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National Institute of Justice | ***Policy Brief***

Competency to Stand Trial

The Problem

Although there is considerable case law distinguishing the legal concept of *insanity* from that of *incompetency* to stand trial, there is evidence that the two concepts are often confused by attorneys, judges, and mental health professionals. As a result, many defendants whose competency could be determined without recourse to costly hospitalization are unnecessarily committed to medical facilities for competency evaluations. When this occurs:

- the cost of prosecution is increased; and
- prosecution is delayed longer than necessary.

Experience in several states has shown that the competency evaluation process can be strengthened and streamlined.

Contents of This Brief

This Brief discusses several issues related to referrals of criminal defendants to mental health professionals for competency determinations. Specifically:

- Section I provides a brief background on the issues pertaining to competency evaluations.
- Section II presents key features of the governing statute and court rules, a two-step screening and evaluation process, and a method for referring defendants to the mental health system.
- Section III discusses the benefits to be derived from a revised competency evaluation system, and Section IV suggests how to begin the revision process.
- Section V contains a sample statute and court rules and sources of further information.

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I. INTRODUCTION

Until ten years ago, in many states, a defendant whose competency to stand trial was questioned could be, and often was, hospitalized indefinitely for psychiatric observation. Although recent Supreme Court decisions have made it necessary for states to develop workable procedures for assessing competency on a timely basis, no consensus yet exists on the most effective, efficient, and equitable means of examining defendants within the Supreme Court guidelines.

In Dusky v. United States, 362 U.S. 402 (1960), the United States Supreme Court promulgated the legal standard for determining a defendant's competency to stand trial. The Court held that the case may proceed to trial only if:

> ". . .(The defendant) has 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."

This standard has been adopted in every state, either through court decision or by legislation. The Dusky decision requires that, once a doubt is raised as to the defendant's competency to stand trial, the court must interrupt the proceedings pending resolution of the competency question. This generally entails referral of the defendant to a mental health professional for an evaluation, after which the court usually holds a hearing to decide the issue.* If the court finds the defendant competent, the trial may resume. If the defendant is found incompetent, he may be involuntarily hospitalized until he becomes competent or a determination is made that competency cannot be restored.**

*In Pate v. Robinson, 383 U.S. 375 (1966), the Supreme Court held that a formal hearing is mandatory whenever the "evidence raises a bona fide doubt as to the defendant's competence to stand trial."

**The disposition of "permanently incompetent" defendants is an unusually complex problem, beyond the scope of this Policy Brief. For explication of the issues, readers are referred to the American Bar Association's draft Criminal Justice Mental Health Standards.[1]

Historically, in most states, the periods of commitment, both for evaluation of the defendant's competency and for treatment to restore competency, were unlimited.[2] In its landmark decision in Jackson v. Indiana, 406 U.S. 715 (1972), the Supreme Court mandated a prompt initial competency assessment and established some limits on the length of time a defendant can be held after being found incompetent. Today, most states have set statutory time limits on the evaluation and treatment intervals in accordance with the Jackson decision.[3] Commonly, the evaluation must be completed within 30 to 60 days, during which the defendant may be hospitalized for observation, treatment, and testing. Although these intervals may appear reasonable, evidence suggests that the purpose of competency evaluation is unclear to many attorneys and mental health professionals, so that some number of defendants may be hospitalized unnecessarily.

In perhaps the most comprehensive study of forensic mental health evaluations to date, Keilitz's work for the National Institute for Mental Health[4] found the following deficiencies in the provision of competency evaluations:

- Statutes, court rules, and procedures manuals inadequately define the specific needs and goals of the competency evaluation process.
- Courts often fail to provide reasons for the evaluation request, such as examples of the defendant's speech or behavior.
- Courts often fail to screen out requests for evaluation which are not warranted by the facts and circumstances of the case.
- Criminal justice system personnel and mental health professionals may disagree as to the purpose of the evaluation.
- There are often lengthy delays between the request for evaluation and completion of the evaluation report.
- Resources for forensic evaluations are often allocated without consideration for cost-efficiency.
- Consistent procedures for screening and evaluation of allegedly incompetent defendants do not exist in many states.

These organizational and conceptual deficiencies can impede the delivery of effective, efficient, and equitable services. Often, they lead to unnecessary hospitalization and delay of trial proceedings.

Overreliance on involuntary hospitalization for competency evaluations has several important ramifications. One is clearly cost: a 1978 study in Massachusetts reported per diem costs of $68.36 at a state mental health facility, compared to $17 at the county jail.[5]

The less apparent consequences of commitment for competency evaluation are no less significant, however. Some researchers have suggested that the referral for competency evaluation often serves as a vehicle for accomplishing other objectives unrelated to determining the defendant's competency to stand trial.[6,7] Examples of such secondary purposes include getting further background information on the client for plea bargaining purposes,[8] determining the viability of a plea of insanity (without explicitly raising the insanity issue), delaying the trial process for tactical advantages or to encourage a plea bargain,[9] and securing short-term, pretrial detention.[5] In addition, some researchers have found a direct correlation between the decline of involuntary civil commitments* associated with the deinstitutionalization movement in the mental health field, and an increase in involuntary hospitalizations for competency evaluations or treatment.[10] In Wisconsin, for example, incompetency commitments rose 42 percent in 1977, the year following a legislative change tightening civil commitment requirements.[11]

Whether these alternative purposes for inpatient competency evaluations are accomplished intentionally or inadvertently cannot be determined. Studies suggest, however, that there is a persistent problem in distinguishing between the concepts of competency to stand trial and legal insanity.[9] From a legal perspective, they are quite distinct: insanity is an affirmative defense at trial, whereas competency pertains only to the defendant's constitutional right to participate meaningfully in his or her own trial. Competency to stand trial has no bearing on guilt or innocence.

From a mental health perspective, there is evidence that the concepts of competency and insanity are often blurred. One researcher found that the two concepts had been so thoroughly confused by mental health evaluators as to render their reports to the court "empty and meaningless."[12] The American Bar Association explains the differences between mental illness and incompetency quite succinctly in its Tentative Draft Standards:[1]

> If a defendant is capable of meeting the articulated requirements for competency, the presence or absence of mental illness is irrelevant. Conversely, a defendant may not be mentally ill, yet may be incompetent to stand trial.

An example of a mentally ill person who could be found competent to stand trial would be an amnesiac whose memory loss predates the criminal incident in question.

So long as the purposes of the competency evaluation remain unclear, the courts and mental health examiners may continue to work at cross-purposes, the former striving to assure the defendant's due process rights and the latter attempting to diagnose and treat mental illness. The need to clarify the purpose of the competency evaluation and the respective roles of all involved parties is compelling.

This Policy Brief focuses on two questions: (1) How may legislatures provide guidance to ensure compliance with the legal standards for competency determinations set by the Supreme Court? and (2) How may mental health professionals properly fufill the evaluation role without unnecessarily hospitalizing the defendant or unduly delaying the trial process?

II. KEY STATUTORY AND PROGRAMMATIC FEATURES

Several jurisdictions have succeeded in instituting focused and coordinated competency evaluation processes. These processes have three characteristics which must be considered fundamental: (1) statutes that clearly spell out the goals and objectives of the evaluation process; (2) a screening mechanism that allows prompt identification of defendants who are clearly competent; and (3) a re-

*Involuntary civil commitment is the legal process whereby an individual deemed mentally disturbed and dangerous to self or others is restrained in a mental health facility. It is not necessary to commit a criminal act to become subject to involuntary civil commitment proceedings.

ferral process that attempts to ensure that competency evaluations will be speedy and responsive to the court's needs. The remainder of the Policy Brief considers each of these basic elements.

Key Legal Elements

Most states have not adopted statutes or court rules that specify the format of competency examination conforming to Dusky standards. (see p.1) One state that has is Florida,[15] whose statute[16] and accompanying court rules[17] were created in 1980. The court rules seek to curtail the use of competency evaluations for purposes other than assessing the defendant's fitness to stand trial. They also ensure that sufficient information is provided to the evaluators, who must make a report and possibly testify as to the defendant's competency. Specifically, the Florida Rules of Criminal Procedure require:

- that, if the motion for competency evaluation is made by defense counsel, counsel must certify the motion is made in good faith and on reasonable grounds, and recite specific observations and statements of the defendant that form the basis for the motion.
- that the motion include arrest reports which contain information regarding the defendant's alleged incompetency.
- that expert evaluators be appointed and an order be entered immediately setting a time for a hearing to determine the defendant's mental condition, to be held no later than 20 days after the motion is filed.

In addition, the rules set forth the grounds upon which a defendant may be found incompetent to stand trial. The evaluator must consider and analyze the defendant's mental condition as it affects each of the following criteria:

(i) appreciation of the charges;

(ii) appreciation of the range and nature of possible penalties;

(iii) understanding of the adversary nature of the legal process;

(iv) capacity to disclose to attorney pertinent facts surrounding the alleged offense;

(v) ability to relate to attorney;

(vi) ability to assist attorney in planning defense;

(vii) capacity to realistically challenge prosecution witnesses;

(viii) ability to manifest appropriate courtroom behavior;

(ix) capacity to testify relevantly;

(x) self-helping motivation in the legal process; and

(xi) capacity to cope with the stress of incarceration prior to trial.

These criteria, drawn directly from the Competency Assessment Instrument developed by A. L. McGarry of the Harvard Laboratory of Community Psychiatry, were cited in the American Bar Association's draft standards regarding the determination of incompetency to stand trial.[1]

Finally, the Florida rules specify the conditions under which a defendant may be held for an extended period of time if found incompetent. Under this rule, the examining experts must consider and include in their report an analysis of the following factors:

(i) The nature and extent of the mental illness or mental retardation suffered by the defendant;

(ii) Whether the defendant, because of such mental illness or mental retardation, meets the criteria for involuntary hospitalization or placement set forth by law;

(iii) Whether there is a substantial probability that the defendant will attain competency to stand trial within the foreseeable future;

(iv) The nature of the care and treatment to be afforded the defendant and its probable duration;

(v) Alternatives other than involuntary hospitalization which might be less restrictive on the defendant's liberty.

The full text of Florida's statute and court rules is contained in the Appendix.

These legal guidelines provide the mental health professional with a task that is neither ambiguous nor without sufficient factual information to perform the tests required by the courts.

Key Structural Features

Most states' procedures for determining competency can be characterized in one of three ways: inpatient assessment only, outpatient screening with inpatient assessment, or outpatient screening with outpatient assessment. These options are graphically portrayed in Figure 1 on the next page. On the figure, the dotted line separates the criminal justice and mental health systems; arrows demonstrate movement within and between the two systems. The upper case letters signify defendants at various stages of the competency evaluation process.

Historically, all forensic mental health services were provided by state-operated, centralized hospitals. In most states, competency examinations were routinely conducted on an inpatient basis (Option I). The advantage of a central facility is that examinations are conducted by forensic specialists who understand the needs of the criminal justice system and whose reports will be based on consistent standards. The principal disadvantage is cost.[1]

In recent years, however, there has been a movement away from sole reliance on centralized facilities, for several reasons:

- the movement toward community mental health centers has finally reached the area of forensics;
- there have been lawsuits exposing inhumane conditions in maximum security units;
- other lawsuits, citing the "least restrictive environment" doctrine, have prompted states to reconsider the actual need for maximum security for competency evaluation purposes; and
- outpatient alternatives are perceived to be less costly than inpatient evaluations.[18]

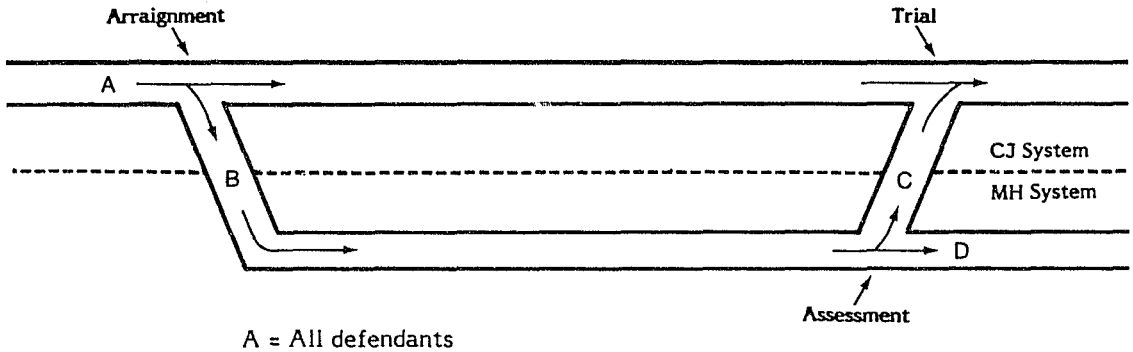
In this vein, many states have adopted a two-step, screening/evaluation process in which a quick interview serves to weed out those defendants who are obviously competent. If the screener is not convinced of the defendant's competency, the defendant is referred for inpatient evaluation (Option II), or for outpatient evaluation at a local mental health facility (Option III). In Massachusetts, for example, an "Option II" state, the applicable statute requires all defendants alleged to be incompetent to stand trial to be screened at the time the question is raised.[19] The screening takes place in a court clinic staffed by psychiatrists, psychologists, and/or social workers. Those defendants whose competence remains doubtful are referred to a state-operated mental hospital. Unfortunately, Schreiber has found the screening phase in Massachusetts to be relatively ineffective: three-fourths of the defendants are still referred for inpatient evaluation, and three-fourths of those defendants are ultimately found competent and returned for trial.[14] In contrast, the Medical Office of the Supreme Bench in Baltimore also screens defendants who are referred for competency evaluations, but only 30 percent are hospitalized for in-depth examination.[4] Thus, with an effective screening mechanism, Option II retains the advantages of specialization and standardization while reducing costs substantially by minimizing the need for inpatient evaluation.

Elsewhere, in "Option III" states such as Tennessee, Ohio, and Michigan, most defendants are evaluated on an outpatient basis (unless denied pretrial release for other reasons), with commitment only after incompetency is established. In Michigan, for example, all defendants* whose competency to stand trial is questioned are evaluated at a central facility on an outpatient basis. The required interviews are conducted in a single visit, after which the defendant is released, either on bond or to the sheriff if in custody. This option has the greatest potential for reducing costs. It also expedites the adjudication process. Unless the local facility houses a special forensic unit or specially trained clinicians, however, there may be misunderstandings about the purpose and format of the

*With the exception of defendants in the City of Detroit, where there is a court clinic.

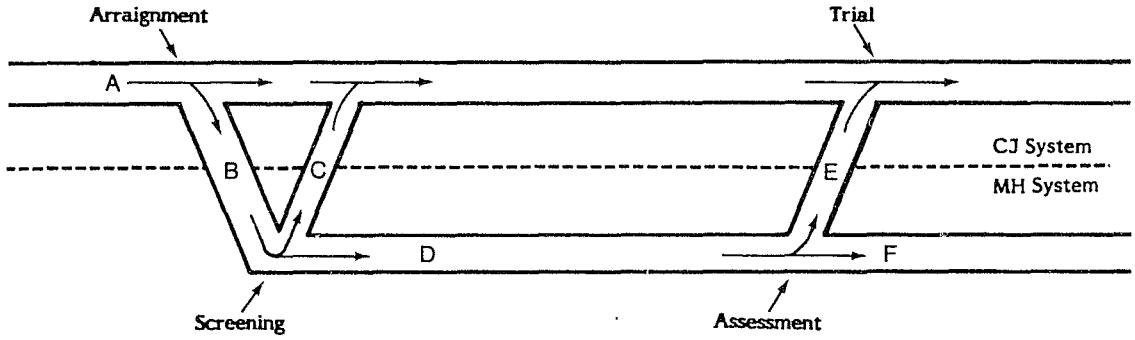
Figure 1

THREE APPROACHES TO COMPETENCY EVALUATIONS*



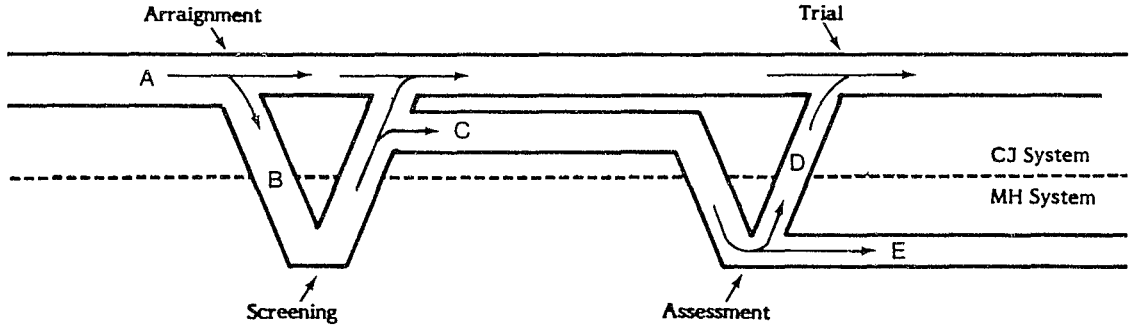
A = All defendants
B = Defendants referred by court to assessor
C = Defendants found competent
D = Defendants found incompetent

Option I: INPATIENT ASSESSMENT WITH NO SCREENING



A = All defendants
B = Defendants referred by court for competency examination
C = Defendants found competent by screeners
D = Defendants referred for assessment
E = Defendants found competent by assessors
F = Defendants found incompetent

Option II: OUTPATIENT SCREENING WITH INPATIENT ASSESSMENT



A = All defendants
B = Defendants referred by court to screener
C = Defendants referred by screener to assessor
D = Defendants found competent by assessor
E = Defendants found incompetent by assessor

Option III: OUTPATIENT SCREENING WITH OUTPATIENT ASSESSMENT

*Prepared by Jan Schreiber, Social Science Research Institute, formerly with Abt Associates Inc.

assessment. Such misunderstandings may underlie the serious underutilization of outpatient assessments in St. Louis, Missouri. There, only about one-eighth of the local mental health center's competency evaluation caseload receive outpatient examinations; the remainder are referred for inpatient evaluation, which entails an average stay of 21 days, and for which there is a three to four week waiting period. Still, an effort to increase the use of outpatient services failed, largely because defense attorneys believed their clients' needs were "not fully served."[4]

Although a few states still rely solely on inpatient evaluation, the trend is toward greater use of screening techniques and outpatient assessments at community mental health facilities.[20] And at least one evaluation has found that brief, outpatient assessments are as effective in determining competency as a three-week inpatient examination.[14]

Key Programmatic Features[21]

Keilitz provides an operational definition of forensic mental health screening and evaluation which fits well into the type of legal definition provided above. It is stated as follows:

> Screening and evaluation is the process conducted by mental health personnel, at the direction of criminal justice authorities, for the purposes of delineating, acquiring, and providing information about the mental condition of client-offenders that is useful for decision-making in the criminal justice system.

As defined by Keilitz, there are three distinct phases in the process of obtaining mental health evaluations of criminal defendants. Each is considered below.

Requesting a Competency Evaluation.
How to specify the information to be recorded by forensic mental health officials is only in part provided by the legal framework. It involves further defining the psycholegal questions in each case and thereby delimits the scope of the screening and evaluation process. Clear and precise statutory definitions give mental health professionals direction and a set of expectations. Beyond that, however, is the necessity of a clear referral request from the courts. The written motion and order for the evaluation must set forth adequate facts and reasons for the referral, so that the mental health professional will know precisely what must be considered. Keilitz elaborates on four aspects of the referral process:

- At a minimum, the referral request should contain (a) a statement of the specific behaviors and events which led to the request, and (b) a statement as to how those events and behaviors related to the issue of competency to stand trial.

- Formal, written motions, orders, and supporting documents containing the basis and rationale for the requested examination should be submitted to the evaluators prior to the defendant's arrival for examination.

- Once the request has been received, the defendant becomes a client of the mental health facility. The facility should acknowledge receipt of the request and the client's arrival. This notice signifies that the evaluation process has been initiated and should set a date when the process may reasonably be completed.

- In addition to documents transmitted with the referral request, the mental health facility should obtain copies of warrants, indictments, criminal complaints, police reports, medical and psychological records, statements by the defendant and witnesses, copies of presentence reports, and transcripts of hearings. Before engaging in a large-scale review, these materials should be pre-screened to make certain of their relevance to the precise question contained in the evaluation request.

These steps are designed to improve the communication between criminal justice officials and mental health personnel, and to narrow the scope of the referral for evaluation.

Gathering Data. In the second phase of Keilitz's model process, the evaluators gather data about the defendant's mental condition. Clinical interviews and psychological testing are often used, coupled with information obtained through the defendant's social history, medical examinations, and other sources. Some researchers have proposed methods and procedures for screening and evaluation, but no consensus has been reached as to even the minimum criteria for such methods.[22] Keilitz, however, offers a systematic approach to acquiring the necessary information and data, as follows:

- Following the guidelines established by recent case law[23] and the ethical procedures developed by professional associations, the defendant should be warned that:

  — the goal of the examination is not treatment;

  — the examiner is not the defendant's physician--the doctor/patient privilege does not apply;

  -- the purpose of the examination is to determine the defendant's competency to stand trial;

  -- the information obtained will be submitted to the court; and

  — full disclosure of the information obtained from the process can affect the outcome of the case.

- Evaluators should review thoroughly all materials collected in support of the referral request.

- The evaluation itself typically consists of personal interviews, psychological testing, social assessments, and other inquiries. A strong case may be made for the use of standardized testing procedures, although some researchers believe that such procedures may not be feasible in all contexts. Nevertheless, standardized tests have been found useful to some degree in at least four states (Tennessee, Ohio, North Carolina, and West Virginia).[3]

- Finally, the evaluators should synthesize their findings and formulate a psycholegal opinion. This step links the results of the mental health examination and investigation to the facts of the case and the law.

This phase of the process emphasizes a speedy, accurate, and fairly standard interview and testing approach. It also reinforces the point that the competency evaluation is not to be confused with treating an alleged mental illness.[1] Rather, it is a diagnostic process, and an opinion based upon that concept is intended to satisfy the needs of the criminal justice system.

Submitting a Report. Especially in controversial cases, the final phase, in which the evaluators' findings are submitted to the court, is the most visible aspect of the competency screening and evaluation process because the mental health professional may be asked to testify in further court hearings on the question. As McGarry and Curran[24] point out, however, the testimony is, or should be, based upon the written report as well as all of the materials and information that contributed to it. There are three important aspects of this final phase:

- The report should naturally be responsive to the initial request for the competency evaluation. Practical guidelines for preparing reports have been outlined elsewhere.[3]

  Keilitz does not recommend the use of standard forms for the report, but suggests considering the following criteria:

  -- The findings can be conveyed by means of a written report, formal messages, expert testimony, or some combination. Most likely, the format and length will comport with the expectations of the source of referral.

  -- The report should be legally non-conclusory, understandable, and useful to the referral agent.

  -- The contents of the report should meet confidentiality requirements.

  -- The report should appropriately identify the examiners and their qualifications.

- Most state statutes specify how, when, and to whom the report is to be communicated. Even so, Keilitz recommends that expectations with regard to the report's format, contents, and deadline requirements be defined by the referral agent when the initial request is made.

- Periodic assessments of the competency referral and evaluation process can help to increase efficiency and effectiveness. This responsibility should be shared by the criminal justice personnel who request competency evaluations and the mental health personnel who provide them.

In this way, the mental health professional can best assist the court by providing an opinion both congruent with the court's expectations and informa-

tive for purposes of determining the defendant's competency to stand trial.

III. BENEFITS

Many jurisdictions have already adopted one or more of the proposed recommendations for reform in the competency evaluation process. Others may be at various stages of decision-making or implementation. For those that have not yet instituted reform in this area, this section recapitulates the benefits to be gained.

Clarification of the purpose and expected outcome of the competency evaluation. Such clarification should be expressed both in the statute providing for competency assessments and in the court rules which direct their implementation. The Florida statute, contained in the appendix, considers virtually every procedural option available to the courts, the prosecution, the defense, and law enforcement authorities for raising the issue of a defendant's competency to stand trial. The court rules, also contained in the appendix, establish clear expectations as to how the process will move, once the issue is raised. In addition, the statute and rules provide specific procedures for appointing expert evaluators and a time frame for completing the evaluation and submitting the report. Finally, the rules establish the defendant's right to counsel throughout the competency evaluation proceedings, the type of hearing which may be held upon completion of the evaluation, and what the court may do under the circumstances of each case. Similar guidance may be found in the ABA's Tentative Draft Standards and supporting memoranda.

More expeditious caseflow, because an effective preliminary screening interview, conducted within the courthouse itself, can resolve most competency questions. The vast majority of defendants are ultimately found competent, but in many locations this determination is not made until after some period of involuntary hospitalization. If the screening process can be upgraded to allow competency decisions to be made with a greater degree of confidence, these defendants can be returned for trial with little delay.

Reduced cost to the criminal justice system, as fewer defendants are hospitalized for in-depth examination. Most defendants can be evaluated on an outpatient basis by local mental health facilities with specially trained clinical staff. Only the most disturbed defendants require hospitalization for purposes of the competency evaluation.

A consistent approach to the evaluation process itself. Following guidelines set forth in legislation and court rules, legal and mental health professionals can devise a standard procedure for referring defendants, assessing their competence, and reporting the results of these evaluations. The process suggested by Keilitz offers a useful model.

IV. AGENDA FOR ACTION

Analyzing the Legal Needs

Existing legislation and court rules must be reviewed to determine whether they set forth sufficient direction and a clear procedure to be implemented when the question of a defendant's competency is raised. Legislation and court rules should include the following elements:

- A clear statement of the appropriate legal standards for determining competency under relevant United States Supreme Court and state court case law.
- A mechanism for pre-evaluation screening in order to weed out those defendants who are clearly competent.
- When the need for further evaluation is determined, a procedure which sets forth the precise facts supporting the defendant's alleged incompetence, and which requires a court order delineating the areas of inquiry and defining the psycholegal question(s) for the evaluators.
- Deadlines for completing the evaluation, submitting the report, and setting the date of the competency court hearing, at which the evaluators may be called upon to testify.

Legislators also should attempt to define the dispositional alternatives open to the court if the defendant is found permanently incompetent. Again, readers are referred to the ABA's Tentative Draft Standards[1] for guidance in this area.

Both criminal justice and mental health professionals should be consulted to identify the multiple purposes currently being served by the competency

evaluation process. Before revising competency evaluation statutes, policymakers should specifically review existing laws governing civil commitment, as changes in either system will have repercussions for the other.

Devising the Structure

Mental health professionals and court officials should seek to develop community-based forensic mental health facilities throughout the state to screen and evaluate allegedly incompetent defendants. Where caseload permits, a court clinic or field office in the courthouse should be considered as a means of providing a quick assessment that should suffice for most defendants. Clinicians who will be conducting the examinations should receive training to ensure that they understand the distinction between competency to stand trial and mental illness. In Tennessee, for example, where the Forensic Services Section of the state Department of Mental Health and Mental Retardation controls the funding of community mental health centers throughout the state, state-sponsored training ensured that competency screening and evaluation would be conducted in a fairly uniform and consistent fashion across jurisdictions. This training included endorsement of a specific interview instrument that is now utilized for all competency examinations.[3] Readers are encouraged to contact state Forensic Services Directors (in Tennessee, Ohio, and Michigan, for example) for details on alternative ways to implement an outpatient screening mechanism.

Establishing the Process

The model process developed by Keilitz offers a useful framework for integrating both flexibility and stability in the procedures for making referrals, examining defendants, and submitting findings. Criminal justice and mental health professionals must work together to ensure that the courts provide mental health evaluators with the information they need so that they, in turn, will supply the court with satisfactory answers to the competency question.

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FLORIDA STATUTES
CHAPTER 916
MENTALLY ILL DEFICIENT AND
MENTALLY ILL DEFENDANTS

916.11 Appointment of experts

(1) The court may appoint no more than three nor fewer than two experts to determine issues of the mental condition of a defendant in a criminal case, including the issues of competency to stand trial, insanity, and involuntary hospitalization or placement. The panel of experts may evaluate the defendant in jail or in another appropriate local facility.

(2) To the extent possible, at least one of the appointed experts shall be either a state-employed psychiatrist, psychologist, or physician if in the local vicinity; a psychiatrist, psychologist, or physician as designated by the district mental health board; or a community mental health center psychiatrist, psychologist, or physician.

(3) Expert witnesses appointed by the court to determine the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as witnesses, which shall be paid by the county in which the indictment was found or the information or affidavit was filed. State employees shall be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case.

916.12 Mental competence to stand trial

(1) A person is incompetent to stand trial within the meaning of this chapter if he does not have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding or if he has no rational, as well as factual, understanding of the proceedings against him.

(2) A defendant who, because of psychotropic medication, is able to understand the nature of proceedings and assist in his defense shall not automatically be deemed incompetent to stand trial simply because his satisfactory mental functioning is dependent upon such medication. As used in this subsection, "psychotropic medication" means any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods or emotions and includes antipsychotic, antidepressant, antimanic, and anti-anxiety drugs.

916.13 Hospitalization of defendant adjudicated incompetent to stand trial

(1) Every person adjudicated incompetent to stand trial and found to meet the criteria for involuntary hospitalization or placement shall be admitted for hospitalization and treatment in accordance with the provisions of this section and the applicable Rules of Criminal Procedure. The Department of Health and Rehabilitative Services shall admit a defendant so adjudicated to an appropriate facility for hospitalization and treatment and may retain and treat the defendant. No later than 6 months after the date of admission or at the end of any period of extended hospitalization or at any time the administrator shall have determined that the defendant has regained competency to stand trial or no longer meets the criteria for continued hospitalization or placement, the administrator shall file a report with the court pursuant to the applicable Rules of Criminal Procedure.

(2) Any adjudication of incompetency to stand trial shall not operate as an adjudication of incompetency to give informed consent for medical treatment or for any other purpose unless specifically set forth in the court order.

916.14 Statute of limitations; former jeopardy

The statute of limitations shall not be applicable to criminal charges dismissed because of the incompetency of the defendant to stand trial. If a defendant is declared incompetent to stand trial during trial and afterwards is declared competent to stand trial, his other, uncompleted trial shall not constitute former jeopardy.

916.16 Jurisdiction of committing court

The committing court shall retain jurisdiction in the case of any patient hospitalized pursuant to this chapter. No person hospitalized pursuant to this chapter shall be released except by order of the

committing court. The administrative hearing examiner shall have no jurisdiction to determine issues of continuing hospitalization or release of any person admitted pursuant to this chapter.

916.17 Conditional release

(1) The committing court may order a conditional release of any defendant who has been committed according to a finding of incompetency to stand trial or an adjudication of not guilty by reason of insanity, based on an approved plan for providing appropriate outpatient care and treatment. At such time as the administrator shall determine outpatient treatment of the defendant to be appropriate, he may file with the court, with copies to all parties, a written plan for outpatient treatment, including recommendations from qualified professionals. Such a plan may be submitted by the defendant. The plan shall include:

(a) Special provisions for residential care or adequate supervision of the defendant.

(b) Provisions for outpatient mental health services.

(c) If appropriate, recommendations for auxiliary services such as vocational training, educational services, or special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of the release and progress in treatment, with copies to all parties.

(2) If at any time it appears that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court may, after a hearing, modify the release conditions or order that the defendant be returned to the Department of Health and Rehabilitative Services for further treatment.

(3) If at any time it is determined after a hearing that the defendant no longer requires court-supervised follow-up care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

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RULES OF CRIMINAL PROCEDURE

Rule 3.210 Competence to Stand Trial: Procedure for Raising the Issue

(a) A person accused of a crime who is mentally incompetent to stand trial shall not be proceeded against while he is incompetent.

(b) If before or during the trial the court of its own motion, or upon motion of counsel for the defendant or for the State, has reasonable ground to believe that the defendant is not mentally competent to stand trial, the court shall immediately enter its order setting a time for a hearing to determine the defendant's mental condition, which shall be held no later than 20 days after the date of the filing of the motion, and shall order the defendant to be examined by no more than three nor fewer than two experts prior to the date of said hearing. Attorneys for the State and the defendant may be present at the examination.

(1) A written motion for such examination made by counsel for the defendant shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the defendant is incompetent to stand trial. To the extent that it does not invade the lawyer-client privilege, the motion shall contain a recital of the specific observations of and conversations with the defendant which have formed the basis for such motion.

(2) A written motion for such examination made by counsel for the State shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the defendant is incompetent to stand trial, and shall include a recital of the specific facts which have formed the basis for such motion, including a recitation of the observations of and statements of the defendant which have caused the State to file such motion.

(3) If the defendant has been released from custody on a pre-trial release provision, the court may order the defendant to appear at a designated

place for evaluation at a specific time as a condition of such release provision. If the court determines that the defendant will not submit to the evaluation provided for herein or that the defendant is not likely to appear for the scheduled evaluation, the court may order the defendant taken into custody, if he is not already in custody, until the determination of his competency. A motion made for evaluation under this subsection shall not otherwise affect the defendant's right to pre-trial release.

Rule 3.211. Competence to Stand Trial: Examination and Report

Upon appointment by the court, the experts shall, prior to the hearing, examine the defendant with respect to the issue of competency to stand trial, and shall report to the court, in writing, at such time as shall be specified by the court, with copies to attorneys for the State and the defense, setting forth the results of such examination. If the court determines that there is reason to believe that the defendant may require involuntary hospitalization the court shall also order the experts to include in their report a report on issues of involuntary hospitalization. The experts shall consider the following issues, each of which shall be specifically addressed in the report:

(a) Whether the defendant meets the statutory criteria for competence to stand trial, that is, whether the defendant 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.

(1) In considering the issue of competence to stand trial, the examining experts should consider and include in their report, but are not limited to, an analysis of the mental condition of the defendant as it affects each of the following factors:

(i) Defendant's appreciation of the charges;

(ii) Defendant's appreciation of the range and nature of possible penalties;

(iii) Defendant's understanding of the adversary nature of the legal process;

(iv) Defendant's capacity to disclose to attorney pertinent facts surrounding the alleged offense;

(v) Defendant's ability to relate to attorney;

(vi) Defendant's ability to assist attorney in planning defense;

(vii) Defendant's capacity to realistically challenge prosecution witnesses;

(viii) Defendant's ability to manifest appropriate courtroom behavior;

(ix) Defendant's capacity to testify relevantly;

(x) Defendant's motivation to help himself in the legal process;

(xi) Defendant's capacity to cope with the stress of incarceration prior to trial.

(b) If ordered by the court to report on the issues of involuntary hospitalization, the experts shall then consider whether the defendant meets the criteria for involuntary hospitalization set forth by law.

(1) In determining the issue of involuntary hospitalization, the examining experts shall consider and include in their report an analysis of the following factors:

(i) The nature and extent of the mental illness or mental retardation suffered by the defendant;

(ii) Whether the defendant, because of such mental illness or mental retardation, meets the criteria for involuntary hospitalization or placement set forth by law;

(iii) Whether there is a substantial probability that the defendant will attain competence to stand trial within the foreseeable future;

(iv) The nature of the care and treatment to be afforded the defendant and its probable duration;

(v) Alternatives other than involuntary hospitalization which might be less restrictive on the defendant's liberty.

(c) If a notice of intent to rely on the defense of insanity has been filed, or when ordered by the court, the experts shall report on the issue of the defendant's sanity at the time of the offense.

(d) The court shall require such report to be on a standardized form if such form has been approved by the chief judge of the circuit.

(e) The information contained in any motion by the defendant for determination of competency or in any report of experts filed under this section insofar as such report relates to the issues of competency to stand trial and involuntary hospitalization, and any information elicited during a hearing on competency or involuntary hospitalization held pursuant to this Rule, shall be used only in determining the mental competency to stand trial of the defendant or the involuntary hospitalization of the defendant.

The defendant may waive this provision by using the report or parts thereof for any other purpose. If a part of the report is used by the defendant, the State may request the production of any other portion of that report which in fairness ought to be considered. Cf. section 90.108, Florida Statutes (1976), Rule 1.330(6) Florida Rules Civil Procedure.

Rule 3.212 Competence to Stand Trial: Hearing and Disposition

The experts preparing the reports may be called by either party or the court, and additional evidence may be introduced by either party. The experts appointed by the court shall be deemed court witnesses whether called by the court or either party and may be examined as such by either party.

(a) The court shall first consider the issue of the defendant's competence to stand trial. If the court finds the defendant competent to stand trial, the court shall enter its order so finding and shall proceed to trial.

(b) If, at the hearing, the court determines that the defendant is not mentally competent to stand trial, the court shall consider the issue of involuntary hospitalization of the defendant if examination into that issue has been previously ordered.

(1) If the court decides that a defendant is not mentally competent to stand trial and meets the criteria for involuntary hospitalization set forth by law, it shall order the defendant to be transferred to a treatment facility as defined in Florida Statutes, or residential services as set forth in Florida Statutes, or may order that he receive outpatient treatment at any other appropriate facility or service on an involuntary basis. Such involuntary hospitalization or treatment shall be subject to all provisions of Florida Statutes not in conflict herewith.

(2) The order of commitment shall contain the following:

(i) Findings of fact relating to the issues of competency and involuntary hospitalization, addressing the factors set forth in Rule 3.211 above where applicable;

(ii) Copies of the reports of the experts filed with the court pursuant to the order of examination;

(iii) Any other psychiatric, psychological or social work reports submitted to the court relative to the mental state of the defendant;

(iv) The charging instrument and all supporting affidavits or other documents used in the determination of probable cause.

(3) The treatment facility shall admit the defendant for hospitalization and treatment and may retain and treat the defendant. No later than six months from the date of admission the administrator of the facility shall file with the court a report which shall address the issues and consider the factors set forth in Rule 3.211 above, with copies to all parties. If at any time during the six month period or during any period of extended hospitalization which may be ordered pursuant to this Rule, the administrator of the facility shall determine that the defendant no longer meets the criteria for involuntary hospitalization or has become competent to stand trial, the administrator shall notify the court by such a report, with copies to all parties.

(i) In the event that, during the six month period of hospitalization and treatment or during any period of extended hospitalization which may be ordered pursuant to this Rule, counsel for the defendant shall have reasonable grounds to believe that the defendant is competent to stand trial or no longer meets the criteria for involuntary hospitalization, he may move the court for hearing on the issues of the defendant's competence or involuntary hospitalization. Such motion shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the

defendant is now competent to stand trial or no longer meets the criteria for involuntary hospitalization. To the extent that it does not invade the attorney-client privilege, the motion shall contain a recital of the specific observations of and conversations with the defendant which have formed the basis for such motion.

(ii) If, upon consideration of a motion filed by counsel for the defendant and any information offered the court in support thereof, the court has reasonable grounds to believe that the defendant may have regained competence to stand trial or no longer meets the criteria for involuntary hospitalization, the court may order the administrator of the facility to report to the court on such issues, with copies to all parties, and shall order a hearing to be held on those issues.

(4) The court shall hold a hearing within 30 days of the receipt of any such report from the administrator of the facility on the issues raised thereby. If, following such hearing, the court determines that the defendant continues to be incompetent to stand trial and that he meets the criteria for continued hospitalization or treatment the court shall order continued hospitalization or treatment for a period not to exceed one year. When the defendant is retained by the facility, the same procedure shall be repeated prior to the expiration of each additional one year period of extended hospitalization.

(5) If at any time after such hospitalization the court decides, after hearing, that the defendant is competent to stand trial, it shall enter its order so finding and shall proceed with the trial.

(6) If after any such hearing the court shall determine that the defendant remains incompetent to stand trial but no longer meets the criteria for involuntary hospitalization, the court shall proceed as provided in Rule 3.212(c).

(c) If the court decides that a defendant is not mentally competent to stand trial but does not meet the criteria for involuntary hospitalization set forth by law, or is not mentally retarded under law, the defendant may be released on appropriate release conditions for a period not to exceed one year. The court may order that the defendant receive outpatient treatment at an appropriate local facility and that the defendant report for further evaluation at specified times during such release period as conditions of release. A report shall be filed with the court after each such evaluation by the persons appointed by the court to make such evaluations, with copies to all parties.

Rule 3.213 Continuing Incompetency to Stand Trial: Disposition

(a) If at any time after five years after determining a person incompetent to stand trial when charged with a felony or one year when charged with a misdemeanor, the court, after hearing, determines that the defendant remains incompetent to stand trial, that there is no substantial probability that the defendant will become mentally competent to stand trial in the foreseeable future, and that the defendant does not meet the criteria for involuntary hospitalization set forth by law, or for involuntary admission to residential services as set forth by law, it shall dismiss the charges against the defendant.

(b) If at any time after five years after determining a person incompetent to stand trial when charged with a felony or one year when charged with a misdemeanor, the court, after hearing, determines that the defendant remains incompetent to stand trial, that there is no substantial probability that the defendant will become mentally competent to stand trial in the foreseeable future and that the defendant does meet the criteria for involuntary hospitalization set forth by law, the court shall dismiss the charges against the defendant and commit the defendant to the Department of Health and Rehabilitative Services for involuntary hospitalization or residential services solely under the provisions of law, or may order that he receive outpatient treatment at any other facility or service on an outpatient basis subject to the provisions of those statutes. In the order of commitment, the judge shall order that the administrator of the facility notify the State Attorney of the committing circuit no less than 30 days prior to the anticipated date of release of the defendant.

Rule 3.214 Effect of Adjudication of Incompetency to Stand Trial: Psychotropic Medication

(a) If the defendant is declared incompetent to stand trial during trial and afterwards declared competent to stand trial, his other uncompleted trial shall not constitute former jeopardy.

(b) An adjudication of incompetency to stand trial shall not operate as an adjudication of incompetency to consent to medical treatment or for any other purpose unless such other adjudication is specifically set forth in the order.

(c) A defendant who, because of psychotropic medication, is able to understand the proceedings and to assist in his defense shall not automatically be deemed incompetent to stand trial simply because his satisfactory mental condition is dependent upon such medication, nor shall he be prohibited from standing trial or entering a plea solely because he is being administered medication under medical supervision for a mental or emotional condition.

(1) Psychotropic medication is any drug or compound affecting the mind, behavior, intellectual functions, perception, moods, or emotion, and includes anti-psychotic, anti-depressant, anti-manic and anti-anxiety drugs.

(2) If the defendant proceeds to trial with the aid of medication for a mental or emotional condition, upon the motion of defense counsel, the jury shall, at the beginning of the trial and in the charge to the jury, be given explanatory instructions regarding such medication.

(d) The provisions of Rule 3.191 shall no longer apply to any defendant adjudged incompetent to stand trial until, in the case of a defendant whose charges have not been dismissed pursuant to these rules, the date the defendant is again adjudicated competent to stand trial or, in the case of a defendant whose charges have been dismissed without prejudice, the date the charges are again filed.

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