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Report No. 13-04

Juvenile and Adult Incompetent to Proceed Cases and Costs

at a glance

Over the past five fiscal years, the number of juveniles incompetent to proceed has fluctuated somewhat. Juveniles in community competency services received fewer services per month, which reduced overall costs. The time juveniles spend in the forensic facility has decreased.

Since Fiscal Year 2006-07, adult incompetent to proceed cases have leveled off. Adult community competency costs have remained relatively stable, while the costs associated with restoring competency for adults in secure forensic facilities have increased.

Scope

This report provides the Legislature current information on juvenile and adult defendants found incompetent to proceed and contrasts it with data from reports we issued in 2002 and 2008.^{1, 2}

Background

Florida law provides that juvenile and adult defendants must be mentally competent before they stand trial for their offenses. Specifically, defendants must be able to appreciate the range and nature of the charges and penalties that may be imposed, and must be able to understand the adversarial nature of the legal process and disclose to counsel facts pertinent to the proceedings at issue. Defendants

also must manifest appropriate courtroom behavior and be able to testify relevantly.³

If a defendant is suspected of being incompetent due to mental illness or developmental disability, the court or counsel for the defendant or the state may file a motion for an examination of the defendant's cognitive state. If the defendant is found incompetent to proceed, competency must be restored through the provision of competency restoration services in either the community or secure settings before the criminal proceeding may resume. See Appendices A and B for more information about the juvenile and adult incompetent to proceed processes.

Two state agencies, the Department of Children and Families (DCF) and the Agency for Persons with Disabilities (APD), oversee the provision of competency restoration services. DCF has oversight of juvenile defendants who are found incompetent to proceed due to mental illness or developmental disability and adult felony defendants who are found incompetent to proceed due to mental illness.^{4,5} APD oversees

¹ Section [11.51\(3\)](#), *F.S.*

² Information on incompetent to proceed defendants was previously provided in *Delays Reduced But Persist in State's Juvenile Competency Program*, OPPAGA [Report No. 02-54](#), October 2002 and *Incompetent to Proceed Adjudications Increasing*, OPPAGA [Report No. 08-17](#), March 2008.

³ Sections [916.12](#), [916.3012](#), and [985.19](#), *F.S.*

⁴ In Fiscal Year 2010-11, the Legislature appropriated \$2,080,668 for community juvenile incompetent to proceed services and \$4,891,311 for secure juvenile incompetent to proceed services.

⁵ In Fiscal Year 2010-11, the Legislature appropriated \$11,707,829 for community adult incompetent to proceed services and \$152,535,828 for secure adult forensic services. The secure forensic services cost includes forensic facility competency restoration, medical care, and rehabilitative services for defendants deemed incompetent to proceed and not guilty by reason of insanity. While the department was unable to separate the costs for defendants deemed incompetent to proceed and defendants deemed not guilty by reason of insanity, they report that defendants deemed not guilty of reason insanity represent 35% of forensic residents on any given day.

adult felony defendants who are incompetent to proceed due to developmental disability.⁶

Competency restoration services help defendants understand how the legal process works, the charges brought against them, the possible court dispositions, and their rights under the law, so that they can meaningfully participate in their own defense. While services can vary based on the age and diagnosis of the individual, they usually include educational classes and group and/or individual activities. Defendants may also receive case management services to assess functioning and service needs and coordinate and monitor service delivery and compliance with court orders. See Appendix C for information on the average cost to restore competency.

It is the Legislature's intent that competency restoration take place in the least restrictive setting.⁷ Defendants may be placed on conditional release to receive competency restoration services in the community if the court finds they do not pose a risk to public safety.⁸ If the court determines that the defendant is a danger to himself or others, it may involuntarily commit the defendant to a secure forensic facility.

Once a defendant is determined to have regained his or her competence to proceed by a competency evaluation expert, the court is notified and a hearing is set for the judge to determine the defendant's competency.⁹ If a juvenile is determined to still be incompetent, the court retains jurisdiction for up to two years after

the date of the order of incompetency, with reviews at least every six months to determine competency.¹⁰ If, at the end of the two-year period following the date of the order of incompetency, the juvenile has not attained competency and there is no evidence that the juvenile will attain competency within a year, the court must dismiss the delinquency petition.¹¹ Adults can remain in the incompetent to proceed process for up to five years. At that point, by statute the charges must be dropped, unless the court specifies reasons why the defendant will become competent and in what time period.¹²

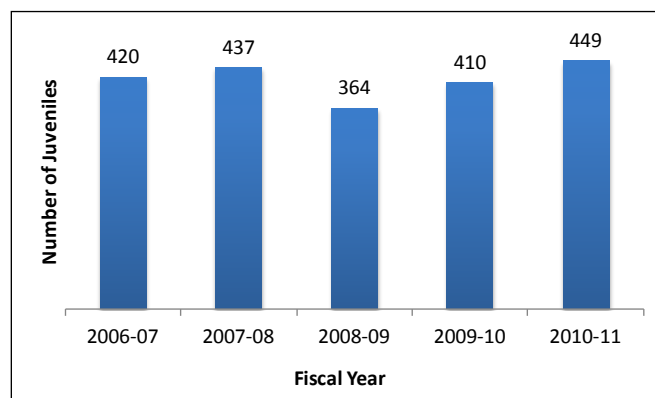
This report describes trends in the number of persons found incompetent to proceed, the rate of incompetency, and the lengths of time and costs for community and residential treatment for both juveniles and adults.

Juveniles

The number of juveniles found incompetent to proceed has fluctuated somewhat. The annual number of juveniles initially disposed as incompetent to proceed has fluctuated between Fiscal Years 2006-07 and 2010-11, as shown in Exhibit 1.

Exhibit 1

The Number of Juveniles Disposed As Incompetent to Proceed Has Fluctuated Somewhat Over the Past Five Fiscal Years



Source: OPPAGA analysis of Juvenile Justice Information System data from the Department of Juvenile Justice.

⁶ In Fiscal Year 2010-11, the Legislature appropriated \$15,131,303 to the Agency for Persons with Disabilities for the Mentally Retarded Defendant Program. Agency expenditures for community services to adult felony defendants incompetent to proceed due to developmental disability in Fiscal Year 2010-11 were \$1,247,352 for community services to adult felony defendants incompetent to proceed due to developmental disability.

⁷ Section [916.105\(3\)](#), *F.S.*

⁸ Conditional release is a court-ordered outpatient treatment plan. See ss. [916.17](#) and [916.304](#), *F.S.*

⁹ Section [916.115 \(1\)\(a\)](#), *F.S.*, provides that experts appointed by the court to conduct competency evaluations shall, to the extent possible, have completed forensic evaluator training approved by the DCF and each shall be a psychiatrist, licensed psychologist, or physician. In the juvenile system, the court appoints mental health experts to conduct competency evaluations although there does not appear to be a specific requirement in the juvenile competency statute that the expert be a psychiatrist, licensed psychologist, or physician as is the case in the adult system

¹⁰ Section [985.19\(5\)\(a\)](#), *F.S.*

¹¹ Section [985.19\(5\)\(c\)](#), *F.S.*

¹² Section [916.145](#), *F.S.*

During the past five years, the number of juvenile incompetent to proceed cases, shown by the bottom line in Exhibit 2, remained around 600.¹³ However, the total number of delinquency cases filed against juvenile defendants decreased by 26%, as shown by the top line in Exhibit 2.

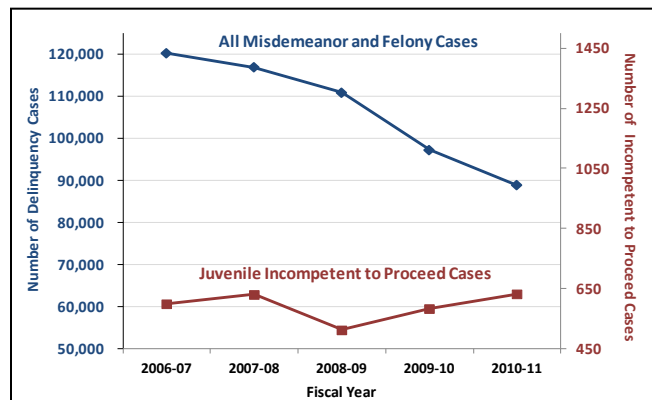
Incompetent to proceed cases are a small increasing portion of juvenile delinquency case filings. For every 1,000 delinquency cases, 5 were found incompetent to proceed during Fiscal Year 2006-07, whereas 7 were found incompetent to proceed in Fiscal Year 2010-11.

Increasing awareness of mental illness and developmental disabilities among attorneys was cited by public defenders as one reason why incompetent to proceed cases have not declined during a period when overall crime was declining. For example, training for attorneys on these issues has been enhanced, likely resulting in more persons being identified as incompetent to proceed.

In Fiscal Year 2010-11, aggravated assault and battery was the largest subcategory of offenses committed by juveniles found incompetent to proceed, followed by burglary, misdemeanor assault and battery, and sex offenses.¹⁴ Statute directs that only children whose crimes would be felonies if committed by an adult may be committed for competency treatment or training.^{15, 16}

Exhibit 2

While Juvenile Delinquency Cases Declined, Incompetent to Proceed Cases Did Not



Source: OPPAGA analysis of data from the Department of Juvenile Justice.

Community Competency. Juveniles received fewer services. DCF contracts with Twin Oaks Juvenile Development, Inc., to provide community competency restoration services, most of which are provided in children's homes. In Fiscal Year 2010-11, Twin Oaks provided competency services to 178 juveniles with mental illness and developmental disabilities.¹⁷ Of the 145 juveniles discharged by Twin Oaks, 103 were referred to the court.¹⁸ Of these 103 juveniles, 52 (50%), were recommended as competent to proceed.¹⁹

Juveniles receive fewer community competency restoration training services per month than they did at the time of our 2002 review. The decrease from an average of 20 hours per month in 2002 to an average of 13 hours per month in Fiscal Year 2010-11, and a reduction in case management hours from 7 to 4 hours per month helped to contribute to the reduction in overall costs.²⁰

¹³ The number of cases exceeds the number of juveniles because some juveniles found incompetent to proceed may have more than one court case.

¹⁴ In Fiscal Year 2010-11, no juvenile found incompetent to proceed was charged with murder or attempted murder.

¹⁵ Section 985.19(2), F.S.

¹⁶ DCF reports that each court determines how juvenile misdemeanor defendants found incompetent to proceed will be handled. For example, some have local resources to provide competency services, some drop the charges, and some review the case every six months to see if the youth's status has changed.

¹⁷ DCF has a memorandum of understanding with APD to provide forensic outpatient services to juveniles with developmental disabilities at a cost of \$440,000 per year. Any costs in excess of that amount are paid by the Department of Children and Families.

¹⁸ Forty-two (42) clients were discharged with no finding, which means they were discharged from the program by actions of the court, such as dismissal of charges.

¹⁹ Twin Oaks reported that 51 clients were recommended as not likely to achieve competency.

²⁰ In addition to reductions in case management and training hours, decreases in the cost of competency evaluations from \$880 in 2002 to \$450 in Fiscal Year 2010-11 also contributed to this reduction. Under the previous contract, evaluations were done twice per year,

Although the duration of community competency services more than doubled, from an average of 7 months in 2002 to 15 months in Fiscal Year 2010-11, overall costs fell from \$9,176 per juvenile in 2002 to approximately \$8,008 per juvenile in Fiscal Year 2010-11.

Forensic Facility: Time spent in the juvenile forensic facility has decreased. DCF also contracts with Twin Oaks Juvenile Development, Inc., for the operation of the Apalachicola Forest Youth Camp to provide secure residential services to juveniles who are court-ordered to DCF custody under s. 985.19, *Florida Statutes*.

In Fiscal Year 2010-11, 113 juvenile defendants were served; 76 were discharged, with 67, or 88%, of them recommended competent to proceed. The camp serves both male and female juveniles ages 8 to 20. In Fiscal Year 2010-11, the average age served was 15. Camp staff provide several competency restoration training activities, administer a monthly competency assessment tool to determine the client's current knowledge and status, and provide additional services, such as clinical, medical, vocational, educational, mental health, case management, dietary, recreational, and religious services.

In 2002, secure residential competency restoration services training lasted an average of 220 days per juvenile; by Fiscal Year 2010-11, the average length of training had decreased to 200 days. The cost per juvenile increased from \$64,680 to approximately \$70,900 over this period.²¹

Adults

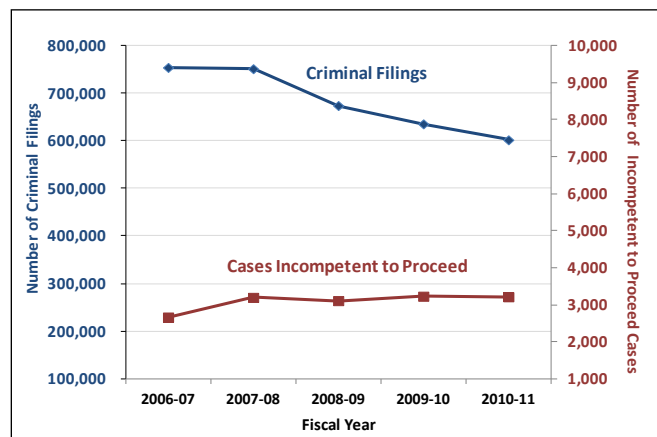
Adult incompetent to proceed cases have leveled off in recent years. We previously reported that the estimated annual number of cases found incompetent to proceed more than doubled from Fiscal Year 2002-03 to Fiscal Year 2006-07. Between Fiscal Year 2006-07 and Fiscal Year 2007-08 there was a slight increase, but since that time, available data indicate that the number of incompetent to proceed cases has leveled off,

while they are currently performed only once per year.

²¹ The department reports that the contracted capacity was reduced from 48 juveniles to 39 juveniles during this time period.

remaining around 3,200.^{22, 23} (See bottom line in Exhibit 3.) Appendix D discusses the methodology used to derive these estimates.

Exhibit 3 The Number of Adult Cases Disposed as Incompetent to Proceed Levelled Off as Total Adult Criminal Cases Declined



Source: OPPAGA analysis of data from the Offender-Based Transaction System of the Office of the State Court Administrator and the Department of Children and Families.

During this same time period, the total number of adult criminal cases decreased.²⁴ As shown by the top line in Exhibit 3, the number of adult criminal cases decreased by 20% between Fiscal Years 2006-07 and 2010-11. The rate of incompetent to proceed cases per 1,000 criminal filings has increased from 3.5 cases in Fiscal Year 2006-07 to 5.3 cases in Fiscal Year 2010-11.

Public defenders we interviewed cited increasing awareness of mental illness and developmental disabilities among attorneys as one reason why incompetent to proceed cases have not declined during a period when overall crime was declining. Other factors mentioned include the tendency for homeless mentally ill defendants to resist law enforcement intervention, which can result in a

²² Information on adults incompetent to proceed is derived from court records that track cases rather than individuals.

²³ Fifty-seven counties reported data to the Offender-Based Transaction System (OBTS) managed by the Office of the State Courts Administrator in Fiscal Year 2006-07, increasing to 59 in Fiscal Year 2010-11. Data for Fiscal Year 2006-07 is higher than in our last report due to improved data reporting from the counties.

²⁴ Includes felony, misdemeanor, worthless checks, county and municipal ordinances, but excludes DUIs and other traffic offenses.

charge of assault or battery on a law enforcement officer in what otherwise might have been a non-criminal encounter, and the likelihood that some incompetent to proceed defendants may not complete or receive adequate treatment, will commit another crime, and cycle back through the criminal justice system.

In Fiscal Year 2010-11, misdemeanor crimes, including trespassing, made up the largest subcategory of charges against adults found incompetent to proceed. The most common felony offenses committed by adults found incompetent to proceed were theft/forgery/fraud, burglary, and drug crimes. Of the felony offenses, 27 cases against persons found incompetent to proceed were for non-capital murder, 37 were for felony sexual offenses, and 13 were for capital murder. Statute directs that only adults charged with a felony may be involuntarily committed for competency treatment.²⁵

Community Competency Services: Costs have remained relatively stable. Defendants who do not require a secure environment can be conditionally released by the court to receive competency restoration services and training in the community.²⁶ The types of community-based restoration services provided vary based on the diagnosis of the individual and by availability of services in the community. For defendants with mental illness, DCF provides services, while APD provides services for defendants with developmental disabilities.

DCF reported that 2,743 defendants with mental illness were served in community-based competency restoration services provided under contract with DCF in Fiscal Year 2010-11, a substantial increase from 1,431 served in 2006-07. DCF is currently unable to provide information on

the number of defendants served in the community who were restored to competency. In Fiscal Year 2006-07, department staff estimated that community competency restoration services generally took four to six months. Current data show a length of stay of 9.1 months between admission and discharge for defendants served in the community. Despite the increased time, costs have not increased significantly. DCF reported a cost per defendant of \$10,408 in Fiscal Year 2010-11 compared to our estimate of \$7,080 to \$10,620 in Fiscal Year 2006-07.

In Fiscal Year 2010-11, APD provided community competency restoration services to 307 defendants with developmental disabilities, an increase from the 215 served in Fiscal Year 2006-07. In our 2008 report, the agency could not identify the cost and length of time to restore competency in the community for defendants with developmental disabilities. For Fiscal Year 2010-11, data show that with a weighted average length of treatment of 32 months, the estimated cost per client released was \$10,910.²⁷ A total of 141 defendants were discharged, with 31, or 22% of them recommended competent to proceed.

Forensic Facilities: The costs have increased. In Fiscal Year 2010-11, 1,494 defendants were involuntarily committed for competency restoration services to one of DCF's four secure forensic facilities for persons with mental illness, slightly more than the 1,396 admitted in Fiscal Year 2006-07. A total of 1,324 defendants were discharged, with 1,214, or 92% of them recommended competent to proceed. A total of 71 defendants were admitted to APD's secure facility for persons with developmental disabilities in Fiscal Year 2010-11, a decrease from the 118 admitted in Fiscal Year 2006-07.²⁸ In Fiscal Year 2010-11, 98 defendants were discharged from

²⁵ Sections [916.13\(1\)](#) and [916.13\(2\)](#), *F.S.* Some circuits have local agreements and provide treatment resources for misdemeanor defendants found incompetent to proceed. In some more severe cases, local courts do not have placement options and the defendant may be kept in jail and a settlement of the case may be delayed until it is eventually dismissed.

²⁶ Community services also are used for persons who have been released from forensic facilities because they no longer meet the criteria for involuntary commitment but have not yet been restored to competency.

²⁷ The Agency for Persons with Disabilities conducted a survey of area offices to obtain data on cost and length of stay for this review.

²⁸ The Department of Children and Families operates Florida State Hospital in Chattahoochee and the North Florida Evaluation and Treatment Center in Gainesville. The department contracts with GEO Group, Inc., for the operation of the South Florida Evaluation and Treatment Center (SFETC) in Miami, and the Treasure Coast Forensic Treatment Center in Indiantown. The Agency for Persons with Disabilities operates the Mentally Retarded Defendant Program at Florida State Hospital in Chattahoochee.

APD's secure facility, with 57, or 58%, as competent to proceed.

The costs for providing competency restoration services in a DCF secure forensic facility to defendants with mental illness have increased. From Fiscal Year 2006-07 to 2010-11, the weighted average per diem cost increased by \$5 and the average length of stay increased by 15 days.²⁹ As a result, the average total cost per defendant increased from approximately \$36,000 in Fiscal Year 2006-07 to \$41,382 in Fiscal Year 2010-11.

Costs to provide competency restoration services for defendants with developmental disabilities in the APD forensic facility also increased. The average per diem cost increased by \$58 from Fiscal Year 2006-07 to 2010-11, and the average number of days to restore competency also increased by 97 days.³⁰ As a result, the total average cost to restore

competency for these defendants in forensic facilities increased significantly, from approximately \$61,000 in Fiscal Year 2006-07 to approximately \$105,000 Fiscal Year 2010-11.

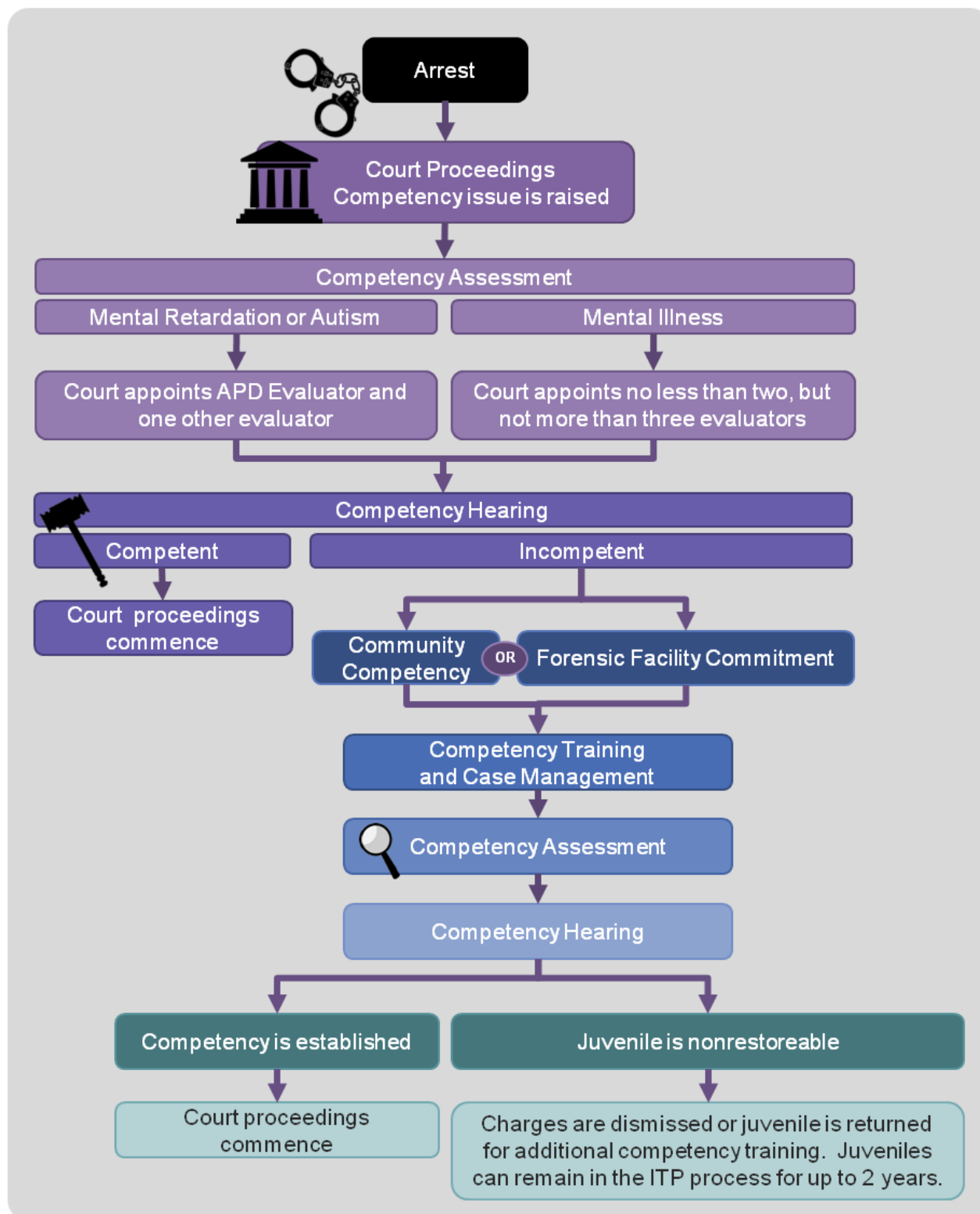
APD staff reports that the increased length of stay was due, in part, to an increase in the number of significantly more complex residents needing treatment. In addition, the department has indicated that the incidence of "malingering" among incompetent to proceed defendants has doubled over the past five years. Malingering is the purposeful exaggeration of deficits in competency knowledge, overall cognitive barriers, or the lack of ability to recall information. In Fiscal Year 2010-2011, 36% of residents restored to competency were identified as malingering, compared to 17% of persons restored to competency so identified in Fiscal Year 2006-07.

²⁹ From Fiscal Year 2006-07 to 2010-11, the weighted average per diem increased from \$337 to \$342, while length of stay increased from 106 to 121 days. We calculated a weighted average per diem based on the cost and number of beds in DCF forensic facilities.

³⁰ From Fiscal Year 2006-07 to 2010-11, APD per diem increased from \$266 to \$324 and the length of stay increased from 228 to 325 days.

Appendix A

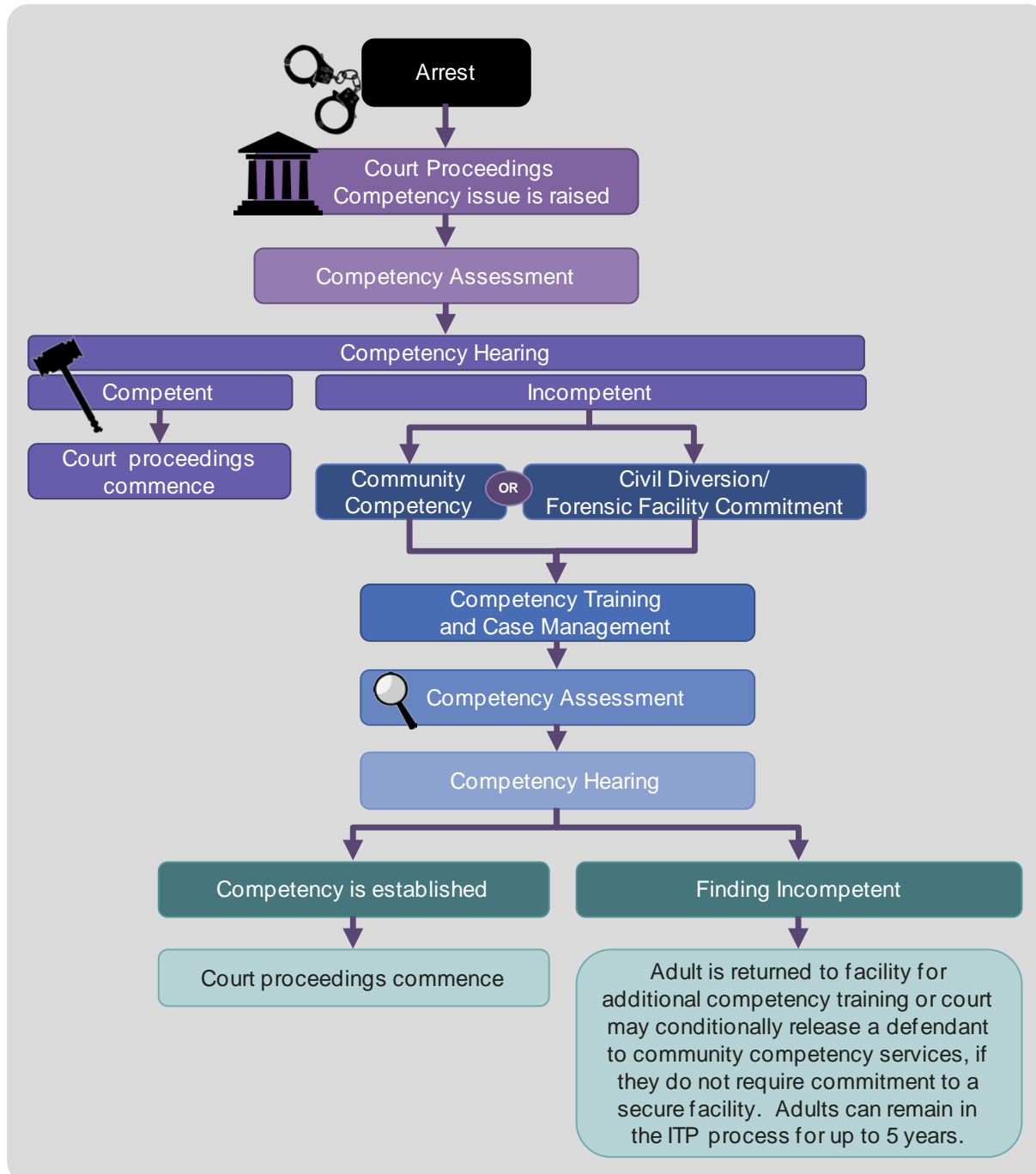
The Juvenile Incompetent to Proceed Process for Felony Offenses



Source: Department of Children and Families.

Appendix B

The Adult Incompetent to Proceed Process for Felony Offenses



Source: Department of Children and Families.

Appendix C

Average Cost to Restore Competency by Client Groups

Exhibit C-1

The Average Cost to Restore Competency Increased for Defendants Treated in Forensic Facilities

Group	Previously Reported Cost Per Defendant Per Year	Fiscal Year 2010-11 Cost Per Defendant Per Year	Comment
Community Services			
Juvenile Community Treatment	\$9,176 (2002)	\$8,083	Reduced costs due to fewer services per month and reduced costs for competency evaluations
Department of Children and Families Adult Community Competency Restoration	\$7,080 to \$10,620 (Fiscal Year 2006-07)	\$10,408	Despite an increase in the time to restore competency, a reduction in per diem costs results in similar costs
Agency for Persons with Disabilities Adult Community Competency Restoration	N/A (Fiscal Year 2006-07)	\$10,910	In Fiscal Year 2006-07, APD was unable to identify the cost and length of time to restore competency in the community for defendants with developmental disabilities
Forensic Facilities			
Juvenile Secure Residential Facility	\$64,680 (2002)	\$70,900	While the average length of time in forensic facilities for juveniles has decreased by almost 10%, costs increased
Department of Children and Families Adult Facilities	\$36,000 (Fiscal Year 2006-07)	\$41,382	Increases in average length of stay resulted in cost increases
Agency for Persons with Disabilities Mentally Retarded Defendant Program	\$61,000 (Fiscal Year 2006-07)	\$105,000	Increases in average length of stay, average per diem cost, and the complexity of client deficits resulted in cost increases

Source: Departments of Juvenile Justice, Department of Children and Families, and the Agency for Persons with Disabilities.

Appendix D

Data and Methodology Used to Estimate the Number of Incompetent to Proceed Cases

Although courts are not required to report the number of defendants found to be incompetent to proceed to the Office of State Courts Administrator, courts in 57 to 59 counties have recorded these cases voluntarily in the Offender Based Transaction System in each of the past five fiscal years.

To estimate the number of incompetent to proceed cases for counties not reporting data, we used an ordinary least squares regression model to predict the number of cases given values for other known variables. Our analysis covers the period during Fiscal Years 2006-07 through 2010-11.

Data and variables

The Office of State Courts Administrator provided data from the Offender Based Transaction System (OBTS) showing the number cases for defendants found unable to stand trial in circuit court. Courts in approximately 85% of Florida's 67 counties have reported these cases during the period from Fiscal Year 2006-07 through Fiscal Year 2010-11. Counties not participating in OBTS in Fiscal Year 2010-11 included DeSoto, Duval, Flagler, Nassau, Osceola, Putnam, St. Lucie, and Seminole counties. In Fiscal Year 2006-07, other counties not participating included Palm Beach and Suwannee counties. In addition, due to technical errors, Dade County reported no ITP data for 2006-07. The absence of data for some large counties could affect the outcome of our analysis.

Using available data correlated with the number of incompetent to proceed cases, we estimated the number of ITP cases for each fiscal year for each county with missing data. Our regression model was based on available data on variables associated with persons with mental illness, since data was not available for persons with developmental disabilities, who comprised only 5% of involuntary commitments for Fiscal Year 2010-11. It included as independent variables data from the Summary Reporting System of the Office of the State Courts Administrator for the number of felony filings by county, and data from the Department of Children and Families for the number of involuntary commitments to forensic facilities of defendants found incompetent to proceed due to mental illness, and the number of people with mental illness receiving competency restoration in the community, both by county for Fiscal Year 2006-07 to Fiscal Year 2010-11.

Results

Applying the relationships predicted by the model resulted in adjusted R-square values ranging from .792 for Fiscal Year 2009-10 to .953 for Fiscal Year 2007-08.

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