

Competency to Stand Trial

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Competency to Stand Trial

- Definition
- How measured and evaluated
- Treatment to Competency
 - Process overview
 - Differences between MMHI and WMHI
 - Orders to treat

Wisconsin Law

- No person who lacks substantial mental capacity to understand the proceedings or assist in his or her own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

Wisconsin Statute 971.13(1)

Wisconsin Law

- Competency is a judicial rather than a medical determination. Not every mentally disordered defendant is incompetent; the court must consider the degree of impairment in the defendant's capacity to assist counsel and make decisions which counsel cannot make for him or her.

Wisconsin Statute 971.13 – ANNOT.

Wisconsin Law

- There is a higher standard for determining competency to represent oneself than for competency to stand trial, based on the defendant's education, literacy, fluency in English, and any physical or psychological disability that may affect the ability to communicate a defense.

Wisconsin Statute 971.13 - ANNOT

Dusky v. United States

- U.S. Supreme Court, 1960
- "whether the accused 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."

Competency – Task Specific

- To stand trial
- To be sentenced
- To be executed
- To be revoked
- To waive representation by counsel
- To waive appeals

Competency Evaluation

- Legal information
 - Court order for evaluation
 - Criminal complaint
 - Clarification of court proceeding
- Collateral information
 - Attorneys – clarify the reason competency raised, information regarding interactions with client, contact information for family and records

Competency Evaluation

- Collateral information (cont'd)
 - Medical records
 - Treating clinicians
 - Family/Friends
 - Past criminal record

Competency Evaluation

- Clinical examination
 - Personal history
 - Mental health history
 - AODA history
 - Medical history
 - Family history
 - Legal history

Competency Evaluation

- Clinical examination (cont'd)
 - Mental Status Examination
 - Psychological testing
 - Assessment/Diagnosis

Competency Evaluation

- Competency to proceed examination
 - Interview by qualified, trained clinician—often utilizing “McGarry Criteria”
 - Ongoing trained observations
 - Psychological tests (to assist)
 - Utilize this information with clinical, collateral, legal information to reach an opinion

McGarry Criteria

- Ability to appraise the legal defenses available
- Level of unmanageable behavior
- Quality of relating to attorney
- Ability to plan legal strategy
- Ability to appraise the roles of various participants in the courtroom proceedings

McGarry Criteria

- Understanding of court procedure
- Appreciation of the charges
- Appreciation of the range and nature of possible penalties
- Ability to appraise the likely outcomes
- Capacity to disclose to the attorney available pertinent facts surrounding the offense.

McGarry Criteria

- Capacity to challenge prosecution witnesses realistically
- Capacity to testify relevantly
- Manifestation of self-serving versus self-defeating motivation

Psychological Tests

- Clinical Assessment Instrument—not sufficiently validated for quantitative use, but qualitatively used
- The MacArthur Competence Assessment Tool-Criminal Adjudication (Copyright 1999)
 - Hypothetical case scenarios
 - Understanding, Reasoning, Appreciation

Psychological Tests

- Evaluation of Competency to Stand Trial-Revised (Copyright 2004)
 - Structured clinical interview
 - Rational understanding of the courtroom proceedings, factual understanding of the courtroom proceedings, consult with counsel
 - Will likely pick up malingering

Psychological Tests

- Competence Assessment for Standing Trial for Defendants with Mental Retardation (Copyright 1992)
 - Multiple choice sections, open ended section
 - Basic legal concepts, skills to assist defense, understanding case events

Pearls

- All of the psychological tests are designed to *assist* the clinician in reaching an opinion.
- Competency is task specific.
- Often a dearth of available information.
- Obvious secondary gain complicates evaluation.

Treatment to Competency

- Repeat competency evaluation
- Assess treatment needs
- Formulate treatment plan
- Implement plan
- Provide updates to the court

Initial Evaluation

- Intake security procedures
- Typically SATU—max security
- Nursing assessment
- Multidisciplinary assessment – psychiatry, psychology, nursing, social work, rehabilitation services, unit manager, psychiatric care technician
 - Essentially repeats competency evaluation with more resources

Formulate Treatment Plan

- Multidisciplinary treatment plan
 - Initially may focus on more extensive evaluation
 - Medical/laboratory tests
 - Psychological/neuropsychological tests
 - 24/7 observation by trained staff
 - Monitoring of group participation

Common Scenarios - Competent

- Appears competent – will report back to court with reasons
 - Malingering
 - More extensive evaluation yields different opinion
 - Improved from time of hearing
 - Was malingering but doesn't like MMHI

Common Scenarios - Incompetent

- Psychotic – most common
 - Schizophrenia, psychosis nos, schizoaffective disorder, delusional disorder
- Manic (often psychotic)
 - Bipolar disorder, drug induced
- Depressed/suicidal

Common Scenarios - Incompetent

- Mental retardation
- Head injury
- Dementia

Initiate Treatment Plan

- Treat underlying psychiatric illness
 - Medications likely necessary
 - Psychotherapy
 - Group/milieu therapy
 - Time
 - Structure/safety

Initiate Treatment Plan

- Psychoeducational approach
 - Competency group
 - Legal issues group
 - Individual instruction
 - Teachers

Competency Education

- Groups present information in a variety of ways
 - Lecture
 - Discussion
 - Worksheets (some using more pictures and diagrams)
 - Videos
 - Educational games

Continuing Process

- Progress monitored by multidisciplinary team—symptomatic improvement, functional improvement, security issues, level system.
- Transfer to a less restrictive unit when obtained/maintained highest levels on SATU.

Reassessment

- Reassessment reports typically due every 3 months
- Earlier if patient requests and/or treatment team has assessed the patient appears competent
- A full re-evaluation of competency typically occurs

Special Cases

- Non-English speaking
- Cultural differences
- Not likely to become competent
- Personality Disorders
- Malingering

Pearls

- 24/7 observation by trained staff is enormously valuable, especially in cases of potential malingering and/or personality disorders
- Malingering stands out on a unit of several legitimately ill patients
- Multidisciplinary approach adds layers of peer review to opinions

Pearls

- Return to court criteria is different than discharge criteria of most civil admissions.
- Justice 2000
- Communication regarding potential conversion to civil commitment.

Orders to Treat

- Most patients sent for treatment have a treatable mental illness
- Most patients sent for treatment are not agreeable to treatment
- Orders to Treat ensure the patient receives the treatment necessary to become competent and to return to an optimal level of functioning

Orders to Treat

- Many of the patients enter the hospital disorganized, psychotic, and dangerous.
- Orders to treat allow consistent treatment to reduce symptoms and minimize danger to self and others.

Orders to Treat

- Hospitals (including forensic hospitals) are limited in the ability to manage aggressive behavior on an ongoing basis.

In Conclusion

- The more information, the better the evaluation and treatment.
- This is a complex patient population.
- For most, treatment to competency serves more than this narrow goal.