

# Competency Evaluation

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# Learning Objectives

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- Become familiar with the competency-to-stand trial evaluation and treatment process
- Become familiar with the process for ordering competency-to-stand trial evaluation
- Become familiar with the process to request developmental disabilities professional

# Who we are...

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Established in 2016, the mission of DSHS's Office of Forensic Mental Health Services (OFMHS) is to lead and manage a system of forensic mental health care that assists the courts and justice system to protect both public safety and the rights of accused mentally ill persons by providing timely, high quality, and data-informed mental health services.

- Provides forensic evaluations, forensic navigation and diversion, competency restoration, and Not Guilty by Reason of Insanity treatment services
  - NOTE: OFMHS does not oversee sexually violent predator evaluation/treatment.

# What is Competency to Stand Trial?

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- ***U.S. Constitution – Due process***
- ***Dusky v. United States 362 U.S. 402 (1960)***
  - “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”
- **Revised Code Washington 10.77.050: Mental incapacity as bar to proceedings.**
  - No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.
- "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.
- Competency may be raised during any stage of legal proceedings.

# Competency Evaluation Process

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- Court orders an evaluation
- Evaluations may be conducted in-jail, inpatient setting (the state hospitals) or other settings (e.g., for defendants on personal recognizance)
- The evaluation process generally entails:
  - Interview
  - Review of records/collateral sources
  - Assessments (when indicated)
    - Testing is not conducted in the presence of defense counsel to protect test security and integrity (APA guidelines and WAC 246-924-365(4))

# Process Delays (optional slide)

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- Evaluation Delays:
  - Attorney presence
    - Delays in responding to email communication
  - Interpreter scheduling
    - Coordinating jail, interpreter, attorney, and evaluator schedules
  - Jail room availability
    - Evaluators **do not** schedule a face-to-face room unless an attorney and/or interpreter is required
  - Waitlist/influx of cases

# Where Evaluations are Conducted

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- Why are some defendants transferred to WSH for the initial evaluation?
  - Is the defendant charged with first- or second-degree murder?
  - Is it likely an accurate evaluation cannot be completed in jail?
  - Is evaluation outside of jail setting necessary for defendant's health/safety ?
- If so, defendant ordered to WSH for up to *15* days for evaluation
- If not, defendant evaluated in jail, or community if on personal recognizance
  - Can be sent for an inpatient evaluation from there if deemed necessary by the evaluator and the court agrees

# Videoconferencing Program

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- DSHS has capability to conduct CST evaluations via secure videoconferencing
  - In process of developing telehealth interview capabilities for other jail facilities and PR interviews
- Allows attorneys to three-way conference



For more information, contact  
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# After the Evaluation Process

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- The evaluation report is submitted to the court, and if the court finds that the defendant is competent, the case proceeds to trial or other disposition.
- If the court concludes that the defendant is incompetent, a period of treatment (competency restoration) may be authorized to restore the defendant to competency.
  - In some cases the court may drop the charges when the defendant is found not competent.
- If the person is restored to competency, the case proceeds to trial or other disposition.

# Why Refer

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“Neither party should move for an evaluation of competence in the absence of a good faith doubt that the defendant is competent to proceed. Nor should either party use the incompetence process for purposes unrelated to assessing and adjudicating the defendant’s competence to proceed, such as to obtain information for mitigation of sentence, obtain a favorable plea negotiation, or delay the proceedings against the defendant. Nor should the process be used to obtain treatment unrelated to the defendant’s competence to proceed; rather such treatment should be sought pursuant to Part II of these Standards, whether the defendant is in jail, the community, or an inpatient facility.”

(Standard 7-4.3(e))

(ABA Criminal Justice Standards on Mental Health)

# When to refer

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- At any point in the case, the prosecution, defense counsel, or judge may raise concern about competency
- For any “bona fide doubt” the case is suspended by judge for court-ordered evaluation (*Pate v. Robinson*, 383 U.S. 375 (1966))
  - Obligation of the judge, even if no other party raises concern
    - Constitutional due process implications
  - Order will also indicate if parties waive defendant’s future presence at the competency hearing if the evaluator opines IST

# National Judicial College

## Mental Competency Best Practices Model

“When the issue as to whether a defendant is mentally competent to proceed is raised, it is a best practice for the court to conduct an initial hearing to determine whether there is a reasonable basis to refer the defendant for a competency evaluation.”

**“If there is a likelihood that the defendant’s presentation or current status is being influenced by the recent use or withdrawal from substances, it is a best practice to allow enough time for the defendant to withdraw from the effects of any substance use or abuse before determining whether to refer him or her for a competency evaluation.”**

(Section I.A., Initial Competency Hearing)

# **National Judicial College**

## **Mental Competency Best Practices Model**

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“[I]f the evaluation is performed too close in time to when the defendant is taken into custody, it may pose a difficulty for the examiner to rule out the possibility that the defendant’s mental state is impaired due to the effects of any potential substance use or abuse. Depending upon the circumstances, it is a best practice for the mental health professional to allow enough time for the defendant to withdraw or recover from the effects of any substance use or abuse.”

(Section D., When to Order a Competency Evaluation be Performed)

# Pre-Transfer Monitoring

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- Attorneys may seek an order for re-evaluation prior to transport for restoration treatment if the defendant has stabilized in the jail or community following evaluation
  - King County Jail has a process to notify OFMHS when defendant's awaiting transport have improved
- Defendant does NOT lose their place on admission waitlist
  - removed from the waitlist only if a trier of fact determines current competency

# Forms

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<http://www.courts.wa.gov/forms>

# Developmental Disabilities Professional Request

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## Developmental Disability

- “disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition ... **originates before the individual attains age eighteen**” (RCW 71A.10.020(5))
- *Continuing* into adulthood
- Possible indications:
  - Registration with WA’s Developmental Disabilities Association
  - Professionally substantiated diagnosis
    - not necessarily “Borderline Intellectual Functioning” or a history of special education (services can often be for behavioral issues rather than developmental disability)



# Developmental Disabilities Professional Request

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## Developmental Disability

- Does *not* include any lowered functioning occurring *after* childhood:
  - Adult traumatic brain injury
  - Suspected dementia
- DDP referrals for these issues could cause unnecessary delay for these (as well as developmentally delayed) clients

# What Is Competency Restoration?

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- Competency Restoration treatment may consist of:
  - Administration of psychiatric medications
  - Group and individual psychoeducation about mental illness
  - Educational treatment programs designed to address competence-related deficits
  - Recreational and psychosocial group activities
  - Medical treatment

## ***Jackson v. Indiana, 406 U.S. 715 (1972)***

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“At the very least, due process requires that the nature and duration of [IST] commitment bear some reasonable relation to the purpose for which the individual is committed.”

- cannot maintain under competency commitment for treatment of global mental health needs unrelated to legal competency standard

# Competency Restoration

- The initial length of the competency restoration treatment period depends upon the type of criminal charge ...
  - Defendants charged with “serious” misdemeanor offenses qualify for up to 90 days of restoration treatment.
  - Defendants charged with Class C or non-violent Class B felony offenses qualify for an initial treatment period of 45 days.
  - Defendants charged with violent Class B and Class A felonies are committed for an initial treatment period of up to 90 days



## After First Restoration Period: Felonies Only

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- Still not competent?
  - If Court finds likely restorable: another 90 days
- Still not competent?
  - If defendant is found to be a danger and likely to commit acts jeopardizing public safety, and substantial probability of restoration: up to another 6 months
    - If not: charges dismissed and evaluated for civil commitment

What happens to defendants deemed non-restorable, or not restored within maximum commitment term?

## *Jackson v. Indiana*, 406 U.S. 715 (1972)

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A defendant “cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain the capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant.”

# What happens from there?

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- Charges dismissed without prejudice (or “stayed or dismissed” for non-serious non-felonies)
- Then:
  - Misdemeanors: DCR evaluation for civil commitment under emergent risk/grave disability standard, if recommended
  - Felonies: 72-hour WSH evaluation for civil commitment under RCW 71.05 if dismissal of felony charges
    - If no petition filed – charges re-filed?



# Civil Commitment after Felony Dismissal

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In addition to making findings under grave disability and emergent risk (self, others, property) standards, court will determine whether:

- the acts the person committed constitute a violent offense under RCW 9.94A.030
- such person ... as a result of a mental disorder, presents a substantial likelihood of repeating similar acts

RCW 71.05.280(3)

## **Civil Commitment after Dismissal of “Violent Felony”**

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Review by “independent public safety review panel” to advise on recommendations:

- Regarding change in commitment status
- To allow furloughs or temporary leaves accompanied by staff;
- Not to seek further commitment terms
- To permit movement about the grounds of the treatment facility, with or without the accompaniment of staff.

# Civil Commitment Release

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- Community oversight
  - Conditional release
  - “Less Restrictive Alternative” placement
- Refiling of charges?

# Resources

<https://www.dshs.wa.gov/bha/office-forensic-mental-health-services>

Washington State Department of Social and Health Services

How may we help you?

Home > **BHA** > Office of Forensic Mental Health Services

**BHA**

Office of Forensic Mental Health Services

Competency Restoration Facilities

Forensic Navigator Program

▶ Jail Technical Assistance Program

Competency Restoration FAQs

Ross Settlement Project

Telehealth Resource Site

Triage Consultation and Expedited Admission

Trueblood et al v. Washington State DSHS

WorkForce Development

Assistant Secretary's Message

Child Study and Treatment Center

Eastern State Hospital

Services for American Indians and Alaska Natives

Western State Hospital

Community-Based Treatment

Special Commitment Center

Office of Forensic Mental Health Services

The Office of Forensic Mental Health Services is a division of the Department of Social and Health Services' Behavioral Health Administration that was created in 2015 to oversee the state's adult forensic mental health system. It has nine regional offices and three residential treatment facilities.

As part of DSHS' Behavioral Health Administration, the OFMHS strives to transform forensic mental health throughout Washington state by partnering with communities and law enforcement in areas such as mental health resources in jails, competency restoration, diversion programs, and community resources to better support people living with mental illnesses who come into contact with the criminal court system.

The programs provide forensic services, defined broadly as the intersection of law and psychology. These services include competency evaluations, care and treatment for competency restoration, forensic navigator services, diversion work, and more.

**Workforce development**


OFMHS provides forensic workforce development and jail technical assistance programs. The mission of the forensic workforce development team

is to help develop sufficient availability of mental health professionals to provide an array of services in Washington's communities, inpatient facilities, and law enforcement or correctional settings, including jails and prisons. The jail technical assistance program provides training and guidance manuals focused on best practices to assist jail staff in areas such as treatment planning, suicide prevention, and crisis de-escalation. These trainings may also have relevance for others working within the criminal court system. The jail technical assistance team will work to ensure that these other partners are aware of and have access to such trainings.

**Trueblood v. DSHS**

Much of the office's efforts are aimed at coming into substantial compliance with orders in the Trueblood v. DSHS lawsuit, which focuses on ensuring jail-based competency evaluations and inpatient competency services occur in a timely manner. This includes the work of forensic evaluators, who evaluate Trueblood class members who are in jails, inpatient facilities, and the community, and report to the court on their findings.

Latest News



First year of Trueblood implementation filled with major milestones

Quick Links

Contact OFMHS

Resources

Trueblood et al v. Washington State DSHS

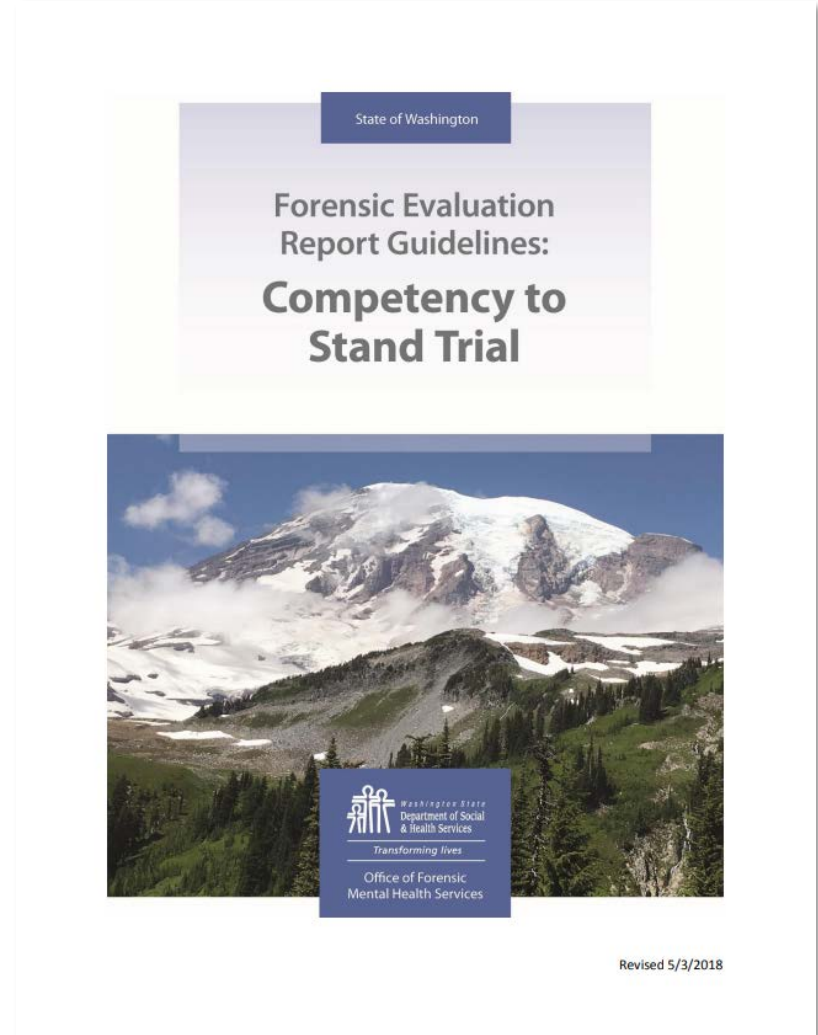
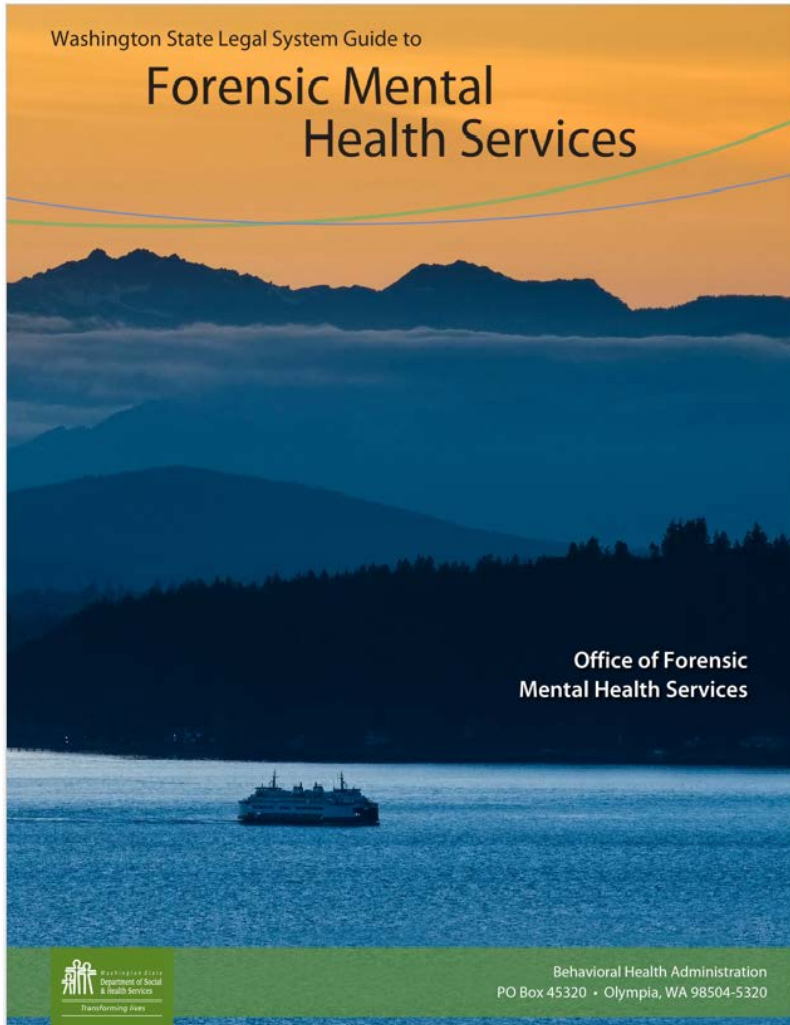
Ross Settlement Project

Communications

About OFMHS

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# Resources



# Q&A

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# Recognition

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