

Competency: Statute and Practice

Competency to Stand Trial

- ▶ 552.010. The terms "mental disease or defect" include congenital and traumatic mental conditions as well as disease. They do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, ... The terms "mental disease or defect" do not include alcoholism without psychosis or drug abuse without psychosis ...

Competency to Stand Trial

- ▶ 552.020. 1. No person who as a result of mental disease or defect **lacks capacity to understand the proceedings** against him or **to assist in his own defense** shall be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

Competency to Stand Trial

- ▶ Whenever the judge, the defense, or the prosecutor “has reasonable cause to believe that the accused lacks mental fitness to proceed”
 - The Court can appoint “private psychiatrists or psychologists” to complete an evaluation of competency
 - The Court can order the Department of Mental Health “to have the accused so examined by one or more psychiatrists or psychologists.”

Competency to Stand Trial

- ▶ If the court finds the defendant Incompetent to Stand Trial (IST)
 - “... the criminal proceedings shall be suspended and the court shall commit him to the director of the department of mental health.”
 - Six months after the commitment, DMH will
 - Evaluate the defendant to determine if he or she is competent to proceed.
 - If not competent, is there a “substantial probability” that he or she “will attain the mental fitness to proceed in the foreseeable future”

Competency to Stand Trial

- ▶ If there is not a “substantial probability” that he or she “will attain the mental fitness to proceed in the foreseeable future” then
 - DMH will either seek guardianship for the defendant or
 - DMH will civilly commit the defendant
 - The court will dismiss the charges

Topics

- ▶ Can a competency examinee be mentally ill and still competent?
 - ▶ How do we make decisions in cases that are close calls?
 - ▶ Strategies for evaluating competency examinees who decline to participate in an interview?
 - ▶ Challenges in preparing for testimony.
 - ▶ Challenges in dealing with attorneys.
 - ▶ What are the good and bad reasons to ask a competency examinee about his or her childhood?
 - ▶ Can a personality disorder ever be a reason to find someone incompetent, and if so, which ones and under what circumstances?
 - ▶ How much detail to put in reports related to a competency examinee's defense strategies and statements about the alleged offense?
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