In **Module 4**, you will learn about competency to stand trial and insanity, which is also referred to as criminal responsibility or not guilty by reason of insanity (NGRI).

In the previous modules, you learned how to evaluate and select the appropriate personality tests to use in your forensic assessment. In this module, you will turn your attention to the use of vocational testing in the forensic setting. As you have learned earlier, intelligence, organic, and educational factors can all contribute to criminal behavior and require attention in assessments. Thorough evaluations of such deficits are important in treatment planning, if treatment is recommended, and in making recommendations to the court or third parties to ensure appropriate punishment or rehabilitative efforts during sentencing.

Vocational testing measures the ability to perform certain tasks related to specific job descriptions. It can also explore a person’s occupational interests and determine the types of work most suitable for that individual. This is important in forensic assessments because employment rehabilitation is often recommended in sentencing. In addition, mental health and substance use treatment plans may include vocational rehabilitation for offenders. It is common for community mental health centers to work in conjunction with vocational rehabilitation facilities to increase the likelihood of a smooth transition from custody to community living for clients.

Learning Outcome

* Explain the major methods and instruments in forensic assessment and apply the use of those methods and instruments to appropriate forensic client populations and relevant decision points in criminal and civil legal proceedings.
* Identify and differentiate the diagnostic and legally-defined offender categories that are commonly assessed in forensic practice including *DSM-5* disorders, organic syndromes, the mentally disordered offender, dangerousness, the potential recidivist, and pre-release inmates and patients.
* Identify and provide a brief description of how it might affect your findings if any potential issues with offender behaviors associated with malingering and deception exist.

**Appropriate Diagnosis**

An appropriate diagnosis will bring about the best treatment for clients. Vocational testing can influence diagnoses and offer insights into the needs and abilities of the clients.

In terms of the functioning of the clients, these types of tests can offer insights into exceeding what can be gleaned from an interview and personality testing, and they can be crucial elements in the assessment process for several reasons. For example, there might be a case of a client being referred for an assessment to rule out malingering and to determine if there is possible feigning of psychotic symptoms. This presentation is common among sociopaths attempting to claim the presence of psychosis for secondary gain such as leniency in sentencing or securing of disability benefits. Neuropsychological testing may indicate the presence of an organic etiology for both the personality and believed feigned psychotic symptoms flagged by a personality test as indicators of malingering and feigning symptoms. In addition, these neuropsychological tests may uncover organic memory, attention, and concentration problems and aid in an accurate competence or incompetence designation.

In addition, vocational testing in forensic cases can supplement the findings of other psychological tests. They can help determine the fitness of clients to consider certain types of employment while taking into consideration relevant personality and neuropsychological factors. Evaluators need as many resources as they can find to accurately assess the clients, plan their treatment, and make recommendations to the court and third parties. The most comprehensive forensic assessment will include all the components discussed in the previous modules.

**Assessment of Competency to Stand Trial**

The issue of competency to stand trial came into legal prominence after a few instances of a mentally ill individual being tried for a crime and convicted in spite of his or her complete lack of awareness of what was going on around him or her in the courtroom and inability to provide any assistance on his or her own behalf in his or her defense. While our judicial system had rightfully tried and convicted these individuals, a moral issue of true justice was brought to light. It then became illegal to bring an individual to trial unless he or she was mentally and physically competent to sufficiently understand and participate in the legal proceedings.

In order for an individual to be found competent to stand trial, he or she must be able to participate in his or her own defense by communicating with his or her attorney or by communicating in the courtroom as appropriate. The individual must also be able to understand the nature of the proceedings, such as the adversarial process, the judge as a neutral party, etc.

In some cases, the symptoms of mental illness can prevent either of those circumstances from happening. For example, in some cases, individuals with a psychotic disorder have so much internal auditory stimuli that they experience what is called "thought blocking," in which he or she is unable to verbalize his or her own thoughts due to the distractions brought on by auditory hallucinations. It would be about the equivalent of an average person trying to do his or her homework in the middle of a rock concert. Another symptom of mental illness that might interfere with one's competency would be delusions as a delusional individual might believe that his or her lawyer is demonic and trying to possess him or her, which would undoubtedly prevent him or her from wanting to work with his or her attorney.

The issue of malingering seems inextricably linked with the issue of competency. Some offenders seem to think that pretending not to be competent to stand trial could somehow make them not culpable for their criminal behavior, which is actually not the case. Nonetheless, many offenders will try anything to attempt to escape the legal penalties for their crimes. Fortunately, a number of tests have been developed to accurately detect malingering.

However, sometimes the easiest way for an evaluator to begin to gauge whether someone is genuinely mentally ill or possibly malingering is to ask, "What would you like my report to say about your competency?” It is not uncommon for a mentally ill individual to state that he or she wants to be found competent so that he or she can go to court to express what he or she thinks and feels. For example, a mentally ill individual might sincerely want to be able to go to court so that he or she can profess to the judge and everyone in the courtroom that he or she is the messiah to attempt to convert members of the courtroom to his or her ways of religious thinking. Conversely, individuals who are malingering are not likely to readily express a desire to be found competent to stand trial since they are trying to feign mental illness to avoid trial. Therefore, the simple question regarding what the individual would like the findings in the report to indicate can help to shape the evaluator's thoughts on whether mental illness or malingering is the prominent issue at hand.

An individual can be found competent to stand trial regardless of his or her level of prior impairment. In other words, prior functioning in regard to his or her mental illness neither negates nor determines his or her competency because legally, competency is only concerned with a person's current level of functioning.

In cases where an individual is found not competent to stand trial, he or she is often required to take medications to attempt to restore his or her competency. In addition, offenders who are found not competent to stand trial for their crimes do not go free. They are not returned to the community. Instead, they remain in a secured psychiatric correctional facility until they are found competent or sometimes until they have served time longer than what they would have if they had been convicted of their crime.

The psycholegal issue of competency to stand trial is different from the psycholegal issue of insanity, which we will discuss in the next lecture.

**The Assessment of Insanity**

The psycholegal issue of insanity goes by different terminologies such as criminal responsibility and not guilty by reason of insanity (NGRI). All those terms refer to the same concept regarding whether an individual is impaired by mental illness at the time of his or her crime. NGRI applies when a person's mental illness is at the root of his or her crime. For example, a mentally ill offender who burned down a house might qualify for status as legally insane if it can be rightfully demonstrated that the reason he or she burned down the house was to remove the demons within it due to his or her delusions.

Unlike competency to stand trial, insanity is a much more elusive concept for an evaluator to assess. The reason for the difficulty in assessing it is that insanity has to do with a person's mental functioning at the time of his or her crime; yet, unless an evaluator is somehow magically able to appear immediately after a mentally ill offender has committed a crime to assess his or her level of functioning, it is simply not possible to assess a person's mental state at the time of his or her crime with 100% certainty.

The only way to attempt to gauge a person's mental functioning at the time of his or her crime is to assess the severity of his or her mental illness presently and to discuss with him or her what he or she was thinking at the time of his or her offense. Essentially, the psycholegal issue of insanity attempts to answer the question of whether the individual knew right from wrong at the time of his or her offense, which means that a person could have been mentally ill at the time of his or her crime but not necessarily qualify as being legally insane. An offender is only considered legally insane if his or her mental illness specifically interfered with his or her ability to know and understand that his or her criminal behavior was wrong. For example, consider the case of a mentally ill offender who shot at people because his or her internal auditory hallucinations were saying that those people were going to shoot him or her if he or she did not try to kill them first. NGRI might apply if it is clear that the symptoms of his or her mental illness substantially interfered with his or her ability to know at the time that what he or she was doing was wrong.

As you can imagine, because of the intricacies involved in declaring someone legally insane, it is extremely rare for this insanity to be attempted as a defense and even more rare for the court to declare an individual legally insane. Because insanity is so rarely used as a defense and it is so hard to assess, few tests actually measure it.

Just as with competency to stand trial, individuals who are found to be not legally sane, i.e., NGRI, also do not go free. Instead of being returned to the community, they serve out sentence in a psychiatric correctional facility that is typically equal to or longer than what they would have served in a regular prison setting. However, no amount of medications to attempt to restore sanity would result in the offender being retried for his or her crime because once an individual has been found NGRI for a crime, he or she cannot be tried for it a second time. So once an individual has been found NGRI for a crime, he or she can never be found guilty for it; though again, the legal defense of insanity is extremely hard to prove and for that reason rarely occurs.

**Conclusion**

The psycholegal issues of competency to stand trial and insanity or criminal responsibility are the prominent ones within the field of forensic psychology. The two are often confused with one another, and there are many misconceptions about both. The primary misconception about them is that either can easily be used by any well-functioning individual in order to avoid responsibility for his or her charges, which is not the case. Even before any testing occurs, it is often quite obvious to a forensic evaluator when an offender might be malingering.

Consider the case of an offender who is in his midthirties, with a long history of prior violent and/or sexual charges, and who worked in construction for a while in the community. The offender is now facing a charge as serious as murder and has begun making claims of "hearing things." The offender is not likely making a genuine presentation. Anyone who was able to hold down a job prior to his or her charge, very likely did not have symptoms of mental illness that were significant enough to cause himself or herself to commit a crime. Therefore, an evaluator reviews all historical and collateral data of an offender when making a determination of competency or insanity. That information, in combination with the objective data from sophisticated psychological tests, can allow the evaluator to accurately discern whether the offender is truly mentally ill or malingering to attempt to avoid charges. Often, such attempts are completely in vain.