

# Jackson v. Indiana: What Did it Mean to the States?



Karen Bailey-Smith, Ph.D.  
State of Georgia

NASMHPD Forensic Division Conference  
September 2008

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"My client did *not* escape, Your Honor — his prison was so crowded, somebody pushed him out the window!"

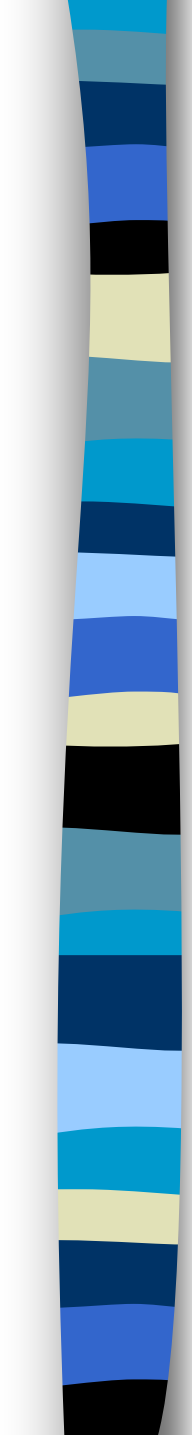


## Rationale for the Competency Doctrine

- Accurate decision of guilt versus innocence
- Fairness for the defendant (a fair playing field)
- Appearance of justice
- Dignity of the criminal trial



**There are no stupid  
questions!**



*But, there are questions that  
are stupid to ask*

*(or at a minimum you may be sorry  
you asked!)*



# Starting place for an answer:

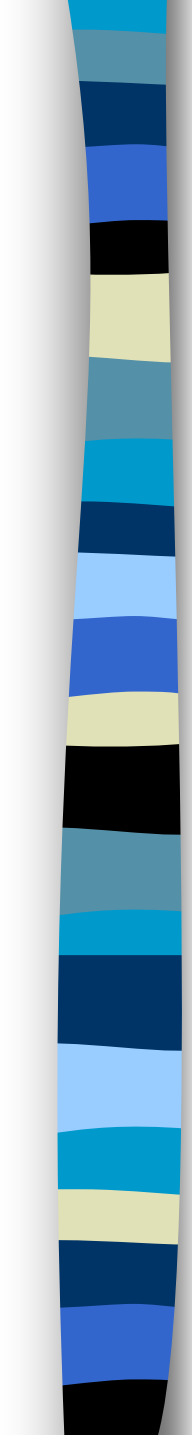
- In 1972, the US Supreme Court decided *Jackson v. Indiana* which had profound implications for how the states treat defendants who are incompetent to stand trial
- How has that decision been implemented and what do state practices look like now?





# Jackson v. Indiana: The case

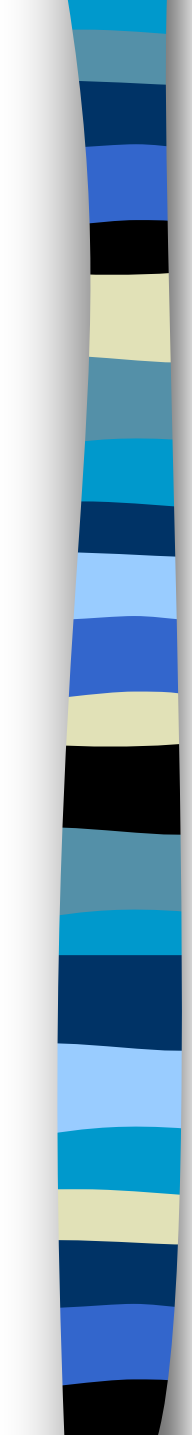
- Theon Jackson, age 27
- mentally retarded, deaf-mute individual
- Indicted on 2 counts of robbery (purse snatching)
- Incompetent and unlikely to ever become competent
- Committed to Indiana DMH until his competence was restored



# Jackson v. Indiana

## 406 U.S. 715 (1972)

- Justice Blackmun
- Writing for a unanimous Court
- Found:
  - A due process violation
  - An equal protection violation



“...We hold, consequently, that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future...”



# What Jackson didn't do:

- ***REASONABLE?***

- Specify the time limit for restoration treatment

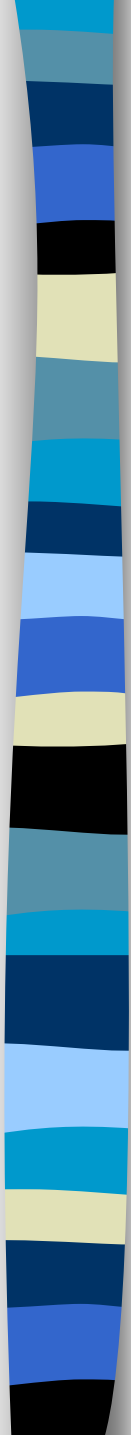
- ***FORESEEABLE FUTURE?***

- Define



# Question:

How did states define reasonable period  
for restoration and/or foreseeable  
future?



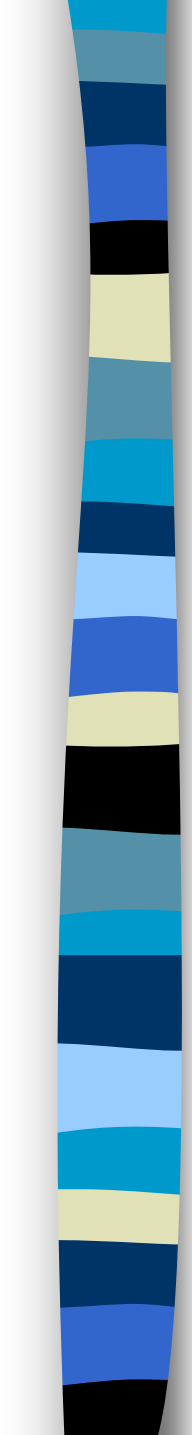


IF:

“The nature and duration of confinement must bear some reasonable relation to the purpose of the commitment”

THEN:

***Indefinite commitment of a defendant whose restoration is unlikely violates substantive due process***



## Relied heavily on the reasoning in *Baxtrom v. Herald*, 383 U.S. 107 (1976)

- a state prisoner civilly committed at end of his prison term was denied equal protection when deprived of a jury trial that the state otherwise made available to all persons committed on a civil basis
- If criminal conviction is insufficient to justify less protection against indefinite commitment, how can mere filing of charges?



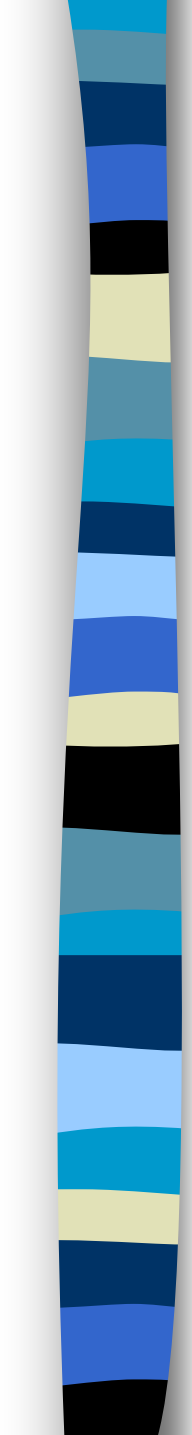
## Jackson decision clear: When restoration is over:

If it is determined that this is not the case, the the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant....”

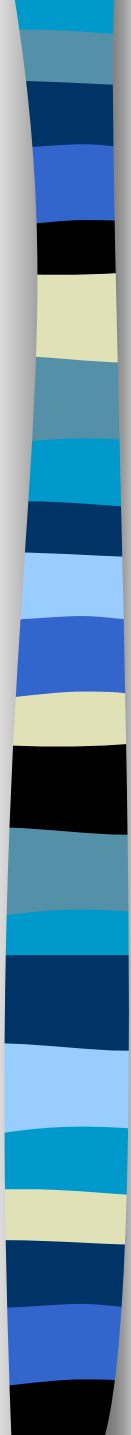


# Jackson emphasized equal protection:

- Violation of the equal protection clause to subject an IST defendant to a more lenient commitment standard and to a more stringent standard of release than generally applicable to those who have never been charge with offenses



How did the states  
respond to concerns  
about equal protection?





# Pre-Jackson studies

- McGarry (1971) – In Massachusetts, more incompetent defendants left Bridgewater Hospital by dying than by all other avenues combined.
- Steadman (1979) – Beating the rap



# Post-Jackson studies

- 1985 (Weiner, Barbara):
- About half of the jurisdictions still statutorily permitted indefinite hospitalization based solely on finding of incompetency to stand trial



# Roesch & Golding (1979)

- Almost ½ of all jurisdictions still permitted indefinite commitment without requiring periodic review.
- Of those states that have revised their procedures as a result of Jackson, many have failed to set a specific duration limit on incompetency commitment.



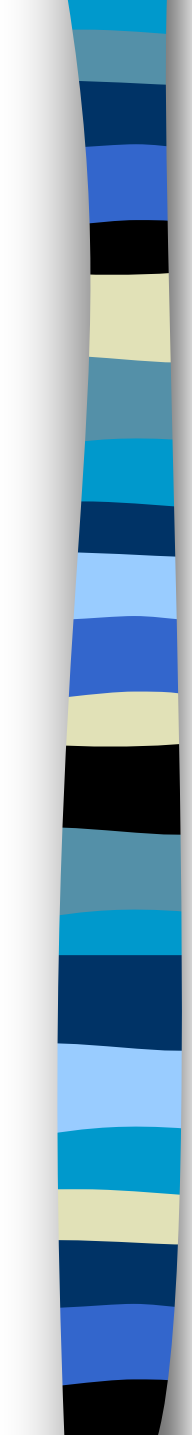
# Morris and Meloy (1993)

- “Simply stated, many states have not fully implemented Jackson”
  - Jackson has been ignored and circumvented

# NASMHPD 2008 SURVEY



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- Are we better than when Morris and Meloy looked at the states?

- 37 states responding

- Unequivocally, no

- Circumvention may be worse than they knew.....



# How many states specify a length of time (“reasonable period”) for restoration?

- Morris and Meloy (1993)
  - 20 states specify
    - 90 days most frequent (30 days to 12 months)
- NASMHPD (2008)
  - 24 states specify
    - 15 states – flat answer (30 days to 5 years)
      - Median 270
      - Mode: 365
    - 9 don’t define
    - 4 “moving targets”



BUT.....IS THAT Really the Issue?

**NO!!!!!!!!!!!!**



# How long till have to institute civil commit proceedings:

- Morris and Meloy (1993)
  - 13 states ignore Jackson by continuing to allow indeterminate commitment until defendant has been resorted



# Progress for the 13 ugly states or on hit list?

- 3 off the hook because not in survey (DE, NE, WY)
- 3 off the hook because moved to civil commitment (AL, MD, & partially, MA)
- 4 off the hook because moved to time frames (IA, MT, OK, UT)
- *Leaves poor Hawaii, New Jersey, and Mississippi ! (the defiant)*
- *Found 3 (MO, MN, NC) also no timeframes, but 2 would be off hook because of civil commitment (MO!)*



## Morris and Meloy conclude: 20 years from Jackson ruling....

- Most states still have not responded or if they did, responded appropriately.
  - 28 states – 13 by allowing indeterminate commitment and 15 circumventing it.
  - *Concludes 22 responded to Jackson in good faith*
    - 4 incompetent defendants are committed only through civil commitment process
    - 18 – short period (60 days to 18 months)
      - Most frequently mandated treatment period 6 months or 1 year

- 
- Question for us: *Do the other 22 really comply? **NOT!***



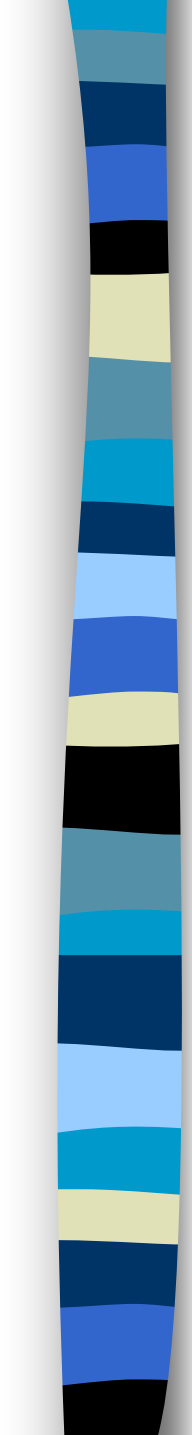
# NASMHPD – “closer look”

- 9 states that don't define
  - 6 okay: use “true” civil commitment
- 24 have a number
  - Bright line states
  - Whichever is less states
- 4 moving target states



# The “bright line” states

- 15 define an absolute specific period
  - Range 30 days to 5 years
    - Median 19 months
    - Mode: 1 year
    - Average: 15 months



# “Whichever is less” states: Tying restoration to sentence?

- Jackson: “nature and duration of commitment reasonably related to purpose of commitment”
  - Seriousness of crime does not relate to responsiveness to treatment
  - Counter: severity of crime (competence depends on legal context of case)
- How long is average restoration?
  - Worber (2008): 12 months (mode)



## “Whichever is less” states

- 9 link to max potential sentence or time limit, **whichever is less**
  - Range is 12 months to 10 years
    - Mode: 18 months & 10 years
    - Median: 21 months
    - Average: 3.7 years
  - PA twist: oh yeah, no limit if murder



# The “moving target” states

- Colorado
  - Maximum sentencing time
- New York
- Ohio
- Utah

# The Complex States

## ■ NY, OH, & UT

### – NY

- 90 days (non-indicted felonies)
- 2/3 max sentence (felonies)

### – Ohio

- 30 days, 60 days, 1 year
- But wait.....max sentence if IST-U-CJ

### – Utah

- 180 days, additional 1 yr and 8 months; max sentence



# You might not be a good faith state if you :

- Utilize indefinite commitment
- Impose lengthy treatment periods
- Connect treatment period to maximum sentence



# “Good Faith States”

- Civilly commit or short, defined restoration period
  - 5 pure civil commitment states
  - 14 of the 15 bright line states
  - 4 of the 9 whichever less states

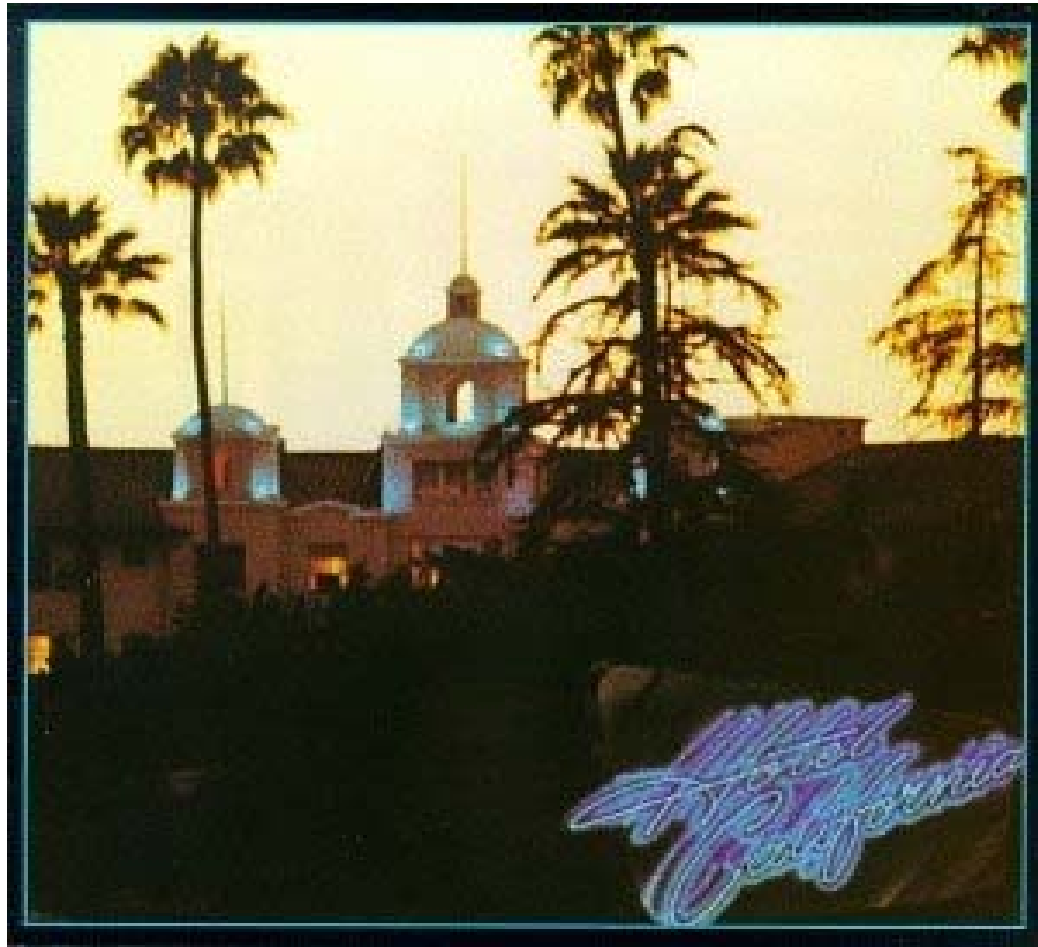
TOTAL: 23 states

***but wait.....***



## *Karen's "TOP 6" List*

- Notice to interested party so can file motion
- Simply leave charges pending – prosecutor must dismiss before discharge
- Hearing on the sufficiency of the evidence
- Criminal court must approve discharge even though commitment thru civil court
- Criminal court does the civil commitment
- Civil commitment is to a secure institution





# Other interesting tidbits

- Restoration in corrections
  - AZ (community restoration in jail\_
  - Other permit in DOC (HI, if person dangerous?)
- Illinois hearing (can be found guilty)



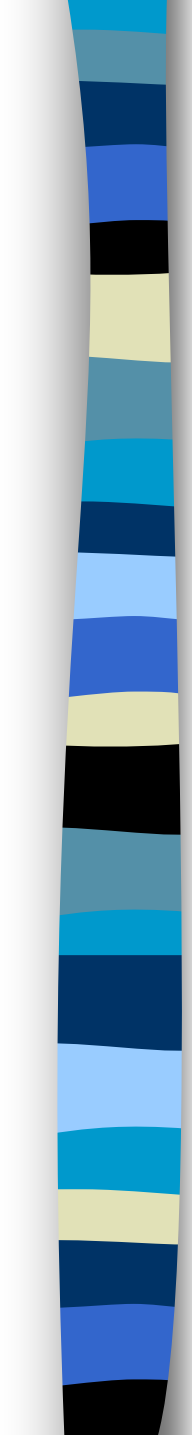
Alternatives????????

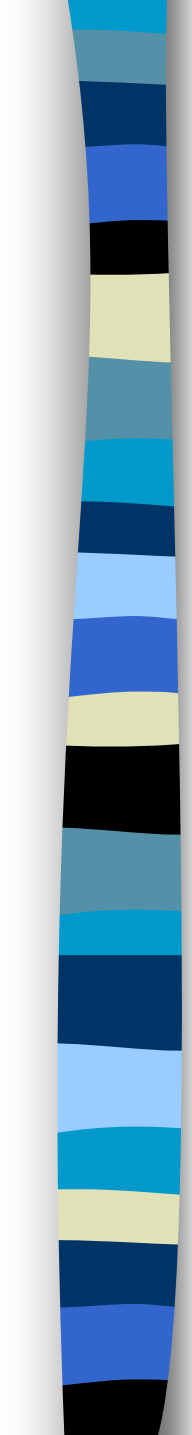


# The attorneys get it first!!

- 1972: Burt and Morris
  - High costs of incompetency commitments, both to the defendant and to society
  - Argue “incompetency plea” should be abolished in favor of a system of trial continuances



- 
- 1985, 1987: Winick
  - Defense should be able to waive the suppose “protections” of the incompetence doctrine
    - As many as 90% of all defendants find it in their best interests to plead guilty following plea bargaining

- 
- Bonnie (1992, 1993)
  - A finding of **decisional incompetence** need not bar “adjudication”. Only **incompetence to assist counsel** bars adjudication.



# Perlin (2000)

- For the Misdemeanor Outlaw
- No significant change



# Possible Alternatives: Evidentiary hearing for ISTs

- Jackson dicta – seems to be for those without sufficient evidence against to get out of IST quagmire
- Jones (1983) – NGRI could be confined without the procedural protects available to other civil committees
  - Footnote - distinguished IST no affirmative proof as with NGRIs
- Foucha (1992) – NGRIS require both mental illness and dangerousness
  - Cites Jackson (repeatedly) – that due process requires commitment to bear some reasonable relation to purpose.

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DAVE COVERLY

"DUE TO AN OVERCROWDED PRISON SYSTEM,  
I'M SENTENCING YOU TO STAND IN THAT CORNER  
FOR THE NEXT SIX MONTHS."



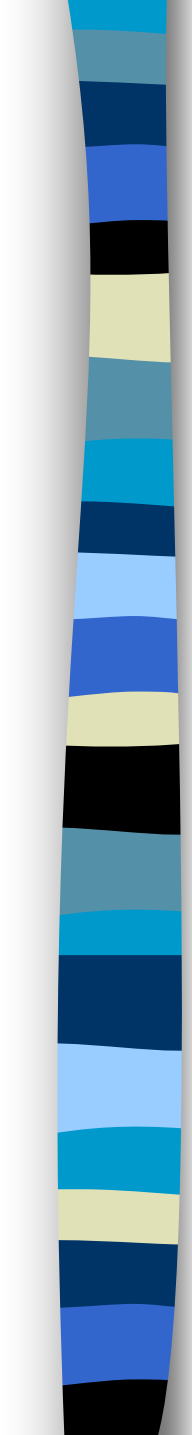
# The Good News: Community Restoration

- 36 States Responding
  - 24 No Community Restoration
    - 10 not permitted
    - 13 not prohibited, but no mechanism
    - 1 does it in the jail
  - 12 Allow Community Restoration
    - 6 have programs
    - 6 are beginning or have limited programs



# The “Subversion Hypothesis”

- Hochstedler, et al (1996)
- Criminal process is frequent subverted to accomplish the ends of the civil commitment process because civil commitment standards are unrealistically stringent
- Not true in Wisconsin?
  - “In a very few instance, the criminal process is used for its treatment capacities rather than its penal capacities”

- 
- Perhaps not subversion, but displacement.....



# Paradigm Shift: Psychiatric to Correctional Care

- Lamb, et. Al (2005)
- “...given the lack of alternatives in the mental health system, the criminal justice system has become the system that “cannot say no”.
- Result of structural changes in mh system – specifically, psychiatric bed reduction

# CIVIL BEDS?



A typical ward at Austin State Hospital circa 1940s. Courtesy Austin History Center, Austin Public Library.

# FORENSIC BEDS?





# The IST Crisis

- Worzel, et. al. (2007)
- Symptom of overwhelmed mental health system
  - Deinstitutionalization and commensurate surge in mental health issues in jails and prisons
  - Courts responding – diversion and specialty courts
  - Community resources – where are they?



# Where did crisis come from?

“...these circumstances have been created by social policy that seeks to reduce the sorts of psychiatric care without due regard to safety, interacting with social policy that seeks safety at any cost.” (Scalora, 1999)