



COMPETENCY ASSESSMENT RESULTS FOR FY 2019

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INTRODUCTION

Working with New Mexico Counties, the New Mexico Sentencing Commission (NMSC) designed a study to examine the competency process in New Mexico. NMSC received competency related events filed with the courts as well as competency evaluations from the New Mexico Behavioral Health Collaborative’s data base, bhsdstar. We received information on 1,528 competency evaluations performed in FY19. These evaluations were for 1,418 individuals from all districts within the state. For individuals that had multiple evaluations in the time period, we selected their first evaluation. This report summarizes the results of NMSC’s analyses of those evaluations.

MEDIAN LENGTH OF TIME BETWEEN EACH OF THE DATED EVENTS

We looked for variations in the length of time between key events in individual’s competency proceedings; these key events were categorized depending on the defendant’s custody status and his/her competency finding. Since there was considerable variation in the length of time between key events, we use the median time instead of an average (mean). Key events are considered 1) the date the evaluation is ordered to the date of the evaluation, 2) the date of evaluation to the date the report, and 3) the date the report to the date of disposition for the case. The median statistic is best because it represents the middle score in the data: half the scores are greater than the median and half are less than the median. In situations where there is a large dispersion (standard deviation) in the data as we see here, the median is a more accurate measure.

Table 1 looks at the median time between events by custody status and competency finding. The median number of days between the filing of the order of evaluation and the date of the evaluation were similar for those in and out of custody. The median number of days (39) was longest for those found competent and out of custody, and shortest for those found not competent and out of custody (35 days). Generally, the evaluation occurred more quickly for those out of custody (36) than those in custody (38).

The median number of days between the date of evaluation to the date of the report varied minimally within all

Table 1. Median Length of Time Between Each Event by Custody Status and Competency Findings

	In Custody**		Out of Custody***	
	Competent	Not Competent	Competent	Not Competent
Date Evaluation Ordered to Date of Evaluation*	38	38	39	35
Date of Evaluation to Date of Report***	11	12	12	11
Date of Report to Case Disposition**	105.5	45	130	39

*p ≤ .05, ** p ≤ .01, *** p ≤ .001

categories. The median numbers varied from 11 to 12 days across all categories.

The last row contains the median number of days from the date of the report to the disposition date. Cases where the defendant was found not competent were disposed quicker. Time to disposition was significantly longer for those who were found competent; 130 days for those out of custody and 105.5 days for those in custody.

COMPETENCY EVALUATION AND DETERMINATION OF COMPETENCY BY JUDICIAL DISTRICT

Table 2 is broken down by judicial district. The first column outlines the median number of days from the order of competency to the date of the report. The shortest median time was 28 days for those in the Bernalillo County Metropolitan Court. The median number of days was longest for those in the 8th Judicial District at 81 days.

There are wide variations once we consider competency and custody status. Once these variables were considered, we found that the longest time between the order for competency evaluation and competency report was 128 days in the 8th Judicial District for those competent and out of custody. The shortest time was 19 days for those competent and in custody with cases in Metropolitan Court.

Among those in custody and competent, the time between the order for competency evaluation and determination of competency was longest for those from the 6th Judicial District at 97 days.

Among individuals in custody who were found not competent, the longest time was 75 days in the 5th Judicial District. The shortest time was found among those individuals from the 7th Judicial District, who had a median custody length of 22 days.

The median time for individuals out of custody who were found competent was longest among those from the 8th Judicial District (128 days). The shortest median time for this group was 33.5 days in the Metropolitan Court.

Finally, among those who were not in custody and who were found not competent, the longest time overall was for those from the 13rd Judicial District at 93 days, and shortest for those from the Metropolitan Court (31 days).

Table 2. Median Number of Days between Order for Competency Evaluation to Competency Report by Judicial Districts, Custody Status, and Competency Finding

District (Total cases)	Median	In Custody		Out of Custody	
		Competent	Not Competent	Competent	Not Competent
1st District (117)	43	56	39.5	39.5	35.5
2nd District (408)	75	51	52	43.5	34
3rd District (138)	64	52	58.5	70	69
4th District (56)	45	45	37	45	51
5th District (228)	73	53	75	57.5	82
6th District (33)	51	97	61	99	40
7th District (51)	41.5	44	22	46.5	57.5
8th District (45)	81	83	62	128	36.5
9th District (41)	42.5	38.5	33	65.5	56
10th District (15)	37	50	23	38	32
11th District (168)	48.5	33.5	49.5	57	47
12th District (38)	40	45.5	29.5	48	43.5
13th District (80)	60.5	74	49	84	93
Metro (229)	28	19	23.5	33.5	31

COMPETENCY FINDING FOR JUDICIAL DISTRICTS

Table 3 outlines the number of competency findings by judicial district. Overall, we found that in most judicial districts the majority of defendants were found not competent. The majority of defendants were found to be competent in the 8th, 9th, 10th, and 12th Judicial Districts.

TIME BETWEEN ORDER FOR COMPETENCY EVALUATION AND DETERMINATION OF COMPETENCY BY JUDICIAL DISTRICT AFTER RULE CHANGE

Table 4 compares the median number of days from the order to determine competency to the date the report before and after the rule change. The median time decreased by a range of 39% to 68% after the rule change. The shortest median time before the rule change was 34 days in Metropolitan Court. After the rule change the shortest time was 13 days for those in the 10th Judicial District. Prior to the rule change, the longest median number of days was 96.5 for the 8th Judicial District. After the rule change, the longest was 40 days in the 6th Judicial District. The 8th and the 10th Judicial Districts had the largest reductions in median times with an 68% decrease.

Table 3. Competency findings in Judicial Districts

	Total cases	Competent	Not Competent
1st District	116	47.4% (55)	52.6% (61)
2nd District	408	41.9% (171)	58.1% (237)
3rd District	138	50% (69)	50% (69)
4th District	56	44.6% (25)	55.4% (31)
5th District	227	26.4% (60)	73.6 (167)
6th District	33	21.2% (7)	78.8% (26)
7th District	51	37.3% (19)	62.7% (32)
8th District	45	53.3% (24)	46.7% (21)
9th District	41	51.2% (21)	48.8% (20)
10th District	15	66.7% (10)	33.3% (5)
11th District	168	28% (47)	72% (121)
12th District	38	57.9% (22)	42.1% (16)
13th District	80	43.8% (35)	56.3% (45)
Metro	229	37.1% (85)	62.9% (144)

Table 4. Median Number of Days between Order for Competency Evaluation and Competency report by Judicial Districts after Rule Change

	Median Number of Days between Order for Competency Evaluation to Competency Report***		
	Before	After*	Median
1st District	57	26	43
2nd District	83.5	38	75
3rd District	77	30	64
4th District	54	35	45
5th District	90	38.5	73
6th District	66	40	51
7th District	54	30.5	41.5
8th District	96.5	31	81
9th District	60	31	42.5
10th District	40	13	37
11th District	60.5	32	48.5
12th District	50	22.5	40
13th District	78.5	31	60.5
Metro	34	16	28

*p ≤ .05, ** p ≤ .01, *** p ≤ .001

Rule Change: Supreme Court of New Mexico Order No. 18-8300-023

- Issued December 20, 2018 to go into effect for all cases filed on or after February 1, 2019.
- Court Rule 5-602.1 was designed to create a procedure to more timely and efficiently determine whether a defendant is competent to stand trial, by addressing issues related to delays and costs of resolving competency in a criminal proceeding. As described by the commentary, the rule adopts a four-pronged approach to addressing these concerns:
 1. Scope of evaluation: limited to a determination of whether the defendant is competent to stand trial.
 2. Process for raising competence: clear process set forth for filing a motion and resolving the motion.
 3. Neutral evaluator: the court must appoint a neutral evaluator, and the evaluator's opinion and findings create a rebuttable presumption regarding the defendant's competency.
 4. Time limits to resolve the competency issue.

From the Administrative Office of the Courts

PERCENTAGE OF CUSTODY STATUS BEFORE AND AFTER RULE CHANGE

Table 5 compares custody status before and after the rule change. The percentage of individuals in custody at the time of their evaluations was not substantially different after the rule change.

Table 5. Percentage of Custody Status for Before and After Rule Change

	Before Rule Change	After Rule Change	Total
Incarcerated	54% (561)	52.1% (195)	53.5% (756)
Not Incarcerated	46% (478)	47.9% (179)	46.5% (657)
Total	100% (1039)	100% (374)	100% (1413)

COMPETENCY BY CUSTODY STATUS

Table 6 compares competency finding by custody status. There were no statistically significant differences in the percentage of defendants found not competent and their custody status.

Table 6. Percentage of Not Competent/Competent for In Custody and Out of Custody

	Competent	Not Competent	Total
Not in Custody	45.6% (256)	47.2% (401)	46.6% (657)
In Custody	54.4% (306)	52.8% (448)	53.4% (754)
Total	100% (562)	100% (849)	100% (1,411)

COMPETENCY AND TYPE OF CASE

Table 7 breaks down competency findings by felony and misdemeanor offenses. A little over 60% of the evaluations were in felony cases. Individuals with misdemeanor cases were statistically more likely to be found incompetent (63.9%, compared to 57.4% in felony cases).

Table 7. Percentage of Competency and Type of Case

	Felony*	Misdemeanor*	Total
Competent*	42.6% (357)	36.1% (201)	40.0% (558)
Not Competent*	57.4% (481)	63.9% (356)	60.0% (837)
Total	100% (838)	100% (557)	100% (1395)

*p ≤ .05, ** p ≤ .01, *** p ≤ .001

GENDER AND COMPETENCY STATUS

Table 8 looks at competency finding and gender. There was no significant difference in the percentage of males and females that were found not competent.

Table 8. Gender and Competency

	Male	Female	Total
Competent	40.2% (434)	39% (131)	39.9% (565)
Not Competent	59.8% (645)	61% (205)	60.1% (850)
Total	76.3% (1079)	23.7% (336)	100% (1415)

COMPETENCY STATUS BY CUSTODY AND GENDER

Table 9 looks at competency finding, custody status, and gender. The percentage between competency status and custody differed slightly by gender. Among those determined competent, a higher percentage of males were in custody, whereas females were more likely to be out of custody. The same pattern was also found for incompetent males; however, there was not a statistical difference for females found incompetent regarding custody status.

Table 9. Competency Status by Custody and Gender

	Competent		Not Competent	
	Male	Female	Male	Female
In Custody	56.4% (243)	48.1% (63)	53.7% (346)	50% (102)
Not in Custody	43.6% (188)	51.9% (68)	46.3% (298)	50% (102)
Total	100% (431)	100% (131)	100% (644)	100% (204)

RACE AND COMPETENCY

Table 10 examines competency status and race. The race variable was unknown in 25.5% of cases. African Americans and Native Americans have a significantly higher probability of being found incompetent compared to any other race. This difference was statistically significant.

Table 10. Race and Competency

	Hispanic	White	Native American**	African American**
Competent	44.4% (228)	38.1% (114)	29.1% (41)	23.3% (17)
Not Competent	55.6% (286)	61.9% (185)	70.9% (100)	76.7% (56)
Total	514	299	141	73

*p ≤ .05, ** p ≤ .01, *** p ≤ .001

COMPETENCY FINDING BY AGE

The first column of Table 11 illustrates the age breakdown into categories, while the following two columns describe the finding of each competency type. Overall, we found the highest age range for competencies was for the ages of 25 to 34, with a slightly higher percentage found to be incompetent. Additionally, we found that there was a significantly lower number of competency requests for individuals 45 and older.

Table 11. Percentage of Competency finding by Age

	Competent	Not Competent	Overall
18-24	16.5% (93)	13.2% (112)	14.5% (205)
25-34	35.0% (198)	32.6% (277)	33.6% (475)
35-44**	19.5% (110)	24.9% (211)	22.7% (321)
45-54	16.1% (91)	16.4% (139)	16.3% (230)
55-64	10.3% (58)	8.5% (72)	9.2% (130)
>65	2.7% (15)	4.5% (38)	3.7% (53)

*p ≤ .05, ** p ≤ .01, *** p ≤ .001

PRIOR COMPETENCY ASSESSMENTS

Table 12 looks at competency finding, custody status, and prior competency evaluation. Overall, we found individuals who had a previous forensic assessment were more likely to be found not competent. This relationship held regardless of custody status.

Table 12. Prior Competency Evaluation by Custody Status and Competency Finding

	In Custody***			Not in Custody		
	No Prior Assessment	Has Prior Assessment	Total	No Prior Assessment	Has Prior Assessment	Total
Competent	48.9% (186)	32.1% (120)	40.6% (306)	41.3% (158)	35.8% (98)	39% (256)
Not Competent	51.1% (194)	67.9% (254)	59.4% (448)	58.7% (225)	64.2% (176)	61% (401)
Total	380	374	754	383	274	657

*p ≤ .05, ** p ≤ .01, *** p ≤ .001

AGE BREAKDOWN AND PRIOR COMPETENCY ASSESSMENT

The first column of Table 13 illustrates the age breakdown into categories, while the following columns show if a previous competency assessment was completed or not. Overall, we found those 25-34 were statistically more likely to have a prior evaluation.

Table 13. Percentage of Competency by Age and Prior Evaluation

	No Prior Eval	Prior Eval	Total
18-24	15.4% (118)	13.4% (87)	14.5% (205)
25-34*	29.9% (229)	38% (247)	33.6% (476)
35-44	24.5% (188)	20.6% (134)	22.7% (322)
45-54	16.3% (125)	16.2% (105)	16.2% (230)
55-64	9.4% (72)	8.9% (58)	9.2% (130)
65<	4.4% (34)	2.9% (19)	3.7% (53)

*p ≤ .05, ** p ≤ .01, *** p ≤ .001

REVIEW OF MEDICAL RECORDS BY CUSTODY STATUS

Table 14 lists whether outside medical records were consulted for the evaluations by custody status. Overall, we discovered custody status did not affect whether medical records were reviewed. Regardless of custody status, there was a lower percentage of individuals who had a medical record review.

Table 14. Percentage of Medical Records Reviewed by Defendant Custody Status

	Not in Custody	In Custody	Total
No Medical Records reviewed	65.5% (423)	69.1% (516)	67.4% (939)
Medical Records Reviewed	34.5% (223)	40.0% (231)	32.6% (454)
Total	100% (646)	100% (747)	100% (1,393)

PSYCHIATRIC DIAGNOSIS

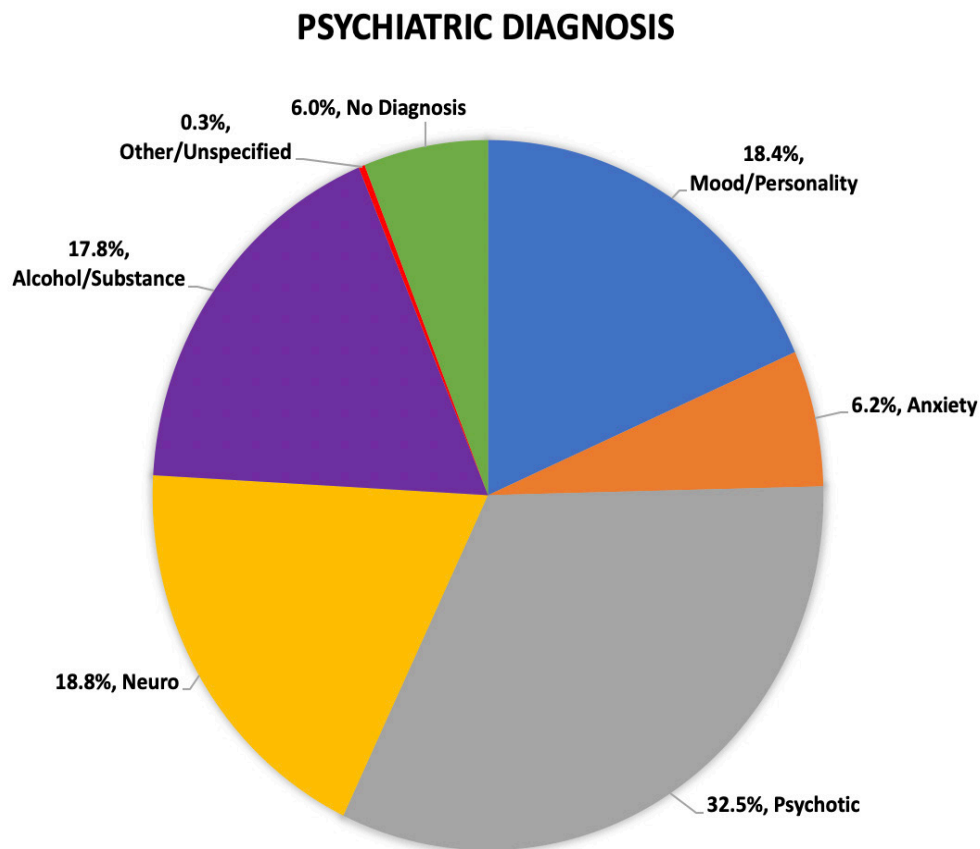
We used the Psychiatric Diagnosis variable to determine the percentages of individuals with different diagnoses. Since there were over 424 different types of conditions listed in the responses of evaluators, many of the diagnoses were grouped and recoded. We used The Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition from the American Psychiatric Association to classify the mental disorders and consulted the classification scheme used by the New Mexico Sentencing Commission previously (Freeman et al., 2013).

The diagnoses were grouped as follows:

- Personality and Mood Disorders were combined into one category and include: Antisocial Behavior, Obsessive-Compulsive Personality Disorder, and other Personality Disorders classified by the DSM-5. Depression and Dysthymic Disorders, disorders on the Bipolar Spectrum, Control/Conduct and Impulse Disorders were categorized as Mood Disorders.
- Anxiety Disorders include: Anxiety Disorders, Panic Disorders, and Social Phobias. Post-Traumatic Stress Disorder and Adjustment Disorders were also coded into the Anxiety category.
- Psychotic Disorders consist of the following: disorders on the Schizophrenia Spectrum, including Schizophreniform and Schizoaffective Disorder, as well as other Psychotic Disorders.
- Neuro Disorders include any disorder characterized by developmental deficits that produce impairments such as an Intellectual Disability or Limited Social Skills. For example, Autism, Attention Deficit Disorder, and Dyslexia meet these criteria.

Only 6% of individuals had no psychiatric diagnosis. The majority of individuals (32.5%) had a Psychotic Disorder, followed by Neuro Disorders (18.8%).

Table 15. Psychiatric Diagnosis



COMPETENCY FINDING AND PSYCHIATRIC DIAGNOSIS

Table 16 shows the primary psychiatric diagnoses by competency finding. Overall, those with Mood Personality Disorders, Anxiety Disorders and unknown or no diagnosis were more likely to be found competent. Additionally, those with Psychotic and Neurological diagnosis have a statistically higher probability to be found incompetent.

Table 16. Psychiatric Diagnosis and Competency

	Mood Personality Disorder***	Anxiety***	Psychotic ***	Neuro***	Alcohol/ Substance Abuse	Unspecified/ Other***	No Diagnosis ***	Total
Competent	61.5% (158)	70.6% (60)	19% (88)	19.6% (53)	56% (140)	66.7% (4)	73.8% (62)	39.9% (565)
Not Competent	38.5% (99)	29.4% (25)	81% (375)	80.4% (218)	44% (110)	33.3% (2)	26.2% (22)	60.1% (851)
Total	100% (257)	100% (85)	100% (463)	100% (271)	100% (250)	100% (6)	100% (84)	100% (1416)

* $p \leq .05$, ** $p \leq .01$, *** $p \leq .001$

REFERENCES

- American Psychiatric Association. (2013). Diagnostic and statistical manual of mental disorders (5th ed.). Arlington, VA: Author.
- Freeman, L., Chapel, A., and Malan, M. (2013). "Effect of Competency and Diagnostic Evaluation on Length of Stay in a Sample of New Mexico Detention Facilities." New Mexico Sentencing Commission. Online report: <https://nmsc.unm.edu/reports/index.html>