

Competency conundrum



Tribune/Barry Kough

Second District Judge John Stegner gets advice from many professionals in many fields as they prepare for each session of a mental health specialty court held in Moscow.

Courts are seeing more defendants with mental health issues; theories for why are both plentiful and complex

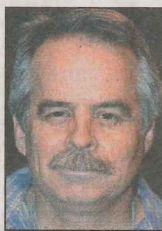
By KATHY HEDBERG
OF THE TRIBUNE

Asotin County Prosecutor Ben Nichols recalls when claiming a defendant needed a mental health evaluation to determine whether he was competent to stand trial was a crafty legal defense strategy.

It was a tactic to buy time, Nichols said.

But the maneuver started to lose its effectiveness when it began to unnecessarily drag out the process.

"Those sorts of frivolous evaluations have fallen off sharply," Nichols



Ben Nichols

said. "When it got bad and we were seeing incredible delays, it wasn't a good tactic."

Ironically, the number of defendants making their way through the criminal justice system who legitimately need mental health evaluations to determine competency for trial has spiked in recent years, both in Washington and Idaho.

Nichols said there are two main reasons for that.

"We are seeing an increase as we are seeing more people who have been using a significant number of

drugs for a longer period of time. Long-term drug abuse definitely has an impact on mental health. I would say almost without exception" that the defendants who have required competency evaluations also have substance abuse problems.

The other reason for more mental health troubles in the community, Nichols said, "is that there is a deterioration of the support network. Mental health providers are overtaxed in terms of their caseloads and (being) underfunded. So people aren't able to get mental health help through the

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appropriate channels."

Jim Phillips is a Lewiston psychologist who does most of the mental health competency examinations for defendants in Nez Perce, Latah, Clearwater, Lewis and Idaho counties and some in northern Idaho.

When he began conducting competency evaluations in the mid-1990s he was doing about two a year.

"For, I don't know how many years now, I've been doing 35 to 40 a year," Phillips said.

The reasons for the increase are complex.

"Well, obviously there are more people having problems than before," Phillips said. "And I think it's a mixture (of reasons). Some are involved in treatment and some aren't involved in treatment; or they've never been identified (as suffering from mental illness) or just never stayed in treatment. But part of it is just due to the lack of coordinated treatment services that are available."

Competency is a gauge to determine whether a defendant understands the charges against him or her, whether the defendant grasps how the legal system works, including who the judge, prosecutor and defense attorney are and if the person can cooperate with his or her attorney to assist in the defense.

Any of the principals involved in a case can request a mental health evaluation.

Phillips said it's most often the defense attorney who raises the issue, but there are good reasons a prosecutor might also call for an evaluation.

"Oftentimes in high-profile cases where there is an issue of mental health, or whether or not the person understands, I will bring a motion simply to close that door," Nichols said.

"It would be terrible to go all the way through a trial and process where somebody says, 'You realize the guy's incompetent.' And now everything's out the window and you've got to go back and do it all over again. So sometimes we do an evaluation if nothing more than to close that door, provided there's evidence there are mental issues."

Phillips estimated about 80 per-

cent of the defendants he looks at are not competent to stand trial at that time in the state of Idaho. When the determination is made the person most often will be sent to State Hospital North in Orofino or another mental health hospital that has a competency restoration program.

"Sometimes they have to be taught about the legal system so they understand it," Phillips said. "Sometimes it's just adjusting their medications. Some people go in and in a few weeks get back started on their medications and they become competent."

"And some stay all their life in the state hospital because they're never competent."

In Washington the process is similar. Defendants usually are sent to Eastern State Hospital at Medical Lake, where they undergo competency rehabilitation or are determined to have a mental illness that requires ongoing medical treatment.

In Idaho there's another alternative.

Nez Perce, Latah and Clearwater counties have mental health courts where a person who has been charged with a crime is deemed capable of participating in mental health court. People in Idaho and Lewis counties also can take

part in one of the region's mental health courts, which are mostly funded by the Idaho Supreme Court.

Second District Judge John Stegner of Moscow said if a defendant who has been diagnosed with a mental illness commits a misdemeanor or felony they could qualify for mental health court.

"They have to go to treatment, both group and individually; they have to be employed or be doing a job search or community service, or we would let somebody forego work if they were in school or if there's some combination of work and school," Stegner said.

"So what we're trying to do is get them to be productive members of society. Some of them are on Social Security disability so we wouldn't require them to work full time, but we might try to get them a part-time job. We don't like to have idle hands."

A team of people, including health professionals, social work-

ers and legal officials meet once a week to discuss how the candidates are performing.

Stegner said if the supervisory team determines the person is stable that may help the person avoid going to prison.

"But if they're not stable they probably aren't going to avoid the penitentiary," he said.

"Protection of society is always an important consideration about whether somebody gets into mental health court or not. And we're trying to determine if their mental illness is what's driving their criminality or vice versa. If their mental illness is just a tangent of their criminality they're probably not going to be appropriate for mental health court."

Stegner said he has had people ask if their son or daughter could get into mental health court, but unless a person has committed a crime it's not available.

For those who do get in, there are success stories.

Stegner remembers a man in his court years ago who had been diagnosed with a mental illness and sentenced to a retained jurisdiction program. After a while, prison supervisors recommended that the man be sent to prison.

"The underlying basis was that the people who had been dealing with him were frightened," Stegner said.

The judge agreed with the recommendation and sent the man to prison, where he completed a five-year term.

"So fast forward 10 years and he's back in front of me — still mentally ill," Stegner said. "We screen him for mental health court — it wasn't available the first time — and while there was some reluctance to admit him, I thought he was an appropriate candidate."

"He has now graduated from mental health court and is doing well. So that's the kind of difference we see when we have mental health court available where we didn't have it before."

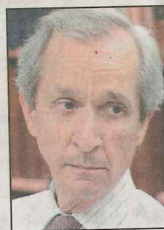
It's not a silver bullet, Stegner said, but it's a better alternative than sending somebody to prison for five years on a cost-benefit basis.

"If we can keep them from going to the penitentiary when their real underlying problem is mental illness, I think we've made a huge inroad."

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James Phillips



John Stegner