

NEW MEXICO SENTENCING COMMISSION

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Study Highlights

- The concept of legal competence is defined in federal case law and state law.
- A person afflicted with a mental disorder may be found legally competent.
- 91 individuals (1.8% of the total sample on June 30, 2010) had a mental health competency proceeding.
- A meta-analysis of competency research spanning approximately 50 years was published in 2011, and found the base rate of legal incompetency findings to be 27.5%.
- 27.4% of the arrestees who had a mental health competency proceedings were found incompetent.
- The vast majority of arrestees with a mental health proceeding were charged with a felony (83.5%).
- The median length of stay for arrestees who had a competency proceeding was 278% longer than the median length of stay for arrestees who did not have a competency proceeding. This proportion held when we controlled for whether or not the arrestee was charged with a misdemeanor or felony.
- The median length of stay for arrestees that did not have a competency hearing was significantly lower (141 days) than arrestees who were found competent (332 days) or arrestees that were found incompetent (537 days).
- Arrestees who had mental health competency proceedings were more likely to be charged with domestic violence, violent charges, or assault/battery.

Effect of Competency and Diagnostic Evaluation on Length of Stay in a Sample of New Mexico Detention Facilities

Introduction

In 2012, the New Mexico Sentencing Commission (NMSC) published a report entitled “Length of Stay in Detention Facilities: A Profile of Seven New Mexico Counties” (August 2012). This analysis is meant to supplement that report by providing additional information concerning arrestees who had a competency hearing. The following literature review provides context for our analysis of the effect of competency on length of stay and discusses how competency differs from mental illness.

Literature Review

Legal competency

There is a belief that a person found to be insane, mentally ill, or developmentally disabled must also be legally incompetent. While there is certainly an overlap between mental disorders and legal competency, a person afflicted with a mental disorder may be found legally competent.

The concept of legal competency has been addressed and has evolved in federal case law. Significant cases include: *Dusky v. United States* 362 US 402 (1960); *Wieter v. Settle* 193 F. Supp. 318 (1961); and *Drope v. Missouri* 420 US 162 (1975).

In *Dusky*, the court found that when determining legal competency “the defendant [is] oriented to time and place and [has] some recollection of events,” and that the “test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him.”

In *Wieter*, the court’s analysis of legal competency included the following:

“The mental capacity to appreciate his presence in relation to time, pace, and things; his elementary mental processes be such that he apprehends that he is in a Court of Justice charged with a criminal offense; that there is a judge on the bench; that a prosecutor is present who will try to convict him of a criminal charge; that the lawyer will undertake to defend him against that charge; that he will be expected to tell his lawyer the circumstances, to the best of his mental ability, the facts surrounding him at the time and place where the law violation is alleged to have been committed; that there is, or will be, a jury present to pass upon evidence as to his guilt or innocence of such charge; and that he has memory sufficient to relate those things in his own personal manner.”

The court in *Drope* added the element that the defendant must be able to “assist in preparing his defense.”

New Mexico law on the subject of legal competency includes the following:

“Neither the fact that a person has been accepted at or admitted to a hospital or institutional facility, nor the receiving of mental health or developmental disability treatment services, shall constitute a sufficient basis for a finding of incompetence or the denial of any right or benefit of whatever nature which he would have otherwise” (Section 43-1-5 NMSA 1978).

According to the National Judicial College’s mental competency website, in the United States there are approximately 60,000 court-ordered competency evaluations each year.

Approximately 20% of these evaluations lead to findings of incompetence. That rate is relatively low compared to other research findings.

Nicholson and Kugler found that an average of just over 30% of defendants in their review of studies was found incompetent (1991). Another study found that for their particular group, only 15.5% were judged not competent but cite that the average rate is 30% (Moss, 1988).

In 2011, a meta-analytic review of competency research spanning approximately 50 years established the base rate of incompetency to be 27.5% (Zapf, Pirelli & Gottdiener).

State Law

In New Mexico, when the question of competency arises, all proceedings are suspended until the issue is determined.

“The defendant's competency shall be professionally evaluated by a psychologist or psychiatrist or other qualified professional recognized by the district court as an expert and a report shall be submitted as ordered by the court. A hearing on the issue of the competency of an incarcerated defendant charged with a felony shall be held by the district court within a reasonable time, but in no event later than thirty days after notification to the court of completion of the diagnostic evaluation. In the case of an incarcerated defendant not charged with a felony, the court shall hold a hearing and determine his competency within ten days of notification to the court of completion of the diagnostic evaluation” (Section 31-9-1.1 NMSA 1978).

Finally, Uniform Jury Instructions on the subject of competency set forth the following: “...A person is competent to stand trial if he:

1. understands the nature and significance of the criminal proceedings against him;
2. has a factual understanding of the criminal charges; and
3. is able to assist his attorney in his defense.

As to this issue only, your verdict need not be unanimous. When as many as ten of you have agreed as to whether the defendant is competent to stand trial, your foreman must sign the proper form. If your verdict is that the defendant is incompetent, you will immediately return to open court without proceeding further. If your verdict is that the defendant is competent, you should proceed to consider the defendant's guilt or innocence”. (UJI 14-5104)

Mental Health

According to the VERA Institute of Justice, from a cohort of 2,874 adults arrested by the Metropolitan Police Department of the District of Columbia in June of 2008, 33% had a mental health need (Parsons & Sandwick, 2012). The VERA analysis references another study that found the rates of mental illness for jail inmates at 15% for males, and 31% for females (Steadman et. al., 2009). A more recent study found that there are three times as many people with serious mental illnesses in jail or prison than there are in hospitals (Torrey et. al., 2010).

According to the Bureau of Justice Statistics (BJS), U.S. Department of Justice (DOJ) only 34% of people in state prisons who have signs of mental health issues received any sort of treatment after admission, and only 17% of those detained in jail received treatment (James & Glaze, 2006). The same report states that the mean total time expected to be served by state prison inmates until release is longer for those with a mental health problem (146 months) than it is for those without a mental health problem (141 months). Interestingly, this correlation was reversed in jails; the mean sentence for those who had a mental health problem was five months shorter than that for jail inmates without a mental health issue. In federal prisons, those with mental health issues had a shorter maximum sentence length by seven months (James & Glaze, 2006).

Much of the literature reviewed found a strong correlation between a finding of incompetence and having a psychotic disorder, or history of psychiatric hospitalization (Zapf, Pirelli, Gottdiener, 2011; Nicholson & Kugler, 1991). Other research found that of those referred for a competency evaluation, 94% were given at least one psychiatric diagnosis (41.1% schizophrenia; 12.7% character disorder; 9.5% affective disorder; 6.3% mental retardation and; 4.2% central nervous system disease) (Moss, 1988). Nicholson and Kugler found that 51% of psychotic defendants referred for competency evaluations were judged to be incompetent compared to only 10% of nonpsychotic defendants (1991). This finding may speak more to why people are referred, rather than why they are ultimately found incompetent.

Finally, Viljoen, Roesch, and Zapf conducted a study that found those with psychotic disorders were more likely to have legal impairment than those with affective or substance abuse disorders (2002). Specifically, those with schizophrenia had greater legal impairment than those with other psychotic disorders, such as delusional or bipolar disorders (Viljoen, Roesch & Zapf, 2002).

Results

Arrestees with Competency or Diagnostic Evaluation

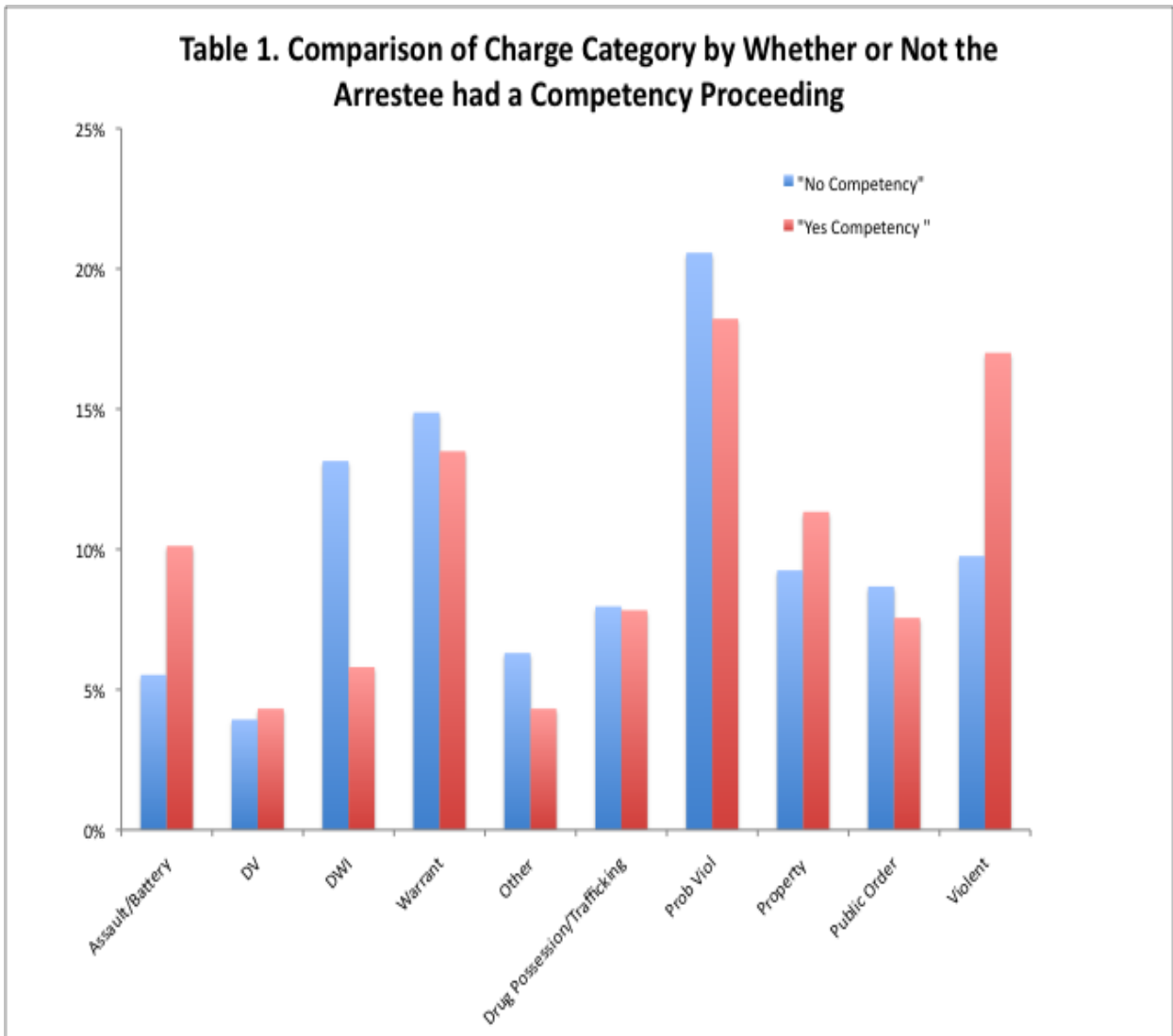
Initially, it appeared that 158 individuals in the seven included detention centers had requested a competency hearing. Upon further review, we found 166 individuals that appeared to have had a competency hearing. For each individual, the case court information was reviewed. During this verification, only 91 were actual cases where competency hearings were requested. Of the 91 individuals that had competency hearings, 27.4% (25) were found incompetent.

Over eighty percent of arrestees who had a competency hearing were charged with a felony (83.5%). Table 1 presents offenders and their most serious charge by whether or not there was a competency proceeding. Arrestees with a competency proceeding were more

likely to be charged with a Violent Charge (31% compared to 10%), Assault/Battery (24% compared to 6%), or Domestic violence (10% compared to 5%).

The median length of stay for arrestees who were found competent was 332 days, while the median length of stay for arrestees that were found incompetent was 537 days. The median length of stay for all arrestees that did not have a competency hearing was significantly lower (141 days). The difference in length of stay between arrestees who had a competency hearing and those who did not was statistically significant.

The remaining 84 of the 158 cases where the offender was thought to be competent were sixty-day diagnostic evaluations. In these cases, an individual is convicted of a crime and committed to the New Mexico Corrections Department for up to 60 days for the



purpose of diagnosis, with direction that the court be given a report as to what disposition appears best when the interest of the public and the individual are evaluated. These arrestees had a median length of stay of 251 days. The difference in length of stay between arrestees who had a sixty-day diagnostic evaluation and arrestees who did not was statistically significant.

Conclusion

Arrestees with competency proceedings were charged with more serious charges when compared to arrestees who did not have mental health proceedings.

Arrestees with competency proceedings had a longer median length of stay in jail. The median length of stay for an arrestee who was found competent was 2.3 times longer than an arrestee who did not have a competency proceeding.

While only a small percent of arrestees were found incompetent (27.4%), their median length of stay was 3.8 times longer than an arrestee who did not have a competency proceeding.

Bibliography

- Fentiman, L. (1986). Whose Right Is It Anyway?" Rethinking Competency to Stand Trial in Light of the Synthetically Sane Insanity Defendant. Pace Law Faculty Publications. Paper 328, FN 18.
- James, D., Glaze, L. (2006). Mental Health Problems of Prison and Jail Inmates. Bureau of Justice Statistics. <http://bjs.ojp.usdoj.gov/content/pub/pdf/mhppji.pdf>
- Kapoor, R. (2011). Commentary: Jail-Based Competency Restoration. *Journal of the American Academy of Psychiatry and the Law*. 39, 311-315, 2011. <http://www.jaapl.org/content/39/3/311.full.pdf+html>.
- Lieb, R., Burley, M. (May 2011). Competency to Stand Trial and Conditional Release Evaluations: Current and Potential Role of Forensic Assessment Instruments. Washington State Institute for Public Policy. www.wsipp.wa.gov.
- Mental Competency Website: Best Practices Model. (2012). The National Judicial College. Accessed August 20th, 2012. www.mentalcompetency.org.
- Moss, A. (1988). Characteristics of Competency Referral Defendants and Nonreferred Criminal Defendants. 16 *The Journal of Psychiatry & Law*. Summer, 1988, 233-245 http://heinonline.org/HOL/Page?handle=hein.journals/jpsych16&div=22&g_sent=1&collection=journals.
- Nicholson, R., Kugler, K. (1991). Competent and Incompetent Criminal Defendants: A Quantitative Review of Comparative Research. *Psychological Bulletin*. Vol. 109(3), 1991, 355-370. <http://px7gv7gt2n.scholar.serialssolutions.com/?sid=google&auinit=RA&aulast=Nicholson&title=Competent+and+incompetent+criminal+defendants:+A+quantitative+review+of+comparative+research.&id=doi:10.1037/0033-2909.109.3.355&title=Psychological+bulletin&volume=109&issue=3&date=1991&spage=355&issn=0033-2909>.
- Parsons, J., Sandwick, T. (July, 2012). Closing the Gap: Using Criminal Justice and Public Health Data to Improve the Identification of Mental Illness. VERA Institute of Justice. Substance use and mental health program.
- Steadman, H., Osher, F., Robbins, P., Case, B., Samuels, S. (2009). Prevalence of Serious Mental Illness Among Jail Inmates. *Psychiatric Services*, 60, no. 6, 2009.
- Torrey, E., Kennard, A., Eslinger, D., Lamb, R., Pavle, J. (2010). More Mentally Ill Persons Are in Jails and Prisons than Hospitals: A Survey of the States. Treatment Advocacy Center and The National Sheriff's Association. http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf
- Viljoen, J., Roesch, R., Zapf, P. (2002). An Examination of the Relationship Between Competency to Stand Trial, Competency to Waive Interrogation Rights, and Psychopathology. *Law and Human Behavior*, Vol. 26, 5, pp. 481-506.
- Zapf, P., Pirelli, G., Gottdiener, W. (January 17, 2011). A Meta-Analytic Review of Competency to Stand Trial Research. *Psychology, Public Policy, and Law*. Vol. 17(1), 2011, 1-53. <http://www.apa.org/pubs/journals/releases/law-17-1-1.pdf>.

The New Mexico Sentencing Commission

The New Mexico Sentencing Commission (NMSC) serves as a criminal and juvenile justice policy resource to the three branches of state government and interested citizens. Its mission is to provide impartial information, analysis, recommendations, and assistance from a coordinated cross-agency perspective with an emphasis on maintaining public safety and making the best use of our criminal and juvenile justice resources. The Commission is made up of members of the criminal justice system, including members of the Executive and Judicial branches, representatives of lawmakers, law enforcement officials, criminal defense attorneys, and citizens.

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