




Competency



Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so.

United States Supreme Court
Dusky v US, 362 U.S. 402 (1960)

- Any of various conditions characterized by impairment of an individual's normal cognitive, emotional, or behavioral functioning, and caused by social, psychological, biochemical, genetic, or other factors, such as infection or head trauma.

Mental Illness

- Case Law
 - US V Dusky, 362 U.S. 402 (1960)

"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."

Two Components (Present Ability)

- 1 Legal Process
rational and factual understanding of criminal proceedings
 - 2 Aid and assist
sufficient present ability to consult with counsel with a reasonable degree of rational understanding
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1. Any time after the arrest of a defendant, including, without limitation, proceedings before trial, during trial, when upon conviction the defendant is brought up for judgment or when a defendant who has been placed on probation or whose sentence has been suspended is brought before the court, if doubt arises as to the competence of the defendant, the court shall suspend the proceedings, the trial or the pronouncing of the judgment, as the case may be, until the question of competence is determined.
2. If the proceedings, the trial or the pronouncing of the judgment are suspended, the court must notify any other departments of the court of the suspension in writing. Upon receiving such notice, the other departments of the court shall suspend any other proceedings relating to the defendant until the defendant is determined to be competent.

NRS 178.405

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- 178.415 gives the court authority to assess competency.
 - Appoint appropriate evaluators.
- 178.425 –initial competency is completed
 - The court accepts competency evaluations and makes findings as to whether the defendant is competent or incompetent.
 - If incompetent, remands the def to custody of sheriff for transport to the Division for further treatment and restoration to competency.

178.425 versus 178.415

- The Division has a legal obligation under 178.425 to promptly provide restorative treatment. That has been defined as about 7-20 days from the receipt of the order finding the defendant incompetent.
- Upside of Covid, and zoom/video conferencing.
 - Rural jurisdictions can teleconferencing docs/jail.

178.425 and 178.415

- In 2005 the Chief Judge assigned the determination of all competency matters to one specific department.
 - Efficiency
 - Consistency
 - Accuracy

Eighth Judicial

Typical Process

- Doubt is raised NRS 178.405
 - Order/referral is signed
 - Language for jail docs/records
 - A date is given for 3 weeks in Competency Court
 - Referral goes to CC Coordinator
 - Docs are assigned from list of NRS 178.417 qualified.
 - Reports
 - Split decision
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- In a series of cases 2006-2009 the NSC confirmed that attorneys may provide additional information to the competency doctors
 - Fergusen v State, 124 Nev. 795
 - Sims v Eighth, 125 Nev. 126
 - Calvin v State, 122 Nev. 1178
 - Scarbo v Eighth, 125 Nev. 118
 - May speak with the doctors
 - May provide the court with additional evaluations and additional evidence.
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- However, any ongoing competency issue must vest with the trial judge who has been assigned to hear the matter.
 - The determination of all competency matters that arise during trial must vest with the trial judge who has been assigned to hear the matter.
 - Fergusen v State, 124 Nev. 795
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- **Findings**

- Competent
 - Return to the originating courtroom to proceed with underlying charges
- Incompetent
 - Transferred to the custody of the Sheriff for transport to Lakes/Stein for further treatment and restoration to competency
- Incompetent Without Probability
- Misdo Diversion Program

Hearing

- Incompetent without probability- NRS 178.461
 - Court makes findings
 - No substantial probability that they will attain competency within the foreseeable future.
 - Foreseeable future
 - Charges are dismissed
 - State may seek civil commitment for up to 10 years on A felonies and some B felonies.
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- A defendant can only be kept by the Division for the potential length of their sentence.
 - Misdemeanors are up to 6 months
 - Gross misdemeanors up to 1 year.
- As result of lack of space (predated Stein) program to divert misdemeanants.

Misdo Diversion

- Attorneys may challenge the findings of the initial competency determinations and the Division's findings.
 - Witnesses-additional evaluations
 - Aiding/Assisting
 - Speak with attorney
 - Observe interaction if necessary

Promptly- as reports get stale

Challenges

- 2 facilities in Nevada
 - Lake's Crossing-Reno
 - 67 beds
 - Stein Hospital-LAS
 - 47 beds
 - C-Pod (SNAMH grounds) 20 beds
 - Possibility of 20 additional beds

Both are state run facilities specifically intended to provide treatment to competency.

Forensic Treatment

- The Division makes decisions as to which facility a particular defendant may be sent.
 - Forensic staff diagnose, treat, evaluate and inform the court regarding defendant's competency.
 - As part of their treatment program defendants participate in a Legal Process class.
 - The class lasts for six weeks
 - It is a continuous loop till they pass
 - Teach them what they need to know to pass the competency questions
 - There are out of custody treatments at both facilities
 - Class in Southern Nevada
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- Findings of competency
 - Pursuant to NRS 178.455
 - Two members of the defendant's treatment team conduct evaluation
 - One evaluator who is not part of the treatment team (but is a state employee)
 - Determine if:
 - Defendant is of sufficient mentality to understand the nature of the offense
 - Defendant is of sufficient mentality to aid and assist counsel
 - Defendant is not of sufficient mentality if there is a substantial probability that he will attain competency in the foreseeable future.
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TARGET POPULATION FOR AOT PROGRAM:

- + Individuals with serious mental illness
- + Treatment resistant (failed at lower levels of care)
- + Frequent hospitalizations
- + Currently working with CIT to identify “super users”
- + Started identifying patients with insurance for AOT

ASSISTED OUTPATIENT TREATMENT (AOT)

(COMMITTED TO OUTPATIENT TREATMENT)

- ✖ Started in Las Vegas in 2014
- ✖ Run through Southern Nevada Adult Mental Health Services (state hospital)
- ✖ AOT can be a condition of probation for a defendant who is acutely mentally ill
- ✖ In 8th JDC, there are currently 75 active AOT participants (6 on probation)

PURPOSE OF SPECIALTY COURTS

- ✗ Increases public safety
- ✗ Reduces criminal recidivism (re-offending)
- ✗ Improves quality of participants' lives
- ✗ Saves money
 - + Less expensive than detention
 - + Reduces criminal justice costs
 - + Increases productivity of participants

MENTAL HEALTH COURT (NRS 176A.250)

A defendant with a serious mental illness can enter Mental Health Court

1. As part of a diversion program (NRS 176A.260)
 - ★ Adjudication is stayed by the court
 - ★ Placed on probation, with a dismissal after graduation
2. As a condition of probation

Some negotiations agree to reduce a charge after successful completion of MHC and probation

SERIOUS AND PERSISTENT MENTAL ILLNESS

Disease that is treated with medication

MHC serves individuals with severe and persistent serious mental illness:

- + Schizophrenia
- + Schizoaffective
- + Bipolar Disorder (with or without psychosis)
- + Major Depressive Disorder (severe)
- + Posttraumatic Stress Disorder

ELIGIBILITY CRITERIA FOR MENTAL HEALTH COURT

Defendant can be referred at any time in the criminal process

Identified Serious Mental Illness (SMI)

History of psychiatric hospitalizations

Alcohol and/or Substance Use Disorder can be present, as long as mental health symptoms stem primarily from SMI

Applicant must be involved in the criminal justice system

All applicants are considered on an individual basis.

CO-OCCURRING DISORDERS COURT ELIGIBILITY CRITERIA

Identified Mental Illness (less severe)

Alcohol and/or Substance Use Disorder must be present

Applicant must be involved in the criminal justice system

Ability to sustain housing after 120 days (employment or disability)

All applicants are considered on an individual basis.

AOT MHC

CODC

Criminal charges necessary?		X		X
Housing component?	X	X		120d
Case Manager?	X	X		
Medication management?	X	X		limited
Drug Treatment available?	limited X		X	
Sanctions/Incentives	limited	X		X
Forced medication?				
Lock down facility?				
Occupational Therapy?	X	X		limited
Probation Officer?	20%	99%		100%