

Restoration to Competency: Treatment, Justice, or Neither

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Trends

- Per capita state psychiatric bed populations **by 2010 plunged to 1850 levels.**
- 2005 data reported a 90% reduction in bed population in the first 50 years of deinstitutionalization. Nevada (5.1/100,000), **Arizona (5.9/100,000)** and Arkansas (6.7/100,000) had the fewest

T.A.C. reports

Loss of Public Psychiatric Beds between 2005 and 2010 Arizona ranks 49th of 50

State	Number of beds 2010	Number of beds 2005	Number of beds lost or gained	Percent of beds lost or gained	2010 beds/100,000 total population	Percent of target beds per capita	State ranking per capita (highest to lowest)
Arizona	260	338	-78	-23%	4.1	8%	49

National Alliance on Mental Illness

- As a result, 2 million people with mental illness are booked into jails each year.
- Nearly 15% of men and 30% of women booked into jails have a serious mental health condition.
- 40 percent of adults who experience serious mental illnesses will come into contact with the criminal justice system at some point in their lives.

“If you are mentally ill in America
you are more likely to see a Judge
than a Psychiatrist.”

Judge Steven Leifman

COMPETENCY

The evaluation of adjudicative competence is arguably the single most significant mental health inquiry pursued in criminal law*, in part because “more defendants are evaluated for competency and more financial resources are expended for their evaluation, adjudication, and treatment than for any other class of forensic activities”**

*Nicholson & Kugler, 1991.

**Golding, 1992, p. 77.

Before we get to "Restoration"



Arrest

- Charges pressed
- Arraignment

Rule 11

- Motion
- Order

Findings made by Court

- Competent
- Needs RTC

Effect of incompetency

A person shall not be tried, convicted, sentenced or punished for an offense if the court determines that the person is incompetent to stand trial.

18 U.S.C. § 4241 (2006) and A.R.S. §13-4502 (A)

A Little History

- *Historia Placitorum Coronae*, 1736 p. 35
- (*Youtsey v. United States*, 1899)



The Case All is Based on

- Dusky v. United States (1960):

“sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” or “a rational as well as factual understanding of the proceedings against him”

- A.R.S. §13-4502 (A). Effect of incompetency

A person shall not be tried, convicted, sentenced or punished for an offense if the court determines that the person is incompetent to stand trial.

What is Competency?

The constitutional standard for competency, based on *Dusky*, may be understood as requiring that defendants be able:

- (1) to consult with defense counsel,
- (2) to otherwise assist with their defense, and
- (3) to have both a rational and factual understanding of the proceedings

(American Bar Association, 1989, p. 170)

Competent or Not

What happens next?

If the person is competent: proceeds as usual

at this stage - If the person is not competent:
options . . .

Dr. Freedman and Dr. Seuss



Restoration . . .

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Restoration . . .

- ❖ Restoration is not "treatment"
- ❖ Restoration is an education about the criminal justice system

- ❖ Some therapeutic techniques are used:
 - Motivational interviewing
 - Rapport building
 - Especially helpful with malingering people

Restoration and Medications

ARS §13-4511. Competency to refuse treatment; length of sentence:

If the court finds that a defendant is incompetent to stand trial, the court **shall** determine:

1. If the defendant is incompetent to refuse treatment, including medication, and should be subject to involuntary treatment.

ARS §13-4512. Treatment order; commitment

E. An order entered pursuant to this section **shall** state if the defendant is incompetent to refuse treatment, including medication, pursuant to section 13-4511.

Medications

Landmark Supreme Court Cases:

- Washington
- Riggins
- Sell



Washington vs. Harper (1990)

Key Points:

- In custody and sentenced
- **Dangerousness + best medical interest**
- Judicial hearing vs. **review hearing**
- **Alternative, less intrusive means**

Riggins vs. Nevada (1992)

Key points:

- Not convicted
- **Least Intrusive** For restoration to competence
- **Medically appropriate for his safety and others**

Sell vs. United States (2003)

- 1) important governmental interests are at stake;
- 2) involuntary medication will significantly further those interests
- 3) involuntary medication is necessary to further those interests
- 4) administering the drugs is medically appropriate.

What Does all This Really Mean?

- Medications can be forced to restore someone to competency
- Findings must be made
- Experts consulted
- Lengthy hearings



And Then What?

- Reports to the Court
- Hearings and Findings
 - Competent
 - Not competent and not restorable



Why Things Are The Way They Are

Adjudicative Competence vs. Mental Illness/Mental Disorder



Options for Survival

- Specialized probation caseloads
 - Non traditional compliance strategies
 - Evidenced based supervision
 - Evidenced based psychiatric and Behavioral Health models
 - Targeting Criminogenic needs
- Interactive Behavioral Health agencies
 - Evidenced based practices
 - Engagement and reengagement
 - Title 36
- Choosing the correct Social Service agency

Not Competent and Not Restorable

- Case is dismissed but may be re-filed
- Case is dismissed and Title 36 is ordered
- Case is dismissed and Title 14 is ordered



A. R. S. § 13-4517

**JUST GET IN THE CAR, ALICE,
I'LL EXPLAIN ON THE WAY.**

