

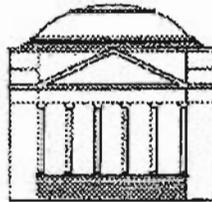
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Juvenile Justice Fact Sheet

**ADJUDICATIVE COMPETENCE IN JUVENILES:  
LEGAL AND CLINICAL ISSUES**

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Defendants in criminal cases must have the opportunity for meaningful participation in their case, or the right to trial is an empty right. Thus, it is unconstitutional to try an incompetent defendant: "fundamental to the adversary system of justice" is the requirement that the defendant have a rational and factual understanding of the proceedings against him, and the ability to consult with counsel and assist in preparing his defense" (*Drope v. Missouri*, 1975).

The adjudicative competence (or "competence to stand trial")<sup>1</sup> doctrine serves at least three important interests. First, ensuring that defendants are able to assist in their defense helps guarantee accurate adjudications. An incompetent defendant may not, for example, be able to inform his attorney about relevant information or witnesses. Second, it ensures that a defendant's decisions (e.g., whether to accept a plea bargain) are, in fact, autonomous decisions reflecting his or her wishes. Third, it preserves the dignity of the criminal justice process by ensuring that defendants have a moral understanding of the purposes of the proceedings against them.

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<sup>1</sup> Because "competence to stand trial" also includes competence to participate in pretrial proceedings, "adjudicative competence" is the more appropriate term.

The Supreme Court, however, has never addressed whether the adjudicative competence requirement also applies to juvenile proceedings. But recently, state courts and legislatures have recognized that the adjudicative competence requirement should also be applied to delinquency proceedings in the juvenile court, just as it does in adult criminal proceedings. This new jurisprudence is the result of rather dramatic changes over the last two decades in the nature, purposes, and consequences of juvenile court adjudications. Juvenile adjudications, which increasingly resemble those of a criminal conviction, now have far more serious ramifications. Consequences of a juvenile adjudication may include, for example, open hearings and no guarantee of confidentiality or expungement of court records, a long-term determinate sentence in a juvenile correctional facility, use of juvenile adjudications to enhance an adult sentence, and the possibility that a juvenile adjudication may count as a "strike" under the three strikes laws in some states. In addition, some states (10, as of this writing) have moved towards "blended sentencing" systems allowing juvenile courts to impose lengthy *adult* sentences in certain types of cases.

Thus, despite the lack of U.S. Supreme Court precedent on the issue, commentators argue that "the virtually inescapable conclusion [is] that the due process clause bars adjudication of delinquency against a child who lacks the minimum capacity to understand the proceedings and participate in their own defense" (Bonnie & Grisso, 2000, p. 94).

### **WHAT IS ADJUDICATIVE COMPETENCE IN PRACTICE?**

Unlike the issue of sanity, which is a retrospective inquiry concerned with the defendant's criminal responsibility, adjudicative competence is only concerned with a defendant's current capacities in pretrial and trial proceedings and a finding of competency has no bearing on a possible plea of insanity. Competency is unrelated to issues concerning the ability to represent oneself, culpability, offense mitigation, or the need for mental health treatment. However, as a practical matter, the competency requirement will have the salutary effect in some cases of diverting mentally ill defendants from the justice system for mental health treatment.

To be competent to stand trial, a defendant must have "sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him" (*Dusky v. United States*, 1960) and the capacity "to assist in preparing his defense" (*Drope v. Missouri*, 1975). The defendant must understand the nature and purpose of the proceedings, be able to make competent decisions about his defense, and be able to work actively with counsel in preparing his defense. In practice, however, the bar for competence is set rather low, requiring only a minimal capacity to comprehend and communicate.

In addition to the *Dusky* and *Drope* criteria, which provide few specifics about competence, certain abilities have become accepted as part of the adjudicative competence criteria, including the ability to understand: the charges, current legal situation, relevant facts, legal issues and procedures, the roles of court personnel, and potential legal defenses and dispositions. In its application, competency has also come to include the defendant's ability to understand legal strategy and to relate to the defense attorney and communicate effectively, including being able to explain pertinent facts

surrounding the alleged offense. It also entails the ability to follow ongoing courtroom proceedings, to tolerate the stress of trial, and to behave appropriately in court. Melton et al. (1997) provide a listing of competence-related abilities:

**Abilities related to adjudicative competence (from Melton et al. 1997)**

- To understand the current legal situation
- To understand the charges
- To understand relevant facts
- To understand the legal issues and procedures
- To understand potential legal defenses
- To understand the possible dispositions, pleas, and penalties
- To appraise the likely outcome
- To appraise the roles of the defense counsel, prosecutor, judge, jury, witnesses and defendant
- To identify witnesses
- To relate to counsel
- To trust and communicate relevantly with counsel
- To comprehend instructions and advice
- To make decisions after receiving advice
- To maintain a collaborative relationship with counsel and help plan legal strategy
- To follow testimony for contradictions or errors
- To testify relevantly and be cross examined if necessary
- To challenge prosecution witnesses
- To tolerate stress at the trial and while awaiting trial
- To refrain from irrational and unmanageable behavior during trial
- To disclose pertinent facts surrounding the alleged offense
- To protect oneself and utilize legal safeguards available

**THE VIRGINIA JUVENILE COMPETENCY STATUTE**

In 1999, the Virginia General Assembly enacted legislation requiring that juveniles be competent for trial in delinquency proceedings in the Juvenile and Domestic Relations Court. This legislation is found in Virginia Code Section 16.1-356 et seq., summarized as follows:

Competency Standards and Bases for a Finding of Incompetency. The adult *Dusky/Drope* standard for competence applies: juveniles must have "substantial capacity to understand the proceedings against him or to assist his attorney in his own defense".

Raising the Competency Issue. The competency issue may be raised at any point in a delinquency proceeding, by either party or the Court. The court must order a competency evaluation if there is probable cause to doubt the juvenile's competence. So that the evaluator may know the concerns that gave rise to questions about competence, the moving party is required to provide the evaluator a summary of the reasons for the

evaluation.

Qualifications of Competency Evaluators. Evaluators are required to be licensed professionals (physicians) with "training and experience . . . in the forensic evaluation of juveniles". Pursuant to the statutory mandate, the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services promulgated administrative guidelines to guide courts in the appointment of evaluators of juvenile competency to stand trial. The guidelines call for evaluators to have: (1) training in psycholegal assessment, the legal standard of competency to stand trial, and risk assessment, (2) formal education in child and adolescent development and psychopathology, and knowledge of the secure and non-secure facilities for juveniles in Virginia and the continuum of available community resources for juveniles, and (3) a minimum of two years of graduate or postgraduate experience in providing mental health evaluation or treatment services to children and adolescents, under the supervision of a licensed mental health services provider.

Location of Evaluations. Evaluations must be performed in the least restrictive setting consistent with public safety requirements. All evaluations are to be conducted on an outpatient basis (or in the detention home) unless psychiatric hospitalization is clinically indicated. Evaluations are to be conducted within 10 days after the court order for evaluation.

The Evaluation Report and Competency Hearing. The evaluation report is to be provided to the court, the defense attorney, and the prosecutor. To protect the juvenile's Fifth Amendment Rights, it is to contain no statements of the juvenile relating to the alleged offense, and no such statements may be used against the juvenile at adjudication or disposition hearings. It also is to contain no conclusions of law (that the juvenile is or is not competent). Rather, the report should describe any deficits and how they may affect the juvenile's ability to understand court proceedings and assist counsel. The report should also address the restoration services needed in the event the juvenile is found incompetent, and the least restrictive setting available to provide such services.

A hearing on competence is not required unless requested by the defense or prosecution. The juvenile has the right to notice and to participate in the hearing.

Restoration Services. If the court finds the juvenile to be incompetent but potentially restorable, the proceedings are stayed and the court orders restoration services. The provider of restoration services must notify the court at the end of three months (at which time the court must hold a hearing; the court may order that services be renewed for another three months), or immediately upon concluding that the juvenile has been restored to competency or that the juvenile is unrestorably incompetent. As with the competency evaluation, any statements about the alleged offense made by the juvenile pursuant to restoration services may not be used against the juvenile.

The Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services established administrative requirements for the training and qualifications of providers of outpatient restoration (i.e., psychoeducational) services. Restoration services must be provided under the direct supervision of a licensed professional qualified to conduct evaluations of juvenile competency to stand trial. In addition, providers must have the following minimum qualifications: (1) a bachelor's degree in a human services field, education, or nursing, (2) two years post-baccalaureate experience providing mental health related services to children or adolescents, under the supervision of a mental health provider licensed to provide services to children and adolescents.

Dispositions for Unrestorably Incompetent Juveniles. The legislation provides four

options if the court finds the juvenile to be incompetent and unrestorable. The court may: (1) release the juvenile, (2) file a Child in Need of Supervision ("CHINS") Petition, placing him or her on supervised probation and/or ordering treatment, (3) civilly commit the juvenile to a mental health facility under the juvenile commitment procedures, or (4) certify the juvenile for commitment to a facility for the mentally retarded. (The court also has the authority to commit a juvenile who turns 18 during the time in which the court finds him to be unrestorably incompetent.)

Charges against unrestorably incompetent juveniles are to be dismissed within three years from the date of arrest for felony charges, and within one year from the date of arrest for misdemeanor charges.

## **EMPIRICAL RESEARCH ON THE ADJUDICATIVE COMPETENCE OF JUVENILES**

While research on adjudicative competence in juveniles is just emerging, the body of empirical research is developing such that tentative conclusions may be drawn concerning children's competence-related abilities at different ages and the impact of mental illness and mental retardation on competence.

First, as expected, age is strongly related to competence. Research findings suggest that many children younger than 13-14 are incompetent and that, coincident with developing abilities in abstract thinking, most children 14-15 or older are competent. Ages 12-14 is a transitional age period vis-a-vis competence. However, there is considerable heterogeneity within age groups. "[T]he more critical information for policy debate is the heterogeneity and variability among adolescents in their relevant abilities. . . . As a consequence, for youths aged 14 through 16, age itself tends to be a poor indicator of abilities" (Grisso, 1997, p. 21). Second, IQ is consistently related to competence, with the likelihood of competence declining with lower IQ scores. Third, juveniles with a history of severe mental illness (particularly psychosis), mental retardation, or special educational placements, are more likely to be incompetent. But as compared to adults, serious mental illness will be a less frequent cause of incompetence in juveniles, because psychosis is relatively uncommon in children and adolescents. (However, it generally is more difficult to identify mental disorders in adolescents as compared to adults. Early, adolescent forms of psychosis may go undetected by clinicians and thus unidentified as the cause of competence-related deficits, leading to erroneous findings of competence, particularly in those states requiring that a finding of incompetence be based upon mental illness or mental retardation (Bonnie & Grisso, 2000)). Grisso (1997) urges attorneys to routinely consider the possibility that their juvenile client may be trial incompetent, particularly when the juvenile has a history of mental illness, mental retardation, or learning disabilities, or when the juvenile is younger than 14.

Recent research provides a picture of the percentage of juveniles that may be incompetent as a function of age and disability. In a sample of 136 juveniles (age 9-16 years) referred for pretrial competency evaluations, Cowden & McKee (1995) report that the evaluators judged 72% of the 16-year-olds, 84% of the 15-year-olds, 63.3% of the 13 to 14 year-olds, and only about a quarter of the 11 to 12 year-olds to be competent. Only 28% of the juveniles having a severe mental illness and only 46% who had a history of special education placements were competent. In McKee's (1999) sample of 112 juveniles

(age 12 to 16 years, with mean age of 14.2) referred for pretrial competency evaluations, 14% were considered by the evaluators to be incompetent. Moreover, roughly 50% of the juveniles found to be competent nonetheless had at least one serious deficit in competence-related abilities. Based on such findings, McKee concludes that "many adjudicated juveniles may likely be undetected incompetents" (p. 72), and Grisso (1997) has suggested that there be a legal presumption of incompetence to stand trial for juveniles younger than 14. No state, however, has adopted such an approach. All states presume competence, with the defense bearing the burden of proving incompetence.

What competency-related deficits are most commonly seen in juvenile defendants? In most cases, incompetence in juveniles is due to some mix of youth, immaturity, lack of knowledge, or mental retardation. McKee (1998) found that most juveniles younger than 13 could not describe the charges against them or the nature of the adversarial process, could not report facts relevant to their defense, and did not understand plea bargaining or the confidential nature of the attorney-client relationship. Young adolescents often incorrectly believe that their attorney will reveal confidential information to the judge or police, and have difficulty calibrating their decisions about whether to plead guilty based on the likelihood of being found guilty. Older adolescents generally have a sufficient understanding of the nature of the proceedings, but many do not fully understand the advocacy role of the attorney and the concept of legal rights, perceiving such rights (e.g., to remain silent) as conditional or revokable by adults (Grisso, 1997).

In addition, many juveniles have impaired judgement relative to adults in the areas of responses to peer and parental pressure, time perspective, attitudes toward risk, temperance, reactions to stress, and responsibility. For example, adolescents tend to focus on short term consequences, to weigh more strongly the possible benefits of a decision and to discount possible risks, and to be susceptible to pressure from peers and parents. One study has found differences between juveniles and adults on these judgment factors as affecting adjudicative competence. Grisso (1998) provides case examples of juveniles' immaturity adversely affected their trial competence, such as the "13-year-old 'wannabe,' only peripherally involved in the gang offense with which he is charged, who refuses to talk about the involvement of the rest of the gang even when informed by his attorney that the others will be witnesses against him" (p. 114).

At present, however, neither clinicians, lawyers nor courts know whether, or how, to incorporate factors relating to juvenile immaturity into considerations regarding trial competency, since such judgment-related factors are not normally considered in evaluations of adult competency to stand trial. "Existing law provides no formal basis for relying upon developmental immaturity as a reason for . . . a declaration of adjudicative incompetence" (Bonnie & Grisso, 2000, p. 88), and "the proper remedial prescription for youths who are incompetent due to developmental immaturity rather than mental disorder is an unanswered question" (Grisso, 1998, p. 96).

With regard to the current state of the art in the evaluation of juvenile competency, Warren and Lexcen (2000) note that "forensic evaluators are struggling to make sense of these theoretical constructs and research findings as they are increasingly asked to evaluate juvenile adjudicative competence in both criminal and juvenile court. The approach that is being used thus far borrows liberally from adult practice . . . Specific training in juvenile forensic evaluation, however, has begun to appear . . . This type of training seeks to elucidate some of the ambiguity around the proper extrapolation of standards to juveniles who will remain in juvenile court, highlights the unique aspects of

psychopathology and neuropsychological impairment that is found in most juvenile populations, identify concepts of maturity as they apply in the evaluative context, and explores the issues around restoration, commitment and certification that apply to juvenile offenders".

## **EMPIRICAL RESEARCH ON COMPETENCY RESTORATION IN JUVENILES**

Since adjudicative competence is a relatively new concern in the juvenile court, states have not had wide experience in the provision of competency restoration services to juveniles found to be incompetent. Except for data on the Florida experience provided by McGaha and McClaren (2000), there is virtually no systematic research on the restoration of juveniles found to be incompetent.

Between May 1997 and December 1999, Florida had 108,000 juveniles with delinquency charges. Of these juveniles, 361, only .003%, were adjudicated incompetent to proceed (average age=14.4). Notably, none of the juveniles adjudicated incompetent had been charged with homicide offenses. Most were charged with assault or property crimes. Eighteen percent had at least one charge occurring at school. As the predicate condition for the finding of incompetence, thirty-one percent of the juveniles were mentally ill (17% of these juveniles also had some level of mental retardation), 41% were mentally retarded, and 28% had both mental illness and mental retardation. The average IQ was 61, with no juvenile referred for restoration having an average or above-average IQ. Other data indicate that virtually all the juveniles had been placed in special education classes at school, and 40% had diagnosed brain damage. Psychosis was evident in 16% of the juveniles.

### **SUGGESTED READING**

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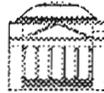
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