

APA Official Actions

Position Statement on Competence Evaluation and Restoration Services and the Interface with Criminal Justice and Mental Health Systems

Approved by the Board of Trustees, July 2020

Approved by the Assembly, April 2020

“Policy documents are approved by the APA Assembly and Board of Trustees. . . These are . . . position statements that define APA official policy on specific subjects. . .” – *APA Operations Manual*

Issue:

Every day in jails across the United States, individuals with serious mental illness, intellectual disability and/or other serious neurobehavioral conditions are detained, often locked in restrictive housing cells with active psychiatric symptoms or behavioral dysregulation, awaiting evaluation for competence to stand trial¹ and, for those found to lack competence, awaiting transfer to a forensic hospital or some other service for restoration of competence. Prolonged jail stays in many states are often due to the lack of adequate capacity to conduct these assessments, in jails, hospitals, or community settings and to provide restoration services in appropriately therapeutic settings to the defendants who are found to be incompetent for criminal adjudication. Advocates for these detainees have successfully filed class action lawsuits² challenging the constitutionality of the states’ failure to provide timely assessments and/or treatment for restoration. The judicial orders in these class action cases require the states to fund more psychiatric services for evaluations and for the provision of restorative treatment across a variety of settings.

As a result of complex system failures at the intersection of mental health services and the criminal justice system, a backlog has developed for jail detainees awaiting competence assessments and transfers for treatment, most with serious mental illness, intellectual or developmental disabilities and/or other conditions impacting cognitive functioning. In a significant proportion of these cases, the detainees have ended up in jail due to inadequate access to preventive community mental health services and a suitable range of crisis stabilization services, including acute-care inpatient psychiatric beds. In some situations, marginally competent defendants move back and forth between the jails and hospitals as repeat competence assessments and restoration hospitalizations are ordered. This “revolving door” makes no useful contribution to the administration of justice, worsens the long-term clinical prognosis of the defendants, and results in poor utilization of scarce forensic bed space.

In theory, barring adjudication when defendants are incompetent to understand the proceedings and assist in their own defense protects their right to a fair trial. However, the result of a fragmented and poorly coordinated criminal justice and mental health system is that many detained individuals wait in jail for needed restoration services while those individuals who have received competency restoration

¹ Also called competence to proceed, fitness to proceed, or adjudicative competence

² See, e.g., *Trueblood v. Washington State DSHS*, 822 F.3d 1037 (9th Cir. 2016); *Disability Law Center v. State of Utah*, U.S.D. C. (D. Utah), Case No. 2:15-cv-00645-RJS-BCW

services are often released to the community (with sentences of “time served”) without adequate transitional services and discharge planning.

APA Position:

It is the position of the APA that the current system for assessing competence of defendants under criminal charge and for providing treatment to those found incompetent requires fundamental reform in many jurisdictions. The process of carrying out judicial orders for competency assessments and treatment to restore a defendant’s competence should be overhauled as an integral component of a comprehensive plan for providing mental health services to persons with serious mental illness, including those charged with criminal offenses who are in jail or at risk of pretrial detention.

Reforms of the current system for assessing competence of defendants under criminal charge and for providing treatment to those found incompetent should be guided by the following principles:

- (i) Community-based services and supports for individuals with serious mental illness and other conditions affecting cognitive capacities should be sufficiently funded and resourced to prevent many of these individuals from entering the criminal justice system in the first place;**
- (ii) Individuals who have been ordered to undergo competence to stand trial assessments should be evaluated in a timely manner;**
- (iii) Jail diversion services should be available for all individuals with mental illness and intellectual and developmental disabilities who have become involved with the criminal justice system and are eligible for pretrial release;**
- (iv) Individuals found incompetent to stand trial should have timely access to the level of psychiatric treatment that they need for restoration and maintenance of competency, including outpatient care, hospital care and jail-based care. Individuals should not be disadvantaged from alternatives to detention solely due to their mental illness.**

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