



Virginia Department of
Behavioral Health &
Developmental Services

Adult Out-Patient Restoration Training 2015

Training for CSB Out-Patient Restoration Coordinators and Counselors

Trainers

Competency to Stand Trial (CST): History, Law, and Clinical Practice

TRIAL COMPETENCE AND RESTORATION TO COMPETENCY

- How did these legal concepts develop in our courts and in our constitution?
- What are the court cases that helped to define the concepts?

HISTORY OF THE LAW

- Concept dates back to 1600's in English Common Law
 - “Mute of Malice” vs. “Mute by visitation of God”
- First written law in 1790
 - Frith's Case
- Competency is considered morally necessary for a fair trial
- *Youtsey v. U.S.* (1899) gave competency “constitutional status” as a matter of due process
 - “...It is not ‘due process of law’ to subject an insane [incompetent] person to trial upon an indictment involving liberty or life.”
 - Supports Sixth Amendment rights

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

Defined Competency to Stand Trial

- Milton Dusky, a 33 year old man was charged with assistance in the rape and kidnapping of an underage girl. He was diagnosed with Schizophrenia but was found competent to stand trial. After a finding of guilt, he was sentenced to 45 years.
- Court says: “it is not enough for the district judge to find that ‘the defendant [is] oriented to time and place and [has] some recollection of events,’ but 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.”**
 - Dusky did not define all of the terms used; some were defined in later decisions

COMPETENCY TO STAND TRIAL

U.S. v. Dusky
(1960)

Present ability to consult with attorney with *reasonable* degree of rational understanding

Rational and factual understanding of proceedings

Wieter v. Settle - U.S. District Court for Western Missouri (1961)

WHAT MUST A DEFENDANT KNOW?

- He is in a Court of justice, charged with a criminal offense
- There is a Judge on the bench
- A Prosecutor is present who will try to convict him of a criminal charge
- He has a lawyer who will undertake to defend him on that charge
- He will be expected to tell his lawyer the circumstances, to the best of his mental ability (whether influenced or not by mental aberration) and the facts surrounding him at the time and place
- There is or will be a jury present to decide his guilty or innocence of such charges
- He has memory sufficient to relate those things in his own personal manner



JACKSON V. INDIANA, 406, U.S. (1972)

- *Jackson v. Indiana (406, U.S., 1972)*: Theon Jackson, a deaf mute who could not read or write or communicate in other ways, and was charged with two counts of petty theft.
- A CST evaluation was conducted and the psychiatrist opined that his intelligence was too low for him to understand the charges against him and that the probability of him being restored to competency were “rather dim” even if he was not hearing and verbally impaired.
- Nevertheless, he was committed to a psychiatric facility for treatment but later petitioned the Supreme Court asserting that this commitment was paramount to a life sentence.
- The court agreed, ruling that a defendant could not be held longer than the ***reasonable period of time necessary to determine whether there is a substantial probability that he would attain competency in the foreseeable future.***



OTHER COURT CASES

WHEN IS COMPETENCY RAISED?

- When there is a “bona fide doubt” about the defendant’s competency (*Pate v. Robinson, 1966*) or sufficient doubt is raised due to behaviors by the defendant (*Drope v. Missouri, 1975*)
- Defense, prosecution, or the court may raise the issue at any point in the process (*Pate; Drope*)
 - Practically, the defense is usually the first to raise competence concerns
- All defendants are presumed competent to stand trial (*Medina v. California, 1992*)
- The State requires a defendant claiming incompetence prove it by the preponderance of the evidence (*Medina; Cooper v. Oklahoma, 1996*)

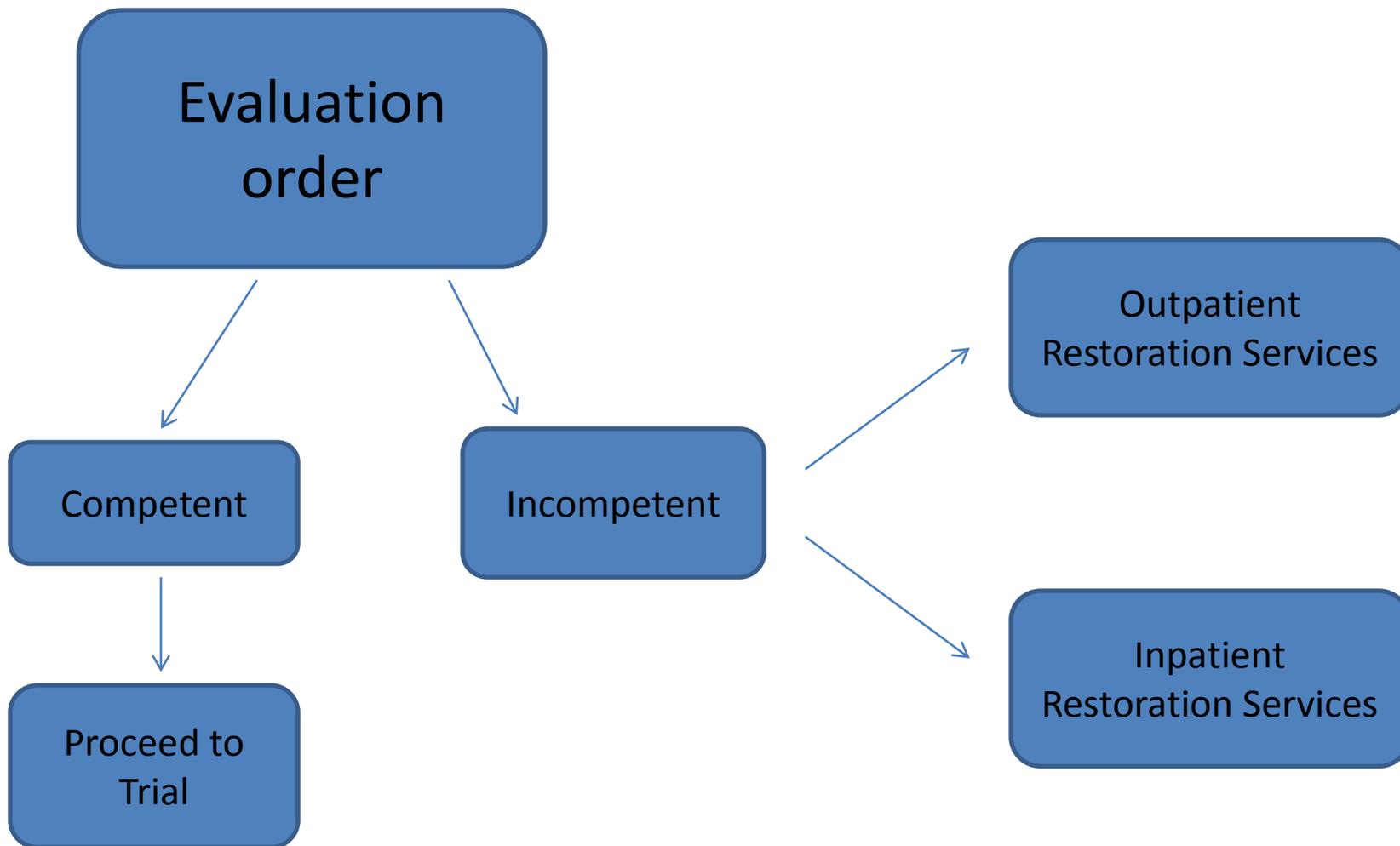
In Virginia, a defendant is not competent if:

- Lacking *substantial capacity*
 - To understand the proceedings against him
- Or -
- To assist his attorney in his own defense

THE PROCESS IN VIRGINIA PER CODE SECTIONS

- **§19.2-169.1:** Raising question of competency to stand trial or plead; evaluation and determination of competency
 - Initial CST Evaluation
- **§19.2-169.2:** Disposition when defendant found incompetent
 - Initial order for restoration of competency to stand trial services
- **§19.2-169.3:** Disposition of unrestorably incompetent defendants
 - In addition to the dispositions, also allows for subsequent restoration orders when defendant is incompetent but restorable to competency

Competency Process



REFERRALS FOR CST EVALUATIONS

- Competence questions usually raised by defense attorney, but can be raised by judge or CWA
- Issue can be raised at any point during the trial process
- 10-15% of defense attorneys question the competence of their defendants, but requests for examination of the defendant's competency is made in fewer than half of these cases
 - (cited in Melton, et al.)
- Disorganized speech is common reason for referral

DATA ABOUT CST EVALUATIONS

- Most evaluations are completed in the community or in the jail vs. in a DBHDS hospital.
- DBHDS has averaged about 97 inpatient admissions per year since FY 11 for pre-trial evaluations, mostly for competency to stand trial.
- The State Supreme Court paid for 2,147 competency evaluations in FY 14 performed on an outpatient basis. 48% were competency evaluations alone and 52% were combined competency and sanity evaluations.
- High level of agreement between evaluators, and between the evaluator's opinion and the decision by the judge

Qualifications of competency evaluator:

- “Psychiatrist or clinical psychologist who is qualified by training and experience in forensic evaluation”

NOTE: These qualifications apply to the evaluator for the initial and any subsequent (outcome) competency evaluations.

LOCATION OF CST EVALUATION PURSUANT TO § 19.2-169.1

- “Shall be performed on an outpatient basis at a mental health facility or in jail unless the court specifically finds that outpatient services are unavailable or unless the results of outpatient evaluation indicate that hospitalization of the defendant for evaluation on competency is necessary.”

THE CST EVALUATION (§19.2-169.1)

- The CST evaluation must address:
 - “defendant’s capacity to understand the proceedings against him;
 - his ability to assist his attorney and
 - his need for treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future.”
- The Code changed 7/1/14 to require that the CST evaluator recommend either outpatient or inpatient restoration for incompetent defendants.
- “No statements of the defendant relating to the time period of the alleged offenses shall be included in the report.”
 - By implication, this should hold true for restoration counselors

FOCUS OF CST EVALUATION

- *Dual Focus*: Two identified prongs:
 - *Understanding* the legal process
 - Ability to *assist* counsel
- *Present Time Frame*: Assessment of a *present state* that can fluctuate over time and may require reassessment.
- *Contextual*: The degree of understanding is related to the complexity of the charge and legal process that will be unfolding.
- *Capacity-Based*: Reflects *capacity*, not current state of knowledge:
 - Attempts to educate during evaluation are necessary
- *Rational and Factual*: Able to understand generally, and apply information to one's own situation.
- *Low Standard*: Requires only a “reasonable degree,” not impeccable understanding of the relevant information:
 - “The bar for competency is low” and does not require legal sophistication

CLINICAL ASSESSMENT OF TRIAL COMPETENCY

Assessing whether the defendant can adequately:

- Understand the alleged criminal offense, including its seriousness and potential penalties
- Articulate facts pertaining to the alleged offense
- Understand roles of all of the participants in a trial, including the prosecutor, defense attorney, judge, witnesses, and jury
- Understand purpose of a trial and the adversarial nature of court procedures
- Understand implications, drawbacks, and benefits of a plea bargain
- Understand rights of the defendant including the right to deny guilt and avoid self-incrimination
- Reason through the common legal choices and options such as a plea bargain
- Communicate, understand, and retain information
- Assist counsel as reflected in their ability to help their defense attorney
- Maintain proper courtroom behavior
- Understand the pros and cons of a potential trial



AMNESIA AND MEDICATION

Two clinical conditions recognized by statute:

- *Amnesia*: The fact that the defendant claims to be unable to remember the time period surrounding the alleged offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the charges against him and can assist in his defense.
- *Medicated Defendant*: Nor shall the fact that the defendant is under the influence of medication bar a finding of competency if the defendant is able to understand the charges against him and assist in his defense while medicated.

WHAT RECOMMENDATIONS DOES THE CST EVALUATOR MAKE TO THE COURT?

The 3 defined options in the Code are:

- Competent to stand trial
- Incompetent to stand trial but restorable
- Incompetent to stand trial for the foreseeable future with recommendations for:
 - Release
 - Committed pursuant to § 37.2-814
 - Certified pursuant to § 37.2-806
- Note: Court may order an unrestorably incompetent defendant to be screened pursuant to § 37.2-903 and § 37.2-904 if they have qualifying sex charges

WHAT ARE THE KEY ELEMENTS OF THE CST EVALUATION?

- Background information *as relevant to competence*
 - Should be “proportional” to defendant’s problem areas
- Past and/or current test results *as relevant to competence*
- Description of clinical status, particularly *as relevant to competence*
- Clear and detailed description of the interview addressing trial competence
 - Not just courtroom knowledge, but individualized appreciation and reasoning
 - *A clear description of the barriers to competence.*

GOOD CST EVALUATIONS

- Do not emphasize diagnoses. They emphasize the relevant legal issue or referral question.
- Clearly describe *relevant symptoms, deficits, and strengths* that clearly link to the issue of trial competence.
- Clearly articulate the evaluator's opinion and underlying reasoning
 - *These* deficits will interfere with *these* components of competence in *these* particular ways...
- Are “transparent,” meaning you can follow evaluator's procedures, reasoning, and conclusions.
- Consider third party information
- Are clear and comprehensible. Any mental health jargon that is necessary for the evaluation is clearly defined

PROBLEMATIC CST EVALUATIONS

- Appear ignorant of competence standard, or address only one aspect of it
- Fail to access, or consider, collateral data
 - Rely on defendant self-report only
- Emphasize diagnosis or provide irrelevant description
- May violate defendant's rights by offering excessive or irrelevant information
- Include defendant's description of the instant offense

COMPETENCY TO STAND TRIAL IS:

- A sufficient understanding; not a perfect understanding
- A layperson's understanding
- A capacity to understand, involving both factual and rational understanding

COMPETENCY TO STAND TRIAL IS *NOT*:

- Passing a vocabulary test
- Passing a knowledge test
- Being a legal expert
- Being a rights expert

THE COMPETENCY DETERMINATION (§ 19.2-169.1)

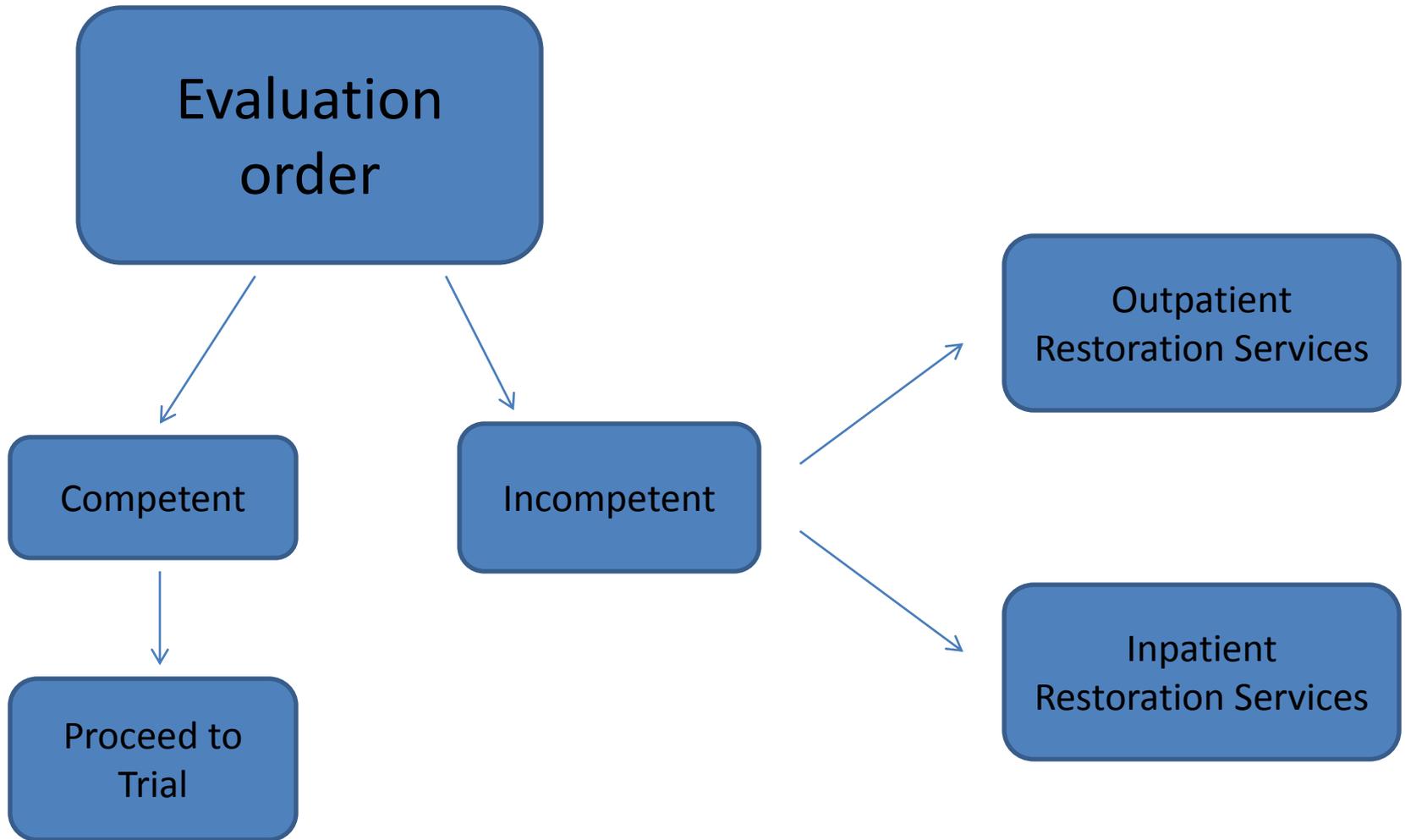
What happens next?

- After receiving the CST evaluation, the Court shall promptly determine whether the defendant is competent to stand trial
- The CST evaluator provides an opinion; the presiding judge makes a determination of competency to stand trial
- A hearing is not required unless one is requested by one of the parties, or unless the Court has reasonable cause to believe the defendant will need a court order for restoration services

DISPOSITION WHEN DEFENDANT FOUND INCOMPETENT (§ 19.2-169.2)

“the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the defendant requires inpatient hospitalization, at a hospital designated by the Commissioner...”

Competency Process



WHY IS OUTPATIENT COMPETENCY RESTORATION IMPORTANT?

- The Code (§ 19.2-169.2) sets outpatient restoration as the default – outpatient is presumed unless the judge makes a special finding for inpatient.
- Outpatient restoration is considered “less restrictive” than inpatient restoration.
- Availability of outpatient restoration may facilitate an individual being granted bond.
- Outpatient restoration allows defendants to remain closer to home and access care through existing resources.
- Availability of outpatient restoration helps preserve inpatient beds for those in the most acute need for restoration.