Competency to Stand Trial: An Overview of the Legal Guidelines for Evaluating Competency

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If you've watched enough Law and Order, you've probably heard the term "Incompetent to Stand Trial (IST)" or competency to stand trial. We get a lot of questions from attorneys asking us if their clients are competent to stand trial.

The rules and laws surrounding competency to stand trial can be confusing and difficult to understand. The goal of this blog post is to provide an overview of the laws regarding competency to stand trial and how we evaluate individuals to determine if they are competent.

What is Competency to Stand Trial?

Under the Sixth Amendment to the U.S Constitution, everyone that is charged with a crime has the right to a fair trial.

For a trial to be considered "fair", the defendant must be able to meaningfully participate in their defense.

The U.S. Supreme Court, Dusky v. United States (1960), held that the right of an incompetent defendant to avoid is trial is a fundamental aspect of our criminal justice system.

Every state might have some variation on the rules and regulations regarding competency. For the purposes of this article, we're going to be talking about competency to stand trial under California Law.

Section 1367 of the California Penal Code states that a defendant is mentally incompetent to stand trial if, because of a mental disorder or developmental disability if they fall into either of the two prongs:

Prong 1: The defendant is unable to understand the nature of the criminal proceedings

Prong 2: The defendant is unable to assist counsel in the conduct of a defense in a rational manner

It's important to remember that incompetency is judged on the day of the proceedings. These two prongs help establish if the defendant has a **rational and factual understanding** of the proceedings against them.

If the defendant does not meet the standards of **either** of these categories, they are incompetent to stand trial.

How do you know if a defendant is unable to understand the nature of criminal proceedings?

To evaluate for this first prong, the defendant needs to be able to answer at the very least, the following questions:

- What are your charges?
- How much time are you facing?
- What are the four pleas (e.g. guilty, not guilty, not guilty by reason of insanity, and no contest) and what are the consequences of using the pleas?
- What's a plea bargain and what are the consequences of using a plea bargain?
- Whose in the courtroom (e.g. judge, jury, defense attorney, prosecuting attorney) and what are their roles?

It's not enough that they can just recite the answers to these questions in a rehearsed or rote manner. They must have a rational understanding of the information.

For example, a defendant should know what a plea bargain is and understand the consequences of taking the plea bargain.

I've often had defendants state they want to take a plea but don't understand that they will not automatically get probation and that they might have to serve time in jail or prison.

Defendants will sometimes say that they want to plead "no contest" but don't understand that the consequences of that plea are the same a guilty plea and they won't get a trial.

How do you know if the defendant is unable to assist counsel in the conduct of their defense in a rational manner?

Unlike the first prong, there really isn't a simple set of questions that you can ask a defendant to assess for this.

To evaluate for the second prong, it's important that the expert has an excellent understanding of mental illness and how it can impact an individual's ability to make rational decisions and work with others.

The common mental health diagnoses that often impact a defendant's ability to assist counsel including the following:

- Schizophrenia

- Schizoaffective Disorder
- Delusional Disorder
- Bipolar Disorder
- Mild or Major Neurocognitive Impairment
- Intellectual Disability
- Borderline Intellectual Functioning

Typically, most defendants that are unable to meet this second prong are not able to do the following:

- They are unable to cooperate or work with their attorney.
- They are unable to comprehend information or take advice.
- They are unable to plan a legal strategy.
- They are unable to recall important facts or events related to the case.
- They are unable to testify on their behalf.
- They are unable to control their emotions, mood, thoughts, or other symptoms and it will interfere with their ability to participate in court.
- They are unable to tolerate the stress of being in court.

This list is not exhaustive and there can be other problems that the defendant might have that will interfere with their ability to assist their attorney in a rational manner.

For example, if a defendant has paranoid delusions and believes that their defense attorney is a spy and is conspiring against them, they are not going to be able to work with their attorney.

Another example is if a defendant has neurocognitive impairment due to a dementing disorder like Alzheimer's Disease, they might not have the cognitive capacity to sit in court and work with their attorney to form a defense.

What Happens If a Defendant is Competent to Stand Trial?

If a defendant is found to be competent to stand trial, then the criminal proceedings will move forward. If they are in a state hospital for competency restoration, they will be discharged to the county jail and will be held there during the trial.

Remember how I mentioned that competency to stand trial is evaluated the day of the criminal proceedings?

This is very important to remember, and I'll demonstrate this with an example.

Mr. Jones is diagnosed with schizophrenia but is medicated and stable. He commits a crime, is arrested, and held in the county jail pending trial.

Mr. Jones attends several hearings and court dates and is psychiatrically stable, has a rational and factual understanding of the criminal proceedings, and can assist his attorney in his defense in a rational manner. His next court date is one month later.

For unknown reasons, Mr. Jones stops taking his medications, his symptoms worsen, and he starts to present with clear signs of psychosis. His thoughts are disorganized and don't make sense, he is delusional, and he stops bathing and caring for himself.

Even though Mr. Jones was competent during all his court dates, based on how he **currently** is, he is incompetent to stand trial due to his psychotic symptoms.

Because of his thought disorganization and delusional thinking, he unable to understand the nature of the criminal proceedings and he can't assist counsel in the conduct of a defense in a rational manner.

In this situation, the criminal proceedings would be postponed until Mr. Jones receives treatment (e.g. medications and court competency groups) and his symptoms are better managed.

He would be evaluated again using the criteria I talked about earlier. If he is found to be competent, then criminal proceedings would move forward.

What Happens If a Defendant is Incompetent to Stand Trial?

This is a question that we get asked all the time. What happens if a defendant is incompetent to stand trial? Do the charges get dropped and they get to go free?

No, the charges don't get dropped automatically. If a defendant is incompetent, then the criminal proceedings are temporarily delayed until the defendant becomes competent.

In California, that means that if they are charged with a misdemeanor, they will receive treatment in a county jail in a specialized competency restoration unit.

In misdemeanor cases, they can be held in a county jail for up to 1 year for competency restoration.

If they are charged with a felony, they will be sent to a state hospital for competency restoration. There are only 5 state hospitals in California so the waitlist for the beds is very, very long.

In felony cases, the defendant has up to 2 years to become competent.

How do you make someone competent to stand trial?

If they have a psychiatric diagnosis like schizophrenia or bipolar disorder, they need to be stabilized on medications. Most individuals who are incompetent and who are treated with medications can be restored to trial competency within 6 months.

If necessary, a judge can sign a court order for involuntary medication.

They would also meet with a social worker and rehabilitation therapist for one to one therapy and education groups to help them learn the court material.

What happens if after two years they are still incompetent to stand trial?

If after 2 years (or 1 year if the defendant is charged with a misdemeanor) the defendant is still incompetent, then there are two possibilities:

1. They can be placed into an LPS (Lanterman-Petris-Short) Conservatorship.
2. They can be placed into a Murphy Conservatorship under Welfare and Institutions Code Section 5008, subdivision (h)(1)(B).

The state hospital or county jail won't wait until the 1 year or 2-year deadline to make this decision. The proceedings for conservatorship start at least 6 months before the deadline

LPS Conservatorship

To qualify for an LPS Conservatorship, the defendant must be "gravely disabled". This means that as a result of a mental health disorder they are unable to provide basic personal needs such as **food, clothing, or shelter.**

The public guardian's office will do a conservatorship investigation and find the defendant a conservator. Ideally, it should be a family member but in most cases, the defendant doesn't have anyone that can be their conservator.

In these situations, the public guardian's office will be the conservator and try to find the defendant housing and treatment (usually in a board and care facility).

In most cases, for the defendant to get conserved and have housing in the community, their charges have to be dropped. This generally happens if the defendant has a non-violent crime

Murphy Conservatorship

What happens if the individual has a violent crime? This is where the Murphy Conservatorship comes in.

In a Murphy Conservatorship, the following have to be present:

- The defendant is still incompetent to stand trial
- Their crime was a felony that caused great bodily injury or the death of another individual
- The charges have not been dismissed
- The defendant represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder

If all of these are true, then the public guardian's office will do an investigation to determine if a Murphy Conservatorship is appropriate.

If the defendant is conserved, then they will continue to stay in a state hospital until they are found to be competent.

These individuals can potentially spend many years in a state hospital until they are found to be competent or they no longer meet the criteria for a Murphy Conservatorship.

Conclusion

The U.S. Supreme Court, Dusky v. United States (1960), held that the right of an incompetent defendant to avoid is trial is a fundamental aspect of our criminal justice system.

Section 1367 of the California Penal Code states that a defendant is mentally incompetent to stand trial if, because of a mental disorder or developmental disability if they fall into either of the two prongs:

Prong 1: The defendant is unable to understand the nature of the criminal proceedings

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If after 2 years (or 1 year if the defendant is charged with a misdemeanor) the defendant is still incompetent, then they can be either placed into an LPS Conservatorship or Murphy Conservatorship.

The laws regarding competency to stand trial can be complicated and confusing. We're hoping that this overview helped clarify things and helped you understand how we evaluate a defendant to determine if they are competent to stand trial.