

## **§ 320.20 Psychiatrists, Psychologists**

### **§ 320.20.10 Type of Examinations**

Chapter 313 of Title 18 ([link is external](#)), as amended by the Insanity Defense Reform Act of 1984 (Chapter IV of the Comprehensive Crime Control Act of 1984), provides for court-directed psychiatric or psychological examination of individuals in connection with the various proceedings to determine mental condition authorized under that chapter. The functions of these separate proceedings are to determine:

- (a) the mental competency of a defendant to stand trial ([18 U.S.C. § 4241 \(link is external\)](#));
- (b) insanity at the time of the offense ([18 U.S.C. § 4242 \(link is external\)](#));
- (c) the mental condition of an acquitted person hospitalized following a finding of not guilty only by reason of insanity ([18 U.S.C. § 4243 \(link is external\)](#));
- (d) the present mental condition of a convicted defendant ([18 U.S.C. § 4244 \(link is external\)](#));
- (e) the present mental condition of an imprisoned person who objects to transfer to a treatment facility ([18 U.S.C. § 4245 \(link is external\)](#)); and
- (f) the present mental condition of a hospitalized person due for release ([18 U.S.C. § 4246 \(link is external\)](#)).

In addition, mental condition examinations may be conducted for purposes other than those specified in [18 U.S.C. chapter 313 \(link is external\)](#), e.g., to aid the defendant in preparing a defense.

### **§ 320.20.20 Source of Payment**

- (a) CJA funds are used to pay for psychiatric and related services obtained in accordance with [18 U.S.C. § 3006A\(e\) \(link is external\)](#) upon a determination that the services are "necessary for an adequate defense." These are "defense" services, where the defendant selects the expert and controls the disclosure of the expert's report.

(b) It is important to note that psychiatrists and related experts may be used in many circumstances in which payment is made from a source **other** than the CJA appropriation. In these situations the court or the government selects the expert and persons other than the defendant also have access to the expert's report. The Department of Justice (DOJ) generally pays for these "non-defense" services. The chart in § 320.20.60 summarizes payment responsibility for the various circumstances in which psychiatric and related services are utilized.

### **§ 320.20.30 Limitation of Amount**

The limitations contained in § 310.20 apply to compensation claims submitted by "defense" psychiatrists and related experts, to be paid out of the CJA appropriation. For information regarding "dual purpose" examinations, **see:** § 320.20.50.

### **§ 320.20.40 Procedures for Payment**

#### **(a) CJA Appropriation – Defense Services**

- (1) [Form CJA 21 \(Authorization and Voucher for Expert and Other Services\)](#) should be used for all payments for "defense" services in non-capital cases.
- (2) [Form CJA 31 \(Death Penalty Proceedings: \*Ex Parte\* Request for Authorization and Voucher for Expert and Other Services\)](#) should be used for all payments for "defense" services in death penalty cases.
- (3) The form CJA 21 or CJA 31 should clearly describe the purpose of the expert's service.
- (4) If separate vouchers are submitted for examination and testimony, they should be cross-referenced by voucher number.

#### **(b) DOJ**

Compensation claims for psychiatric and related services to be paid for by the DOJ should be referred to the U.S. attorney or assistant U.S. attorney.

### **§ 320.20.50 Dual Purpose Examinations**

(a) On occasion, a psychiatrist or related expert will be asked to examine an individual for both a "defense" purpose and a "non-defense" purpose. In these cases, the defense has waived the confidentiality of the "defense" portion of the examination. In such dual purpose examinations, for the convenience of the expert providing the service, the entire compensation claim may be


submitted on [Form CJA 21](#), or, in a death penalty proceeding, [Form CJA 31](#). The CJA will pay the expert the total amount approved and obtain reimbursement to the CJA appropriation from the DOJ for one-half of the cost. As a result of the AO's need to seek reimbursement from the DOJ, claims submitted for dual purpose examinations must be accompanied by separate court orders that indicate:


- who requested the examination;
- the specific purpose(s) of the examination;
- to whom the examination is directed; and
- to whom copies of the report are to be given.

(b) The limitation in [§ 320.20.30](#) applies to 50 percent of the claim for a dual purpose examination in which a portion of the examination is for "defense" purposes.

(c) In some "dual purpose" examinations both portions of the examination are chargeable to the same payment source. For instance, if the examination included evaluation of competency to stand trial under [18 U.S.C. § 4241 \(link is external\)](#) and evaluation of sanity at the time of the offense under [18 U.S.C. § 4242 \(link is external\)](#), the DOJ would be responsible for both portions of the examination and the entire compensation claim should be submitted to the U.S. attorney or assistant U.S. attorney.



**§ 320.20.60 SUMMARY CHART: RESPONSIBILITY FOR PAYMENT OF PSYCHIATRIC AND RELATED EXPERT SERVICES**

Type of Service	CJA	DOJ
<p>(a) To determine mental competency to stand trial, under <a href="#">18 U.S.C. § 4241</a> </p> <p>(1) Examination costs</p> <p>(2) Testimony costs for examiner if called at hearing</p> <p>(3) Testimony costs for examiner if called at trial</p>	<p>If witness appears on behalf of defense</p>	<p>Yes, regardless of which party requests, including examination on court's own motion</p> <p>Yes, regardless of which party calls</p> <p>If witness appears on behalf of government</p>

<p>(b) To determine existence of insanity at time of offense, under <a href="#">18 U.S.C. § 4242</a> </p> <p>(1) Examination costs</p> <p>(2) Testimony costs for examiner if called at trial</p>		<p>Yes</p> <p>Yes, regardless of which party calls</p>
<p>(c) To determine existence of insanity at time of offense, under CJA subsection (e)</p> <p>(1) Examination costs</p> <p>(2) Testimony costs for examiner if called at trial</p>	<p>Yes</p> <p>Yes</p>	

<p>(d) To determine mental condition of hospitalized person found not guilty only by reason of insanity, under <a href="#">18 U.S.C. § 4243</a> </p> <p>(1) Examination costs</p> <p>(2) Testimony costs for examiner if called at hearing</p>		<p>Yes</p> <p>Yes, regardless of which party calls</p>
<p>(e) To determine mental condition of convicted person suffering from mental disease or defect, under <a href="#">18 U.S.C. § 4244</a> </p> <p>(1) Examination costs</p> <p>(2) Testimony costs for examiner if called at hearing</p>		<p>Yes</p> <p>Yes, regardless of which party calls</p>

<p>(f) To determine mental condition of imprisoned person, under <a href="#">18 U.S.C. § 4245</a> </p> <p>(1) Examination costs</p> <p>(2) Testimony costs for examiner if called at hearing</p>		<p>Yes, including costs of additional examiner selected by imprisoned person in accordance with <a href="#">18 U.S.C. § 4247(b)</a> </p> <p>Yes, regardless of which party calls, including additional examiner selected by imprisoned person in accordance with <a href="#">18 U.S.C. § 4247(b)</a> </p>
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<p>(g) To determine mental condition of hospitalized person due for release, under <a href="#">18 U.S.C. § 4246</a> </p> <p>(1) Examination costs</p> <p>(2) Testimony costs for examiner if called at hearing</p>		<p>Yes, including costs of additional examiner selected by hospitalized person in accordance with <a href="#">18 U.S.C. § 4247(b)</a> </p> <p>Yes, regardless of which party calls, including additional examiner selected by hospitalized person in accordance with <a href="#">18 U.S.C. § 4247(b)</a> </p>
<p>(h) Examination of a person in custody as a material witness</p>		<p>Yes, under all circumstances</p>
<p>(i) Examination and testimony costs for expert witnesses not appointed under <a href="#">18 U.S.C. §§ 4241, 4242, 4243, 4244, 4245, 4246</a> </p>	<p>If requested by the defense</p>	<p>If requested by the government, or if appointed as an independent expert on court's own motion under <a href="#">Fed. R. Evid. 706</a> </p>