



COMPETENCY FOR CRIMINAL TRIAL IN COLORADO

By Kerry White

The U.S. Constitution guarantees each citizen the right to a fair trial, which includes the right to be present at the trial, able to understand the nature of the proceedings, and able to participate in his or her defense. Whether the defendant's mental health impaired his or her ability to know right from wrong during the alleged commission of a crime is a separate issue. When the issue of fitness for trial (competency) is raised, Colorado law requires the court to order a competency exam.¹This *issue brief* describes the roles and processes of Colorado courts and the Department of Human Services (DHS) in addressing competency.

Process for competency evaluation. A judge, prosecutor, or defense attorney may request the court order a competency exam of a defendant. Typically, requests are made when the defendant exhibits signs of mental illness or an intellectual or developmental disability (IDD). If a judge orders an exam, all trial or sentencing proceedings stop until the evaluation is complete. Within 14 days of receiving a court-ordered report, the prosecution or the defense may request a hearing on the report or a second exam. A hearing must be held within 35 days of a timely request or receipt of the second exam. The goal of the exam is to determine whether the defendant is competent to stand trial or requires services to be restored to competency.

Exams. State law requires that exams be conducted on an outpatient basis, or if the defendant is in custody, at that location. Colorado law requires a licensed psychiatrist or psychologist to conduct the exam. According to the Judicial Department, outpatient competency exams paid for by the court may be billed for a maximum of ten hours. This is consistent with the length of time for exams occurring at the Colorado Mental Health Institute at Pueblo (CMHIP). Table 1, which provides recent exam data, shows that cases needing an evaluation have increased 25 percent over the last three fiscal years.

Table 1
Recommendations for Competency Evaluations
FY 2013-14 through FY 2015-16

	FY 2013-14	FY 2014-15	FY 2015-16
Adult	1,130	1,340	1,446
Juvenile	176	202	192
Total	1,306	1,542	1,638

Source: Colorado Department of Human Services (does not include second and further evaluations).

Commitment. The court may place a defendant in the custody of the CMHIP for an exam or to receive restoration services if it believes:

- the defendant is a danger to self or others;
- an observation period is necessary;
- previous evaluations were inconclusive; or
- the defendant has been uncooperative or has clinical needs that warrant transfer to the CMHIP.

¹ Section 16-8.5-102 (2), C.R.S.

Under a 2012 federal settlement, no defendant may wait more than 28 days for admission to CMHIP for a competency exam or restoration services.

Competency restoration in Colorado. If a defendant is found incompetent to proceed, the court will order outpatient or inpatient services.

Outpatient services may be completed at various locations, including private mental health clinics, the University of Denver program “Denver First,” or other agencies that provide these services. Inpatient restoration services are offered at the CMHIP, managed by the DHS (307 forensic beds), or the Restoring Individuals Safely and Effectively (RISE) program in Arapahoe County’s Detention Center (about 50 beds). Colorado law prohibits confinement for purposes of competency restoration from exceeding the maximum term of confinement that could be imposed for the offenses with which the defendant is charged. It further requires that the court review a defendant’s status at least once every three months. A defendant who is found guilty is eligible to receive a credit for any time spent confined while undergoing restoration.

Table 2 presents recent cases with findings of completed restoration, by referral location. These data show that cases where restoration is recommended have increased 72 percent over the last three fiscal years. Placement data by age is not currently available.

Table 2
Competency Restorations
FY 2013-14 through FY 2015-16

	FY 2013-14	FY 2014-15	FY 2015-16
CMHIP	278	369	433
Rise	65	94	117
Community	47	108	120
Total	390	571	670

Source: Colorado Department of Human Services.

Treatment protocols. In 2012, the National Judicial College issued its findings on best practices for competency restoration. The model calls for treatment to be tailored to the individual needs of each defendant and that, in most cases, treatment should be completed

within 120 days, unless that amount of time is greater than any sentence of incarceration that would have been imposed upon a criminal conviction.

CMHIP. Depending on the needs of the defendant, restoration services can include: medication; specialized programs for individuals with IDD; education programs; individual treatment; and cognitive remediation programs.

RISE. The RISE Program has competency groups (including rational decision-making and mock courts); psychotherapy groups (topics include social skills, anger management, coping skills); individual therapy; and competency screenings, among others. The average length of stay between November 2013 and May 2016 was 51 days.

Due to the differences in timing of orders and the average length of days between competency exam orders and restorations, the precise number of individuals restored in any given year is not available. Table 3 shows the average number of days to restore competency.

Table 3
Average Number of Days for Competency Restoration
FY 2013-14 through FY 2015-16

	FY 2013-14	FY 2014-15	FY 2015-16
Adult	110.4	121.8	126.7
Juvenile	84.6	95.3	69.3

Source: Colorado Department of Human Services.

A final determination of incompetency. If the court makes a final determination that the defendant is incompetent to proceed, it may:

- release the defendant on bond and in so doing impose conditions such as a requirement to obtain treatment; or
- if it decides the defendant is not eligible for release from custody, it may commit the defendant to the custody of the DHS until such time as the DHS determines competency has been restored.

In other instances, a defendant may also be committed under civil proceedings or, due to IDD, be subject to other restrictions.