

Defendants found Incompetent or Insane: What Does it Mean?

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Department of Mental Health Conference, October 2019

Overview

- ▶ When the criminal justice system and our mental health system of care intersect
- ▶ What does it mean to be incompetent
- ▶ What does it mean to be found insane
- ▶ Available options for these defendants
- ▶ Orders of Non Hospitalization

Incompetence Defined



- ▶ **13 V.S.A. § 4817** (a) A person shall not be tried for a criminal offense if he or she is incompetent to stand trial.
- ▶ (b) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in his or her behalf, or the State, at any time before final judgment, raises before the court... the issue of whether such person is incompetent to stand trial, or if the court has reason to believe that such person may not be competent to stand trial, a hearing shall be held

Incompetence Defined, continued

- ▶ At the hearing: evidence shall be received and a finding made regarding competency to stand trial. However, in cases where the court has reason to believe that such person may be incompetent to stand trial due to a mental disease or mental defect, such hearing shall not be held until an examination has been made and a report submitted by an examining psychiatrist in accordance with sections 4814-4816 of this title.

What does “incompetent” mean?



Fundamental fairness in the judicial process.



Defendants must understand the court process, the roles of the judge, prosecutor and jury.



Defendants must be able to assist their attorney.



It is unfair to subject someone to a criminal proceeding if he/she does not understand the proceeding and/or its purpose.

Different from Insanity



Insanity: defendant's state of mind at the time of the crime.



Defendant could not appreciate the difference between right and wrong at the time of the crime.



Determined by defendant's actions before, during and after the crime.



Doesn't change; once insane, always insane for that offense.



Competency is present day ability to understand the proceedings and to assist his/her attorney.

Vermont Law of Insanity

- ▶ Known as an “excuse” defense - I did it, but my conduct should be excused (age, duress)
 - ▶ As opposed to “justified” - I did it, but my conduct was justified (self-defense, choice of evils)
- ▶ 13 V.S.A. §4801 : not responsible, if, as a result of mental disease or defect, defendant lacks capacity to conform their conduct to the requirements of the law
- ▶ Mental disease/defect = congenital and traumatic mental conditions as well as disease. NOT an abnormality manifested only by repeated criminal or otherwise anti-social conduct.
- ▶ Defendant has the burden of proof by a preponderance of a doubt.

Procedure: Who can Ask for an Evaluation

- ▶ **13 V.S.A. § 4814 (a)(2)**
- ▶ The Defendant
- ▶ The State
- ▶ An attorney
- ▶ A guardian

- ▶ **13 V.S.A. §4814 (a)(4)**
- ▶ The court

How Does it Work?

- ▶ Usually at arraignment, the court will call for a screener from the mental health agency located in the county where court is being held.
- ▶ Screener will review whatever information is available (often it's the police affidavit) and attempt to assess the defendant, using “person in need of treatment” standard.
- ▶ Screener provides their opinion to the court - is this a person in need of treatment or not?
- ▶ Forensic examination be conducted in the community or in a hospital setting?

Ordered In-patient or not?

- ▶ Even if the screener recommends in-patient evaluation, if the admitting doctor at the psychiatric hospital determines the defendant does not meet “clinical standards of care”, the doctor does not have to admit the defendant. 13 V.S.A. §4814(g)(3)(A) and (g)(6)
- ▶ If turned away at the hospital, the defendant is NO LONGER in the custody of DMH. 13 V.S.A. §4814(g)(3) DMH obligation is to provide an appropriate outpatient mental health referral

How Does it Work? (cont)

- ▶ DMH arranges for a forensic evaluation to occur
- ▶ Evaluator examines the defendant, any treatment records (past and present), police report and any other information they deem necessary to complete their report
- ▶ Report is issued and everyone goes back to court
- ▶ Prosecutor and defense let the judge know if they will agree to the report (a stipulation) or if it will be contested.
- ▶ If contested, the party contesting it can hire their own expert

What happens to a Defendant Found Insane or Incompetent?

- ▶ A hearing is held to determine: hospitalization, non-hospitalization in the care and custody of Commissioner of DMH, or no commitment needed.
- ▶ Initial commitment period is 90 days.
- ▶ “Commitment” could be either in hospital or out of hospital on an Order of Non-Hospitalization

NUMBERS

- ▶ 2018: 38 Inpatient Orders
23 Not competent
- ▶ 270 Outpatient Orders
- ▶ 66 Not competent

Compared to 2017

- ▶ Total Evals in 2018 - 308
- ▶ Total Evals in 2017 - 279

- ▶ 2017: out of 50 inpatient, 26 not competent = 52%
- ▶ 2018 out of 38 inpatient, 23 not competent = 60%

- ▶ 2017: out of 229 outpatient, 61 not competent = 26%
- ▶ 2018: out of 270 outpatient, 66 not competent = 24%

Defendants
Found
Incompetent

- ▶ Options:
 - ▶ Order of Hospitalization (OH)
 - ▶ Order of Non-Hospitalization (ONH)
 - ▶ Act 248
 - ▶ Return to community

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▶ Orders of Non-Hospitalization

Orders of Non-Hospitalization (ONH)



Must name a designated mental health agency



Conditions must make sense



DA needs to be consulted



Defendant has to be willing to accept treatment



Conditions specific to defendant



Good for 90 days

Challenging the Finding of Incompetency

- ▶ Prosecutors can still hire their own expert to review the findings of the court appointed expert or defense expert.
- ▶ Cannot further examine the defendant.
- ▶ Review of the evaluation and method of evaluation.

Order of Hospitalization

- ▶ Defendant incompetent or insane
- ▶ Because of a major mental illness
- ▶ Intellectual disability specifically excluded
- ▶ Danger to self or others if not in a hospital setting
- ▶ Must be in least restrictive environment
- ▶ Defendant continues to receive treatment

Case Study

- ▶ Steven Bourgoïn - failed defense of insanity



Thank You