

Indiana v. Davis: Revisiting Due Process Rights of Permanently Incompetent Defendants

Douglas R. Morris, MD, and George F. Parker, MD

With its landmark *Jackson v. Indiana* (406 U.S. 715 (1972)) decision, the United States Supreme Court ruled that states may not indefinitely confine criminal defendants solely on the basis of incompetence to stand trial. While this decision led to widespread state statutory and procedural changes, the *Jackson* court left unresolved whether states could indefinitely maintain criminal charges against incompetent defendants. Nearly four decades after the *Jackson* decision, the Indiana Supreme Court finally revisited this question in *Indiana v. Davis* (898 N.E.2d. 281 (Ind. 2008)), unanimously ruling that holding criminal charges over the head of a permanently incompetent defendant, when her pretrial confinement extended beyond the maximum period of any sentence the trial court could impose, violated the basic notions of fundamental fairness embodied in the Due Process Clause of the Fourteenth Amendment. In this analysis of *Indiana v. Davis*, the facts of the case and the court's rationale for its decision are discussed. This unique ruling is considered in light of the questions resolved and still unanswered since *Jackson v. Indiana*.

J Am Acad Psychiatry Law 37:380–5, 2009

In May 1968, Theon Jackson, who was mentally retarded, deaf, and mute, was charged with stealing \$9.00 worth of property. Although psychiatric examiners opined that there was little probability that he would ever be competent to stand trial, Jackson was statutorily committed to Indiana's Department of Mental Health until supposedly sane. Jackson's counsel appealed, arguing that his commitment under these circumstances amounted to a life sentence without his ever having been convicted of a crime. The United States Supreme Court agreed, holding that, in addition to depriving Jackson of equal protection, indefinite commitment of a criminal defendant solely on account of his lack of capacity to stand trial violated the due process protections of the Fourteenth Amendment.¹ However, the Court declined to rule on Jackson's argument that fundamental fairness required that the charges against him be dismissed. In considering this argument the Court noted:

Apparently it [Indiana] believed that by reason of Jackson's incompetency commitment the State was entitled to hold the charges pending indefinitely. On this record, Jackson's claim is a substantial one. For a number of reasons, however, we believe the issue is not sufficiently ripe for ultimate decision by us at this time [Ref. 1, p 739].

While the *Jackson* Court recognized that dismissal of charges against an incompetent accused may be justified by violation of the right to a speedy trial or "denial of due process inherent in holding pending criminal charges indefinitely over the head of one who will never have a chance to prove his innocence," it believed that grounds for dismissing Jackson's charges were "not squarely presented here" (Ref. 1, p 740).

After the *Jackson* ruling, Indiana revised its competence statutes to require the Department of Mental Health to seek civil commitment after six months of attempted competence restoration. However, these statutes made no provision for the disposition of the criminal charges against defendants who were unlikely to ever be restored to competence. The Department of Mental Health subsequently interpreted the revised statutes to require ongoing supervision of incompetent defendants so long as their charges remained active, and thus determined that it could not release incompetent defendants who had active charges pending against them. Consistent with this

Dr. Morris is Volunteer Clinical Assistant Professor of Psychiatry, and Dr. Parker is Associate Professor of Clinical Psychiatry, Indiana University School of Medicine, Bloomington, IN. The views and opinions expressed in this commentary are solely those of the authors and do not necessarily reflect official policies or positions of the Indiana University School of Medicine or the Indiana Division of Mental Health and Addictions. Address correspondence to: Douglas R. Morris, MD, Logansport State Hospital, IRTC 833, 1098 South State Road 25, Logansport, IN 46947. E-mail: drdmo@hotmail.com

interpretation, the current Indiana mental health agency, now known as the Division of Mental Health and Addictions (DMHA), always requests renewal of the civil commitment of incompetent defendants with pending charges. Indiana courts nearly always authorize continued commitment and hospitalization, based on Indiana's relatively broad civil commitment statutes. As a result, some defendants have spent years in Indiana's state psychiatric hospitals as both incompetent to stand trial and civilly committed, sometimes beyond the maximum sentence for the underlying charges.

Nearly four decades after the *Jackson* decision, an Indiana trial court judge dismissed the charges against a defendant who had been civilly committed to a state hospital as incompetent to stand trial for longer than her maximum sentence. When this decision was appealed, the Indiana Supreme Court was finally "squarely presented with the question the United States Supreme Court left unresolved."²

Indiana v. Davis

On February 21, 2004, Charlene Davis entered an Indianapolis bank and demanded a withdrawal from her savings account, which she believed was active and contained a balance of over \$300.00. Becoming upset when told her account was closed, she produced a knife and began waving it about. Police were called and she was subdued after she refused to relinquish the knife. She was arrested and charged with criminal recklessness, a class D felony punishable by up to three years' incarceration.

Ms. Davis' counsel filed a motion for evaluation of competence to stand trial, questioning whether she understood the nature of the proceedings against her and was able to assist counsel in the preparation of her defense. Two court-appointed psychiatrists subsequently evaluated Ms. Davis and both opined that she had schizophrenia and was not competent to stand trial. Consequently, she was statutorily committed to Indiana's DMHA for inpatient competence restoration.

The May 2004 commitment order, in accordance with state statute, required the superintendent of the psychiatric hospital to certify to the trial court within 90 days, in an interim report, whether Ms. Davis had attained competence to stand trial or had a substantial probability of attaining this competence within the foreseeable future. After the initial 90-day period of evaluation and treatment, Ms. Davis was opined

to have little probability of successful competence restoration. Citing a continuing need for treatment, the hospital then filed for civil commitment, which was granted.

By March 2007, Ms. Davis had been hospitalized for nearly three years and had been transferred to another state psychiatric hospital. At this time, this hospital's medical director advised the court that it was her opinion that Ms. Davis remained too guarded and paranoid to ever work with legal counsel and could not be restored to competence.

Later that month, Ms. Davis' counsel filed a motion to dismiss her charges, arguing that her client's hospitalization was tantamount to incarceration and that she had already accrued more days than the maximum possible sentence for her charged crime. After a hearing, the trial court granted this motion. The state appealed, arguing that the trial court did not have the legal authority to dismiss the charge against Ms. Davis. The Indiana Court of Appeals unanimously reversed the trial court's dismissal and ruled that civil commitment was distinct from criminal proceedings and that time in civil involuntary commitment could not be equated to time served in jail for pending criminal charges.³ Counsel for Ms. Davis appealed this ruling to the Indiana Supreme Court.

Indiana Supreme Court Ruling and Reasoning

The Indiana Supreme Court unanimously reversed the appellate court's decision and affirmed the trial court's judgment, ruling that the trial court judge did not abuse her discretion in granting Ms. Davis' motion to dismiss the charge against her. The court concluded that because her pretrial confinement had extended beyond the maximum period of any sentence the court could impose, and because the state advanced no argument that its interests outweighed Ms. Davis' substantial liberty interest, it was a violation of the basic notions of fundamental fairness embodied in the Due Process Clause of the Fourteenth Amendment to hold criminal charges over the head of an incompetent defendant when it was apparent she would never be able to stand trial.

In forming its opinion, the court noted that abuse of discretion is the appropriate standard for appellate review of trial court decisions to dismiss criminal charges. In general, courts have the inherent authority to dismiss criminal charges when prosecution of such charges would violate a defendant's constitu-

tional rights. Due process rights are such constitutional rights, and the court sought to determine whether Ms. Davis' case involved a due process right and, if so, whether this right had been violated.

In weighing Ms. Davis' argument, the court acknowledged the inherent difficulty of defining due process, noting, "[f]or all its consequences, 'due process' has never been, and perhaps can never be precisely defined" (Ref. 2, p 287, citing *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 24 (1981)). Due process was recognized not as a technical concept with fixed content unrelated to time, place, and circumstances; instead, "[a]pplying the Due Process Clause is thus an uncertain enterprise which must discover what 'fundamental fairness' consists of in a particular circumstance by first considering any relevant precedents and then by assessing the several interests that are at stake" (Ref. 2, p 287, citing *Lassiter*, pp 24–25).

The Indiana Supreme Court noted that other state jurisdictions that had considered the dismissal of criminal charges against incompetent defendants had done so on the basis of statutory authority or court rule. The court found no applicable Indiana state law or case law precedents on the issue of "whether there is an inherent denial of due process in holding pending criminal charges over the head of one who will never have a chance to prove her innocence" (Ref. 2, p 287). Without relevant Indiana statutory or case authority in this area, the court then undertook its own analysis of the interests at stake in Ms. Davis' case.

The Indiana Supreme Court recognized that Ms. Davis' interest was basic and fundamental, as it involved "a massive curtailment of liberty" (Ref. 2, p 288, citing *Humphrey v. Cady*, 405 U.S. 504, 509 (1972)) that is the result of involuntary civil commitment. The court acknowledged that the justification for commitment of a defendant found incompetent to stand trial is based on the state's interests in restoring the accused, which include prompt and fair disposition of the criminal charges and protection of the defendant from prosecution when she is unable to understand the proceedings or assist her attorney. The court understood commitment of the incompetent defendant to require the possibility that the defendant can be restored and accepted that, for Ms. Davis, restoration was not possible.

Indiana's civil commitment statutes are based on findings of dangerousness or "grave disability."⁴

Normally, individuals who have been civilly committed after such a finding are eligible for release when these conditions no longer exist.⁵ However, the court recognized that Indiana statute did not specifically address release eligibility when the original commitment stemmed from the criminal court and was based on incompetence to stand trial.

Ms. Davis had been charged with criminal recklessness as a class D felony, punishable by a maximum of three years' imprisonment and with a presumptive sentence of 18 months.⁶ The court noted that Indiana defendants earn a one-day credit for each day they are confined awaiting trial and specifically rejected the appeals court's statement that state hospitalization for restoration was not equivalent to confinement, citing an Indiana appellate precedent that recognized time in a mental health facility for restoration as equivalent to confinement.⁷ Based on credit for her time confined in Indiana state hospitals as incompetent to stand trial, the court found Ms. Davis immune from further sentencing.

The court acknowledged that there were situations in which the state might have legitimate interests in determining guilt, even if that individual was not eligible for further punishment (e.g., to require an individual to register as a sex offender, to prohibit firearms possession, or for sentence enhancement based on gang activity or habitual-offender status). However, the state advanced no such claims in Ms. Davis' case, nor did it cite significant public interests that might be served by determining her guilt or innocence now that she was no longer subject to further criminal confinement. For these reasons, and because "the indefinite prolonging of criminal charges carries the very real likelihood of subjecting Davis to the 'anxiety and scorn accompanying public accusation'" (Ref. 2, p 290, internally citing *Klopper v. North Carolina*, 386 U.S. 213, 222 (1967)), the trial court's dismissal of her charges was supported.

Incompetent Defendants in Indiana

In Indiana, all individuals adjudicated incompetent to stand trial (ICST) are committed to DMHA for competence restoration.⁸ Though outpatient restoration is allowed by statute, no program to do so has been developed, and all incompetent defendants are admitted to a state hospital for restoration to competence. The hospital that admits the ICST defendant for restoration is required to file a report with the criminal court within 90 days of admission re-

garding the defendant's competence and the probability of restoration in the near future. If an ICST defendant remains unrestored after six months in a DMHA state hospital, Indiana law requires the hospital to seek civil commitment of the defendant,⁹ and, as discussed, DMHA's interpretation of the competence statute has led to a policy to continue to request renewal of the commitment of unrestored defendants from the probate courts until the charges are dropped or the defendant gains competence to stand trial.

As revealed in a recent study of Indiana defendants hospitalized for competency restoration, these practices may affect a significant number of defendants. Of the 1,375 defendants who were admitted for restoration efforts from 1988 to 2004, more than one in four (27.6%) were not restored within Indiana's six-month statutory limit, and one in six (16.1%) remained hospitalized one year after admission.¹⁰ While pre-*Jackson* automatic indefinite commitment of incompetent defendants is no longer allowed, Indiana's current statute and policy make it possible for ICST defendants to spend many years in state hospitals. Like Indiana, other states have also struggled to implement the *Jackson* decision effectively, and commentators in the decades since *Jackson* have consistently noted that nearly half of states have no effective time limits for competency restoration.¹¹⁻¹³

While courts and commentators have focused their attention on the liberty interests of incompetent defendants faced with extended and perhaps indefinite hospitalization, the persistence of these defendants' underlying criminal charges also has significant implications. The primary concern is the threat of prosecution of the charges even after prolonged hospitalization, although this is somewhat dependent on the severity of the charges. These individuals are also subject to the DMHA policy of continuing to request civil commitment of ICST defendants with enduring criminal charges. In addition, defendants must cope with the "anxiety and scorn accompanying public accusation," as noted by the *Davis* court. Finally, Indiana ICST defendants retain DMHA as their gatekeeper even after civil commitment as unrestored defendants, which subjects them to DMHA oversight and approval regarding transfer to less restrictive environments and some hospital privileges. In contrast, ICST defendants whose charges are dismissed are assigned community mental health centers as their gatekeepers, are not subject

to the same degree of DMHA oversight, are more easily transferred to less restrictive environments, and can be discharged from state hospitals. For these reasons, persistence of criminal charges can serve as a means of effectively lengthening an ICST individual's length of stay in the Indiana state hospital system.

Discussion

While it is easy to criticize Indiana and other states that have seemingly restrictive statutes and policies regarding the management of ICST defendants, all states face difficulties in justly dealing with permanently incompetent individuals. Like insanity acquittees, who tend to remain hospitalized for evaluation and treatment longer than is clinically indicated,¹⁴ permanently incompetent defendants may find themselves in the midst of controversy, as defense and civil rights attorneys argue with prosecutors and public safety officials about the appropriate disposition of the defendant.¹⁵

Prosecutors have little incentive to drop these individuals' charges and may believe that the public safety of their communities is better served by ICST defendants remaining hospitalized, thus ensuring ongoing treatment and monitoring. Defense attorneys generally advocate for the release of their clients, particularly as the length of stay in the state hospital approaches the length of the likely sentence if the defendant had been found guilty. However, in the face of serious charges like murder, defense attorneys may believe it is in their clients' best interests to stay in the state hospital, particularly if they have ongoing difficulties in communicating and working with their clients. Probate judges may be placed in the difficult position of having to rule on the potential release of individuals who have both mental illness and active criminal charges. In addition, while patient advocates argue for treatment in less restrictive environments, states may not have community systems in place that either desire or are able to treat forensic patients. These factors combine to lead to stagnation in treatment and placement efforts, and the best available and most feasible option is often to continue the hospital commitment of an ICST defendant.

As noted by the Indiana Supreme Court, the states have developed a variety of ways to handle the disposition of criminal charges when defendants are unlikely to be restored to competence. In some states, a trial court must drop criminal charges if it deter-

mines that a defendant is likely to remain incompetent to proceed.^{16,17} In other states, dismissal of criminal charges is either discretionary,^{18,19} or mandatory in some cases and discretionary in others.^{20,21} Not noted by the court was the possibility of conditional release of incompetent defendants, which is an option in Ohio if the criminal court chooses to retain jurisdiction over the defendant after finding: (1) no substantial probability of restoration; (2) the presence of clear and convincing evidence that the defendant committed the alleged offense; and (3) the defendant “is a mentally ill person subject to hospitalization by court order.”^{22,23} Ohio also limits the length of time of criminal court jurisdiction over an incompetent defendant to the maximum sentence of the underlying charge.²⁴ Indiana’s statutes are silent with regard to dismissal of charges or conditional release of incompetent defendants, but the court’s acknowledgment of a substantial liberty interest for permanently incompetent defendants raises the possibility that a specific statute allowing indefinite persistence of charges could be found unconstitutional.

The federal government and some states have developed alternative means of advancing their interests in situations that would normally require criminal conviction but involve defendants whose criminal charges cannot be adjudicated. South Carolina’s Sexually Violent Predator Act defines “convicted of a sexually violent offense” to include individuals who have “been charged but determined to be incompetent to stand trial for a sexually violent offense.”²⁵ Since 1968, the federal government has prohibited individuals “adjudicated as a mental defective” or who have been “committed to any mental institution” from purchasing a firearm from a federally licensed firearms dealer.²⁶ Subsequent federal gun-control laws have continued these prohibitions and encouraged states to report to the National Instant Criminal Background Check System (NICS).^{27,28} In 1997, the Bureau of Alcohol, Tobacco, and Firearms officially defined “adjudicated as mental defective” to include persons found incompetent to stand trial,²⁹ and some states also specifically prohibit handgun possession by individuals found incompetent to stand trial.^{30,31} While such statutes restrict the rights of individuals who have not been convicted of their alleged offenses, they address legitimate state interests involving public safety. As the Indiana Supreme Court noted, prosecutors may seek conviction to make defendants eligible for on-

going restrictions (e.g., sex offender registration). Laws that make unrestorable defendants eligible for these restrictions could lessen the rationale for indefinitely pursuing certain criminal charges.

Conclusions

The Indiana Supreme Court, in *Indiana v. Davis*, held that a trial judge may dismiss criminal charges against a permanently incompetent defendant who has remained confined longer than the maximum sentence if she had been convicted of her crime. This decision, which advances the due process protections for incompetent defendants, begins to answer an important question left unresolved in *Jackson v. Indiana* and also marks a significant shift in opinion since the Indiana Supreme Court initially upheld Theon Jackson’s automatic indefinite commitment nearly four decades ago. While the court ruled that it was within the discretion of the trial judge to dismiss criminal charges against ICST defendants immune from further sentencing, the acknowledgment of substantial due process rights for ICST defendants raises the question of whether the strict scrutiny used to evaluate fundamental liberty interests should require trial judges to dismiss criminal charges in these circumstances. Further challenges to the detention of ICST defendants and attempts to balance competing state and individual interests can be anticipated.

References

1. *Jackson v. Indiana*, 406 U.S. 715 (1972)
2. *Indiana v. Davis*, 898 N.E.2d 281, 287 (Ind. 2008)
3. *State v. Davis*, 875 N.E.2d 779 (Ind. Ct. App. 2007)
4. Ind. Code § 12-26-7-5(a) (1992)
5. Ind. Code § 12-26-7-5(b) (1992)
6. Ind. Code § 35-50-2-7(a) (2005)
7. *Wilson v. State*, 679 N.E.2d 1333, 1336 (Ind. Ct. App. 1997)
8. Ind. Code § 35-36-3-1 (2004)
9. Ind. Code § 35-36-3-4 (2004)
10. Morris DR, Parker GF: Jackson’s Indiana: state hospital competence restoration in Indiana. *J Am Acad Psychiatry Law* 36:522–34, 2008
11. Roesch R, Golding SL: *Competency to Stand Trial*. Urbana, IL: University of Illinois Press, 1980
12. Morris GH, Meloy JR: Out of mind? Out of sight: the uncivil commitment of permanently incompetent criminal defendants. *U Cal Davis L Rev* 27:1–96, 1993
13. Miller RD: Hospitalization of criminal defendants for evaluation of competence to stand trial or for restoration of competence: clinical and legal issues. *Behav Sci Law* 21:369–91, 2003
14. Phillips RTM, Caplan C: Administrative and staffing problems for psychiatric services in correctional and forensic settings, in

- Principles and Practice of Forensic Psychiatry (ed 2). Edited by Rosner R. London: Hodder Arnold, 2003, pp 503–12
15. Norko MA, Dike CC: The forensic unit, in Textbook of Hospital Psychiatry. Edited by Sharfstein SS, Dickerson FB, Oldham JM. Arlington, VA: American Psychiatric Publishing, Inc., 2009, pp 185–95
 16. Mo. Ann. Stat. § 552.020.11(6) (West 2002)
 17. Mont. Code Ann. § 46-14-221(3)(b) (2007)
 18. Ark. Code Ann. § 5-2-310(C) (Supp. 2007)
 19. Haw. Rev. Stat. § 704-406(3) (Supp. 2007)
 20. Minn. R. Crim P. 20.01(6) (2008)
 21. N.J. Rev. Stat. § 2C:4-6c (2005)
 22. Ohio Rev. Code Ann. § 2945.38(B)(2) (2002)
 23. Ohio Rev. Code Ann. § 2945.39(2) (2002)
 24. Ohio Rev. Code Ann. § 2945.401(A) (1997)
 25. S.C. Code Ann. § 44-48-30(6)(c) (1998)
 26. Pub. L. No. 90-618, 82 Stat. 1213 (1968)
 27. Simpson JR: Bad risk? An overview of laws prohibiting possession of firearms by individuals with a history of treatment for mental illness. *J Am Acad Psychiatry Law* 35:330–8, 2007
 28. Price M, Norris DM: National Instant Criminal Background Check Improvement Act: implications for person with mental illness. *J Am Acad Psychiatry Law* 36:123–30, 2008
 29. 27 C.F.R. § 478.11 (1997)
 30. Cal. Wel. Inst. Code § 8103(d)(1). Available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=08001-09000&file=8100-8108>. Accessed May 6, 2009
 31. Minn. Stat. § 624.713 subd. 1(3). Available at <https://www.revisor.leg.state.mn.us/statutes/?id=624.713>. Accessed May 5, 2009