

Considerations Before Ordering a Competency Evaluation

Under the U.S. Supreme Court's decision in *Dusky v. United States*, 362 U.S. 402 (1960), part of the constitutional right to a fair trial includes a defendant being able to understand the charges against them and participate in their own defense. While all defendants are presumed competent, courts may order an evaluation if sufficient grounds exist.

Judges play a critical role in the initial triage that determines whether a competency evaluation is needed. Trial competency is distinct from the ability to consent to medication or the criteria for civil commitment. The Judges and Psychiatrist Leadership Initiative (JPLI) has developed a [bench card](#) with indicators of serious mental illness to support judicial officers in making these determinations. Importantly, a person may exhibit symptoms of mental illness yet still be competent to proceed to trial.

Competency restoration is not mental health treatment. The primary focus of competency restoration services is preparing an individual for trial. Many who complete restoration return to court only to accept a time-served plea, have their case dismissed, or deteriorate in the local jail while awaiting further proceedings. In each instance, the individual often leaves the system without being connected to sustained treatment, leading to poor outcomes for both the person and the community.

In *Jackson v. Indiana*, 406 U.S. 715 (1972), the U.S. Supreme Court held that the nature and duration of an incompetent defendant's commitment must be reasonably related to the purpose of restoration. Courts are encouraged to reserve competency processes for defendants charged with serious crimes and where a strong interest in taking the defendant to trial exists.

What follows is a benchcard to aid judicial officers as they consider whether or not to order a competency evaluation.

1. Inquire About Medical History

Gather available information about diagnoses, treatments, and prescriptions. Relevant sources of information may include jail medical staff, the defense attorney, family members, or the defendant.

2. Assess Medication Status

Determine current treatment resources and medication use. If the individual disconnected from care or medications, inquire about reasons for discontinuation to understand the individual's mental state and barriers that may exist.

3. Provide treatment assistance

Check if the individual has been seen by jail medical staff and their willingness to restart medication voluntarily while incarcerated. Provide suggestions for a community-based treatment provider if the individual is out of custody. Make an assessment or re-engagement a condition of release with a warm hand-off to case management services.

4. Consider the Request for an Evaluation

Ask the attorney to compare their observations with the person's behavior in court. Consider holding a hearing on the need for a competency evaluation if a request has been made.

5. Consider Alternatives

Evaluate the appropriateness of alternatives to competency restoration such as voluntary treatment that includes wraparound care and connection to resources, an emergency detention order, psychiatric advanced directives, guardianship, and civil commitment with an Assisted Outpatient Treatment Program.