

Is this patient competent to stand trial?

How to evaluate mentally ill criminal court defendants

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Mr. P, age 39, attacks a convenience store clerk with a knife and is charged with aggravated assault. The judge grants the defense attorney's request that Mr. P's competency to stand trial be evaluated. Mr. P's medical records show paranoid schizophrenia diagnosed at age 22, multiple psychiatric hospitalizations, and chronic medication noncompliance.

You may be called on to determine *capacity*—such as whether a patient can provide informed consent for a medical procedure. Judges or juries make decisions about *competency*—often based on a psychiatrist's opinion about a person's capacity.



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This article describes how to prepare a report stating your opinion about whether a defendant such as Mr. P is competent to stand trial.

WHAT IS COMPETENCY?

The defendant's attorney usually raises the question of whether a defendant is competent to stand trial, but a judge or prosecuting attorney also may

suggest an evaluation. Defense attorneys question their clients' competence to stand trial in approximately 8% to 15% of felony cases, and up to 50,000 defendants are referred for competency evaluations each year.¹⁻⁴ Competency may be questioned when the defendant:

- is obviously mentally ill or has a history of mental illness
- appears to be making irrational decisions
- has difficulty interacting with the court or defense counsel.⁵

The judge will order a competency evaluation by an independent psychiatrist, and the defense attorney or prosecutor may request additional evaluations.

“Competency” and “sanity” are often used together in discussions of criminal prosecution of mentally-ill defendants. This article describes evaluating competence to stand trial; we will discuss how to evaluate sanity in a future issue of CURRENT PSYCHIATRY.

Competency is dynamic; the law defines many types, each with a legal definition and requisite capacity. A person may be competent in one area but incompetent in another. He may be incompetent to make a decision about psychiatric hospitalization, for example, yet retain competency to give or withhold informed consent for treatment.

Evaluating competency also is dynamic, depending on the patient's present state:

- She might be incapable of giving informed consent for surgery while delirious but capable to make a competent decision about treatment after sensorium clears.
- A psychotic defendant may be incompetent to stand trial initially but may be restored to competency after treatment.

THE 'DUSKY STANDARD'

Courts have long recognized that the mentally ill may be incapable of defending themselves against

Box

'Mute by malice' or 'visitation of God'

The concept of competence to stand trial originated in 13th-century England. Persons charged with a crime were required to enter a plea in the King's Court. Defendants who refused to enter a plea were either:

- confined and starved (“prison forte et dure”)
- or slowly crushed under the weight of stones (“peine forte et dure”).²

Before this punishment was exacted, the reason the alleged criminals did not enter a plea had to be determined. Defendants deemed mute by malice (intentionally withholding a plea) were subjected to the aforementioned cruelties. A defendant deemed mute by visitation of God (unable to comprehend that he was required to enter a plea because of mental illness/retardation) was spared, and a plea of not guilty was entered for him.

In the United States, a person's right to be competent in legal proceedings is implicitly guaranteed by two constitutional amendments:

- right to counsel (Sixth Amendment)
- right to due process (Fourteenth Amendment).

criminal charges (*Box*).⁶ The U.S. Supreme Court in 1960 established in *Dusky v. United States* that the legal standard for competence to stand trial is “whether [the person] 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.” This standard has been adopted in principle by all states and the federal jurisdiction.⁷

The “Dusky standard” indicates that a defendant is incompetent to stand trial if, because of a mental illness or other condition, he is unable to:

continued



Table 1

The 'Dusky standard' of competence

A defendant is incompetent to stand trial if he is:

- unable to understand the trial's nature and objectives
- or unable to assist in his own defense

'Nature and objectives' of a trial include:

- charges against the defendant
- severity of the charges
- pleas that may be entered
- roles of courtroom personnel
- the trial's adversarial nature

'Assisting in own defense' includes ability to:

- work with attorney
- appreciate defendant's role
- understand plea bargaining
- make rational defense decisions
- consider using mental illness defense
- pay attention in court
- be free of self-defeating behavior
- evaluate evidence and predict probable trial outcome
- display appropriate behavior
- give reliable account of offense

Source: *Dusky v US* (1960)

- understand the nature and objectives of the court proceedings
- or assist in his defense (*Table 1*).

This means that mental illness alone is insufficient to establish incompetence. A mentally-ill defendant can be considered competent to stand trial if the illness does not impair his ability to understand court proceedings or assist in his defense.

Judges ultimately determine defendants' competence to stand trial, but psychiatrists' opinions are adopted in 90% of cases.^{8,9}

HOW TO ASSESS COMPETENCY

If a judge asks you to evaluate a defendant's competency, you need to know the standard governing competence to stand trial in the judge's jurisdiction. All courts in the United States use the Dusky standard, but the wording varies.

Review the defendant's case records, including court papers (with a list of charges), medical records, and psychiatric records. Then interview the defendant to thoroughly evaluate his mental status and collect a detailed psychiatric history.

If the defendant has a mental disorder, it must impair his ability to understand the proceedings or participate in his defense to result in incompetency. Sources who know the defendant (spouse, family, or friends) may provide useful collateral information.

Assessment tools. Some argue that tools designed to help determine competency can assess understanding of facts related to the trial but not ability to reason. The MacArthur Competency Assessment Tool—Criminal Adjudication is thought to assess both decisional competency and factual understanding.¹⁰ Another new tool, the Evaluation of Competency to Stand Trial-revised (ECST-R), is beginning to be used more frequently to evaluate possible malingering and case-specific information.

These tools can be purchased online through vendors such as www3.parinc.com. Though useful, these tools serve as adjuncts to the clinical interview.

In your report to the court, include relevant information from the mental status evaluation, the diagnosis, and—most important—a clear, concise opinion of the defendant's current competence to stand trial.

CASE: DOES MR. P MEET THE STANDARD?

During your interview, Mr. P endorses chronic auditory hallucinations telling him to harm others. He is alert and oriented to location, date, and current events. He can adequately describe courtroom proceedings and each individual's role, noting that he had been to court before on a drug possession charge, for which he received probation.

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When you ask Mr. P about his attorney, he leans in and whispers, “My attorney and my mother have a secret plan to send me to prison for the rest of my life.” He contends his attorney is telling him to claim he is “crazy” to make him “look bad” in court.

In a separate interview, you question the corrections officer who accompanied Mr. P to the evaluation. He says Mr. P refuses to see his mother and his attorney when they come to visit him in jail and takes his medications only sporadically.

Understanding court proceedings. A defendant such as Mr. P must be able to understand the charges against him, that he is on trial for those charges, and the severity of the charges. He must be able to understand the pleas he can offer (guilty, not guilty, not guilty by reason of insanity, or no contest).

The defendant also must be aware of the roles of trial participants, including defense attorney, prosecutor, witnesses, judge, and jury. He must appreciate the trial’s adversarial nature, that his attorney is acting in his best interests and defending him, and that the prosecutor is trying to convict him.

Ability to assist in defense. A defendant must be able to have logical, coherent discussions with his attorney and be free of paranoid beliefs about the attorney. He must recognize his role as the defendant and maintain no delusions that he is somehow immune to prosecution.

In cooperation with his attorney, he must be able to evaluate the evidence against him and predict the trial’s probable outcome. He must help his attorney formulate a plan for his defense and make reasonable decisions about that plan. If relevant, he must be willing to consider using a mental illness defense at trial; therefore, he must possess a reasonable amount of insight into his mental illness. He also must:

Table 2
7 common reasons defendants are found incompetent to stand trial

- Low intelligence or dementia impairs understanding of trial process
- Depression and self-defeating behavior limit motivation for trial’s best outcome
- Mania impairs ability to act appropriately in courtroom
- Paranoid delusions impair ability to work with defense counsel
- Disorganized thinking impairs concentration and attention.
- Delusions, disorganized thinking, low intellect, or dementia result in irrational decision-making about defense
- Hallucinations distract from paying attention to the trial

Source: Reference 5

- be able to participate with his attorney in plea bargaining and grasp the meaning and outcome of this process
- have sufficient memory and concentration to understand the trial proceedings.

A defendant must behave appropriately in court. For a finding of incompetency, inappropriate behavior must be the result of a mental illness and not intentional disruption of the trial.

Finally, a defendant must be motivated to assist in his defense and free of self-defeating behavior. For example, severely depressed patients seeking to punish themselves by causing an unfavorable trial outcome could be considered incompetent.

MENTALLY ILL AND INCOMPETENT

Mr. P has a clear history of mental illness, the first criterion for a defendant to be considered incompetent to stand trial. He has psychotic symptoms,



Competency

but these alone are insufficient to consider him incompetent. Also, having competently stood trial in the past does not necessarily mean he is competent now.

Based on the beginning of the interview, Mr. P appears to understand the nature and objectives of court proceedings. His delusions about his attorney, however, clearly would impair his ability to assist in his defense.

Reporting to the court. A forensic evaluator's report to the court might say: "It is my opinion, with reasonable medical certainty, that although Mr. P understands the nature and objectives of the court proceedings against him, he has a significant thought disorder that currently impairs his ability to assist in his own defense. In particular, Mr. P maintains delusions (a fixed, false belief held despite evidence to the contrary) that his attorney is plotting against him."

Treatment to restore competency. Approximately 30% of evaluated defendants are adjudicated incompetent for a variety of reasons (*Table 2, page 41*).¹¹ They often are committed to a forensic mental hospital for treatment to restore competency, which occurs in up to 90% of cases.¹²

Mr. P will likely be committed to restore competency, which may be achieved by treating his schizophrenia.

A patient may be mentally ill but remain competent to stand trial. To guide your court-ordered evaluation, assess abilities included in the 'Dusky standard'—being able to understand the trial's nature and objectives and to assist in one's defense. Though courts determine competence, they adopt psychiatrists' opinions in 90% of cases.

BottomLine

Related resources

- ▶ Grisso T. *Evaluating competencies: forensic assessments and instruments, 2nd ed.* New York: Springer; 2002.
- ▶ Melton GB, Petrila J, Poythress G, Slobogin C. *Psychological evaluations for the courts: a handbook for mental health professionals and lawyers, 2nd ed.* New York: Guilford Press; 1997.
- ▶ American Academy of Psychiatry and the Law. www.aapl.org.

Defendants with disorders such as dementia or mental retardation may be considered unable to be restored to competency, and their charges are dismissed or held in abeyance. They may then be involuntarily hospitalized if committed through civil proceedings.

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