



# Competency for Criminal Trial in Colorado

**By Lauren Morgan**

Competency to stand trial, refers to the constitutional requirement that people facing criminal charges must be able to assist in their own defense. A criminal case cannot be adjudicated unless this requirement is met. The U.S. Supreme Court considers an individual competent to stand trial if they are rationally able to consult with an attorney and hold a clear understanding of the charges against them.<sup>1</sup> Whether the defendant's mental health impaired their ability to know right from wrong during the alleged commission of a crime is a separate issue.

Competency to stand trial is primarily a state matter. Each state has their own specific statutes that define competency, dictate the process for competency hearings, and determine the standards for related psychiatric evaluations. This issue brief describes the roles and processes of Colorado courts and the Department of Human Services (CDHS) in addressing competency.

## Office of Civil and Forensic Mental Health

The Office of Civil and Forensic Mental Health (OCFMH) in the CDHS is responsible for providing court-ordered competency evaluations and restoration services for criminal defendants.

The OCFMH Forensic Services Division provides evaluation, treatment and case management services to individuals with diagnosed or suspected mental health disorders who are involved in the criminal justice system, whether they are incarcerated or living in the community. The Forensic Services team works across all settings, including mental health hospitals, jails, and in the community.

## Competency Evaluations

A judge, prosecutor, or defense attorney may request the court order a competency exam of a defendant. The court may make a preliminary finding of competency or incompetency to proceed. This is a final determination unless a party to the case objects within seven days after the court's preliminary finding.<sup>2</sup> On or before the date when a court orders that a defendant be evaluated for competency, a behavioral health professional may be assigned to the defendant to serve as a bridge between the judicial and behavioral health systems.<sup>3</sup>

If a judge orders an exam, all trial or sentencing proceedings are paused 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

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<sup>1</sup>*Dusky v. United States*, 362 U.S. 402 (1960)

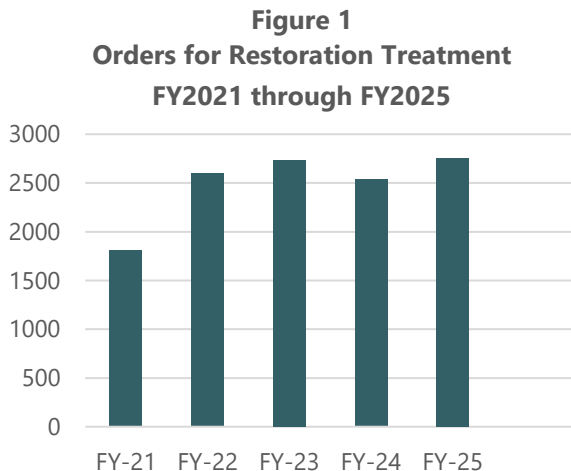
<sup>2</sup> Section 16-8.5-103(1)(a), C.R.S.

<sup>3</sup> Section 13-95-103, C.R.S.

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exam. A hearing must be held within 35 days of a timely request or receipt of the second exam.<sup>4</sup>

Figure 1 shows the number of recent competency exams ordered slightly increased last year, after leveling off from high demand and system backlogs over the past four years.



Source: CDHS Competency Annual Report.

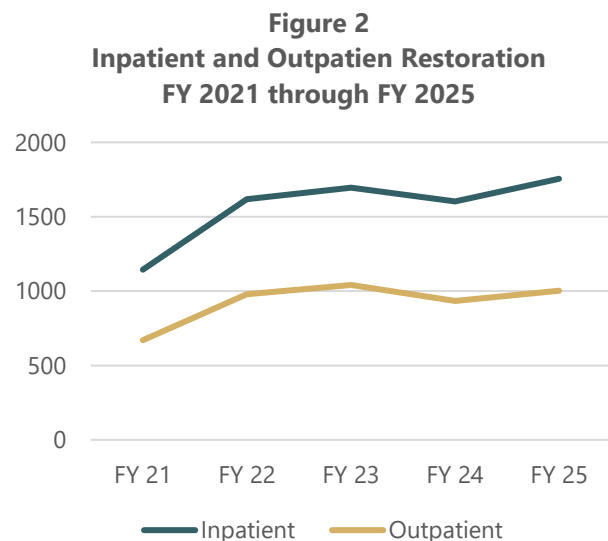
The goal of the exam is to determine whether the defendant is competent to stand trial or requires services to be restored to competency. Colorado law requires a licensed psychiatrist or psychologist to conduct the exam.<sup>5</sup>

## Exams

State law requires competency evaluations to be conducted on an outpatient basis. If a defendant is unable to post bond or is not eligible for release, the exam takes place where they are held in custody.

In-custody defendants found competent to proceed, may be returned to jail or released, depending on bond status. Those determined to be incompetent to proceed who do not need inpatient restoration may receive community-based restoration services if available. The OCFMH will then inform the court, and a behavioral health professional will develop a discharge and restoration plan. Courts may be billed for up to ten hours for outpatient competency exams, per the Colorado Judicial Department.

Figure 2 provides data demonstrating that the number of inpatient and outpatient exams has started to increase.



Source: CDHS Competency Annual Report.

<sup>4</sup> Section 16-8.5-103, C.R.S.

<sup>5</sup> Section 16-8.5-101 (3), C.R.S.

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## Competency Restoration

If a defendant is found incompetent to proceed, the court is required to order outpatient or inpatient services. Outpatient services are provided through private providers or community mental health centers who contract with the CDHS. Inpatient settings include the Colorado Mental Health Hospitals in Pueblo and Fort Logan, jail-based restoration programs in Denver and Arapahoe Counties, and contracted beds at private psychiatric hospitals.

Under Colorado law, requires that the court review a defendant’s status at least once every three months. A defendant found guilty is eligible to receive a credit for any time spent confined while undergoing restoration.

According to CDHS, the average amount of time that an individual waited to begin inpatient restoration services decreased over the first half of FY2024-25, and then returned to initial levels over the second half of the year. Length of stay for inpatient restoration services by location is shown in Table 1. The CDHS has implemented several measures to decrease this backlog including expanding community-based services, speeding up inpatient admissions, and providing treatment for people in jail awaiting competency services.

**Table 1**  
**Length of Stay for Inpatient Restoration Services**  
**by Location**  
**FY 2024 through FY 2025**

	Median	Mean
Colorado Mental Health Hospital in Pueblo	126	196
Colorado Mental Health Hospital in Fort Logan	149	171
Arapahoe Jail	115	135
Denver Jail	92	123
Denver Health	95	87
Peakview	113	147

Source: CDHS Competency Annual Report.

## Final Determination

Several outcomes may occur upon completion of the competency exam, including but not limited to the following:

- the defendant is found competent to proceed;
- the defendant is found incompetent to proceed and eligible for referral to the awraparound care program<sup>6</sup>; and
- the defendant is ordered to receive competency restoration services in an inpatient or outpatient setting.

Under certain circumstances, the court may dismiss the criminal proceedings, a commitment, or a restoration service if requested by the district attorney, the defendant, or on its own motion.

<sup>6</sup> Section 16-8.5-114, C.R.S.