NATIONAL JUVENILE JUSTICE NETWORK

Competency to Stand Trial in Juvenile Court: Recommendations for Policymakers

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ABOUT THIS DOCUMENT

Around the country, the question of whether a defendant is competent to stand trial is being raised more often in juvenile court proceedings. However, most states lack statutory guidance for how competence to stand trial should be applied in juvenile court. Instead, these states apply their adult criminal competence statutes to youth in juvenile court, resulting in frustration, confusion, and uncertainty among judges, prosecutors, and defense counsel. As a result, practitioners and policymakers have become interested in developing competency statutes for use in juvenile court.

To aid states in developing competency statutes for juvenile proceedings, the John D. and Catherine T. MacArthur Foundation's Models for Change initiative published *Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers.* The 91-page guide provides a comprehensive analysis of statutory components, offering arguments in support of and against drafting options, and concludes with drafting recommendations. This brief policy update is intended to provide an overview of the juvenile court competency issue and to summarize the recommendations from Models for Change. However, in order to fully understand the range of statutory options and their implications, we strongly encourage readers to review the full guide.[1]

INTRODUCTION

The United States judicial system is bound by the rights granted to the people in the Constitution. The right to due process and a fair trial, as guaranteed by the Fifth and Sixth Amendments respectively, are commonly thought of as cornerstones of the criminal justice system. However,

[1] The information in this document is drawn from the Models for Change guide, *Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers,* from November 2011, available at http://bit.ly/Tqp7sU. For more information about Models for Change, visit www.modelsforchange.net.

the rights that embody these principles were not always granted to defendants in the juvenile justice system. Even today, youth prosecuted in the juvenile system are not constitutionally guaranteed all of the same protections afforded to defendants in criminal court proceedings.[2]

When juvenile courts were first established in the late 19th and early 20th centuries, they were founded on the notion that youth in trouble with the law needed help and rehabilitative services, not punishment. As such, the courts were created within civil legal systems, rather than criminal systems, and lacked the majority of the due process protections guaranteed to defendants in criminal court—most notably, the right to counsel. Over time, the ideals of the juvenile justice system deteriorated. Youth were increasingly deprived of their liberty and subject to punishment instead of rehabilitation and treatment. The emerging harshness of the juvenile system began to raise questions about whether or not youths' constitutional rights were being violated. In 1967, the Supreme Court responded to concerns about youth rights in *In re Gault*, and extended to youth defendants in juvenile court proceedings the right to timely notification of the charges filed against a defendant, the right to confront witnesses, the right against self-incrimination, and the right to counsel.[3] Although the Court extended other due process protections to defendants in juvenile court following *Gault*, the Court has yet to extend *all* due process rights to youth in the juvenile system. Among these protections is the requirement that a defendant be competent to stand trial.

Competency to stand trial dates back to English common law. Under common law, a defendant was required to have sufficient mental capacity to understand the proceedings against him and to participate in his or her defense. In 1960, the Supreme Court ruled in *Dusky v. U.S.* that competency to stand trial is a constitutional requirement, and a defendant is competent to stand trial if he or she "*has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and … a rational as well as a factual understanding of the proceedings against him."*[4] To comply with the Supreme Court's holding in *Dusky*, states passed statutes to govern competency determinations in criminal court.

COMPETENCY TO STAND TRIAL IN JUVENILE COURT

Defense attorneys did not begin to raise the question of competency in juvenile court until the 1990's. As new laws were passed to treat youth more harshly and more like adult defendants, defense attorneys started raising competency to protect their clients in juvenile court. Since no juvenile competency standards existed, either in case law or statute, attorneys and courts frequently relied on their state's criminal competency statute as the standard. Currently, all states except Oklahoma now recognize that youth in juvenile court must be competent to stand trial,

[2] For example, youth in juvenile court are not guaranteed a right to bail, the right to trial by jury, the right to a speedy trial, or the right to represent themselves.
[3] *In re Gault,* 387 U.S. 1 (1967).
[4] *Dusky v. United States*, 362 U.S. 402 (1960).

even though the Supreme Court has not formally extended this due process requirement to juvenile proceedings. However, not all states legislate or provide guidance on the competency standards to use in juvenile court. In fact, many states, if not most, still employ the same criminal competency statutes used to evaluate adult defendants for youth in juvenile court.

The use of adult competency statutes in juvenile court raises many concerns. Most importantly, criminal statutes were developed for use in determining the competency of adult defendants, and fail to recognize reasons for incompetence that are unique to youth. Criminal competency statutes typically include mental illness and intellectual disability as reasons for incompetence. However, when dealing with youth, a juvenile court should also consider a defendant's developmental maturity when assessing his or her competence to stand trial. These three reasons for incompetence—mental illness, intellectual disability, and developmental maturity—each present challenges when evaluating a youth's competence to stand trial. Moreover, they can also be interrelated, in that a youth's mental illness and/or intellectual disability may be further complicated by his or her developmental immaturity—an issue that is unique to youth.

Mental Illness

Mental illness in youth is difficult to diagnose and treat, as symptoms of mental illness vary with age. A behavior that may be considered symptomatic in someone at one age, which would lead to a diagnosis of mental illness, may be considered normal behavior in someone younger or older, and would not result in a diagnosis. Young people's ongoing development makes it challenging to determine whether a symptom actually exists, or if it is just a behavior that will naturally subside with age. Moreover, a youth's mental illness may be more detrimental to his or her ability to understand the proceedings and participate in his or her defense—rising to the level of incompetence to stand trial—than it might to an adult with the same diagnosis.

Intellectual Disabilities and Cognitive Impairments

Like adults, youth may have a low IQ, learning disability, and/or other neuropsychological impairment that affects their competence. However, some research has shown that youth are more frequently found incompetent based on intellectual deficits than are adults—finding that 58 percent of youth, and only six percent of adults, were found incompetent based on intellectual deficits.[5] In court, these youth may have problems with their memory, learning, and/or processing information, in addition to challenges with abstract reasoning and executive functioning. As a result, they may have difficulty satisfying the factual and rational

[5] Anette McGaha et al., "Juveniles Adjudicated Incompetent to Proceed: A Descriptive Study of Florida's Competence Restoration Program," *Journal of the American Academy of Psychiatry and the Law,* 29 (2001): 427.

understanding tests of the *Dusky* standard — even though they may not meet the full criteria for some of these intellectual and cognitive diagnoses.

Developmental Maturity

While many adult criminal competency statutes refer to mental illness and intellectual disability as underlying factors for incompetence, none refer to a defendant's developmental maturity—a critical factor to consider when evaluating the competency of a youth to stand trial. The ongoing process of adolescent development can amplify mental illness or intellectual disabilities that are already affecting a youth's competence. And developmental immaturity alone can raise concerns about a youth's competence to stand trial. Neurological, cognitive, and psychosocial development all contribute to a youth's factual and rational level of understanding of the court process. During adolescence, youth may have an unstable sense of self, be emotionally impulsive, and have a decreased ability to make rational and reasonable decisions on their own. Their misperceptions of risk and sometimes faulty perspectives on others demand that courts consider developmental maturity when making a determination about a youth's competence. It would be foolish to neglect these major components of human development when making such determinations.

RECOMMENDATIONS / FACTORS TO CONSIDER

To aid policymakers in this important work, this policy update summarizes a series of statutory factors to consider and drafting recommendations drawn from the Models for Change publication, *Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers*.

Defining Competence

Juvenile competency statutes should instruct the court to consider a youth's mental illness, intellectual disability, and/or developmental maturity when determining whether the youth is competent to stand trial in juvenile court.

- In criminal court, adults are usually declared incompetent for one of two reasons: mental illness or intellectual disability. Competency evaluations of youth however, often reveal a third reason for incompetence—developmental immaturity.

- Youth who are developmentally immature are restricted in their ability to understand and reason, even in the absence of a mental illness or intellectual disability. These limitations have been acknowledged by the Supreme Court on several occasions.[6]

Statutes should provide guidance to the court by including cognitive thresholds that youth must satisfy to be found competent.

- A juvenile competency statute should include cognitive thresholds to represent the concepts articulated by the Supreme Court in *Dusky*, mentioned above. For example, the thresholds might include factual understanding, rational understanding, the ability to assist counsel, and the ability to make decisions.
- Defining the categories broadly, as opposed to using specific abilities such as, "able to disclose relevant facts to his or her attorney," protects youth who may have a factual understanding of the situation, but lack the ability to rationally apply the facts to the bigger picture. For example, a youth may know that he or she is in a courtroom, that there is a judge, a prosecutor, and a defense attorney, but may not comprehend the larger implications of a juvenile court proceeding. Since it is difficult to qualify rational understanding with specific abilities, using broad categories allows judges to use discretion when deciding whether or not a youth satisfies the thresholds.

Due Process Considerations

Youth should be provided a right to counsel prior to any evaluation of competence, as well as during the evaluation.

- A competency evaluation in juvenile court is a critical stage of the proceeding and youth should be entitled to counsel before and during the evaluation under the Sixth Amendment, which guarantees defendants the "assistance of counsel for [their] defense."[7] Similar to competency evaluations in criminal court, competency evaluations in juvenile court may affect the outcome of the case and result in a loss of liberty for the youth involved — hence the importance of counsel.

Youth should be protected against the use of any self-incriminating statements made during a juvenile competency evaluation.

- Self-incriminating statements made by youth during a juvenile competency evaluation, or information contained in the written competency report, should be prohibited from being used as evidence against the youth in future proceedings.

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[6] *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 130 S.Ct. 2011 (2010); *J.D.B. v. North Carolina,* 131 S.Ct. 2394 (2011); *Miller v. Alabama*, 132 S.Ct. 2455 (2012).
[7] U.S. Const. amend. 6.

- States may refer to the level of protection afforded to adults in criminal competency evaluations for guidance, or to the protections afforded to youth undergoing other mental or behavioral health evaluations in juvenile court.

Competence Evaluations by Mental Health Examiners

Evaluations of youth competency in juvenile court should be performed by examiners with training and/or experience in child psychology, or psychiatry with forensic specialization.

- Mental health professionals conducting juvenile competency evaluations should have proper training and experience working with children and adolescents, and appropriate training in forensic specialization.
- States should provide continuing education to these professionals, to ensure up-to-date training and knowledge.

Juvenile competency evaluations of youth should be performed in the least restrictive setting appropriate for the youth's psychological needs.

- Youth should not be hospitalized in a psychiatric facility for a competency evaluation unless such psychiatric care is required for a reason separate from the competency evaluation.

Juvenile competency evaluations should be performed within reasonable time limits.

- A juvenile competency evaluation can be appropriately completed by a qualified professional within two to three weeks. States should consider this 14- to 21-day range in relation to the time limits they place on adult competency evaluations, and in light of both the youth's and the state's interest in avoiding unnecessary delay.

Juvenile competency statutes should provide guidance to the court and to examiners on the content that should be included in the competency evaluation report.

- Juvenile competency evaluations should include analysis in five content areas: assessment of the youth's mental disorder and intellectual disability; assessment of the youth's developmental status; assessment of how the youth's mental disorder, intellectual disability, and/or developmental maturity affect his or her abilities associated with competence to stand trial, such as what he or she understands about the trial process, assisting counsel, and making decisions about the proceedings; causes of the youth's deficits, if any, in his or her abilities associated with competence to stand trial; and

potential for remediation of the youth's abilities associated with competence to stand trial.
- Statutes should offer more direction than merely a list of the content areas to be included in the evaluation report, but should still leave some discretion to courts and evaluators.

Remediation and Legal Disposition of Incompetent Defendants

Juvenile competency statutes should instruct the court to determine the most appropriate placement and/or services for a youth, based on the particular reasons underlying the youth's incompetence.

- While criminal statutes typically refer to "restoration"—the period of time it takes to restore an adult's competence—juvenile competency statutes should refer to this period of time as "remediation." Since some youth will be deemed incompetent to stand trial based purely on their developmental immaturity, remediation is a more appropriate label because it does not imply that the youth were once competent and will over time be restored to that status. Rather, it acknowledges that a youth may have never previously satisfied the competency-to-stand-trial benchmark.
- During the remediation process, youth should be placed in the least restrictive setting available.

Statutes should provide a length of time allowed for remediation and should include provisions for periodic review of remediation progress.

- States should look to their criminal codes for guidance on the length of time that should be permitted for remediation.
- Statutes should require periodic review of the remediation progress. Youth placed in inpatient facilities should be protected by more frequent reviews than youth placed in outpatient programs.

When incompetence cannot be remediated, states must decide what should happen in the legal disposition of the case.

- Juvenile competency statutes should balance the interests of the youth, the state, and the public when determining how these cases should be resolved.

If an incompetent youth cannot be remediated and the state chooses to dismiss the juvenile charges against him or her, juvenile competency statutes should include provisions that allow the court to transfer the case to the state's child welfare system.

- By transferring the case to the child welfare system, courts are able to address public safety concerns, and also order appropriate social or clinical services for the youth. States must determine the appropriate court procedure for such a provision.

CONCLUSION

A competent defendant is a requirement for trial that derives from English common law. Incorporated under the due process clause of the Constitution, competence to stand trial protects defendants who cannot understand the proceedings against them or participate in their own defense. Despite states' acknowledgement that competence is a requirement in juvenile court, most states continue to rely on competence statutes that were developed for adult defendants and fail to consider issues regarding competence that are unique to youth. As competence to stand trial is increasingly raised in juvenile proceedings across the country, the need for statutory guidance is amplified.

Because this document is only intended to provide a brief overview of the issues raised by competency statutes in juvenile court and a summary of the Models for Change recommendations, we urge you to download the full document, *Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers*, for more information.