

# Competency and Restoration 101

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# Learning Objectives

~ Have a basic understanding of the mental health competency law and process in Idaho.

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~ Understand how to access and navigate the Idaho Statute, Title 18, Chapter 2.

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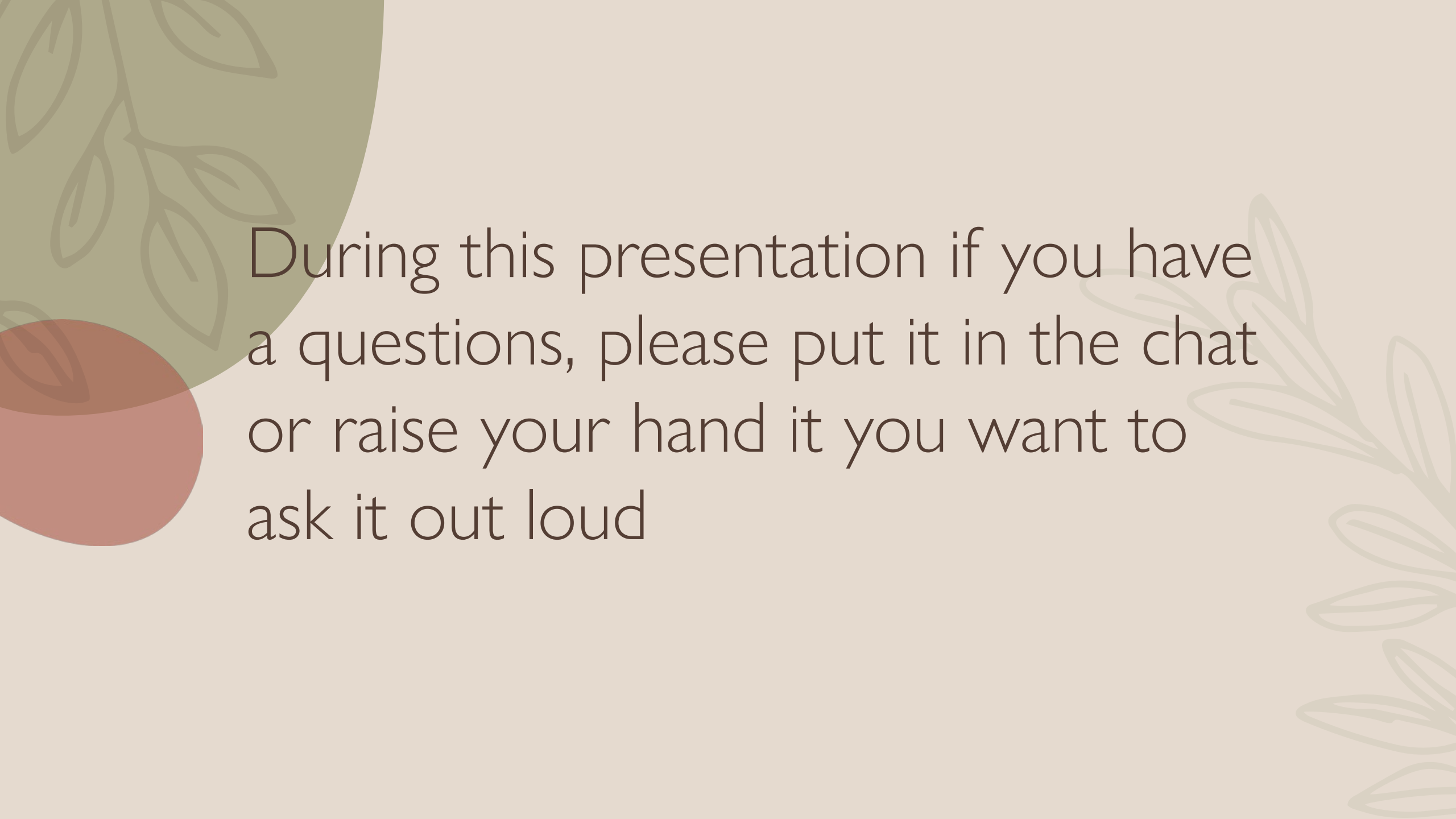
~ Understand competency criteria, evaluation process, and potential outcomes.

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~ Understand the competency restoration process.

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~ Understand the legal time frames for the competency and restoration process.



During this presentation if you have a questions, please put it in the chat or raise your hand if you want to ask it out loud

## Quick History

- The insanity defense was developed in England in 1843 and has evolved over the years.
- The assassination attempt on President Ronald Reagan on March 30, 1981, and the legal aftermath following the result of John Hinckley's trial had a dramatic effect on laws regarding the "not guilty by reason of insanity".
- In 1982, Idaho Code 18-207 was made into law outlining that a "mental condition shall not be a defense to any charge of criminal conduct".
- 4 states explicitly do not allow for the insanity defense; Kansas, Montana, Idaho, and Utah.

# Idaho Statute, Title 18, Chapter 2

- <https://legislature.idaho.gov/statutesrules/idstat/Title18/T18CH2/>

## Idaho Code 18-210. Lack of Capacity to Understand Proceedings – Delay of Trial.

No person who **as a result of mental disease or defect** lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures.

### ***Dusky v. United States* 362 U.S. 402 (1960)**

“whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding — and whether he has a rational as well as factual understanding of the proceedings against him”

# Dusky v United States

Mr. Milton Dusky was a divorced 33-year-old vet and had children, at least 1 child an adolescent son. He was residing in the state of Kansas. In March of 1958 he was treated for in a veteran's hospital. He had a diagnosis of schizophrenia and a long history of alcoholism. While in hospital his wife left him. After hospitalization he had a rented room but had been kicked out due to conflict with his landlord. He was homeless and sleeping in his car. On the night of August 18, 1958, he drank 32 oz of vodka and took tranquilizers. The following day he provided a ride to his son and his friends, they picked up a minor female the adolescent males knew. Mr. Dusky drove them across the state line to Missouri where two of the males raped her. Mr. Dusky was charged with attempted to rape of the minor female.

Mr. Dusky was sentenced to 45 years from for assisting in the kidnapping and rape of the minor female. Petition was made to overturn his conviction on the grounds he was not competent to stand trial at the time of the proceeding.

This case went to the Supreme Court and decision was made April 18, 1960 – this landmark case's court ruling was to be competent to stand trial a defendant must have a “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and a “rational as well as factual understanding of the proceedings against him.” Mr. Dusky was retried when found competent and sentenced to 20 years in prison.

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## Idaho Code 18-211. Examination of Defendant – Appointment of Psychiatrists and Licensed Psychologists – Hospitalization – Report.

- (1) Whenever there is reason to doubt the defendant's fitness to proceed... the court shall appoint at least one (1) qualified Psychiatrist or licensed Psychologist... to examine and report upon the mental conditions of the defendant to assist counsel with defense or understanding the proceedings. The appointed examiner shall also evaluate whether the defendant lacks capacity to make informed decisions about treatment.

Two prongs: Ability to understand proceedings; AND  
Ability to assist in defense of the case



# Question of competency

18-211 order any time during the adjudication process

How they are ordered:

Defense Attorney

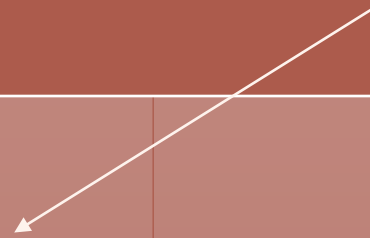
Judge Order without attorney appointed

# 18-211 Mental Health Process

Individual has criminal charges



Competency comes into question, court issues an 18-211 competency evaluation order



18-211 order is sent to generally DHW for assignment to a PhD for completion.



Evaluator gives opinion of competency and files report to the court

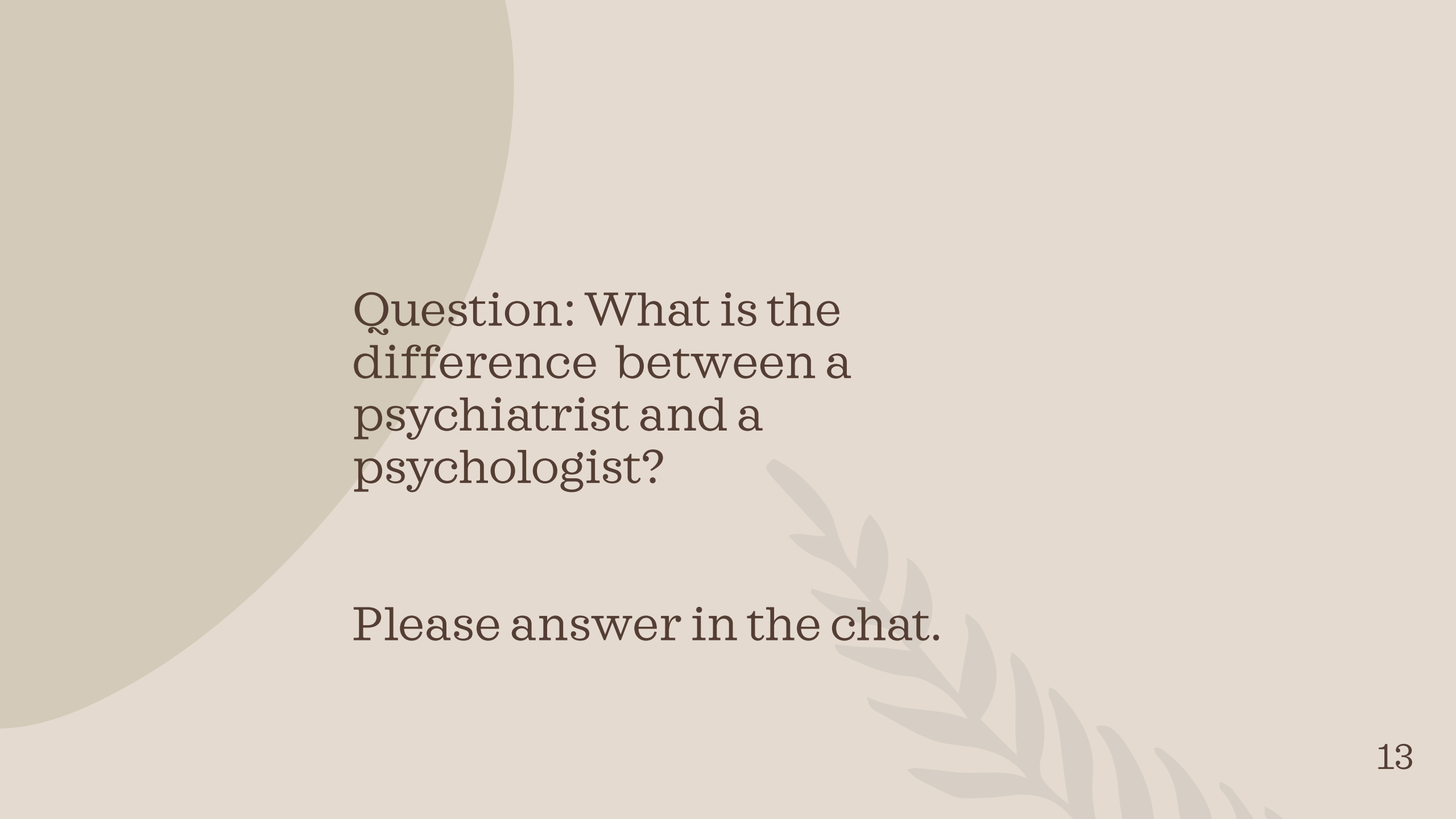
# DHW Role

- Assign PDH to complete 18-211 competency evaluation if court did not assign
- Track progress and completion of evaluation.
- Respond accordingly to court determination of competency.

# Qualifications of a Psychologist/Psychiatrist

Idaho does not have specific criteria or training for a psychologist or psychiatrist to complete competency evaluations. Code is vague identifying “qualified” with no definition of what that entails.

Professional ethics require individuals to practice within scope and training. Working under supervision, being trained, ongoing education.



Question: What is the difference between a psychiatrist and a psychologist?

Please answer in the chat.

# What's the Difference Between **Psychiatrists and Psychologists?**



## **PSYCHIATRISTS**

- "-iatry" refers to medical treatment
- Medical doctor
- Assess both mental and physical aspects of psychological problems
- Conduct and prescribe medical treatments



## **PSYCHOLOGISTS**

- "-ology" refers to the study of a topic
- Advanced degree
- Extensive training in research or clinical practice
- Specialize in psychological testing and evaluation

Currently  
Idaho  
Forensic  
Evaluators  
are  
Psychologist  
not  
Psychiatrist

# I.C. 18-212. Determination of Fitness of Defendant to Proceed – Suspension of Proceeding and Commitment of Defendant –

The Judge either rules to proceed with the case as usual; (fit to proceed) or the Judge will issue an 18-212 commitment order (not fit to proceed)



18-212 Commitment order to DHW



Typically, these individuals are incarcerated. If the individual is out of custody, they are encouraged to seek treatment at a local community MH hospital for inpatient treatment



Individual is seen by DHW clinician for mental health assessment and referred to State Hospital for competency restoration treatment

# ASSESSING COMPETENCY

Based on assessing Competency, 2022. Michael A Hill, MD  
UNC School of Medicine



# COMPETENCY

Legal concept; it refers to having the mental capacity to decide in accordance with one's goals, concerns and values.

Competency is absolute but specific. Either a person is or is not competent to make a particular decision.

Competency is fluid and can change over time.

# COMPETECNY

Decision making ability

Understanding – what is being discussed and who are the people in the room, options

Appreciation – the significance of the information – what to share and when to share it

Reason – apply to the current context, potential outcome and why choosing

# COMPETENCY

## Informed Consent

- Right to self determination
- Reasoned and rational choice
- Appropriate information
- Voluntary decision
- Can be yes or no answer
- Competent individuals are allowed to make foolish choices

## Consideration of 18-211 evaluator

# What is Mental Illness

Mental Illness – IDC 66-217(11) defines this as “Mental ill” means a condition resulting in a substantial disorder of thought, mood, perception or orientation that grossly impairs judgement, behavior, or capacity to recognize and adapt to reality and requires care and treatment at a facility or through outpatient treatment. However, the term “mentally ill” does not include conditions discussed in section 66-329(13).



# Diagnosis examples

- Psychiatric disorders that impair thinking and/or judgment
  - Reasoning influenced by depression, mania, severe anxiety, psychosis, delusional, PTSD
  - Other – disassociation disorder, fugue, catatonia

## What Mental illness is NOT by Idaho Code:

- Neurological Impairment
- Substance Abuse/Use
- Developmental Disability
- Medical Condition

# Neurological impairment

Identified in IDC 66-329(13) as: “Neurocognitive disorder” means decreased mental functioning due to a medical disease other than a psychiatric illness, including: Alzheimer’s disease; Frontotemporal lobar degeneration; Lewy body dementia; vascular dementia; Traumatic brain injury; Inappropriate use or abuse of substances or medications; infection with human immunodeficiency virus; Prion diseases; Parkinson’s disease; or Huntington’s disease.



# Substance Abuse/Use

Disqualified under Idaho Code 66-329(13)

National Institute of Mental Health (NIMH) identifies Substance use disorder as a treatable mental disorder that affects a person's brain and behavior, leading to their inability to control their use of substances like legal or illegal drugs, alcohol or medications.



# Developmental Disability

IDC 66-402 defines this as “Developmental disability” means a chronic disability of a person that appears before the age of twenty-two (22) AND:

(a) Is attributable to an impairment, such as intellectual disability, cerebral palsy, epilepsy, autism or other conditions found to be closely related to or similar to 1 of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairment; AND:

(b) Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care; receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; AND

(c) Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and individually planned and coordinated.

The above requires a 66-406 referral by evaluator and will undergo an evaluation by committee which includes a psychologist, medical doctor and IDHW developmental specialist.



# Medical Condition

STROKE

SEIZURE DISORDER

URINARY TRACK INFECTION

CANCER

VARIOUS MEDICAL CONDITIONS BUT IS NOT CONSIDERED  
MENTAL ILLNESS IN IDAHO



# ASSESSING COMPETENCY

Assessment Goals

Information Gathering

History

Collateral information

Establish current functioning

Establish baseline functioning

# Information Gathering

History – from individual – school, work,  
family mental illness

Collateral information – Records, family,  
jail, criminal history

Establishing understanding of  
Baseline functioning vs current functioning

# ASSESSING COMPETENCY

Determine cause of change

Determine extent of impairment

Meds – Treatment –

Restoration – Hospitalization

# Assessing Current Functioning

Clinical determination of mental illness or other concerns

Assessment tools and resources as the following:

MacCat-CA – The MacArthur Competency Assessment Tool –  
Criminal Adjudication

M-Fast – Miller Forensic Assessment of Symptoms

MoCA – Montreal Cognitive Assessment

The Columbia-suicide severity rating scale

V- Risk-10 – Violence Risk Screening 10

CAST MR – Competency assessment for Standing Trial with  
Defendants with Mental Retardation – validated instrument for  
individual with low IQ

ECST-R – Evaluation of Competency to Stand Trial – Revised

BPRS – Brief Psychiatric Rating Scale

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# Defendant Lacks Fitness to Proceed

(2) If the court determines that the defendant lacks fitness to proceed, the proceedings against him/her shall be suspended...

the court shall commit him/her to the custody of the director of the Department of Health and Welfare, for a period not exceeding ninety (90) days, for care and treatment at an appropriate facility of the Department of Health and Welfare...

# Additional Competency Commitments

66-406 – Developmentally Disabled – provided by a committee and treatment provided by Department of Health and Welfare’s Developmental Disability. Individuals with developmental disabilities can be committed under 18-212 if they have the cognitive ability at baseline to be competent. They can be treated at State Hospital if the lack of competency is due to mental illness.

66-1305 – Dangerous Mentally Ill – add on to a commitment for determination of identifying level of care recommended. Individual can be committed under this code both with civil commitment or criminal commitment. Court determination of need based on recommendation.



# Idaho Code 66-1305

Dangerous and mentally ill persons defined. For purposes of this chapter persons found to be both dangerous and mentally ill shall mean persons found by a court of competent jurisdiction pursuant to any lawful proceedings:

- (1) To be in such mental condition that they are in need of supervision, evaluation, treatment and care; AND
- (2) To present a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; AND
- (3) To be dangerous to such a degree that a maximum-security treatment setting is required.

# When is 1305 – Dangerously Mentally Ill – DMI considered

- History of violence
- Specials security in place
- Threats and posturing
- Acts of aggression during detainment
- Criminal history associated with violence
- Behaviors are causing fear with others
- Crime alone does not warrant 1305
- Needs more behavioral restraints than appropriate for hospital



Commitment for  
Treatment  
&  
Determination  
of Disposition

# Disposition

Where treatment occurs

IDOC commitment – IDOC facility – can be stepped down to  
DHW custody

DHW Commitment –  
Inpatient  
Community Hospital  
Community



## State Hospital South in Blackfoot, Idaho

- Established in 1883- Idaho was not a state
- 1953 population of 766 patients
- Pioneer in research for development of first major antipsychotic drug Thorazine
- New building in 1988 with 106 beds

State Hospital North, Orofino, Idaho

Established 1905

Started with 25 patients living in tents

This building built in 1994

2 units 55 beds





# Syringa Chalet

On campus of State Hospital South, Blackfoot, Idaho

State of Idaho skilled Nursing for civil committed patients to address geriatric needs of those needing a higher level of care.

Established in 1991 in one of the older building of SHS – 82-year-old building demolished, and this 48-bed facility built in 2019.



# Idaho Department of Corrections

- DMI- 1 female bed – segregated by own cell on unit



- DMI- 9 male beds segregated from general population on medical unit



# Competency Restoration Treatment Determination Least Restrictive Alternative

What is Least Restrictive Alternative – Where are needs met without needing higher level of treatment

## State Hospital

State Regional Area of Commitment

Adjusted based on conflict of interest or need

Community hospitalization – deemed appropriate with conjunction of hospital

Intermountain currently only hospital – admitting from West Hub

Other hospitals considering this example but not established at this time.

## Community Restoration

Released by courts when committed – misdemeanors and minor crimes

Appropriate functioning level based on least restrictive alternative

State Hospital refuses to admit

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# What does treatment look like?

Competency restoration curriculum

Individual and group session

Workbook material

Individualized medication plan

Therapeutic milieu with a variety of groups for those inpatient

Individualized case management/treatment planning

Assistance with setting up health care benefits

Assist with discharge planning from inpatient

# Possible Outcomes During the Initial 90 Days

1. **Fit- Criminal Case Resumes.** Transport back to county, “The order of commitment shall require the county sheriff to transport the defendant to and from the facility.”
2. **Unfit- and there is substantial probability the defendant will be fit to proceed within the foreseeable future:** Court may order continued commitment for 180 days. (90 + 180 = 270 days)
3. **Unfit- with no substantial probability the defendant will be fit to proceed within the foreseeable future:** Involuntary commitment proceedings shall be instituted pursuant to I.C. 66-329 in the court in which the criminal charge is pending. (Generally referred to unfit/unrestorable)

# 180-day Commitment

Restored to competency – Fit to proceed – criminal case moves forward with individual returning to county.

Or

Unfit - **with no substantial probability the defendant will be fit to proceed within the foreseeable future:** Involuntary commitment proceedings shall be instituted pursuant to I.C. 66-329 in the court in which the criminal charge is pending.

# Jackson V.

# Indiana

# 1972

Theon Jackson – 27-year-old male who was held without due process in Marion County, Indiana. Mr. Jackson deaf, non-verbal, could not read or write and limited ability to communication through sign language

Charged with 2 counts of robbery – of \$4 and \$5 in value.

Followed statue law and had evaluated by two psychiatrist.

Doctors concluded he was cognitively impaired and deemed incompetent to stand trial. He was then committed and committed to mental treatment until he could be deemed “sane”.

Attorney challenged - there was no evidence that he was not already sane and receiving a life sentence without a conviction of a crime.

Courts concluded “a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen or release the defendant. Furthermore, even if it is determined that the defendant probably soon will be able to stand trial, his continued commitment must be justified by progress toward that goal.”

# Unfit/Unrestorable

UNFIT - WITH NO SUBSTANTIAL PROBABILITY THE DEFENDANT WILL BE FIT TO PROCEED WITHIN THE FORESEEABLE FUTURE:

66-329 evaluation while under 18-212 commitment

Meets Criteria: Person is committed under civil code and criminal commitment terminated. Criminal charges can be dismissed, and charges are never pursued again, or charges could be pursued if ever deemed competent.

Does not meet Criteria: A person is not committed; the court determines next step. Case is generally dismissed; however, charges can be refiled if deemed competent in the future.

# Civil Commitment

If an individual meets civil commitment after deemed unfit/unrestorable they remain at SH until they are psychiatrically stable or reached maximum benefit of psychiatric hospitalization.

Next steps:

1. Discharge to the community when no longer meets civil commitment.
  - a. Return to community
  - b. Placement in a residential treatment facility
  - c. Placement into skilled nursing facility
  
2. Discharge when still meeting civil commitment.
  - a. Dispositioned to appropriate placement in the community with DHW oversight
  - b. Dispositioned to residential treatment facility
  - c. Dispositioned to Syringa – State of Idaho Skilled Nursing facility

# Criminal commitment has its limitations:

Make individuals participate in treatment (unless treatment override is granted)

Place individuals into substance abuse treatment

Send individuals out of state for treatment

Obtain guardianship of individuals or consent for medical treatment

Complete neurocognitive/medical testing

Restore competency for non-mental health issues





thank you

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# Sources

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