Hello Folks and welcome back to the Good Judge-Ment podcast. I am Wade Padgett.

*And I am Tain Kell. Today’s episode is another suggestion from our listeners but is also a topic that Wade and I have thought would be valuable for quite a while.*

That’s right! Every day, all across Georgia, judges are asked to sign orders for mental evaluations – either as to competency to stand trial and/or for evaluations of a defendant’s criminal responsibility. In Augusta, we broadly refer to these orders as “mental evaluations."

*We all sign these orders on a regular basis but we thought it would be best to have an expert from the Department of Behavioral Health and Developmental Disabilities to come and share with our listeners.*

Tain - I struggle with remembering “DBHDD” (and saying it correctly) and so for the remainder of this episode, let’s just call DBHDD the “Department.” Is that ok with you? We already have enough acronyms in this podcast.

*Sure, we will see if that is ok with our expert guest, Ms. Karen Bailey.*

Our special and expert guest today is Dr. Karen Bailey. She is the Director of the Office of Forensic Services with the Department. Dr. Bailey, welcome to the Good Judge-Ment podcast. Is it ok for us to refer to DBHDD as “the Department” today?

**Karen:**

*Tell our listeners a little about your path to becoming the Director of the Office of Forensic Services with DBHDD.*

**Karen:**

***[Dr. Bailey-the following is a list of issues/topics we may elect to cover while we talk. We really want this to be conversational so do not feel the need to follow this in any sort of order]***

**{bullet point topics we need to cover – not necessarily in this order}**

* Today’s episode is dedicated to a discussion of the evaluations that are frequently ordered by trial judges. If we do not run Dr. Bailey off today, we plan to discuss in future episodes what happens if a defendant is found not guilty by reason of insanity or incompetent to stand trial.
* How many facilities are there in Georgia where these evaluations occur?
* Are there times when the Department personnel go out and conduct evaluations at local jails?
* Are all of the evaluation orders assigned “regionally?” In other words, are there times when an evaluator from South Georgia or North Georgia is assigned to conduct an evaluation in Augusta because of staffing issues or differing case loads?
* What is the educational background of the evaluators? Is there a certain minimum degree level or professional designation for an evaluator?
* “Mental Evaluations”
  + Criminal responsibility vs. competency to stand trial
    - Difference between the two types of “mental evaluations” from the Department’s standpoint
* **O.C.G.A. § 17-7-130(b) (Competency to Stand Trial)**
  + (b)(1) If an accused files a motion requesting a competency evaluation, the court may order the department to conduct an evaluation by a physician or licensed psychologist to determine the accused's mental competency to stand trial and, if such physician or licensed psychologist determines the accused to be mentally incompetent to stand trial, to make recommendations as to restoring the accused to competency. If the accused is a child, the department shall be authorized to place such child in a secure facility designated by the department. The department's evaluation shall be submitted to the court, and the court shall submit such evaluation to the attorney for the accused or if pro se, to the accused, but otherwise, the evaluation shall be under seal and shall not be released to any other person absent a court order.
    - (2) If the accused files a special plea alleging that the accused is mentally incompetent to stand trial, it shall be the duty of the court to have a bench trial, unless the state or the accused demands a special jury trial, to determine the accused's competency to stand trial. Once a special plea has been filed, the court shall submit the department's evaluation to the prosecuting attorney.
* Trial judges have a serious duty of confidentiality to only provide the report to the defendant/counsel and not to the prosecutor unless and until a special plea is filed
* **O.C.G.A. § 17-7-130.1 (Insanity at the time of the crime)**
  + At the trial of a criminal case in which the defendant intends to interpose the defense of insanity, evidence may be introduced to prove the defendant's sanity or insanity at the time at which he is alleged to have committed the offense charged in the indictment or information. When notice of an insanity defense is filed, the court shall appoint at least one psychiatrist or licensed psychologist to examine the defendant and to testify at the trial. This testimony shall follow the presentation of the evidence for the prosecution and for the defense, including testimony of any medical experts employed by the state or by the defense. The medical witnesses appointed by the court may be cross-examined by both the prosecution and the defense, and each side may introduce evidence in rebuttal to the testimony of such a medical witness.
    - In all honesty, appointing someone to evaluate the defendant for criminal responsibility is supposed to be triggered by notice of intent to present an insanity defense. But at least in Augusta, we do not usually require that initial filing which, of course, could be withdrawn if it is determined it is not supported by the evidence.
* Do you have any idea how many orders for mental evaluations are filed in an average year?
  + Have they increased or decreased during the COVID pandemic?
* Give us an idea of what goes into an evaluation – for example, the types of information that must be accumulated, the amount of time spent with the defendant by the evaluator, how a person in custody gets to see the evaluator vs. how a person on bond gets to the evaluator, etc.
  + How long does an evaluator meet with the defendant? Is there a minimum amount of time that is acceptable or does it depend upon the circumstances?
* How common is it for the Department to receive only an order for evaluation as to competency as opposed to an order for evaluation for both criminal responsibility and competency?
* Do you ever receive a request for evaluation as to intellectual disability?
* I have reviewed some of my orders and the reports I have received from the Department in preparation for this recording.
  + The reports frequently being with a section that is entitled “Notification of Rights.” What is the defendant told to begin the process?
  + If a defendant invokes his/her rights, does that make it impossible or more difficult to conduct a proper evaluation?
  + How often does the defendant’s lawyer appear with the defendant for the evaluation?
* The reports usually list the “Sources of Information” in the report. What information do you need from the judges/lawyers to help with your evaluation?
  + What other types of information are you hoping to have before the evaluation can be determined “solid?”
* Do you typically obtain medical records of the Defendant? How do you obtain that information?
* Can a proper evaluation be conducted without some of that information?
* If a defendant has been through the criminal justice system before, does that fact impact your evaluation?
  + What about the opposite? If the defendant has been previously evaluated by the Department – does that impact the evaluation?
* What factors typically define whether a defendant is competent to stand trial? (What is the standard?)
  + We often hear about the defendant’s ability to identify the “players” in the courtroom and their respective roles. Do you attempt to help the defendant understand those different roles or do you rely primarily on what the defendant tells you?
* We hear the phrase “malingering” or intentional attempts to be found incompetent. How do you go about discerning whether a defendant is truly incapable of understanding the proceedings vs. those who are attempting to “beat the system?”
* Turning to criminal responsibility – I would believe it is very difficult to determine a person’s state of mind on a prior date. I would imagine that the greater the passage of time between the incident and the evaluation, the more difficult that process can be. Is that even remotely correct?
* What is the standard you use for determining criminal responsibility?
* Can good, competent professionals reasonably disagree as to whether a defendant is criminally responsible? How about whether the defendant is competent to stand trial?
* How can judges help your Office within the Department?
* Is there a particular form that you would request that judges use for these evaluations? (I can only imagine the multiple different forms you receive from all of the different judges across Georgia).
* Recently we have conducted several different types of hearings with Department personnel via video conferencing. Tell our listeners about how much time that saves and how conducting video hearings allows your employees to do more each day.
* Dr. Bailey, as we wrap up our time together today, we would love to have you back in the future to discuss what happens if a defendant is found incompetent to stand trial or not guilty by reason of insanity. Have we so traumatized you today that you cannot see that happening our would you be willing?

Folks, we want to thank our guest today, Dr. Karen Bailey. The entire staff of the Forensic Services Office within DBHDD does an amazing and thankless job and we are all eternally thankful for their work.

*So many of the defendants in our court have demonstrated mental health issues and disabilities, the work of the Department in helping courts identify which defendants are incompetent as opposed to mentally challenged or mentally ill is truly invaluable. If you ever have the need for witnesses from the Department, please consider setting up video conferencing as it frees up whole days for the Department personnel to see patients, testify in other cases, etc.*

As we have noted, this episode was the product of requests made by our listeners. Please continue to help us help you by providing input and suggestions for episode topics at [goodjudgepod@gmail.com](mailto:goodjudgepod@gmail.com). You can visit our website, goodjudgepod.com for the episode notes from this and all other episodes.

*Again, thanks for listening to the Good Judge-Ment Podcast. [Tain’s special reminder]*