

# Legal Questions about Youth's Capacities

Module 4

Toward Developmentally Appropriate Practice:  
A Juvenile Court Training Curriculum

by the National Juvenile Defender Center in  
partnership with Juvenile Law Center

**ModelsforChange**  
Systems Reform in Juvenile Justice

# Legal Questions about Youth's Capacities

## Module 4

Toward Developmentally Appropriate Practice:  
A Juvenile Court Training Curriculum

### Author

Thomas Grisso  
*University of Massachusetts Medical Center  
Center for Mental Health Services Research*

### Editors

Katayoon Majd  
Mary Ann Scali  
Ji Seon Song  
*National Juvenile Defender Center*

Emily Keller  
Lourdes Rosado  
*Juvenile Law Center*

# VI. Competence to Stand Trial (Adjudicative Competence)

## A. Doctrinal and Legal Background

### 1. Doctrinal reasons for requiring competence to participate in trials.

- a. *Preserving the integrity of the criminal process.* Credibility of the criminal process is undermined if the defendant lacks a basic understanding of the nature and purpose of the proceedings.
- b. *Reducing the risk of erroneous convictions.* The accuracy or reliability of the adjudication is threatened if the youth is unable to assist in the development and presentation of a defense.
- c. *Protecting the youth's decision-making autonomy.* Decisions about the course of adjudication, including whether to waive or assert important Constitutional rights, must be made personally by the youth; she must have the abilities needed to make decisions.

### 2. Definition of competence to stand trial.

- a. State's definitions vary, but all are consistent with the U.S. Supreme Court definition in *Dusky v. United States*, 362 U.S. 402 (1960): "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has rational as well as factual understanding of the proceedings against him."
- b. Competence to stand trial pertains to all phases of the trial process, not merely the evidentiary trial. The legal tests for competence to stand trial and competence to plead guilty (and waive counsel) are the same, requiring capacity to make relevant decisions during the trial process. *Godinez v. Moran*, 509 U.S. 389 (1993).
- c. Most states recognize, by law and practice, that incompetence must, among adult defendants, be due to a "mental condition," often a mental illness or intellectual disability, and that the trial may not proceed until the condition is altered such that the defendant can meet the legal test for competence.

## B. Application to Juvenile Court in Delinquency Cases

1. **Background.** Historically, the question of competence in delinquency cases was rarely raised until the mid-1990s, when legislative changes in juvenile law created more severe consequences of delinquency adjudication and adjudication as an adult; this motivated the defense bar to begin asserting the right of youth to be competent in delinquency proceedings.

2. **Right to be competent in juvenile proceedings.** Since the mid-1990s, all states (except Oklahoma) that have addressed the issue have decided that the right to be competent to stand trial applies in delinquency proceedings.<sup>8</sup>
3. **Role of “immaturity.”** All states recognize mental illness or mental retardation as potential reasons a youth might lack capacities for competence to stand trial. Many courts recognize that youth may lack capacities for competence to stand trial due to immaturity. However:
  - a. Only a few states specifically acknowledge that incompetence may be found when competency deficits are related to immaturity, even when mental illness or mental retardation are absent. *Timothy J. v. Sacramento County*, 58 Cal.Rptr.3d 746 (Cal. 2007); *In re Hyrum H.*, 131 P.3d 1058 (Ariz. 2006); *Tate v. State of Florida*, 865 So.2d 44 (Fla. 2003); *In re W.A.F.*, 573 A.2d 1264 (D.C. 1990).
  - b. No state allows the fact that a youth is immature (or of young age) alone to determine incompetence *per se*. In all states, a youth can be immature yet competent. For incompetence, the youth must actually manifest deficits in abilities outlined in the definition of competence to stand trial (which some immature youths presumably can do).

### C. Research on Youth’s Capacities as Defendants

1. A major study by the MacArthur Research Network on Adolescent Development and Juvenile Justice recently found that age and intelligence were related to performance on an empirical measure of abilities associated with competence to stand trial (Grisso et al., 2003; Grisso, 2005a).<sup>9</sup>
  - a. Youth ages 15 and younger performed more poorly on average than did young adults, their impairments often being similar to those of adults in studies who had been found incompetent to stand trial.
  - b. About one-third of youth who were 13 or younger had significant impairments in competency abilities. This increased to about one-half for youth who were 13 or younger and had low intelligence test scores.
  - c. Youth more often than adults made decisions about waiver of rights and plea agreements for reasons that were influenced by immaturity in time perspective.
  - d. Youth ages 16 and 17, on average, performed no differently than young adults.
2. Basic research on the development of cognitive and psychosocial capacities during adolescence suggests the following: (For further explanation, see Module One, *Adolescent Development*).
  - a. Some youth who lack knowledge about court proceedings may be taught what they need to know.

<sup>8</sup> By 2008, (a) more than one-third of the states had developed statutes recognizing competence to stand trial in juvenile court; (b) many others recognized competence in juvenile court by case decisions; and (c) those without specific juvenile competence statutes applied definitions and procedures patterned after competence provisions in states’ criminal laws. When the issue has been raised on appeal, the reasoning in *In re S.H.*, (1996) has been typical. The court noted that juveniles have rights to notice of charges, legal counsel, and privilege against self-incrimination, and that providing these rights would be meaningless if a juvenile defendant was not capable of exercising them. The exception is Oklahoma, *G.J.I. v. State* (1989), in which the Oklahoma appellate court ruled that requiring competence to stand trial in delinquency cases was inconsistent with the civil nature of juvenile court.

<sup>9</sup> Other studies have reported similar findings (Baerger, Griffin, Lyons, & Simmons, 2003; Burnett, Noblin, & Prosser, 2004; Redlich et al., 2003; Viljoen et al., 2005).

- b. Other competency deficits related to psychosocial immaturity are less likely to be remediable by “teaching” and more likely to require further maturation. Examples include the ability to form abstract concepts and to think about hypothetical situations; the ability to delay decision making in order to consider long range consequences; and the ability to resist simple acquiescence to peer or authority influences.

## D. Elements of Competence to Stand Trial

Analyses of competence to stand trial in individual cases typically require information related to two major elements of competence as provided in definitions. These are abilities related to “factual understanding” and abilities related to “rational understanding.”

### 1. Abilities related to “factual understanding” and “rational understanding” of the trial process.

- a. *Factual understanding* refers to the youth’s basic understanding of the nature of the proceedings, including:
- Nature and seriousness of the charges
  - The purpose of a trial process and possible penalties
  - Possible pleas, and the nature of plea agreements
  - The role of various participants in the process, especially defense counsel and, including, the youth himself as the defendant
  - Rights of the youth throughout the process
- b. *Rational understanding* (sometimes called “appreciation” of the significance of what one factually understands) refers to the youth’s ability to apply this information in a manner that does not impair decision making. Several reasons for limitations often seen in youth’s rational understanding may be relevant:
- Understanding is often limited by the youth’s auditory and visual processing problems.
  - Immaturity may impair some youths’ abilities to perceive risks of various decisions realistically, to weigh their long-range consequences, or to decide autonomously rather than on the basis of perceptions of their peers.
  - Mental disorders that may distort or “override” factual understanding (for example, if they involve beliefs that distort the youth’s perceptions of the significance of the trial process).

### 2. Abilities associated with assisting counsel.

- a. *Abilities associated with communication and trust.* For example:
- Ability to comprehend counsel’s inquiries
  - Ability to discern what is relevant to counsel’s inquiry
  - Ability to articulate the relevant information related to counsel’s inquiry
- b. *Must be able to manage the demands of trial process.* For example:
- Must be able to endure stress of trial
  - Must be able to maintain demeanor
  - Must be able to testify relevantly, if necessary

3. *The role of decision making ability.* Deficits in abilities to make autonomous decisions may arise because of problems related to immaturity in all of the above areas. They may also arise due to an inability to understand factually or to apply the information rationally to one's case. Any of these may reduce the youth's ability to assist counsel. Thus, an examination of the youth's ability to use information in a decision making process is especially important.

## E. Analyzing Competence to Stand Trial

Thinking about a youth's competence to stand trial requires three broad considerations.

1. **Functional abilities.** What does the youth actually know, or what can the youth actually do, that is related to the factual and rational understanding components of competence to stand trial?
2. **Causal explanation.** If the youth has deficits in relevant functional abilities, what is their cause?
  - a. As noted earlier, the causes may be disabilities, immature cognitive or psychosocial development, intellectual disabilities, or mental disorders.
  - b. The mere presence of deficits together with one of these possible causes is not sufficient for the analysis. One must show a logical connection between the deficits and the presumed cause.
3. **Situational factors.** Are the demands of the youth's trial situation such that the deficits are sufficiently significant to warrant a finding of incompetence?
  - a. Not all delinquency proceedings are alike in their demands. Certain delinquency proceedings may require the youth to understand and appreciate different concepts.  
  
For example, in states that use blended sentencing, the youth will need to understand the implications of a plea, or a right to a jury trial, or the implications of taking the witness stand, in ways that will differ from the competencies required for the traditional juvenile court process. Or, in a case in which a young person in juvenile court is charged with an offense that can lead to transfer to criminal court, that youth will need to know that her exposure to transfer in the future will be enhanced by a guilty plea (admission) today. Or, in jurisdictions where youth will be subject to life-long sex offender registries, or the eviction of families from public housing when the child is arrested for drugs, the youth will need to understand and appreciate the collateral consequences of the juvenile proceedings.
  - b. The level of abilities required for trial in juvenile court are often considered to be the same as in criminal court; however, this is unsettled in most jurisdictions, and at least one state has decided that a lower level of abilities is sufficient in juvenile court.<sup>10</sup>

---

<sup>10</sup> The Michigan Supreme Court decided that "in juvenile competency hearings, competency evaluations should be made in light of juvenile, rather than adult, norms . . . A juvenile need not be found incompetent just because, under adult standards, the juvenile would be found incompetent to stand trial in a criminal proceeding." In *re Carey*, 615 N.W. 2d 742, 748 (Mich. 2002). But it has been argued that a "lower" standard in juvenile court is unfair in cases in which the consequences of conviction are as serious as in adult court (Scott & Grisso, 2005). Others have argued that requiring lesser abilities is inappropriate for any delinquency case (American Prosecutors Research Institute, 2006).

## F. Essentials for the Forensic Clinician's Evaluation of a Youth's Competence to Stand Trial<sup>11</sup>

1. **Obtain information related to the referral.**
  - a. Examiners should ascertain that the question of competence is truly the reason for the referral. Courts and attorneys should not request a competence evaluation when their real concern is learning about youth's mental health needs or motivations for their offenses. A competence evaluation will not address those questions.
  - b. Contact the youth's attorney and obtain information as to why the question of competence was raised. What evidence was offered for concerns about competence?
2. **Obtain records.** The evaluator should obtain various records, including (a) delinquency and dependency records; (b) records of school performance and academic evaluations; and (c) mental health and medical records.
3. **Interview parents or custodians.** The purposes are two-fold:
  - a. To obtain information about the youth's life course development, including: birth/medical/injury history; social developmental milestones; educational history; history of emotional disturbances; and mental health issues (especially those resulting in mental health treatment).
  - b. To obtain information about the youth's current abilities (for example, the youth's abilities to manage decisions in everyday life).
4. **Interview youth.** This should include:
  - a. Youth's description of developmental and mental health history.
  - b. A specialized competency-abilities interview that examines the youth's factual and rational understanding of the proceedings that the youth faces, as well as the youth's ability to assist counsel. This should cover the factors in Section VI.D., *Elements of Competence to Stand Trial*, above. It can be guided by a structured, standardized interview that has been developed specifically for assessing youth's capacities in competence cases.<sup>12</sup>
5. **Administer standardized testing to youth as needed.** Two types of tests may be appropriate: psychological and forensic.
  - a. Psychological testing, when needed, might include tests of (a) intelligence; (b) academic abilities; (c) personality and psychopathology; and/or (d) neuropsychological testing (that is, tests of cognitive abilities related to memory and information processing). Records sometimes provide recent psychological test results that may reduce the need for new testing.

---

<sup>11</sup> The process of forensic evaluations for juveniles' competence to stand trial has been fully developed in a manual for forensic clinicians (Grisso, 2005b). The same procedure has been described in digested form for judges and attorneys (Grisso, 2005a).

<sup>12</sup> The Juvenile Adjudicative Competence Interview (JACI) is a structured interview tool developed specifically to provide information about youth's strengths and deficits in competency abilities, using questions that help to identify developmentally-based deficits, if they are present. See Appendix C in Grisso (2005b). The JACI is not scored and provides no norms for comparison to other youth or to adults. It is a clinical interview tool, not a psychological or forensic "test."

- b. Forensic testing in competence to stand trial cases refers to the use of standardized instruments that assess defendants' abilities associated with competence to stand trial. These instruments score abilities associated with competence to stand trial based on youth's responses. Those scores are then compared to norms that allow deficits in performance to be identified. Although the norms in these instruments are not youth-specific (meaning that the youth's performance is compared to adult samples of competent and incompetent defendants), such norms are likely to be available in the future. Three forensic instruments are most often used:
- *MacArthur Competence Assessment Instrument-Criminal Adjudication (MacCAT-CA)*: This instrument asks questions about factual information and reasoning about trial decisions. It uses a hypothetical case, not the individual's own case. Answers are objectively scored.
  - *Evaluation of Competency to Stand Trial-Revised (ECST-R)*: Questions focus on factual understanding, rational understanding, and assisting counsel. It focuses on the defendant's own case. Answers are rated for adequacy or inadequacy.
  - *Competency Assessment to Stand Trial-Mental Retardation (CAST-MR)*: Developed especially for use with defendants with mental retardation, and therefore sometimes used with youths without mental retardation whose capacities are questionable due to developmental immaturity. The instrument examines a number of competency abilities (understanding basic legal concepts, skills to assist defense, understanding case events).
- c. What these forensic instruments do not do:
- They do not take the place of the "competency-abilities interview" referred to in Section VI.F.4.b., above, because none of the instruments assess all of the abilities that are relevant, and some assess the abilities only in a "hypothetical case."
  - They do not provide a "competency score" nor indicate that the youth is or is not competent to stand trial. They merely identify areas of deficits in competency abilities compared to adults.

## G. Special Issues in Remediation of Incompetence

### 1. For mental illness or mental retardation.

- a. States typically require treatment of mental illness or intellectual disability to try to "restore" competence.
- b. Treatment should always be in the least restrictive alternative, rather than presuming that hospitalization is required. Most youth who are incompetent due to mental disorder do not have disorders that ordinarily require hospitalization for treatment.

### 2. For immaturity.

- a. When incompetence is due to cognitive or psychosocial immaturity, "treatment" and "restoration" are not appropriate remedies. It is not possible to restore something that does not exist yet because of the youth's level of development. Yet most states do not provide clear alternatives. Remediation with specialized psychoeducational competency services is used in some jurisdictions.<sup>13</sup>

---

<sup>13</sup> Virginia, for example, has special services that engage in home-based education to enhance the competency-related capacities of youth.

- b. Issues arise when a youth's immature cognitive or psychosocial characteristics cannot be modified within the time frame specified by statute.<sup>14</sup> There is no known way to speed up such things as the development of abstract thinking, the ability to look further into the future, or to see the riskiness of certain decisions.
- c. When youth's immaturity continues to be a bar to competence beyond the time allowed for remediation, many courts (either by statute or by local practice) dismiss the charges, but retain jurisdiction through commitment of the youth to child welfare services that allow for protection of the youth and society (Redding & Frost, 2001).
- d. While opening a child welfare case may be the practice in some states, it is not developmentally sound to maintain court intervention in the life of an adolescent because of immaturity. It may make more sense to convene a meeting with the youth, the school, child welfare, and the family to create an informal plan for voluntary additional support for the youth.

3. **For lack of knowledge.**

- a. Youth may be found incompetent to stand trial because they simply lack the requisite knowledge of the court process.
- b. Many states employ education programs intended to ensure that the defendant has an understanding of the trial process and the roles of the judge, jury, prosecutor, and defense attorney. There is a danger that these programs may simply help the youth memorize the answers. In such cases, demonstrated understanding may not mean actual knowledge.

---

<sup>14</sup> Although many youth can learn "factual information," the prospects for "accelerating" the development of immature reasoning and decision-making abilities is seriously limited, and there has been very little empirical study of remediation of competency deficits due to immaturity (Viljoen & Grisso, 2007).