



**JUVENILE CAPACITY DETERMINATIONS:  
THE CLINICAL PERSPECTIVE**

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How is Capacity to Proceed in Juvenile Court (JCTP) defined in North Carolina?

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**Defining Competency to Stand Trial**  
The Dusky Standard



***“...the [Competency] test must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him.”***

- ▣ Three Key Capacities
  - Ability to Consult
  - Factual Understanding of the Proceedings
  - Rational Understanding of the Proceedings
- ▣ Important qualifiers:
  - “sufficient...ability” & “reasonable...understanding”

Dusky v. U.S. (362 U.S. 402, 80 S. Ct. 788 4L. ED. 2d 1461(1960))

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## Defining Competency to Stand Trial

Additional USSC Cases



### □ Must possess capacity to assist in defense preparation:

*It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.*

Drope v. Missouri 420 U.S. 162, 95 S. Ct. 896 (1975)

### □ Must possess capacity to reach legal decisions:

*[All c]riminal defendants – not merely those who plead guilty – may be required to make important decisions once criminal proceedings have been initiated. And while the decision to plead guilty is undeniably a profound one, it is no more complicated than the sum total of decisions that a defendant may be called upon to make during the course of a trial.*

Godinez v. Moran (509 U.S. 389 (1993)

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## Defining Juvenile Capacity to Proceed in North Carolina



*Incapacity to proceed – By reason of mental disorder, intellectual disability, neurological disorder, traumatic or acquired brain injury, or developmental immaturity, the juvenile is unable to understand the nature and object of the proceedings against the juvenile, to comprehend the juvenile's own situation in reference to the proceedings, or to assist in the juvenile's own defense in a rational or reasonable manner.*

NC General Statutes § 7B-2401.1(5)

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How is JCTP evaluated?

What is contained in a JCTP Evaluation Report?

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Forensic Evaluations & Reports



*Forensic evaluation. – A forensic evaluation is a full examination by a forensic evaluator using evidence-based psychological tools to determine if a juvenile has the capacity to proceed. This evaluation shall consist of a review of all available prior mental health and educational records of the juvenile and IQ testing and may include other developmentally appropriate testing for juveniles deemed relevant by the forensic evaluator.*

*Forensic evaluation report. – The written report, by a forensic evaluator, that contains the information required by G.S. 7B-2401.3.*

NC General Statutes § 7B-2401.1(5)

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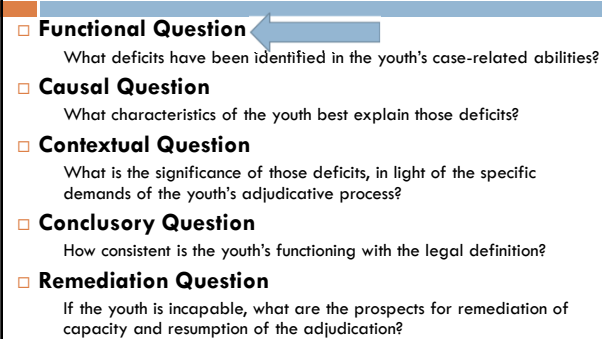
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Capacity to Proceed Evaluation Model



□ **Functional Question**  
What deficits have been identified in the youth's case-related abilities?

□ **Causal Question**  
What characteristics of the youth best explain those deficits?

□ **Contextual Question**  
What is the significance of those deficits, in light of the specific demands of the youth's adjudicative process?

□ **Conclusory Question**  
How consistent is the youth's functioning with the legal definition?

□ **Remediation Question**  
If the youth is incapable, what are the prospects for remediation of capacity and resumption of the adjudication?

Grisso (2005)

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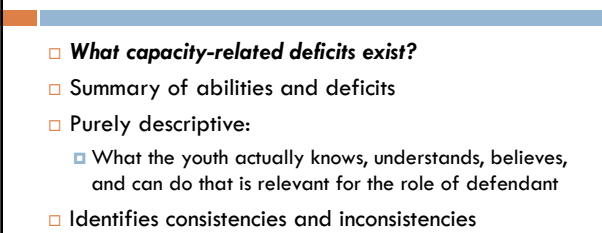
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The Functional Question



□ **What capacity-related deficits exist?**

□ Summary of abilities and deficits

□ Purely descriptive:
 

- What the youth actually knows, understands, believes, and can do that is relevant for the role of defendant

□ Identifies consistencies and inconsistencies

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### Functional Question:

What functional abilities are relevant to determining JCTP?

#### **The 4 Functional Factors**

- ▣ **Factual Understanding**
- ▣ **Rational Appreciation**
- ▣ **Assisting Counsel**
- ▣ **Legal Decision Making**

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### JCTP 4 Functional Factors

#### **Factual Understanding**

- ▣ Basic, concrete knowledge of the legal process
  - ▣ Understands:
    - They are accused of a crime
    - What the alleged crime is
    - Court will decide guilt and innocence
    - Trial could result in punishment
    - What punishments are possible
    - Various ways one may plead
    - Roles of various participants at a trial
    - Basic process of a trial

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### JCTP 4 Functional Factors

#### **Rational Appreciation**

- ▣ Accurate “beliefs” about what is factually understood about court
  - ▣ Able to:
    - Manipulate information that is factually understood
    - Contemplate the implications and significance of what is understood
    - Rationally apply that knowledge in one’s actual case-related situations

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## JCTP 4 Functional Factors

### Assisting Counsel

- Ability to participate with and meaningfully aid counsel in developing and presenting the defense
  - Able to:
    - Understand and adequately respond to counsel's questions during and provide relevant information for defense
    - Provide a coherent account of the facts of the alleged crime
    - Identify potential sources of relevant evidence and witnesses
    - Identify reasons for confronting opposing witnesses
    - Manage the stresses and demands of trial process
    - Follow and comprehend the testimony of other witnesses so to be able to alert counsel to any distortions of the facts
    - Provide testimony with relevance, coherence, and independence of judgment.

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## JCTP 4 Functional Factors

### Legal Decision-Making

- Ability to consider, process, & weigh legal alternatives, and ability to reach & communicate legal choices
  - Able to rationally decide about:
    - How to plead
    - Going to trial
    - Accepting a plea offer
    - Testifying
    - Calling certain witnesses
    - Pursuing certain defenses

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## North Carolina Law on the Functional Question



The forensic evaluator shall consider as part of the forensic evaluation: (3) The capacity of the juvenile to do any of the following:

- a. Appreciate the allegations against the juvenile
- b. Appreciate the range and nature of the allowable dispositions that may be imposed in the proceedings against the juvenile
- c. Understand the roles of the participants and the adversary nature of the legal process
- d. Disclose to counsel facts pertinent to the proceedings at issue
- e. Display appropriate courtroom behavior
- f. Testify regarding the relevant issues
- g. Make reasonable and rational decisions
- h. Assist in the juvenile's defense in a rational manner
- i. Any other factors the forensic evaluator deems to be relevant

NC General Statutes § 7B-2401.3(e)

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North Carolina Law on the Functional Question


Factual Understanding & Rational Appreciation

- a. Appreciate the allegations against the juvenile
- b. Appreciate the range and nature of the allowable dispositions that may be imposed in the proceedings against the juvenile
- c. Understand the roles of the participants and the adversary nature of the legal process

NC General Statutes § 7B-2401.3(e)

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North Carolina Law on the Functional Question


Assisting Counsel & Legal Decision Making

- d. Disclose to counsel facts pertinent to the proceedings at issue.
- e. Display appropriate courtroom behavior
- f. Testify regarding the relevant issues
- g. Make reasonable and rational decisions
- h. Assist in the juvenile's defense in a rational manner

NC General Statutes § 7B-2401.3(e)

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Assessment of Capacities (Abilities)

- Collateral reports about (or observation of) functioning in relevant real-world situations
- Observation of functioning throughout interview
- **Interview of Capacities (Abilities)**
  - ▣ Address all relevant functional domains
    - Understanding      Assisting
    - Appreciation      Decision-Making

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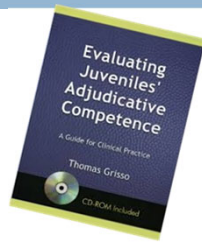
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## Assessment of Capacities



### Juvenile Adjudicative Competency Interview (JACI)

Grisso (2005)

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## JACI- Factual Understanding

### (4) *Guilt and Punishment/Penalties*

**Understanding** What things could happen to you if a juvenile court judge found you guilty?

☐ Examples reasonable for level of offense charged and juvenile or criminal jurisdiction.

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## JACI- Rational Appreciation

### (4) *Guilt and Punishment/Penalties*

**Understanding** What things could happen to you if a juvenile court judge found you guilty?

☐ Examples reasonable for level of offense charged and juvenile or criminal jurisdiction.

**Appreciation** What do you think is the worst thing the juvenile court could do if you are found guilty? Why would that be the worst thing?

☐ Appreciates consequences of penalty.

What is the worst punishment your parent(s) has ever given you? (answer) Which would you rather have (or Which would be worse): that punishment, or [name the court penalty in the above Appreciation question]? Why?

☐ Appreciates consequences of penalty.

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## JACI- Assisting Counsel

**(9) Assisting the Defense Attorney**

**Understanding** Defense lawyers and the people they defend have to work together. The defense lawyer helps the defendant, but the defendant has to work with the lawyer for that to happen. Do you have a lawyer? (If yes) Who is that?

What are some things you can think of that you might do in order to help your lawyer to defend you?

☐ Understands role of defendant in collaborating with lawyer.

**Appreciation** Imagine a defendant just didn't want to talk to the lawyer. Why could that be a problem?

☐ Appreciates defendant as source of information for lawyer and defense.

*Engage youth in discussion of:*

☐ Whether youth has had experience with a lawyer in the past, and, if so, impressions of the lawyer and the lawyer's assistance.

☐ Whether youth has a lawyer now and, if so, youth's impressions of the lawyer.

☐ Absence of factors that might interfere with youth's assistance to lawyer.

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## JACI- Legal Decision-Making

**11-C. Deciding How to Plead**

Let's imagine that you actually did what the police said you did. The juvenile court judge asks you whether you want to plead guilty or not guilty.

☐ What do you think you might decide to do . . . plead guilty or not guilty?

☐ What would be the main reason you'd do that?

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## Capacity to Proceed Evaluation Model

☐ **Functional Question**  
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☐ **Causal Question** ←  
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Grisso (2005)

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North Carolina Law on the Causal Question


The forensic evaluator shall consider as part of the forensic evaluation: (2) The basis of the juvenile's incapacity, to include Mental Disorder, Intellectual Disability, Neurological Disorder, Traumatic or Acquired Brain Injury or Developmental Immaturity:

NC General Statutes § 7B-2401.3(e)

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North Carolina Law on the Causal Question


The forensic evaluator shall consider as part of the forensic evaluation: (2) The basis of the juvenile's incapacity, to include Mental Disorder, Intellectual Disability, Neurological Disorder, Traumatic or Acquired Brain Injury or **Developmental Immaturity**:

NC General Statutes § 7B-2401.3(e)

Developmental immaturity – Incomplete development or delay associated with chronological age, which manifests as a functional limitation in one or more domains, including cognitive, emotional and social development

NC General Statutes § 7B-2401.1(1)

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Developmental Immaturity:  
Adolescent Cognitive Development

- Verbal Fluency
- Reasoning and Problem Solving
- Information Processing Skills
  - Knowledge Base/Experience
  - Organization of Information
  - Short- and Long-Term Memory
  - Sustained Attentional Capacity
- Abstraction Skills
  - Grasp the meaning of events,
  - Appreciate more complex concepts (e.g., a legal right)
  - Apply learned information / past situations to new situations
  - Imagine consequences one has never encountered before (hypothetical situations)

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## Adolescent Psychosocial Development:

### Autonomy (Conformity & Compliance)

- Conformity & Compliance
  - ▣ Peer Influence increases early; decreases later
  - ▣ Authority Compliance gives way to Authority Challenges
- As developing:
  - ▣ Unstable personal preferences
  - ▣ Unstable weighting of advice
- Developed Autonomy:
  - ▣ Stable and clearer self-identity and self-insight
  - ▣ Ability to integrate multiple perspectives
  - ▣ Capacity for self-directed decisions

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## Adolescent Psychosocial Development:

### Risk Perceptions and Attitudes

- Perceptions of Risk
  - ▣ Less aware of possible risks
  - ▣ Underestimate likelihood of negative outcomes
  - ▣ Underestimate the impact of negative outcomes
- Attitudes about Risk
  - ▣ Greater weight on positive outcomes
  - ▣ Greater weight on negative consequences of avoiding risk
  - ▣ Less weight on possible losses associated with risk

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## Adolescent Psychosocial Development:

### Perspective Taking

- Interpersonal Perspective
  - ▣ Ability to take another's perspective
    - Shifting imaginal perspectives
    - Thinking multi-dimensionally
    - Insight into emotional experience
    - Clarity about how people influence one another
- Temporal Perspective
  - ▣ Balancing short-term & long-term consequences
    - Project events into the future
    - Anticipate future consequences
    - Plan for future needs

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### Adolescent Psychosocial Development:

Temperance

- Abilities to:
  - Modulate impulses
  - Maintain emotional and behavioral control
- As developing:
  - Decisions more impulsive
  - Emotion dysregulation more common

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### Developmental Immaturity:

Features of Adolescent Development

- Development is:
  - Idiosyncratic
  - Domain-specific
    - Yet Domain Interactional
  - Non-linear

 ***A Complex, Moving Target that is Difficult to Define!***

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### “Developmental Immaturity”

- Refers to incomplete or delayed development
  - Incomplete Development: “Immature compared to adults”
  - Delayed Development: “Immature compared to age-peers”
- Describes specific abilities or characteristics—  
not an overall condition of the youth
- Depends on actual functioning,  
not simply on age
- Can be expressed in degrees

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## Why Does Immaturity Affect Capacity?

- Factual Understanding
  - Less exposure to court-related information
  - Challenged by abstract concepts (e.g., legal rights)
- Rational Appreciation
  - Immature beliefs and superficial understanding
  - Demands beyond their own experience (e.g., role of defense)
- Assisting Counsel
  - Information processing & organization deficits
  - Attentional and/or social skill deficits
- Legal Decision-Making
  - Poor reasoning based in cognitive and psychosocial limitations

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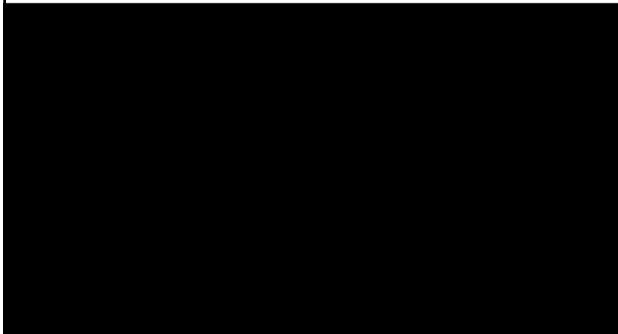
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## Video Demonstration

Immaturity-Based Incompetency



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## Developmental Immaturity

Research

- Age is a robust predictor of Capacity.
  - Studies of Community and/or Detained Samples (7)  
Burnett, Noblin & Prosser, 2004; Ficke, Hart & Deardorff, 2006; Grisso et al., 2003; Panza & Frasier, 2015; Viljoen & Roesch, 2005; Viljoen, Zapf & Roesch, 2007; Warren et al., 2003
  - Studies of Competency Evaluatees (8)  
Baerger et al., 2003; Bath, 2015; Cowden & McKee, 1995; Kruh et al., 2006; McCormick et al. 2021; McKee, 1998; McKee & Shea, 1999; Riggs Romaine 2022
  - Generally holds true for each functional factor  
(e.g., Riggs Romaine 2022)
    - Understanding    Appreciation    Assisting    Decision-Making

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## The MacArthur Study

- Using Measure of Criminal Competency, On Average:
  - ▣ Youth 16 and older performed similarly to adults
  - ▣ Youth 15 and younger performed more poorly
  - ▣ Youth 15 and younger more likely to demonstrate level of impairment consistent with adults found incompetent
    - 1/3 of all youth 12-13 were significantly impaired
    - 1/5 of all youth 14-15 were significantly impaired
- Specific to Decisions, Younger Juveniles:
  - ▣ More compliant with authority.
  - ▣ Identify fewer risks, view them as less likely, and expect a less negative impact.
  - ▣ More likely to change decision in face of peer influence

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## Development and Capacity in North Carolina Law



For any juvenile who is alleged to be delinquent and is less than 12 years of age, the court shall inquire of the prosecutor and the juvenile's attorney regarding the juvenile's capacity to proceed the first time the juvenile appears in court. If the prosecutor or the juvenile's attorney requests additional time to determine whether it is necessary to raise the question of the juvenile's capacity to proceed, the court shall allow the question of capacity to be raised at any time pursuant to subsection (a) of this section.

NC General Statutes § 7B-2401.2(f)

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## North Carolina Law on the Causal Question



The forensic evaluator shall consider as part of the forensic evaluation: (2) The basis of the juvenile's incapacity, to include **Mental Disorder, Intellectual Disability, Neurological Disorder, Traumatic or Acquired Brain Injury** or Developmental Immaturity:

NC General Statutes § 7B-2401.3(e)

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## Psychopathology in Capacity

- Traditionally relevant (in criminal court CST):
  - ▣ Major Mental Illness (i.e., psychosis)
  - ▣ Intellectual Disability (i.e., severe cognitive limitations)
- Both related to findings of incompetency in juveniles, too.
- But important finding with Intelligence
  - ▣ IQ/Age Interaction
    - Younger age and lower IQ yield greater deficits

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## Developmental Psychopathology in Capacity

Expansion of Relevant Types

- Interaction with age causes less severe disorders to yield significant impairment
  - ▣ Less Severe Cognitive Impairment
    - Particularly for younger youth- Kivisto et al. 2011
  - ▣ Developmental Disorders
    - Fetal Alcohol Spectrum Disorders – McLaghlin et al 2014
  - ▣ “Soft” Neuropsychological Deficits
    - Symptoms of ADHD - Riggs Romaine 2022l Viljoen & Roesch, 2005
    - Working memory, processing speed and auditory attention – Panza & Frasier, 2015
  - ▣ Learning Problems
    - Mixed Findings - Baerger et al., 2003; Cowden & McKee, 1994; Kruh et al., 2006; Riggs Romaine, 2022

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## Capacity to Proceed Evaluation Model

- **Functional Question**  
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Grisso (2005)

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## The Contextual Question

### □ How will the deficits impact this examinee in their case?

- Having a deficit does not equal being incompetent
- What matters is how it will impact this youth in this case
- Examiners must consider the case at hand:
  - Complexity of the case / Clarity of case  
Fact pattern; evidence; testimony; defense
  - Expectations of case
    - Lengthy/briefer hearings;
    - Testimony necessary/not;
    - Plea agreement decision-making likely/not likely

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## Capacity to Proceed Evaluation Model

### □ Functional Question

What deficits have been identified in the youth's case-related abilities?

### □ Causal Question

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### □ Conclusory Question

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If the youth is incapable, what are the prospects for remediation of capacity and resumption of the adjudication?

Grisso (2005)

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## North Carolina Law on the Conclusory Question



The forensic evaluator shall consider as part of the forensic evaluation: (1) Whether the juvenile is capable to proceed, incapable to proceed, or incapable to proceed with an ability to attain capacity in the foreseeable future with remediation services.

NC General Statutes § 7B-2401.3(e)

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North Carolina Law on the  
Conclusory Question

The forensic evaluator shall consider as part of the forensic evaluation: (1) **Whether the juvenile is capable to proceed, incapable to proceed**, or incapable to proceed with an ability to attain capacity in the foreseeable future with remediation services.

NC General Statutes § 7B-2401.3(e)

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The Conclusory Question

- Are the deficits adequately impairing to meet the legal test? (Is the examinee incapable of proceeding?)
  - Are the deficits significant enough to warrant an incapacity opinion?

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The **Conclusory** Question

The “Ultimate Issue” Issue

- Ultimate Issue = the court’s legal question
  - Is the youth competent to proceed?
- “Ultimate Issue” Issue = unresolved debate about whether forensic clinicians should answer it.

Against	For
Answering is the domain of the judge because the answer is a legal, social, moral matter – not clinical	The court is aware any opinion is only advisory.
Some laws forbid these opinions	Many laws allow (as in Michigan) and many judges demand these opinions

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### Capacity to Proceed Evaluation Model

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Grisso (2005)

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### North Carolina Law on the Remediation Question



The forensic evaluator shall consider as part of the forensic evaluation: (1) Whether the juvenile is capable to proceed, incapable to proceed, or **incapable to proceed with an ability to attain capacity in the foreseeable future with remediation services.** NC General Statutes § 7B-2401.3(e)

Remediation - Services directed only at facilitating the attainment of capacity to proceed for a juvenile who the court finds is incapable to proceed. Such term may include mental health treatment to reduce interfering symptoms, specialized psychoeducational programming, or a combination of these interventions.

NC General Statutes § 7B-2401.1(6)

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### The Remediation Question

- Given the youth's functional deficits and their causes:
  - What types of interventions are most likely to help?
  - How long is intervention expected to require?
  - Does that timeline fit with statutory requirements?

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## Remediation Programming Modalities

- Pharmacological
  - Remission of symptoms causing relevant deficits
- Psychotherapeutic
  - Remission of symptoms causing relevant deficits
- Psychoeducational
  - Teaching of information that is lacking
- Skills Training
  - Training in skills to alleviate relevant deficits

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## Remediation Success Rates

- ~ 70 - 75% Returned to Court Capable
- Success may depend on:
  - Source of deficits:

■ Mental Illness	85-90%
■ Intellectual Disability	45-55%
■ Both	50-65%
  - Age:

■ Younger Adolescents	65-75%
■ Middle Adolescents	75-80%
■ Older Adolescents	65-75%

McGaha, et al. (2001); Warren, et al. (2009; 2019)

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## Remediation Time-Frames

- Youth averaged 4-5 months in Remediation Services  
McGaha et al., 2001
- 50% of successful youth did so by 4 months
  - Of youth remaining in Remediation longer than 4 months, only 20% were successful  
Warren et al., 2009
- Average length of service across Programs:
  - 120 to 125 days (about four months)  
Fitch, 2014; Kruh et al., 2022

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## Forming the Remediation Opinion

- Based Upon:
  - ▣ Clinical & Empirical Literature
    - Juvenile Remediation
    - Child and Adolescent Treatment Outcome
  - ▣ The Youth:
    - Current Functioning
    - Past Response(s) to Intervention(s)
  - ▣ The Nature of Available Remediation Services

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CAPACITY DEFICIT	SOURCE(S) OF DEFICIT	POSSIBLE INTERVENTIONS	NEEDED / AVAILABLE TIME-FRAME	LIKELIHOOD OF SUCCESS
Poor Appreciation of the Roles of Courtroom Personnel	Poor abstraction skills from young age and Borderline IQ	Repeated and Multi-modal teaching of concepts and discussion	Need: 6 months to 1 yr Available: 6 months to 1 yr.	Moderate
Poor Legal Decision-Making	Inattention and Distractibility from untreated ADHD	Pharmacological intervention; Focused training in weighing advantages and disadvantages of decisions	Need: 3 months Available: 6 months to 1 yr.	High
Poor Ability to Engage in Functional Conversations with Attorney	Verbal processing and expression deficits from Mixed Receptive and Expressive Language Disorder	Speech and Language Therapies	Need: At least two months Available: 6 months to 1 yr.	Moderate
Poor Ability to Understand and Appreciate Plea Agreement Process	Poor frustration tolerance with learning new information related to Learning Disability	Progressive training in concepts related to plea agreements and repeated exposure until mastery is achieved	Need: 3 to 6 months Available: 6 months to 1 yr.	High

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## Evaluation Data Collection

- Third-Party Information Sources *(Records & Interviews)*
  - Teachers & School Officials
  - Mental Health & Medical Providers
  - Social Service Representatives
  - Probation Officers & Detention Officials
  - Defense Attorney
- Caregivers typically a key collateral information source
  - Often provide more reliable information that can augment or correct youth self-report

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Assistance of the Court

□ "...shall order the release of relevant confidential information to the forensic evaluator, including:

<ul style="list-style-type: none"> <li>• Juvenile Petition</li> <li>• Orders for Secure or Nonsecure custody</li> <li>• Law enforcement incident report</li> <li>• Juvenile's Delinquency History</li> </ul>	<ul style="list-style-type: none"> <li>• Detention Records</li> <li>• Any Prior Medical and Mental Health Records of the Juvenile</li> <li>• Any school records of the juvenile."</li> </ul>
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...after juvenile notified and heard, then determining information is relevant and necessary and otherwise unavailable. NC General Statutes § 7B-2401.3(c)

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Evaluation Data Collection

□ Interview of Youth

- ▢ Clinical and Developmental Interview
  - Social History
  - Mental Status Examination
  - Current Symptoms & Diagnoses
- ▢ Competence Interview
  - Functional Interview of Capacity-Related Abilities
    - Juvenile Adjudicative Competence Interview (JACI)

□ Psychological Testing (only as relevant and needed)

- Of Youth
- Completed by Caregivers (or others)

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North Carolina Law on Required Report Contents

**Written forensic reports submitted to the court shall consist of and contain all of the following:**

- (1) Identify the specific matters referred to the forensic evaluator by the juvenile court for evaluation.
- (2) Include notification to the juvenile of the nature, purpose, and anticipated use or uses of the examination and applicable limits of confidentiality.
- (3) Describe the procedures, techniques, and tests used in the forensic evaluation of the juvenile and the purposes of each.

NC General Statutes § 7B-2401.3(f)

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## North Carolina Law on Required Report Contents



**Written forensic reports submitted to the court shall consist of and contain all of the following:**

- (4) Describe the considerations considered by the forensic evaluator.
- (5) State any clinical observations, findings, and opinions of the forensic evaluator on each issue referred to the forensic evaluator for evaluation by the court and specifically indicate any issues on which the forensic evaluator was unable to give an opinion.

NC General Statutes § 7B-2401.3(f)

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## North Carolina Law on Required Report Contents



**Written forensic reports submitted to the court shall consist of and contain all of the following:**

- (6) Identify the sources of information used by the forensic evaluator and present the factual basis for any clinical observations, findings, and opinions of the forensic evaluator.
- (7) Address any other issues ordered by the court.

NC General Statutes § 7B-2401.3(f)

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## North Carolina Law on Required Report Contents



**If a forensic evaluator is of the opinion that a juvenile is incapable to proceed...:**

- (1) Any recommended treatment or education needed for the juvenile to attain capacity, if any.
- (2) The likelihood that the juvenile will attain capacity in the foreseeable future because of the recommended treatment or education.
- (3) An assessment of the probable duration of the treatment or education required to attain capacity.
- (4) If the forensic evaluator recommends treatment for the juvenile to attain capacity, a recommendation as to the least restrictive environment in which services can be provided to the juvenile.

NC General Statutes § 7B-2401.3(g)

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### Basic Contents of a Good Report and Questions to Ask to Assess This

- Includes identifying and referral information
- States legal questions to be addressed
  - ▣ Did the examiner correctly understand the relevant law?
  - ▣ Did the examiner correctly translate these to psychological issues?
- Identifies sources relied upon
  - ▣ Did the examiner fail to consider any relevant data?
- Contains relevant, valid, and reliable facts
  - ▣ Is each fact offered relevant to an evaluation question (diagnosis; developmental status; capacity)?
  - ▣ Did the examiner adequately corroborate the data and consider the credibility of the sources?
  - ▣ Did the examiner employ appropriate and valid techniques, tests, and instruments to obtain the data?

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### Basic Contents of a Good Report and Questions to Ask to Assess This

- Utilizes a process of scientific reasoning
  - ▣ Did the examiner appear to consider multiple hypotheses and offer the one(s) that best fit the data?
  - ▣ Did the examiner offer alternative explanations for the findings and the reasons they were rejected?
- Describes the clinical and developmental factors relevant to the examinee's Capacity to Proceed
  - ▣ Did the examiner describe clinical and developmental factors (including psychopathology) relevant to Capacity to Proceed?
- **Creates a connection between these factors and Capacity to Proceed**
  - ▣ Did the examiner offer a logical connection between the clinical and developmental factors and opinions about capacity to Proceed?

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### Basic Contents of a Good Report and Questions to Ask to Assess This

- Offers concluding opinions
  - ▣ Did the examiner offer an Ultimate Issue opinion? If so, is the underlying rationale for this opinion made evident? Is it consistent with the facts?
  - ▣ Did the examiner avoid an Ultimate Issue opinion? If so, is the underlying rationale for forming an opinion made evident? Is it consistent with the facts?
- Offers limits of the opinions
  - ▣ Did the examiner explain his/her uncertainties about the concluding opinions?

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What could lead two evaluators to reach different opinions about a youth?

1. Differences in the quality of the evaluation
2. Differences in answers to the evaluation questions
3. Differences in interpretations of legal ambiguities

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### Post-Remediation Evaluations

vs. Initial Evaluations

Address same five questions:

Different Timeline Emphasis

The Remediation Period

Some Unique Data

Initial Evaluation Report(s) – Capacity Deficits Identified

Remediation Plan – Capacity Deficits Targeted

Remediation Notes – Tx Efficacy; Changes in Symptoms,  
Development & Competency Deficits

Progress Report(s) – Efficacy & Change

Defense Attorney Report – Last contact? Remaining concerns?

Caregiver Report – Changes noticed?

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Juvenile Capacity to Proceed:  
Clinician Practice Standards & Guides

- Grisso, T. (2005). Evaluating juveniles' adjudicative competence: A guide for clinical practice. Sarasota, FL: Professional Resource Press.
- Wall, B.W., Ash, P., Keram, E., Pinals, D.A., & Thompson, C.H. (2018). AAPL Practice Resource for the Forensic Psychiatric Evaluation of Competence to Stand Trial. Journal of the American Academy of Psychiatry and the Law, 46(3).
- Kruh, I.P., & Grisso, T. (2009). Evaluations of juveniles' competence to stand trial. New York: Oxford University Press.

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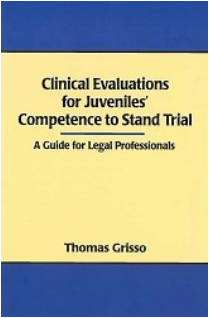
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Juvenile Capacity to Proceed:  
Guide for Legal Professionals



Grisso, T. (2005).  
**Clinical evaluations for juveniles' competence to stand trial: A guide for legal professionals.**  
Sarasota, FL:  
Professional Resource Press.

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