

Colorado Office of Behavioral Health

Understanding Competency to Stand Trial

Competency is a legal construct that refers to an individual's current capacity to function meaningfully and knowingly in a legal proceeding. It is relevant and may be raised at any point by the defense, prosecution, or court in a criminal case; however, it is most often raised by the defense during pre-trial hearings as a part of **protecting due process rights of defendants** and ensuring they can understand the court proceedings, make reasoned decisions and can participate meaningfully in their legal defense.

Competency Evaluation

Once the issue of competency is raised, the court orders a forensic evaluation to be completed, and legal proceedings are suspended until this legal question is answered. In Colorado, a competency evaluation can be court-ordered to be completed in an inpatient hospital, jail or community setting. These evaluations are conducted by the Colorado Department of Human Services. A forensic evaluation of competency will include the following:

- **Review of discovery information on the case**, specifics on the legal charges and competency question, and collateral records.
- **“Notification of Purpose,”** or informing the defendant that the interview is not confidential. Information provided during the assessment can be included in the report that will be submitted to the court, prosecution, and defense for their legal case.
- **A brief history**, including family history, education, employment, significant current relationships, mental and medical health, substance use history, and psychiatric hospitalization history.
- **Mental status examination** and competency-specific assessment questions to assess an individual's factual knowledge about the legal proceedings, ability to make informed and reasoned decisions pertaining to their specific legal charges, and ability to work with their attorney to assist in their defense.
- **A diagnosis and prognosis** of mental health or developmental disorders
- **Barriers to competency to proceed**, when applicable, such as specific symptoms of mental health diagnosis.

Relevant Case Law

Dusky v. United States 420 U.S. 162 (1960):

Provides that a defendant has the right to a competency evaluation prior to his or her case moving forward to trial and sets the standard for competency to stand trial as whether the defendant has a “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and a “rational as well as factual understanding of the proceedings against him.” Dusky v. United States or “The Dusky Standard” is the standard for competency in all 50 states.

Colorado Statute (C.R.S. § 16-8.5-101):

Defines a “competency evaluator” as a licensed physician who is a psychiatrist or a licensed psychologist, each of whom is trained in forensic competency assessments. The statute also allows for a psychiatrist or psychologist in forensic training and practicing under the supervision of a psychiatrist or psychologist with expertise in forensic psychiatry or forensic psychology.

C.R.S. § 16-8.5-101: Defines “competent to proceed” as meaning that the defendant does not have a mental disability or developmental disability that prevents the defendant from having sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding to assist in the defense or prevents the defendant from having a rational and factual understanding of the criminal proceedings.

Evaluation Process

The evaluator summarizes the information obtained through interview and collateral sources to provide an opinion of either **competent to proceed** or **incompetent to proceed** to the court.

It is important to note that a psychiatric diagnosis itself may not be considered a barrier to competency. Individuals may have mental health disorders and the ability to understand and participate in their criminal proceedings. Rather, **the symptoms of a psychiatric** diagnosis may be determined a barrier to competency.



Competency Evaluation Opinions	
Competent To Proceed	Incompetent To Proceed
<p>If an individual is opined competent and the court finds the defendant competent, the criminal proceedings continue.</p> <p>If the court or counsel on either side disagrees with the evaluator's opinion, a second competency evaluation may be requested and ordered by the court. The second opinion evaluation is completed by an evaluator hired by the court who is external to the Colorado Department of Human Services.</p>	<p>If an individual is opined incompetent and the court finds the defendant incompetent to proceed, the court has the option of ordering restoration treatment services in either an inpatient or community setting. The evaluator provides a recommendation based on mental health acuity (severity) and defers to the court for assessment of criminogenic risk and community safety. Recommendations for inpatient restoration services are triaged for expediency of hospital admission by tiered criteria, as defined in Senate Bill 19-223.</p> <p>A defendant found incompetent to proceed can receive services in an inpatient hospital, jail-based (RISE), or community restoration setting to work toward clinical improvement.</p>

Competency Restoration Services

The goal of restoration treatment services is to **restore individuals to competency in the least restrictive setting and in a timely manner**, through psychotropic medications, competency groups, assessment and provision of additional psychiatric services as needed. Treatment focuses on barriers to competency identified in the evaluation and may include:

- Review of **factual legal information**
- Information relevant to **current pending charges**
- The ability to weigh **risk and benefits of decisions**
- The ability to **retain information and make reasoned decisions**
- The individual's ability to **consult with his or her attorney** to assist in their own defense.



Placing Patients

When Court Services receives an order for inpatient restoration, **the Department assesses the patient's acuity**, or the level of treatment required, and places the individual according to their needs. The highest-acuity individuals are placed in a hospital setting, and moderate to low-acuity individuals are placed in the RISE or DRTU jail-based restoration programs.

Jail-Based Treatment

The Department is responsible for **continuous assessment of all individuals in jail-based programs**. When an individual's treatment needs change, such as psychiatric decompensation, the individual is transferred to CMHIP. If the individual is psychiatrically stable, they may be eligible for outpatient services. When the individual is on bond in the community, they receive outpatient restoration treatment.

Best Practices

The restoration curricula utilized at all restoration programs **is the national best practice**, the CompKit competency recovery system. The restoration services include assessment and evaluations, individualized treatment planning, individual and group treatment, psychiatric services, psychological services, medication and medication monitoring, and discharge and re-entry planning and case management.

Most individuals who are restored to competency do so **within the first six months of treatment** and almost all (75-90%) within one year.

Morris & DeYoung, 2012; Pirelli & Zapf, 2011.

Clinical improvement through restoration treatment services alone does not necessarily equate to competence. Restoration treatment focuses on the symptoms of a mental health disorder that affect the defendant's ability to understand the court proceedings, work with their attorney and make reasoned decisions regarding their case, behave appropriately in the courtroom, and testify relevantly, if this is applicable to their charges.

Restoration Services Settings

Hospital settings include the Colorado Mental Health Institute at Pueblo (CMHIP) or contracted hospitals, such as Denver Health or Peak View Behavioral Health.

Jail settings include OBH-contracted, jail-based restoration programs known as RISE (Restoring Individuals Safely and Effectively) available in the Arapahoe and Boulder County jails or Denver Restoration Treatment Unit (DRTU) at the Denver Detention Center.

Outpatient restoration settings include select OBH-licensed and designated providers.

For More Information

Forensics Services: cdhs.colorado.gov/behavioral-health/forensic-services

Mental Health Institutes: cdhs.colorado.gov/behavioral-health/mental-health-institutes