

# Competency to Stand Trial Assessment of Defendants with Intellectual Disabilities

by Daniel H. Swerdlow-Freed, Ph.D. on April 10, 2019 in Competency To Stand Trial, Forensic Services

In 1960, the U.S. Supreme Court, in *Dusky v. United States*, established the minimal standard for competency to stand trial: Whether the defendant has sufficient present ability to consult with his attorney with a reasonable degree of understanding and a rational as well as factual understanding of the proceedings against him.

Criminal defendants that are incompetent to stand trial lack one or more of these abilities rendering them unable to effectively exercise their constitutional rights and, consequently, reduce the likelihood of a fair trial.



Sources estimate that the question of a criminal defendant's competency to stand trial is raised in about 10% to 15% of felony cases and that approximately 60,000 defendants are referred annually for competency evaluations (Hope, 2016). Another source estimates that between 4% and 10% of criminal defendants in the United States have intellectual disabilities (Petersilia, 2000).

Because criminal defendants with intellectual disabilities possess varying levels of cognitive skill and communicative ability, some defendants may exhibit less obvious competency-related deficits and these may go unnoticed or be misinterpreted as malingering (Watson and Kivisto, 2017).

A sub-group of criminal defendants with intellectual disabilities may also experience concurrent symptoms of mental illness, while a third group may have a history of mental illness combined with normal intellectual functioning.

When the question of competency is raised for a specific criminal defendant it is critical to distinguish whether that individual has an intellectual disability only or comorbid symptoms of mental illness, or whether the defendant has symptoms of current mental illness only.

These are important distinctions because criminal defendants whose incompetency is due to current symptoms of mental illness only may be effectively treated with medication and restored to competency. Conversely, criminal defendants with an

intellectual disability are more likely to suffer from life-long cognitive deficits in reasoning, problem-solving, planning, et cetera that cannot be improved with medication and may be nominally responsive to educational interventions.

Psychological tests may be utilized during competency evaluations, although different measures are designed to answer different questions.

For example, when there is a question about a criminal defendant's cognitive functioning, an intelligence test may be used to assess these skills. There are also measures designed to assess current psychological functioning as well as measures to identify exaggeration of symptoms of mental illness or memory impairment. More recently, tests have been developed to evaluate malingered deficits unique to competency to stand trial.

Some of these tests are suitable for examinee's that have intellectual deficits, while others are not. Tests that are appropriately used may provide information that assists in formulating a reliable opinion that facilitates the fair administration of justice.

Tests that are not designed for use with criminal defendants that have intellectual disabilities may provide spurious results that are misinterpreted and lead to faulty recommendations. For example, some tests that are designed to measure malingering have not been standardized on individuals with intellectual deficits. These examinees lack the reading skill needed to comprehend the test items but may not report this to avoid embarrassment. Consequently, these criminal defendants are likely to produce unreliable profiles that erroneously suggest symptom exaggeration and wrongly conclude with the recommendation that the individual is competent to proceed to trial.

For more information about this topic or to schedule a consultation appointment, please call Swerdlow-Freed Psychology at 248.539.7777. Our offices are conveniently located at 30600 Northwestern Highway, Suite 210, Farmington Hills, Michigan 48334, and 55 North Pond Drive, Suite 6, Walled Lake, Michigan 48390.

## **References**

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

Hope, S.K. (2016). Competence to stand trial: An overview. *Indian Journal of Psychiatry*, 58(Suppl 2): S187-S190.

Petersilia, J. (2000). Doing justice? Criminal offenders with developmental disabilities. Detailed Research Findings, California Policy Research Center, Berkeley, CA.

Watson, M.E. & Kivisto, A.J. (2017). The inventory of legal knowledge (ILK) and adults with intellectual disabilities. *Journal of Intellectual Disabilities and Offending Behavior*, Vol. 8, No. 2, 83-89.