



Incompetent to Proceed Adjudications Increasing

at a glance

Persons deemed incompetent to proceed must undergo competency restoration training before they can stand trial for criminal charges. Defendants who are deemed a danger to themselves or others are served in secure forensic facilities, while others receive competency restoration training in the community under conditional release. The estimated cost to restore competency in community settings is lower than that of forensic facilities.

The number of defendants with mental illness adjudicated incompetent to proceed is estimated to have doubled over the last four fiscal years. This increase is due, in part, to an increase in felony arrests and felony filings, as well as greater numbers of persons with mental illness coming into contact with the criminal justice system.

Scope

As directed by the Legislature, OPPAGA addressed two questions.

- How does the process to restore competency to persons who are adjudicated incompetent to proceed operate?
- Have incompetent to proceed adjudications increased over time, and what factors contribute to this increase?

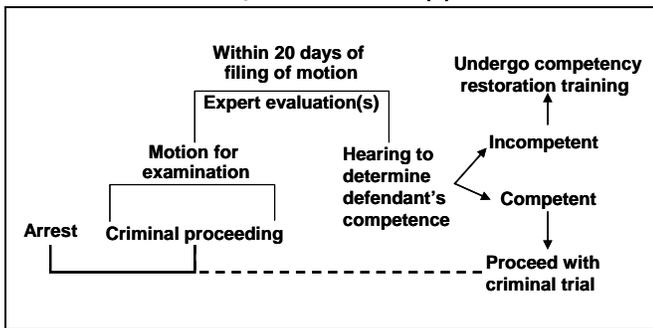
Background

Florida law provides that persons must be mentally competent before they stand trial for their offenses. Specifically, defendants must be able to appreciate the range and nature of the charges and penalties that may be imposed, and must be able to understand the adversarial nature of the legal process and disclose to counsel facts pertinent to the proceedings at issue. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.¹

If a defendant is suspected to be incompetent, the court or counsel for the defendant or the state may file a motion for examination to have the defendant's cognitive state assessed. As shown in Exhibit 1, within 20 days of filing this motion the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing. If the defendant is found to be competent, the criminal proceeding resumes. If, however, the defendant is found to be incompetent to proceed, competency must be restored before the criminal proceeding may resume.

¹ Sections 916.12 and 916.3012, F.S.

Exhibit 1
The Court Determines If Defendant Is Incompetent to Proceed After an Expert Evaluation(s)



Source: *Florida Rules of Criminal Procedure*, 2008.

The Department of Children and Families has oversight of felony defendants who are found incompetent to proceed due to mental illness, while the Agency for Persons with Disabilities is charged with oversight of felony defendants who are incompetent to proceed due to developmental disabilities.²

Questions and Answers—

Question 1: How does the process of restoring competency to proceed operate?

Competency restoration is designed to help defendants meaningfully participate in their own defense. Persons judged to be incompetent to proceed due to mental illness are provided medical and psychological treatment services to stabilize their condition. Persons with developmental disabilities will receive behavioral training with the goal of learning skills they can use to mitigate the effects of their disabilities. Additionally, both groups receive educational counseling to help them understand how the legal process works, the charges brought against them, the possible court dispositions, and their rights under the law.

It is the Legislature’s intent that competency restoration take place in the least restrictive setting. If the court determines that the defendant is a danger to himself or others, it may involuntarily commit the defendant to a secure forensic facility. Defendants may be placed on conditional release to receive competency restoration training in the community if the court finds they do not pose a risk to public safety.³

Once a defendant is determined to have regained his or her competence to proceed, the court is notified and a hearing is set for the judge to determine the defendant’s competency. If the court finds the defendant to be competent, the criminal proceeding resumes. If, however, the court finds the defendant incompetent to proceed, the defendant is returned to a forensic facility or community restoration on conditional release until competency is restored.

Forensic facilities are secure but costly. Defendants determined to be a danger to themselves or others, and for whom all available less restrictive alternatives have been determined inappropriate, may be involuntarily committed to forensic facilities. In Fiscal Year 2006-07, 1,396 defendants were involuntarily committed to forensic facilities within the Department of Children and Families and 118 to the Agency for Persons with Disabilities for competency restoration.

There are five secure forensic facilities in the state for persons with mental illness and one facility for persons with developmental disabilities that offer competency training.⁴ In addition to competency restoration training and evaluation services, these facilities also provide basic support services such as food and clothing, healthcare, and recovery services including holistic mental health treatment or skills training with the individual through an interdisciplinary team.

³ Conditional release is a court-ordered outpatient treatment plan. See ss. 916.17 and 916.304, *F.S.*

⁴ The department operates Florida State Hospital in Chattahoochee and North Florida Evaluation and Treatment Center in Gainesville. The department contracts with Geo Group, Inc., for the operation of South Florida Evaluation and Treatment Center (SFETC) and SFETC Annex, both in Miami, and the Treasure Coast Forensic Treatment Center in Indiantown. The Agency for Persons with Disabilities operates the Mentally Retarded Defendant Program at Florida State Hospital in Chattahoochee.

² Specifically, Ch. 916, *F.S.*, refers to defendants who are developmentally disabled due to mental retardation or autism, which are disabilities that affect mental functioning.

Forensic facilities provide a secure and structured environment for dangerous defendants but are costly. As shown in Exhibit 2, the average per diem cost of serving persons adjudicated incompetent to proceed due to mental illness in forensic facilities is \$337. As the department reported an average of 106 days to restore competency in a forensic facility in Fiscal Year 2006-07, the average cost is approximately \$36,000 per defendant.⁵

**Exhibit 2
The Average Per Diem Cost for Forensic Facilities Operated or Contracted by Department of Children and Families is \$337**

Facility	Operator	Capacity	Cost/Day
Florida State Forensic Hospital	Department of Children and Families	528	\$355
North Florida Evaluation and Treatment Center	Department of Children and Families	216	333
South Florida Evaluation and Treatment Center	Geo Group, Inc.	213	323
South Florida Evaluation and Treatment Center Annex	Geo Group, Inc.	100	N/A
Treasure Coast Treatment Center	Geo Group, Inc.	175	N/A
Total/Average Cost		1,232	\$337

Note: Cost data provided is based on Fiscal Year 2006-07 expenditures. Expenditure data is not yet available for facilities where data is not provided.

Source: Department of Children and Families.

The Agency for Persons with Disabilities reports that the average per diem cost for the Mentally Retarded Defendant Program is \$266 in Fiscal Year 2006-07. The average time to restore competency is significantly longer for these defendants due to the nature of their disabilities. According to the agency, the average number of days to restore competency in Fiscal Year 2006-07 was 228 days. Therefore, the average cost to restore competency for these defendants in forensic facilities was approximately \$61,000.

Community restoration is cheaper but less secure. The court may order defendants who do not require a secure environment to be conditionally released. In these cases, the court orders defendants to receive outpatient treatment and training in the community and to report for further evaluation at specified times during the release period. Community services also are used for persons who have been released from forensic facilities because they no longer meet the criteria for involuntary commitment but have not yet been restored to competency. Based on available data we estimate that 1,431 defendants with mental illness received community-based competency restoration in Fiscal Year 2006-07.⁶ The Agency for Persons with Disabilities is unable to provide complete data to determine the number of defendants with developmental disabilities statewide who received community-based competency restoration. However, the agency reported that 215 persons received competency training in 11 of 14 service areas in Fiscal Year 2006-07.⁷

The types of services provided in community-based competency restoration programs vary based on the needs of the particular individual and by availability of services in the community. For persons with mental illness, these services typically include medical treatment and case management. Medical services provide primary medical care, therapy, and medication administration to improve functioning or prevent further deterioration of a person’s mental health condition. Case management assesses patient needs and coordinates and monitors service delivery and compliance with the court’s conditional release order. The most frequently used community forensic services for defendants with mental illness are:

- Comprehensive Community Service Teams, which provide holistic case management, information and referral, in-home and on-site support, intervention and outreach, supported

⁶ As some individuals receive competency restoration services in the community after being released from forensic facilities because they no longer meet the criteria for involuntary commitment, the total number of persons served in forensic and community placements may exceed the number of persons adjudicated incompetent to stand trial.

⁷ The areas with missing data include Alachua, Escambia, and Polk counties, as well as 15 mostly rural counties.

⁵ The department uses a trimmed mean that removes the top and bottom 5% from the calculation.

- employment, supported housing, and prevention services;
- Florida Assertive Community Treatment teams, which provide comprehensive non-residential care services including community-based treatment, rehabilitative and support services; these services are available on a 24-hours-a-day, seven-days-a-week basis;
- Crisis Stabilization or Crisis Support placements that provide brief, intensive mental health services available 24 hours a day, seven days a week; and
- Residential Level 2 group residential facilities that provide rehabilitation with supervision 24 hours a day, seven days a week.

While the Agency for Persons with Disabilities provides all defendants with developmental disabilities with competency restoration training, community-based disability services are limited. If a defendant is already an agency client on its Medicaid Home and Community-based Services waiver, he or she will generally receive services such as speech and/or physical therapy; residential nursing; supported living or group home placement; transportation; and adult day training. Defendants who are not agency clients on the Medicaid waiver will generally receive only competency restoration training. The agency may, however, provide services to these defendants using discretionary funding. In Fiscal Year 2006-07, the agency spent \$387,614 in general revenue discretionary funding to serve 37 defendants in the community; it also spent \$2.7 million of Medicaid waiver funds to serve 62 defendants in the community.

The length of time and cost to restore competency in the community varies. Forensic coordinators employed by the Department of Children and Families report that community competency restoration generally takes four to six months; at the average cost to restore competency in the community of approximately \$59 per day, the estimated total cost for community competency restoration ranges between \$7,080 and \$10,620.⁸

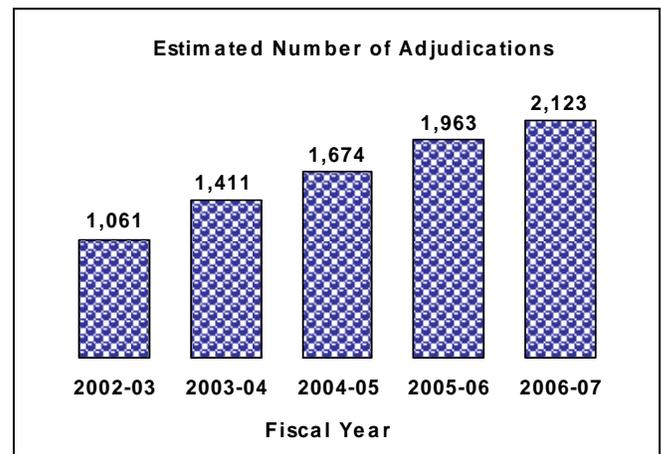
⁸ Based on analysis of data provided by Department of Children and Families; this data does not include all patients whose care is funded by Medicaid managed care.

The Agency for Persons with Disabilities could not identify the cost and length of time to restore competency in the community for defendants with developmental disabilities.

Question 2: Have incompetent to proceed adjudications increased over time, and what factors contribute to this increase?

Available data indicate that the number of defendants adjudicated to be incompetent to proceed has substantially increased over the past four fiscal years. There are no comprehensive statewide data on the number of these adjudications.⁹ However, data on incompetent to proceed adjudications are available from courts in approximately half of the state’s counties. From these data, we estimate that 2,123 people were adjudicated incompetent to proceed in Fiscal Year 2006-07, and that the number of adjudications has doubled over the past four years (see Exhibit 3). Appendix A discusses the methodology used to derive these estimates.

**Exhibit 3
Incompetent to Proceed Adjudications
Have Doubled in Recent Years**



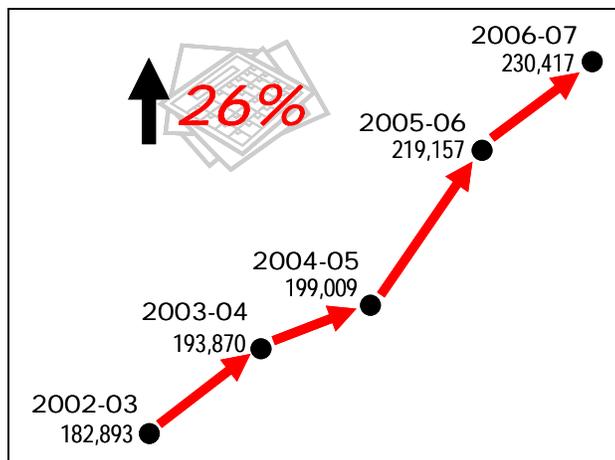
Source: OPPAGA analysis, see Appendix A.

⁹ Courts are not required to report the number of felony defendants adjudicated to be incompetent to proceed to the Office of State Courts Administrator. However, between 35 and 38 counties recorded these adjudications voluntarily in the Offender Based Transaction System in each of the past four fiscal years.

The growth in the number of incompetent to proceed adjudications appears to be associated with two factors—increases in the number of felony charges filed in court, and growth in the number of persons with serious and persistent mental illness who are in community settings.¹⁰

As shown in Exhibit 4, the number of felony charges filed against defendants by state attorneys increased by 26% between Fiscal Years 2002-03 and 2006-07. This mirrored a 21% increase in felony arrests over this period.

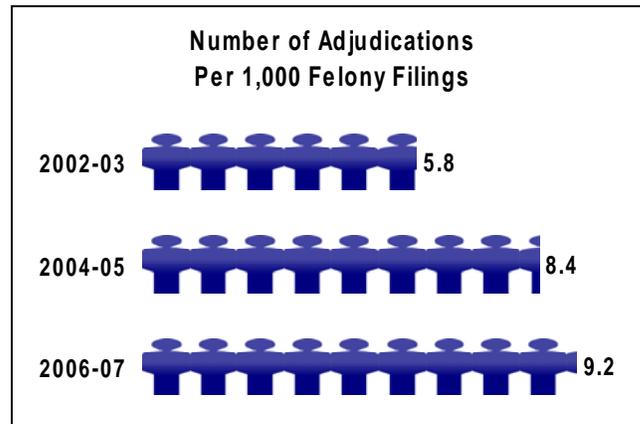
**Exhibit 4
Felony Filings Have Increased 26%
Since Fiscal Year 2002-03**



Source: Office of the State Courts Administrator.

The rate at which felony defendants are adjudicated incompetent to proceed has also increased over the last four fiscal years. As shown in Exhibit 5, during Fiscal Year 2002-03, for every 1,000 felony filings, 5.8 defendants were adjudicated incompetent to proceed. In Fiscal Year 2006-07 there were 9.2 adjudications per 1,000 felony filings.

**Exhibit 5
The Ratio of Incompetent to Proceed
Adjudications to Felony Filings Has Increased**



Source: OPPAGA analysis.

This increase suggests that individuals with mental illness are coming into contact more frequently with the criminal justice system. This reflects the deinstitutionalization of persons with mental illness. Florida, like most states, has closed psychiatric hospitals in order to treat persons with mental illness in the community, based on the theory that persons with severe mental illness could function in community settings with appropriate social and psychiatric support systems.¹¹ However, many people with mental illness do not receive the services they need to appropriately function and, consequently, become disorderly and/or commit criminal offenses. For example, people suffering psychotic episodes may create public nuisances and resist law enforcement officers that they perceive as threatening. The Department of Children and Families reports that battery on a law enforcement officer is the most common felony charge filed against people placed in state forensic facilities. The department also reports that approximately 23% of people in county jails and 16% of state prisoners have serious mental illnesses.¹²

¹⁰ Our regression model was based on variables associated with persons with mental illness as persons with developmental disabilities comprised only 8% of involuntary commitments for Fiscal Year 2006-07. See Appendix A.

¹¹ The Department of Children and Families reports that the number of persons with serious and persistent mental illness in Florida increased by 13% since Fiscal Year 2002-03.

¹² *Substance Abuse and Mental Health Services Plan: 2007-2010*, page 66, Department of Children and Families, January 2007.

Appendix A

Data and Methodology Used to Estimate the Number of Incompetent to Proceed Adjudications

There are no comprehensive statewide data on the number of incompetent to proceed adjudications. Courts are not required to report the number of felony defendants adjudicated to be incompetent to proceed to the Office of State Courts Administrator. Courts in between 35 and 38 counties have recorded these adjudications voluntarily in the Offender Based Transaction System in each of the past four fiscal years.

To estimate the number of incompetent to proceed adjudications, we used an ordinary least squares regression model to predict the number of adjudications given values for other known variables. Our analysis covers the period during Fiscal Years 2002-03 through 2006-07.

Data and variables

The Office of State Courts Administrator provided data from the Offender Based Transaction System showing the number of defendants adjudicated unable to stand trial in circuit court. Courts in approximately half of Florida's 67 counties have reported these adjudications during Fiscal Years 2002-03 and 2006-07. Some large counties, such as Duval, Miami-Dade, Palm Beach, and St. Lucie, did not report incompetent to proceed adjudications, which could effect the outcome of our analysis.

Our ordinary least squares regression model included as independent variables the number of felony filings by county, the number of involuntary commitments to forensic facilities of defendants found incompetent to proceed due to mental illness by county, and the number of people with mental illness receiving competency restoration in the community by county.

The number of felony filings by county was obtained through the Summary Reporting System and was provided by the Office of the State Courts Administrator. The number of involuntary commitments to forensic facilities of defendants found incompetent to proceed due to mental illness by county was provided by the Department of Children and Families. These data are based upon admission packets received by the department in those fiscal years. The number of people receiving competency restoration services in the community by county was derived from data provided by the Department of Children and Families. We counted people with incompetent to proceed admission evaluations for each fiscal year by county.

Results

Table A-1 shows the results of our analysis. The table presents the relationship between incompetent to proceed adjudications and the individual variables. Applying the relationships predicted by the model resulted in correctly estimating the number of adjudications in each county 80% of the time.

**Table A-1
Results of Regression Analysis Show Predictors of Incompetent to Proceed Adjudications**

Variable	Standardized Beta Coefficient	Predictive Strength	Statistical Significance	Unstandardized Beta Coefficient	Interpretation
Felony Filings	0.536	Moderate	0.000	0.006	For every increase of 1,000 felony filings, there is an increase of six incompetent to proceed adjudications.
Number of People Receiving Community Competency Restoration	0.256	Weak	0.000	0.247	For every increase of 1,000 persons receiving community competency restoration, there is an increase of 247 incompetent to proceed adjudications.
Involuntary Commitments to Forensic Facilities	0.184	Weak	0.017	0.282	For every increase of 1,000 persons who are involuntarily committed to forensic facilities, there is an increase of 282 incompetent to proceed adjudications.

Source: OPPAGA analysis.

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