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**THE COMPETENCY TO STAND TRIAL PROCESS IN NORTHERN MINNESOTA  
AND THE EFFECT TIME HAS ON OUTCOMES**

by

HANNAH CORNWELL

A thesis submitted in partial fulfillment of  
The requirements for the degree of  
Master of Science in Clinical Psychology  
Department of Psychology

Bradley Green, Ph.D., Committee Chair

College of Psychology and Education

The University of Texas at Tyler  
July 2023

The University of Texas at Tyler  
Tyler, Texas

This is to certify that the Master's Thesis of

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has been approved for the thesis requirement on

7/13/2023 for

the Master of Science in Clinical Psychology degree

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## **Abstract**

The current system that manages the competency to stand trial (CST) process in many states is in crisis (Callahan & Pinals, 2020). This is largely due to a significant increase in the amount of people needing competency related services in the last decade (Wik, Hollen, & Fisher, 2019). There have been many solutions proposed by researchers, which include but are not limited to, a screening process for competency to stand trial evaluations, along with shortening deadlines for qualified practitioners to complete evaluations (Gowensmith, 2019). This study examines the effectiveness and efficiency of implementing a screen into the CST process while also looking at the association of time and evaluator outcome to determine if there is a proper timeframe from which to recommend an evaluation. The data was collected from archived CST screens and reports available from the 6th Judicial District of Minnesota. The 6th Judicial District serves suburban and rural areas in Northeastern Minnesota. Data collected included time of court order for screen and evaluation, evaluator opinion, evaluation characteristics, and defendant characteristics. The screening process was determined to be both effective and efficient at screening out clearly competent defendants reducing the number of full evaluations forensic examiners needed to conduct. The study found no significant association between time and evaluator outcome when determining the defendant's competence.

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## Introduction

In the United States, defendants in criminal proceedings have an absolute right to understand the proceedings against them and to assist in their own defense. These rights were established in modern law by the case *Dusky v. United States* (1960). In *Dusky* the Supreme Court of the United States held that “a defendant must have sufficient ability to rationally consult with their lawyer and a rational and factual understanding of the proceedings” (*Dusky v. United States*, 1960). This means if a defendant is too mentally ill at the time of the trial to understand what is going on with the legal proceedings or to effectively assist their attorney in their own defense, they must be restored back to competency before the trial can proceed.

The law the court was examining in *Dusky* was established in 1868 by the fourteenth Amendment of the United States Constitution stating, “...No state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (U.S. Constitution). This amendment established the right to due process. Due process includes a fundamental right to a fair trial. It would be fundamentally unfair to require a defendant who was unable to understand the proceedings or assist their attorney in their defense to stand trial. Therefore, if the defendant is not afforded the opportunity to prove their incompetence, it is a violation of their procedural due process.

Although *Dusky* set the standard for competency to stand trial (CST) proceedings, there have been several other U.S. Supreme Court cases that refined the standard over the years, such as *Pate v. Robinson* (1966), *Medina v. California* (1992), and *Cooper v. Oklahoma* (1996). *Pate* (1966) largely reiterates the fourteenth Amendment in that it held that “a criminal trial of an incompetent defendant violates their Constitutional rights as upheld in the fourteenth amendment”. *Medina* and *Cooper* pertain to standards of proof required and who carries the

burden of proof with regard to competency to stand trial. There are three burdens of proof in the justice system: by a preponderance of the evidence, by clear and convincing evidence and beyond a reasonable doubt (Winick, 1993). “Beyond a reasonable doubt” is the highest standard and is required of the prosecution for proving that a defendant is guilty of a crime. It essentially requires that there is no other reasonable explanation that can come from the evidence presented, that the likelihood nears 100%. Preponderance of the evidence is the lowest standard; it means something must be proven to be more likely than not, that the likelihood is greater than 50% (Winick, 1993). The “clear and convincing” standard is an intermediate standard between the two. *Medina* (1992) specifically stated, “A criminal defendant is presumed to be competent to stand trial. The defendant is required to bear the burden of proof, and that proof is by a preponderance of the evidence by the due process clause of the fourteenth amendment”. In this context the defendant must prove that it is more likely than not that he/she is incompetent. *Cooper* likewise held that a defendant must prove their incompetency by a preponderance of the evidence; the Supreme Court justices went further to articulate that the defendant does *not* have to meet the standard of clear and convincing evidence. *Cooper* held that requiring a higher burden is inconsistent with historical common law and with a vast majority of states in the United States. Given that requiring an incompetent defendant to stand trial would violate fundamental fairness, requiring a defendant to meet too high of a burden would also violate a defendant’s fourteenth amendment right to due process. The Court found that while it is important to require the defendant to make some showing in order to discourage feigning of psychological symptoms, it is more important to ensure that no incompetent defendant is required to stand trial. Requiring the clear and convincing standard would likely result in mentally ill defendants unintentionally slipping through the cracks (Winick, 1993). These cases

are vital in the interpretation and implementation of proceedings in court to maintain a fair determination of competency for mentally ill defendants.

Shortly after *Dusky*, another case was brought to the United States Supreme Court regarding competency to stand trial proceedings. This time the decision revolved around who was eligible to serve as an expert witness to determine a defendant's competency. In *Jenkins v. United States* (1962), the court held that "some psychologists are qualified to render expert testimony on mental disorders, and the expert who renders such opinion must be qualified to do so". Following this case, it became widely accepted across the United States that professionals who hold doctorate degrees in clinical psychology or psychiatry, such as PhD's, PsyD's and MD's are the only category of professionals qualified to render decisions on CST proceedings (*Jenkins v. United States*, 1962). Because there are only a select number of mental health professionals who are qualified to conduct these evaluations, this greatly limits the pool from which the courts can select individuals to complete assessments.

### **The Competency Crisis**

Competence to stand trial evaluations are the most common form of forensic mental health assessments in the criminal justice system (Murrie, Gardner, & Torres, 2020). The current system that manages the competency to stand trial process in many states is in crisis (Callahan & Pinals, 2020). This is largely due to a significant increase in the amount of people needing competency-related services (Wik, Hollen, & Fisher, 2019). Current estimates suggest over 130,000 competency to stand trial evaluations are conducted across the United States a year (Murrie, Gowensmith, Kois, & Packer, 2023). This far outnumbers the previous estimation of 60,000 made in 2000 (Bonnie & Grisso, 2000). Some states have documented the huge increase that has taken place in their jurisdictions alone. For example, Washington reported a 76.3%



increase from 2001 to 2012, and Wisconsin reported a 32.5% increase from the 5-year period 2010 to 2015 (Gowensmith, 2019). The most recent numbers in Colorado suggest that there has been a 375% increase from 800 CST evaluations ordered in 2009 to over 3000 in 2021 (Murrie et al., 2023). In Minnesota, numbers of CST evaluations – while already increasing each year prior to the onset of Covid-19 – have multiplied since 2020 (Buffington, 2022). In many states this rapid increase has resulted in long waitlists for defendants to be evaluated for their competency (Gowensmith, 2019).

This long waitlist is in part exacerbated by the fact that the testimony given by forensic evaluators is unique in nature compared to other evaluations clinical psychologists or psychiatrists perform (Otto, Heilbrun, & Grisso 1990). Research suggests forensic psychology is a “discreet and unique body of knowledge” that only mental health professionals trained in forensic work are qualified to do (Otto et al., 1990). This has created a scarcity of experts qualified to render opinions for two reasons, a lack of specialized training programs and a lack of individuals who have reached expertise in forensic psychology matters (Otto et al., 1990).

While the number of CST evaluations continues to grow, rates of findings of incompetency are low, suggesting that many evaluations are unnecessary. This is largely due to the process by which it is determined that a CST evaluation will be conducted. Law requires that if any of the parties – the defense, the prosecution, or the judge – have concerns about a defendant’s competency, that legal professional is obligated to raise the question formally in court. However, very few legal professionals have a strong understanding about the psycholegal assessment of defendants’ CST. While the final determination of whether a competency evaluation should be completed is ultimately up to the judge’s discretion, because the above established law made clear the importance of a defendant’s competency, judges will typically

order evaluations to ensure defendants' Constitutional rights are upheld. Initially this may seem like a good thing. However, a meta-analysis looking at incompetence findings from 1960-2009 determined the average rate of incompetency findings to be only 27.5% (Pirelli, Gottdiener, & Zapf, 2011). Some states, such as Virginia, showed incompetency rates as low as 17.6% (from 1993-1998) (Warren et al., 2006). More recently from 2016-2018, that number has risen to 38.8% (Murrie et al., 2020), but this still remains low. This begs the question: If 60-70% of the defendants undergoing evaluations, using limited evaluator resources, and delaying the resolution of their case are in fact competent, is the system that is currently used in most jurisdictions the most efficient?

### **Possible Solutions**

In an attempt to resolve these issues, states have begun to implement a number of potential solutions that include but are not limited to, implementing a screening process and reducing the time frame for CST evaluations to be completed (Gowensmith, 2019). According to Gowensmith (2019), the screening process should be used to triage clearly mentally competent defendants who have been referred by the court for an evaluation. This would allow defendants to be screened within a short amount of time (5-7 days), and those defendants determined to be competent would be returned to court and allowed to proceed in a timely manner. The screen is not a replacement for a full evaluation, so if the defendant is screened as likely incompetent to stand trial, they would proceed with a full evaluation. The court has the right to disagree with the screener's decision, in which case the court would be able to order a full evaluation for a defendant screened as competent. By "screening out" the competent defendants prior to a full evaluation, the result should be that the number of defendants that make it through to the lengthy evaluation have a higher percentage of incompetency findings (Gowensmith, 2019). This in turn

would reduce the number of defendants needing a full evaluation, which reduces the load for the evaluators. Jurisdictions such as Washington, D.C., and Maryland have found promising empirical data to suggest the screening process is efficient; however, more research is needed to determine the reliability.

A more common solution for many jurisdictions to address the delays and backlogs in the courts that this high volume of CST evaluations presents is to implement specific time frames in which evaluators need to complete their evaluation (Gowensmith, 2019). The national average deadline for CST evaluations to be completed is 31 days (Gowensmith, Murrie, & Packer, 2015). However, many states reported wait times over 60 days (*Trueblood v. Washington State Department of Social and Health Services* [DSHS], 2015). In some cases, this resulted in defendants deteriorating and decompensating while in jail, a facility often not equipped to deal with severe mental illness. In a few cases defendants died by suicide or other measures while awaiting competency services in jail. In 2012 Colorado settled a lawsuit and agreed to impose deadlines for competency evaluations for defendants in custody who were facing extended wait times. The state agreed to complete in custody evaluations within 30 days and admit defendants for inpatient treatment within 28 days (Brown, 2017). This standard proved not to be sustainable, however, as they were accused of having a backlog of over 100 defendants awaiting CST evaluations in 2016 resulting in the case being reopened (Brown, 2017). Likewise, in the state of Washington, there was a class action lawsuit that mandated all CST evaluations completed within seven days of a court order (*Trueblood v. DSHS*, 2015). A year later, though, the state had to change the mandate from seven days to fourteen days in an attempt to lighten the load on evaluators. Ultimately, the implementation of these mandates has raised the question of the appropriate timing of CST evaluations (Gowensmith, 2019).

According to Gowensmith et al. (2015), there are many factors that must be considered when implementing short turnarounds for evaluations. The first is the amount of time a defendant needs to metabolize and detoxify from any intoxicants they took prior to their arrest. Depending on the chemical the defendant ingested, it may be difficult to determine whether their mental state is impaired due to mental illness or substance use (whether intoxication or withdrawal). Giving the defendant time to detoxify from substances may eliminate the need for an evaluation. Another factor that should be considered is the acute stress that defendants face when being arrested and placed in jail. This stress may temporarily dysregulate the defendant's mental state, rendering them uncooperative for a period of time following their arrest, again making it difficult to determine the severity of the underlying mental illness. If defendants were allowed time to adjust in custody, an evaluation of competency to stand trial may be unnecessary. How long a defendant has been on medication must also be taken into consideration. Consistently taking medication in jail may stabilize the defendant to the point where the evaluation becomes unnecessary after a period of days to weeks. All these factors are important when an evaluator is making their decision regarding competence and may inadvertently cause incompetency rates to be higher.

Indeed, data from two states that have implemented a 7-day mandate for evaluators to complete a full CST evaluation (Washington and Maryland) suggest there was a significant increase in the number of defendants opined incompetent after the mandates took effect (Gowensmith et al., 2015; Gowensmith, 2019). Court documents in Washington suggested that 50% of defendants undergoing an evaluation are deemed incompetent to stand trial (*Trueblood v. DSHS*, 2016). That number is much higher than the 27.5% Pirelli et al. found in 2011. Similarly, initial data from Hawaii found that 50% of defendants evaluated within 15 days of court orders

were found incompetent. When those same defendants were evaluated closer to 30 days, the incompetency rate was closer to 20-30%. (Gowensmith et al., 2015).

### **The Present Study**

The present study explored the effectiveness of implementing a screen into the CST process while also looking at the association of timing and evaluator opinions in one sample of CST reports from the 6<sup>th</sup> Judicial District in northeastern Minnesota. The first part of the study looked at the effectiveness and efficiency of using a screen to determine if defendants should continue through the CST process. The next part of the study looked at the association of timing and evaluators' opinions after the defendants had gone through the screening process.

Beginning in 2018, the 6<sup>th</sup> Judicial District, which consists of four counties in northeastern Minnesota, implemented a screening process. Like many of the jurisdictions across the country, the 6<sup>th</sup> Judicial District was finding it difficult to ensure examiners were completing their reports within the allotted time. This was despite the fact that Minnesota allows CST evaluation reports to be completed “within 60 days from the order for examination, or earlier if directed by the court” (Minnesota Code of Criminal Procedure, Rule 20), longer than the national average of 31 days (Gowensmith, 2019).

The screening process is as follows (see Figure 1): A clinical forensic psychologist conducts a 30-60 minute forensic interview with each defendant referred for a CST screen. At the completion of the interview the psychologist does not complete a full CST report but rather provides a “yes or no” recommendation to the court (e.g., Yes, the defendant needs a full evaluation; No, the defendant does not need a full evaluation). The court will then order the full evaluation or resume the proceedings where they left off. Once the court orders the full evaluation the process continues like most jurisdictions across the country. It is important to note

that the 60-day deadline for the full report to be completed does not begin until after the defendant is found likely incompetent to stand trial by the screen. There is no mandated time in which the screener has to complete the screen, but it is understood that it should happen as soon as possible (5-7 days), especially for defendants who are in custody.

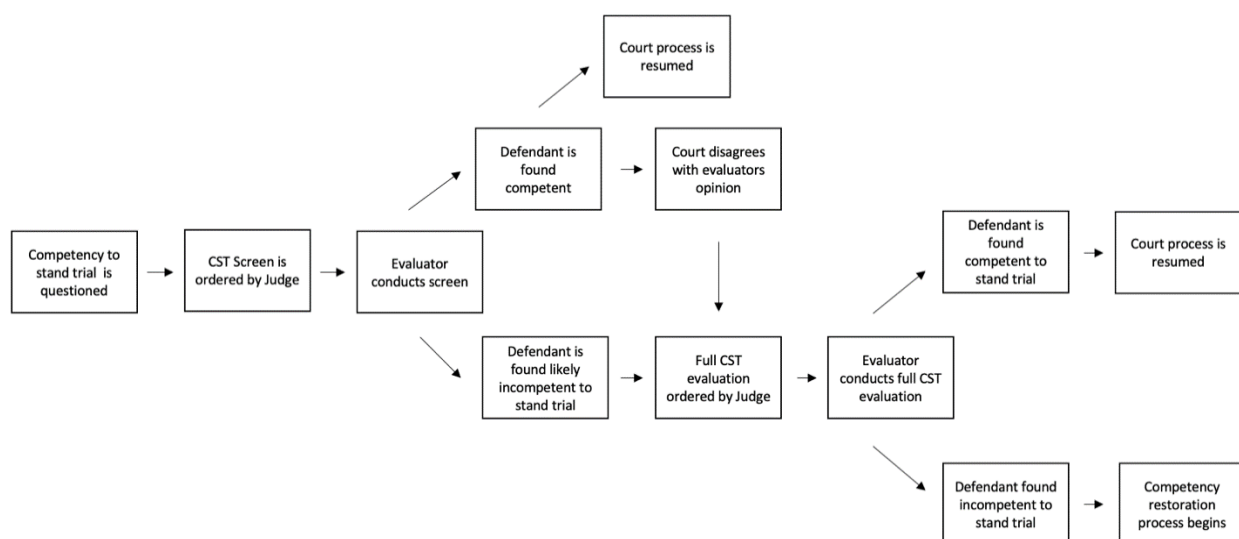


Figure 1. A timeline of the CST process including a screen.

Not only is the process of the screen different for the court, but it is also different for the professional conducting the screen. While collecting similar information as the examiner completing the full evaluation, the screener is tasked with collecting less information. Instead of a full psychosocial history the screener primarily focuses on previous education, mental health history, mental status at the time of the screen, chemical use and history of traumatic brain injuries. The screener would also ask questions about the legal system to gain a better understanding of how the categories above may impact the defendant's ability to understand the legal process. If at any point during the screen the screener believes the defendant might be incompetent, they will end the screen and recommend a full evaluation be completed. The screener does not complete any psychological testing and they do not receive medical records.

They may consult with the defendant's attorney to get a better understanding of why they believed the defendant is incompetent. They may also receive collateral information from family members, treatment providers or probation officers. After collecting all of that information, if the screener believes the defendant is competent to stand trial they will recommend no full evaluation be completed.

The first aim of this study was determining if the screening process is effective at screening out obviously mentally competent defendants, as well as accurate, evidenced by those referred for full evaluations returning an incompetency rate higher than the national average.

Specifically, the hypotheses were as follows:

Hypothesis 1: The screening process will reduce the number of full evaluations that need to be completed by evaluators. Such findings would be consistent with preliminary data from Washington, D.C., and Maryland (Gowensmith, 2019). This would reduce the load on forensic evaluators.

Hypothesis 2: The screening process will increase the percentage of defendants referred for full evaluations to be found incompetent compared to the national average.

The second aim was to determine if time is a significant factor in evaluator findings of incompetence. The following hypothesis was explored:

Hypothesis 3: Time will have a negative association with incompetence findings, meaning that shorter time from order to evaluation will be associated with higher proportion of incompetence findings. This finding would be consistent with preliminary data from Washington, Maryland, Texas, and Hawaii that suggests shorter evaluation times inflate the number of incompetence findings (Gowensmith et al., 2015; Bryson, 2019).

## Methods

### Procedure

The data were collected from archived CST screens and reports available from the 6<sup>th</sup> Judicial District of Minnesota. The 6<sup>th</sup> Judicial District serves suburban and rural areas in Northeastern Minnesota. All potentially identifying information was removed before the data were provided for use. A forensic psychologist that contracts with the 6<sup>th</sup> Judicial District who conducts CST screens and evaluations approved use of this data. The Institutional Review Board at the University of Texas at Tyler also approved the use of this data.

All individuals included in the study were ordered to complete a screen by the lead forensic evaluator to determine their need for a full CST evaluation. If screened likely incompetent a different forensic evaluator would complete a full CST evaluation. All reports obtained were assessments of competency to stand trial. The reports included were initial CST evaluations. Any individual who had a second opinion evaluation or who did not complete a CST screen were excluded.

### Participants

The sample consisted of 211 defendants who completed a CST screen. The mean age of the defendants was 39.73 ( $SD = 12.44$ ) and 159 (75.3%) of these were biological males. Offense type, seriousness of charges, the date the CST screen was ordered, and the date the CST screen was completed were also collected and recorded in days. Additional information was collected for defendants ( $n = 97$ ) who were determined to need a full CST evaluation. The majority of those who completed full evaluations were biological males ( $n = 73, 75.3%$ ) with a mean age of 38.78 ( $SD = 12.92$ ). Other variables collected for these participants consisted of legal history (yes/no), medication compliance at the time of the evaluation (yes/no), previous psychiatric



hospitalizations (yes/no), diagnosis at the time of the evaluation (neurodevelopmental disorder, ADHD, psychotic disorder, bipolar disorder, unipolar depression disorder, anxiety disorder, post-traumatic stress disorder, neurocognitive disorder substance use disorder and personality disorder), opinion of the evaluator (competent to stand trial or incompetent to stand trial), seriousness of the crimes charged (level of crime; felony, gross misdemeanor and misdemeanor. Type of crime; against a person, property, controlled substance, public misconduct, public indecency, violation of sentence and sex crime), the date the full evaluation was ordered and the date the decision of competence was made recorded as number of days. The number of days between the order of the screen and interview represents the number of days the defendant waited in jail or in the community to proceed with their case.

### **Data Analysis**

Frequencies were run for Aim I to determine the effectiveness and efficiency of the screen. Frequencies were also run for the variables such as legal history, seriousness of the charges, psychiatric history, diagnoses and medication compliance to determine if they had a meaningful impact on outcomes. To examine the association between time (number of days) and evaluator opinions, (0 = competent, 1 = incompetent) a logistic regression analysis was run. Blom's Rank Order methods was used to control for outliers in the data set.

## **Results**

### **Aim I Effectiveness of Screen**

The screener opined 126 (59.7%) defendants to be clearly competent to stand trial and 85 (40.3%) defendants likely incompetent at the time of the screen. Of those 126 defendants whom the screener concluded were competent, the court disagreed in 13 cases (10.3%) and ordered a

CST evaluation. One of the 13 reports was not completed at the time of data collection. Therefore, the total number of defendants screened as competent and did not have to complete a full evaluation was 114 (54.0%). A total of 97 defendants completed a full CST evaluation. Evaluators opined 71 (73.2%) defendants to be incompetent to stand trial and 26 (26.8%) defendants to be competent to stand trial. The total rate of incompetency for every defendant ordered to be screened was 33.7% (i.e., 71 out of 211).

There were 85 (40.3%) defendants determined to be likely incompetent at the time of the screen and referred for a full evaluation. As shown in Table 1, 65 (76.5%) were determined to be incompetent to stand trial by a different psychologist during the full evaluation. Of those 65, substance use disorder ( $n = 39$ , 60.0%) was the most frequent diagnosis and the most common serious mental illness was a psychotic disorder ( $n = 36$ , 55.4%). Likewise for the 20 (36.4%) of defendants found competent to stand trial psychotic disorders ( $n = 13$ , 65.0%) and substance use disorders ( $n = 10$ , 50.0%) were the most frequent diagnoses. The similar proportions of substance use and psychotic disorders across people evaluated to be competent or incompetent suggests those disorders were not related to the outcomes for evaluation findings.

The court ordered 13 defendants to be examined by full evaluation after being determined clearly competent to stand trial (and not in need of a full evaluation) by the screener. One of the 13 evaluations was not completed at the time of data collection. Of the 12 reports completed against screening recommendations, 6 (50.0%) resulted in an incompetence finding. Five (83.3%) of these defendants were diagnosed with a substance use disorder. In two (33.3%) of the cases substance use was the leading cause for an incompetence finding. Psychotic disorders were diagnosed at the same frequency. Bipolar disorder was the leading cause for one (16.7%) defendant along with post-traumatic stress disorder diagnosed for one (16.7%) defendant.

As shown in Table 1, the screen was the most effective in determining incompetence when neurodevelopmental disorders, neurocognitive disorders and unipolar depression disorders were being considered. The screener correctly identified the need for an evaluation 100% of the time when a neurocognitive disorder may be the leading cause for an incompetence finding. Serious mental illness diagnoses were the leading cause of incompetence findings with psychotic disorders being the most frequent category diagnosed. Legal history, previous psychiatric hospitalizations and medication status were demonstrated similar proportions across competent and incompetent findings.

Category and seriousness of charges were collected for all  $n = 211$  defendants. Table 2 depicts the frequency of charges for all defendants. The most common category of charges for the 126 defendants who were found competent to stand trial by the screen were minor (misdemeanor and gross misdemeanor) public misconduct crimes ( $n = 34, 27.0\%$ ). The next most common category was minor crimes against a person ( $n = 30, 23.8\%$ ). The most common category for the 85 defendants who were found likely incompetent to stand trial by the screen were felony-level ( $n = 24, 28.2\%$ ) and minor ( $n = 24, 28.2\%$ ) public misconduct crimes. Sex crimes were among the least frequent crimes defendants were charged with.

Table 1.

*Frequency of diagnosis for defendants that completed a full competency to stand trial evaluation.*

	Total number of defendants evaluated <i>n</i> = 97	Found Incompetent to Stand Trial <i>n</i> = 65	Found Competent to Stand Trial <i>n</i> = 20	Screened Competent Court Disagreed <i>n</i> = 12	Screened Competent Found Incompetent <i>n</i> = 6	Screened Competent Found Competent <i>n</i> = 6
Legal History	81 (83.5%)	54 (83.1%)	16 (80%)	11 (91.7%)	5 (83.3%)	6 (100%)
Psychiatric Hospitalization	63 (64.9%)	45 (69.2%)	13 (65.0%)	5 (41.7%)	2 (33.3%)	3 (50%)
Unmedicated at Evaluation	60 (61.9%)	39 (60.0%)	13 (65.0%)	8 (66.7%)	5 (83.3%)	3 (50%)
ADHD	6 (6.2%)	3 (4.6%)	2 (10.0%)	1 (8.3%)	0 (0%)	1 (16.7%)
Neurodevelopmental Disorder	14 (14.4%)	12 (18.5%)	2 (10.0%)	0 (0%)	0 (0%)	0 (0%)
Neurocognitive Disorder	17 (17.5%)	15 (23.1%)	0 (0.0%)	2 (16.7%)	0 (0%)	2 (33.3%)
Psychotic Disorder	53 (53.6%)	36 (55.4%)	13 (65.0%)	3 (25%)	2 (33.3%)	1 (16.7%)
Bipolar Disorder	10 (10.3%)	6 (9.2%)	1 (5.0%)	4 (33.3%)	2 (33.3%)	2 (33.3%)
Unipolar Depression Disorder	16 (16.5%)	10 (15.4%)	4 (20.0%)	2 (16.7%)	0 (0%)	2 (33.3%)
Anxiety Disorder	18 (18.6%)	10 (15.4%)	3 (15.0%)	5 (41.7%)	1 (16.7%)	4 (66.7%)
PTSD	17 (17.5%)	6 (9.2%)	7 (35.0%)	4 (33.3%)	2 (33.3%)	2 (33.3%)
Personality Disorder	24 (24.7%)	12 (18.5%)	7 (35.0%)	5 (41.7%)	2 (33.3%)	3 (50%)
Substance Use Disorder	58 (59.8%)	39 (60.0%)	10 (50.0%)	9 (75.0%)	5 (83.3%)	4 (66.7%)

Table 2.

*Frequency of charges for all defendants.*

	Found Likely Incompetent to Stand Trial by Screen <i>n</i> = 85		Found Competent to Stand Trial by Screen <i>n</i> = 126	
	Minor Crime	Felony	Minor Crime	Felony
Crime Against a Person	21 (24.7%)	18 (21.2%)	30 (23.8%)	26 (20.6%)
Property Crime	15 (17.8%)	14 (16.5%)	1 (8.7%)	17 (13.5%)
Controlled Substance	10 (11.9%)	9 (10.6%)	14 (11.1%)	12 (9.5%)
Public Misconduct	24 (28.2%)	24 (28.2%)	34 (27.0%)	28 (22.2%)
Violation of Sentences	8 (9.4%)	9 (10.6%)	13 (10.3%)	20 (15.9%)
Sex Crime	0 (0.0%)	3 (3.5%)	2 (1.6%)	3 (2.4%)
Indecency Crime	0 (0.0%)	0 (0.0%)	4 (3.2%)	1 (0.8%)

## **Aim II Association of Time and Outcome**

The mean number of days between the screening request and submission of the full CST evaluation opinion was 77.86 ( $SD = 46.68$ ) for those opined incompetent, and for those opined competent the mean length was 81.71 ( $SD = 69.95$ ). These time differences were not significant ( $t(93) = 0.305, p = .761, \text{Cohen's } d = -.072$ ). The mean length of time from court order for screening to evaluation for all 95 defendants was 78.83 ( $SD = 53.13$ ) days. The distribution was mildly skewed (1.70) and leptokurtotic (3.60). Although the skew was mild some extreme outliers were clear in the distribution, (i.e., 195, 197, 221, 247, and 304 days) extending the range of values from 15 to 304 days. Outliers were addressed by transforming the data via Blom's Rank Order method. The resulting distribution had a mean of 48.00 ( $SD = 27.57$ ), skew of 0.00 and kurtosis of -1.20.

A logistic regression analysis was run to look at the association between time and evaluator opinions (0 = competent, 1 = incompetent) using the Blom's transformed data. The logistic regression model was found to be non-significant ( $X^2(1) = .201, p = .654$ ), with Nagelkerke R-squared value of .003. Time from screening to completion of the evaluation was found to be non-significant in predicting whether a defendant would be found competent or incompetent at completion of the evaluation ( $b = .004, SE = .009, \text{Wald} = 21.101, p = .655, OR = 1.004$ ).

## **Discussion**

Using archival data from the 6<sup>th</sup> judicial district in northern Minnesota, the study aimed to determine if implementing a screen into the competency to stand trial process was both effective and efficient. It also looked at the association between outcomes and timing for the screen and

full evaluation to determine if the impact of completing evaluations too soon. Overall, the screening process was determined to be both effective and efficient. It was effective in reducing the number of full evaluations, even when accounting for the 13 evaluations ordered by the court against the screener's recommendations. Similarly, the screen efficiently increased the percentage of full evaluation incompetence findings to 73.2%. This percentage far exceeds the national average of 27.5% that Pirelli et al. (2011) reported. When considering the 211 defendants in the sample whose competency was questioned and ordered to complete a screen 33.7% were evaluated to be incompetent to stand trial at the end of the process. Although this is slightly higher than the national average, it is comparable to the finding of Murrie et al. in 2020 who found an average of 38.8% in their sample. It is also comparable to the 20-30% rate found in Hawaii by Gowensmith et al. in 2015. In our sample, screening out 114 defendants prior to full evaluation increased the rate of incompetence findings from 33.7% (71 out of 211) to 73.2% (71 out of 97).

These findings suggest a screening process can be implemented as a way to reduce the load on evaluators in jurisdictions where finding qualified individuals to complete evaluations can be difficult. This process also allows clearly competent defendants who may be sitting in custody awaiting an evaluation the ability to return to court months before they would without the screen. This is important in protecting their rights as defendants. Lastly, and also crucially for many jurisdictions, this process has the potential to save money and resources because they do not have to pay for the cost of a full evaluation for all defendants whose incompetence may be questioned by the court.

The screener was effective at referring defendants with a psychotic disorder as incompetent and in need of a full evaluation. Of the defendants referred, 53.6% were diagnosed

with a psychotic disorder at the time of the evaluation, and 55.4% of the people referred for the full evaluation were found incompetent due to a psychotic disorder diagnosis. This is consistent with previous findings that psychotic symptoms have been one of the most common disorders among those found incompetent (Nicholson & Kugler, 1991; Pirelli et. al., 2011). Substance use disorders were the most common diagnosis for all defendants screened as likely incompetent. This is consistent with previous studies that suggest high levels of substance use can be comorbid with other serious mental illnesses such as schizophrenia and mood disorders (Volkow, 2009; Quello, Brady, & Sonne, 2005).

When looking at the defendants who screened as competent but were ordered by the court to complete a full evaluation, the majority (66.7%) were found to not have a psychotic disorder. This may be because the defendants' behavior in court can appear psychotic to an untrained professional even when it is not a result of psychosis. For example, people with other diagnoses such as PTSD and anxiety disorders (specifically obsessive-compulsive disorder) have a hard time managing stress, which interferes with their functioning. Court can be a stressful place even for people who are not experiencing a mental illness. When having PTSD or an anxiety disorder that stress can be amplified by the situational demands of court proceedings. Personality disorders were also prevalent and can be particularly difficult to manage in a court setting. Lawyers can assume anyone who questions or challenges their attorney must not be rational in their thinking. However, defendants with antisocial or borderline personality disorder may present with impulsive and disorganized behaviors that are not necessarily cause for an incompetence finding (Reid, 2009).

The study found no association between time and evaluator opinion. This finding is inconsistent with previous research out of Washington, Maryland, Texas and Hawaii



(Gowensmith et al., 2015; Bryson, 2019). An explanation for this inconsistency may be associated with resources allocated in northern Minnesota compared to other regions of the country in bigger urban or smaller, less funded, rural populations. In other words, in the region of our sample, incarceration facilities and related services may provide a more stabilizing and less stressful environment than precincts that are underfunded and overloaded. If findings from our sample, that length of time from order to evaluation is not significantly related to evaluation decision, should generalize to other samples, it may suggest that there is little value in delaying evaluation to give a defendant time to become better compensated.

The appropriateness of the sample data was a strength of this study. Overall, the data collected came from a thorough electronic records system that allowed the data collector to find up to date information about each defendant's case. This allowed the data collector to verify the accuracy of the timing, outcome and other characteristics measured. The sample also consisted of a wide range of time from which screens and full reports were completed allowing the association between time and outcome to be examined.

There were many limitations that should be addressed, however. The defendants' characteristics such as ethnicity and education level were not able to be collected which calls into question the ability of the results to be generalized to more diverse and larger population areas. Resources specific to the area such as access to mental health care, treatment, and housing could lead to different outcomes. It is also important to note that in this study there was an assumption that the conclusions of the full evaluation were correct. Lastly, the screening process was not standardized. One forensic evaluator who has over a decade of experience conducting CST evaluations completed all the screens. The ability to replicate these results with a different less experienced evaluator is unknown. When completing the screen, the evaluator is not asked to

explain why they determined what they did. A screening process in this way could be difficult to conduct in a jurisdiction that tends to be more adversarial in nature. If the evaluator is not trusted by all parties, the screen could be ineffective at reducing the number of defendants referred for a full evaluation.

### **Future Research**

There is very limited data on implementing a screen into the CST process. More research needs to be conducted in other areas of the country with more diverse rural and urban populations. Research should also be conducted to look at the efficacy of a standardized measure for CST screens. While it is complicated to standardize a forensic interview, it should be determined if there is a way to ensure decisions are consistent across evaluators when collecting less information than in a full CST evaluation. There should also be more research into the timing of CST evaluations in short time periods (less than 14 days). While this study did not find an association of time and outcome it is important to understand if intoxicants and other factors previously mentioned inflate the number of defendants being found incompetent so not to waste resources.

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