

In many crimes, the defendant's mental health becomes a concern. There are various ways the court addresses this depending on the severity of the crime, the nature of the person's illness, and other factors. This brochure provides a simplified overview of the issues.

## **Mental Health Court**

Sometimes the legal system finds it is repeatedly incarcerating and adjudicating criminal matters involving a defendant with apparent untreated mental health problems. In such a situation, it is in everyone's best interest to treat the cause of the problem and prevent future involvement in the criminal justice system. To this end, Nevada County has a Mental Health Court.

Potential candidates are referred to Behavioral Health for a suitability evaluation. If eligible, they may volunteer for the one year program which requires monthly court appearances to report to the judge and their peers. Participants have individual case management plans and must meet goals such as attending treatment, following a medication regimen, and locating shelter, transportation and employment.

Defendants who are accepted into the Mental Health Court program are still held accountable for their crimes and can receive jail sentences.

## **Competence to Stand Trial**

Competence is a different issue than "insanity". Competence concerns the defendant's current ability to participate adequately in a court case. A defendant may be too mentally ill to understand criminal proceedings, make informed decisions or assist their attorney in presenting a defense. Competence issues can delay a case by months or years.

If there is a question of competence, information about the defendant's current mental status is provided by psychological experts. With the judge's approval, the defense and the prosecution each choose someone qualified to offer an expert opinion. These professionals each interview the defendant, read relevant records, write reports with their conclusions, and file them with the court. The attorneys then have an opportunity to review the reports and prepare for the hearing.

If the psychologists/psychiatrists agree on the defendant's state of functioning, the defense and prosecution usually "submit on the matter", that is, waive their right to a jury trial on the issue and accept the reports' conclusions as fact. If the psychologists/psychiatrists draw different conclusions, there must be a hearing where each side can present evidence and argue the law that supports their belief about the defendant's competence. The mental health professionals will usually come to court to explain their decisions and answer additional questions.

A judge may hear the case if that is acceptable to both the defense and the prosecution but either side can exercise their right to a jury trial.

If the judge or jury determines that the defendant is competent, the criminal case can proceed. If the defendant is incompetent, the criminal proceedings are temporarily suspended and the court commits the defendant to a treatment program, usually inpatient hospitalization. The treatment goal is for the defendant to recover sufficient functioning for the criminal case to resume. Within 90 days, the treatment facility must submit a progress report to the court.

If the defendant is restored to competence, he returns to the county court to resume the criminal case. (Defendants who were being held in custody prior to treatment usually return to the jail.) If the defendant is not restored to competence, the mental health facility continues treatment and reports to

the court every six months.

If a defendant who has been charged with a felony has not been certified competent by the treatment facility after eighteen months, or is never expected to be restored to competence, additional hearings before a judge are required.

Misdemeanor defendants who are incompetent to stand trial cannot be held in a mental facility longer than one year. Felony defendants cannot be held longer than three years. Time spent in the hospital will be credited to convicted defendants the same as jail time except there is no "good time" credit. Note: If hospitalization is still necessary after three years, a conservator proceeding (Murphy Conservatorship or "MurCon") can be initiated to protect the mentally ill person and the public.

## **Insanity Defense**

The insanity defense is raised in less than 1% of felony cases and is successful in only a fraction of those cases. "Insanity" is a legal term, not a psychological diagnosis. An insanity defense is appropriate when a defendant is charged with a serious crime but morally should not be held criminally responsible because mental illness impaired his judgment and control. "Insane" defendants lack criminal intent; their behavior is driven by mental illness. They are "not guilty by reason of insanity" (NGI).

In California, the M'Naghten test defines insanity. To prove insanity, the defense must convince the judge or jury by a preponderance of evidence that the defendant was mentally ill at the time of the crime and that the illness caused the defendant to be incapable of knowing or understanding the nature and quality of his act and/or of distinguishing right from wrong. Simply suffering from a mental illness by itself does not qualify a defendant for an insanity acquittal.

When a NGI defense is involved, two trials are planned (a “bifurcated” trial). First the defendant must be tried to prove guilt. Then, if found guilty, there is a second trial to prove insanity.

Defendants acquitted by reason of insanity are committed to a state hospital, a mental health facility, or an outpatient program. If the crime was a serious or violent felony (as defined in the state penal code statutes), the defendant must remain in a state hospital for at least six months before becoming eligible for outpatient treatment.

The court receives regular status reports from the mental health facility, retains authority over the defendant and must approve all transfers, grounds passes and outpatient placements. The defendant may be released from inpatient treatment only when his sanity has been restored and he is no longer a danger to himself or society or after he has been in the hospital for a time equal to the maximum sentence. The defendant may then enter outpatient treatment under the supervision of the Forensic Conditional Release Program (CONREP), a statewide system of community-based services operated by the Department of Mental Health.

Studies show that defendants acquitted of guilt with an NGI verdict are confined for time periods equal to or greater than the equivalent prison sentence.

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## Relevant Penal Codes

### Mental Health Court

1203.4 & 1203.4a: Allows criminal charges to be dismissed after successful completion of the program

### Incompetence Hearings:

1369: A trial with expert testimony when the defendant’s incompetence is prolonged or expected to be permanent

1370: Incompetent to Stand Trial

1370.1: Incompetent to Stand Trial due to developmental disability

1372: Restoration of Competency

1372(e): Request for “restored” defendant to remain in hospital rather than jail when court proceedings resume

### Insanity Hearings:

25(b): Defines the conditions equated with insanity

1026(a): Explains the bifurcated trial procedure and requires that NGI defendant be committed for mental health treatment

1026(f): Requires treatment program to submit status reports to the court every six months.

1026.5: Sets NGI commitment up to the longest permitted prison sentence for the crime

1026.2(d): Restricts petitions for restoration of sanity to once per year and only after receiving a minimum of six months treatment

1601(a): Prohibits defendants convicted of certain serious or violent felonies from attaining outpatient status until after at least 180 days of confinement

1603: Requires victims to be notified of defendant’s pending release on outpatient status. Applies only to NGI defendants convicted of specified violent or serious crimes.

# Mental Health Issues in Criminal Cases



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