

“Mentally incompetent defendants on rise”

By Andrew Seaman and Kevin Johnson

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Trend tied to limited health care access, lawyers' strategies

By Kevin Johnson and Andrew Seaman
USA TODAY

WASHINGTON — The number of accused felons declared mentally incompetent to stand trial is rising in 10 of the nation's 12 largest states, delaying local prosecutions and swamping state mental health and prison systems, a USA TODAY review finds.

These defendants cost hundreds of millions of dollars to treat and house as local governments tighten their budgets because of a slowing economy.

Legal analysts attribute the increase to a lack of mental health care, judges' increased openness to such claims and legal strategies by defendants to try to avoid harsh punishment.

"It's a huge problem," says Joshua Marquis, a vice president of the National District Attorneys Association. "It's equally bad for the accused and the vic-

tims" because cases linger.

Criminal defendants who do not understand the legal proceedings against them are generally declared by judges to be incompetent for trial. Most are referred to mental health facilities and treated. The length of treatment varies from an average of three weeks in Virginia to more than nine months in Tennessee before they are deemed fit for trial or mental health experts determine they cannot be successfully treated, the USA TODAY review found.

There is wide variation in how states track thousands of incompetency rulings, and some do not track them at all. Of the 12 most populous states, Texas reported a decline last year and New Jersey did not provide data.

Among states reporting increases:

► **Florida.** State policy analysts reported in March that incompetent defendants there doubled from 1,061 to 2,123 in the past five years. Florida Supreme Court Chief Justice R. Fred Lewis says that reflects a lack of access to treatment even before the accused enter the justice system. Officials spend about \$250 million yearly on treatment

More trials skipped on mental grounds

Among states reporting increases in the number of criminal defendants declared incompetent to stand trial:

California	New York
District of Columbia	North Carolina
Florida	Ohio
Georgia	Oklahoma
Illinois	Pennsylvania
Louisiana	Tennessee
Maryland	Utah
Michigan	Virginia

Sources: USA TODAY research and state departments of health and mental health

to restore mental fitness. The state projects a doubling of costs in seven years.

► **Ohio.** About 32% of 1,050 state mental hospital patients have been charged with crimes but declared unfit for trial. Most are accused felons, and that number has risen recently, says Howard Sokolov, Ohio's medical director for forensic services.

► **California.** Mentally incompetent

defendants treated by state mental health providers increased in four of the past five years. Accused and convicted offenders now occupy 4,500 of the state's 5,000 mental hospital beds, up from 500 more than a decade ago, the state Department of Mental Health says.

Ken Murray, chairman of the National Association of Criminal Defense Lawyers' mental health committee, says competency claims are gaining acceptance among judges, prosecutors and defense lawyers in part because of growing efforts to identify the wrongfully convicted. "Some of these people who made false confessions" — and were convicted based on those statements — "had competence problems to start with," says Murray, a federal public defender in Phoenix.

Sokolov says incompetency caseloads for Ohio's mental health assessors have risen 22% in the past five years. "There is an increasing amount of people who are finding it difficult to obtain (mental health) services," he says, "and they tend to get in trouble with the law."

Contributing: Katharine Lackey

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