FORCE OR VIOLENCE OR CAUSED SERIOUS BODILY INJURY

Per peace officer screening, the inmate used, threatened, or implied the threat of force or violence or did cause great bodily injury in the crime, which is summarized below.

If the clinician disagrees with the peace officer's findings, a thorough explanation must be noted:

Offense A: "The inmate's controlling offense is PC ____, _____.

The offense occurred on _____.

Crime description from POR, or police report.

Inmate's version:

Offense B: "The inmate's controlling offense is PC ____, _____.

The offense occurred on _____.

Crime description from POR, or police report.

Inmate's version:

CRITERION THREE - THE INMATE'S SEVERE MENTAL DISORDER WAS ONE OF THE CAUSES OF OR WAS AN AGGRAVATING FACTOR IN THE COMMISSION OF THE CRIME FOR WHICH THE INMATE WAS SENTENCED TO PRISON.

i. The inmate's severe mental disorder was a cause or aggravating factor in the crime. (YES – MEETS CRITERION THREE.)

Or

ii. The inmate's severe mental disorder was not a cause or aggravating factor in the crime. (NO – DOES NOT MEET CRITERION THREE.)

The evaluator must address each crime cited under Criterion Two and address the issues that make his/her decision.

If Criterion One is negative insert the following phrase and proceed to the next criterion:

> "As reported above, I do not conclude that the inmate has a severe mental disorder as defined in the stature. Therefore, Criterion Three cannot be positive."

If Criterion One is positive insert the following phrase and proceed to the next criterion:

> "Therefore, taken together, there is sufficient/insufficient data to indicate that his/her severe mental disorder was an aggravating/causative factor in the commission of the offense."

CRITERION FOUR – SEVERE MENTAL DISORDER THAT IS NOT IN REMISSION OR CANNOT BE KEPT IN REMISSION WITHOUT TREATMENT.

Decision on Criterion Four: Use one of the following:

i. The prisoner's severe mental disorder is not in remission, and the prisoner does meet the statutory definition of "cannot be kept in remission without treatment." (YES – MEETS CRITERION FOUR.)

Or

ii. The prisoner's severe mental disorder is not in remission. However, the prisoner does not meet the statutory definition of

"cannot be kept in remission without treatment." (YES – DUE TO THE FORMER, DOES MEET CRITERION FOUR.)

Or

iii. The prisoner's severe mental disorder is in remission. However, the prisoner does meet the statutory definition of "cannot be kept in remission without treatment." (YES – DUE TO THE LATTER, DOES MEET CRITERION FOUR.)

Or

iv. The prisoner's severe mental disorder is in remission, and the prisoner does not meet the statutory definition of "cannot be kept in remission without treatment." (NO - DOES NOT MEET CRITERION FOUR.)

4A REMISSION:

California Penal Code (PC) 2962 defines remission as a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support.

4B CANNOT BE KEPT IN REMISSION WITHOUT TREATMENT:

In order for the inmate to be found positive on Criterion 4B, the inmate must demonstrate one of four behaviors of concern with in the last year. These behaviors include: 1. Physical violence except in self-defense; 2. Serious threat of substantial physical harm upon another; 3. Intentional property damage or; 4. Not voluntarily following a reasonable treatment plan.

If Criterion One is negative insert the following phrase and proceed to the next criterion:

"As reported above, I do not conclude that the inmate has a severe mental disorder as defined in the stature. Therefore, Criterion Four cannot be positive."

If Criterion One is positive insert the following phrase and proceed to the next criterion:

"From current examination and from review of the records, the severe mental disorder is/is not in legal remission."

CRITERION FIVE – THE INMATE HAS BEEN IN PSYCHIATRIC TREATMENT FOR THE SEVERE MENTAL DISORDER FOR 90 DAYS OR MORE WITHIN THE YEAR PRIOR TO PAROLE OR RELEASE DATE.

i. The prisoner has been in treatment for a severe mental disorder for 90 days or more within the year prior to parole or release date. (YES – MEETS CRITERION FIVE.)

Or

ii. The prisoner has not been in treatment for a severe mental disorder for 90 days or more within the year prior to parole or release date. (NO – DOES NOT MEET CRITERION FIVE.)

Give dates of treatment and level of care only.

If Criterion One is negative insert the following phrase and proceed to the next criterion:

> "As reported above, I do not conclude that the inmate has a severe mental disorder as defined in the stature. Therefore, Criterion Five cannot be positive."

If Criterion One is positive insert the following phrase and proceed to the next criterion:

i. The length of treatment, as of the date of my evaluation, meets/does not meet the requirement.

Or

ii. As of today, the inmate has been in treatment for # of days; however, the treatment requirement is reasonably expected to be met by the release date.

CRITERION SIX – BY REASON OF THE SEVERE MENTAL DISORDER, THE INMATE REPRESENTS A SUBSTANTIAL DANGER OF PHYSICAL HARM TO OTHERS.

i. The prisoner represents a substantial danger of physical harm to others by reason of a severe mental disorder. (YES – MEETS CRITERION SIX.)

Or

ii. The prisoner does not represent a substantial danger of physical harm to others by reason of a severe mental disorder. (NO – DOES NOT MEET CRITERION SIX.)

1. **History of Violence:**

2. **Prior Performance on Supervised Release:**

3. **Compliance with Treatment:**

4. **Insight:**

5. **Remission:**

6. **Substance Abuse:**

7. **Environmental Risk (Danger to Society):**

If Criterion One is negative, may insert the following phrase:

> "As reported above, I do not conclude that the inmate has a severe mental disorder as defined in the stature. Therefore, Criterion Six cannot be positive."

III. CONCLUSION:

Based on the information reviewed and current forensic evaluation, it is my professional opinion that the inmate *meets/does not meet criteria 1, 2, 3, 4, 5 and 6* for hospitalization within a Department of State Hospital's facility under Penal Code § 2962.

(Note: A lot of options here: example …meets criteria 1, 2, 4, 5 but not 3 or 6…)

_____ _____

I. M. Finished, Ph.D. Date Submitted

Forensic Psychologist

2. Certification:

The certification report is essentially the same report as a difference of opinion. The major difference being the reference to the individual being evaluated is no longer referred to as an "inmate." The individual is now a "patient" in a Department of State Hospital facility, i.e. Atascadero or Patton. Rarely, the patient may be housed in Salinas Valley State Prison in the Salinas Valley Psychiatric Program.

MENTALLY DISORDERED OFFENDER
EVALUATION PURSUANT TO PC SECTION 2962

II. IDENTIFYING DATA

INMATE NAME:
CDCR NUMBER:
DATE OF BIRTH:
RELEASE DATE (EPRD):
TYPE OF REPORT: Certification
EVALUATION DATE:
QUALIFYING OFFENSE DATE:
EVALUATOR:
FACILITY:
SUMMARY OF CRITERIA: (Example: 1, 2, 3, 4, 5, 6)

Note: Follow the Difference of Opinion Format making certain to change Inmate to Patient.

3. Annual Report:

In the Annual report only address Criteria 1, 4A and 4B, 6, and conclusion. The matters of Criteria 2, 3, and 5 are no longer an issue. There are many more medical records for review.

MENTALLY DISORDERED OFFENDER
EVALUATION PURSUANT TO PC SECTION 2962

I. IDENTIFYING DATA

INMATE NAME:
CDCR NUMBER:
DATE OF BIRTH:
RELEASE DATE (EPRD):
TYPE OF REPORT: Annual
EVALUATION DATE:
QUALIFYING OFFENSE DATE:
EVALUATOR:
FACILITY:
SUMMARY OF CRITERIA: (Example: 1, 4, 6)

(NOTE: The inmate's name, CDCR number, evaluation date, and page number are required on subsequent pages in a header.)

SOURCE OF INFORMATION:

I informed the inmate-patient that the interview is not confidential or for treatment and that I would submit a report with the results of the evaluation to the Board of Parole Hearings to assist in determining eligibility for the Mentally Disordered Offender (MDO) Program, which may include the possibility of psychiatric hospitalization. The inmate-patient appeared to understand the nature of the evaluation and the possible consequences of the interview to the best of his ability.

For reasons not limited to the possibility that an individual being evaluated for the MDO program may have a mental disability or condition that may qualify under the Americans with Disabilities Act, a licensed psychologist conducted the evaluation.

I reviewed the Disability Effective Communication System (DECS) and I determined that (no) modifications or accommodations to interview this inmate-patient. The inmate is classified as NCF dated _____ with a TABE score of _____ dated _____.

Both the available prison Central file and Unit Health Record were reviewed.

II. PC 2962 CRITERIA

CRITERION ONE – PRESENCE OF A SEVERE MENTAL DISORDER

(c) The inmate does have a severe mental disorder. (YES – MEETS CRITERION ONE.)

Or

(d) The inmate does not have a severe mental disorder. (NO – DOES NOT MEET CRITERION ONE.)

The term "severe mental disorder" is defined by statute as "an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely."

A. History

Criminal History:

Mr. _____ is ____-year-old, *ethnic background, male/female* committed from _____ County. His qualifying offense is a violation of Penal Code § _____, _____. The offense occurred on _____. (Penal Code § _____, _____. This offense occurred on_____.) Mr._____was convicted on _____. He was sentenced to a _____ year, _____month prison term. He entered into CDCR at _____ on_____. He arrived at _____ on _____.

Address Gang Affiliation.
Review of California Law Enforcement Tracking System (CLETS), Probation Officer's Report (POR), and Institutional Staff Recommendation Summary (ISRS).

Relevant Social History:

Substance Abuse History:

Mental Health History:

Review of Mental Health Records:

G. **Current Medication:**

H. **Medical and Psychological Complaints:** (By inmate/patient)

I. **Mental Status:**

J. **Diagnostic Impression (DSM 5):**

K. **Conclusion: "**Therefore in my opinion, the inmate does/does not have symptoms of a nature of extent that qualifies as a severe mental disorder under PC 2962, meaning an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process or judgment, or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely."

CRITERION FOUR – SEVERE MENTAL DISORDER THAT IS NOT IN REMISSION OR CANNOT BE KEPT IN REMISSION WITHOUT TREATMENT.

Decision on Criterion Four: Use one of the following:

i. **The prisoner's severe mental disorder is not in remission, and the prisoner does meet the statutory definition of "cannot be kept in remission without treatment." (YES – MEETS CRITERION FOUR.)**

Or

ii. **The prisoner's severe mental disorder is not in remission. However, the prisoner does not meet the statutory definition of "cannot be kept in remission without treatment." (YES – DUE TO THE FORMER, DOES MEET CRITERION FOUR.)**

Or

iii. The prisoner's severe mental disorder is in remission. However, the prisoner does meet the statutory definition of "cannot be kept in remission without treatment." (YES – DUE TO THE LATTER, DOES MEET CRITERION FOUR.)

Or

iv. The prisoner's severe mental disorder is in remission, and the prisoner does not meet the statutory definition of "cannot be kept in remission without treatment." (NO - DOES NOT MEET CRITERION FOUR.)

4A REMISSION:

California Penal Code (PC) 2962 defines remission as a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support.

4B CANNOT BE KEPT IN REMISSION WITHOUT TREATMENT:

In order for the inmate to be found positive on Criterion 4B, the inmate must demonstrate one of four behaviors of concern with in the last year. These behaviors include: 1. Physical violence except in self-defense; 2. Serious threat of substantial physical harm upon another; 3. Intentional property damage or; 4. Not voluntarily following a reasonable treatment plan.

If Criterion One is negative insert the following phrase and proceed to the next criterion:

"As reported above, I do not conclude that the inmate has a severe mental disorder as defined in the stature. Therefore, Criterion Four cannot be positive."

If Criterion One is positive insert the following phrase and proceed to the next criterion:

"From current examination and from review of the records, the severe mental disorder is/is not in legal remission."

CRITERION SIX – BY REASON OF THE SEVERE MENTAL DISORDER, THE INMATE REPRESENTS A SUBSTANTIAL DANGER OF PHYSICAL HARM TO OTHERS.

i. The prisoner represents a substantial danger of physical harm to others by reason of a severe mental disorder. (YES – MEETS CRITERION SIX.)

Or

ii. The prisoner does not represent a substantial danger of physical harm to others by reason of a severe mental disorder. (NO – DOES NOT MEET CRITERION SIX.)

8. History of Violence:

9. Prior Performance on Supervised Release:

10. Compliance with Treatment:

11. Insight:

12. Remission:

13. Substance Abuse:

14. Environmental Risk (Danger to Society):

If Criterion One is negative, may insert the following phrase:

> "As reported above, I do not conclude that the inmate has a severe mental disorder as defined in the stature. Therefore, Criterion Six cannot be positive."

SAFELY AND EFFECTIVELY TREATED ON AN OUTPATIENT BASIS.

The patient *can/cannot* be safely and effectively treated on an outpatient basis.

Your explanation/opinion.

Based on this information, it is my professional opinion that his/her psychiatric disorder is/is not in remission and that he/she continues/does not continue to be a threat to society.

III. <u>CONCLUSION</u>:

Based on the information reviewed and current forensic evaluation, it is my professional opinion that the inmate *meets/does not meet criteria 1, 4, and 6* for hospitalization within a Department of State Hospitals facility under Penal Code § 2962.

(Note: A lot of options here. 1 but not 4 and 6. etc.)

I. M. Finished, Ph.D.	Date Submitted
Forensic Psychologist	

3. Placement Report:

MENTALLY DISORDERED OFFENDER
EVALUATION PURSUANT TO PC SECTION 2962

I. IDENTIFYING DATA

INMATE NAME:
CDCR NUMBER:
DATE OF BIRTH:
RELEASE DATE (EPRD):
TYPE OF REPORT: Placement
EVALUATION DATE:
QUALIFYING OFFENSE DATE:
EVALUATOR:
FACILITY:

Mr. _____ is _____ year old _____ male who was admitted to DSH-Atascadero/Patton on _____, pursuant to § 2962 of the Penal Code as a mentally disordered offender. The purpose of the current evaluation is to determine if Mr. _____ can safely and effectively be treated in an outpatient setting.

SOURCE OF INFORMATION:

I informed the patient that the interview is not confidential or for treatment and that I would submit a report with the results of the evaluation to the Board of Parole Hearings to assist in determining eligibility for the Mentally Disordered Offender (MDO) Program, which may include the possibility of psychiatric hospitalization. The patient appeared to understand the nature of the evaluation and the possible consequences of the interview to the best of his ability.

For reasons not limited to the possibility that an individual being evaluated for the MDO program may have a mental disability or condition that may quality under the Americans with Disabilities Act, a licensed psychologist conducted the evaluation.

I reviewed the Disability Effective Communication System (DECS) and I determined that (no) modifications or accommodations to interview this patient. The patient is classified as _____ dated _____ with a TABE

score of _____ dated _____.

The patient's file from *Atascadero State Hospital/Patton State Hospital* was reviewed.

II. ANALYSIS OF DATA

A. History

Criminal History:

Mr. _____ is ____-year-old, *ethnic background, male/female* committed from _____ County. His qualifying offense is a violation of Penal Code § _____, _____. The offense occurred on _____. (Penal Code § _____, _____. This offense occurred on_____.) Mr._____was convicted on _____. He was sentenced to a _____ year, _____month prison term. He entered into CDCR at _____ on_____.

Address Gang Affiliation.

Relevant Social History:

Substance Abuse History:

Mental Health History:

Review of Mental Health Records:

B) CURRENT STATUS:

The patient was admitted to DSH-Atascadero/Patton State Hospital from _____ with a diagnosis of _____ on _____.

Current Medication:

Medical and Psychological Complaints: (By inmate/patient)

Mental Status:

C. CURRENT DIAGNOSIS: (DSM 5)

D. Summary:

(Example) Based on the available records and current mental status evaluation, it is clear the inmate does have a major mental disorder. Mr. _____has a diagnostic impression of schizophrenia, paranoid type, which falls within the definition of a severe mental disorder, as noted above. It appears he has not been in a reasonable state of remission for an extended period. His mental illness is complicated by his history of substance abuse and personality disorder.

III. PC 2962 CRITERION

CAN THE PATIENT BE SAFELY AND EFFECTIVELY TREATED IN AN OUTPATIENT BASIS? Yes or No.

Your explanation.

IV. CONCLUSION:

Based on the records reviewed and current forensic evaluation, it is my professional opinion that the patient *can/cannot* be safely and effectively treated on an outpatient setting.

_____ _____

I. M. Finished, Ph.D. Date Submitted

Forensic Psychologist