



Adjudicative Competency and Restoration Services in Juvenile Court

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What is competency to stand trial?

- Rich history beginning in 14th century common law
- Blackstone Commentaries (1783)
 - If one became mad, he should not be arraigned for it because he would not be able to "plead to it with that advice and counsel that he ought. . ."
- U.S. Constitution (1787)
 - **Amendment 6:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district . . . and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor , and to have the assistance of counsel for his defense.
 - **Amendment 14:** . . . Nor shall any state deprive any person of life, liberty or property with due process of law, not deny to any person within its jurisdiction the equal protection of the law. "



What is the standard for trial competency

- *Dusky v. United States, 362, U.S. 402 (1960)*
 - Milton Dusky, a 33 year old man was charged with assistance in the rape and kidnapping of an underage girl.
 - He was diagnosed with Schizophrenia but was found competent to stand trial and after a finding of guilt was sentenced to 45 years . His writ for certiorari to the U. S. Supreme Court was granted.
- We agree with the suggestion of the Solicitor General that it is not enough for the district judge to find that "the defendant [is] oriented to time and place and [has] some recollection of events," but that the:

"test must be whether he 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."



How is competency relevant in juvenile court?

- 1899: Juvenile court based upon the philosophy of *parens patriae* based upon their less mature and more vulnerable condition as children.
- *Kent v. United States* (383 U.S. 541, 1966). Justice Fortas observed when considering the transfer of Morris Kent to adult court that:

“... There may be grounds for concerns that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative care postulated for children.”
- *In re Gault* (387, U.S. 1 (1967). Justice Fortas observed after reviewing the arrest and detention of Gerald Gault for making obscene phone calls that “neither the Fourteenth Amendment of the Bill of Rights is for adults alone.” Based upon this, youth were afforded many of the same due process rights as adults including the right to a timely notification of charges, the right to confront witnesses, the rights against self-incrimination, and the right to counsel.



How is restoration defined by the courts?

- *Jackson v. Indiana* (406, U.S., 1972): Theon Jackson, a deaf mute who could not read or write or communicate in other ways was charged with two counts of petty theft.
- A CST evaluation was conducted and the psychiatrist opined that his intelligence was too low for him to understand the charges against him and that the probability of him being restored to competency were “rather dim” even if he was not a deaf-mute.
- Regardless he was committed to a psychiatric facility for treatment but later petitioned the Supreme Court asserting that this commitment was paramount to a life sentence.
- The court agreed ruling that a defendant could not be held longer than the *reasonable period of time necessary to determine whether there is a substantial probability that he would attain competency in the foreseeable future.*



What are the relevant clinical dimensions of competency

- Two identified prongs requiring assessment
 - Understanding the legal process that the youth will be encountering
 - Ability to assist counsel
- Assessment involves a present state that can fluctuate over time and may require reassessment if there are significant changes.
- Reflects the capacity of the youth and not their current state of knowledge; therefore attempts at education as part of the assessment are not only permissible but required in most assessments.
- Requires both a rational as well as factual understanding of the relevant information – ability to apply information to ones own situation in a way that suggests an ability to contribute thoughtfully to ones own defense.
- Entails a reasonable degree and not impeccable degree of understanding of the relevant information; the bar for competency is a relatively low bar and does not require legal eloquence or legal sophistication.



What are the most salient programmatic issues relevant to competency assessments

- Who is qualified to conduct competency assessments in juvenile court?
 - Master level licensed social workers and counselors
 - Doctorally trained psychologists and psychiatrists
 - Psychiatrists and medically trained individuals, only?
- How much training do these folks need to conduct a high quality assessment, to write an articulate report, and to offer cogent testimony?
- What kind of mentorship and supervision is required to calibrate opinion formation within and across different county and state programs?
- How do you best address the issue of structured versus clinical assessment procedures and the embedded different practice?
- How do you best protect the autonomy of the evaluation process and protect the interface between the independent evaluator, the restoration program, and the court given the adversarial nature of the setting?



What are the most salient programmatic issues relevant to competency restoration

- Who is qualified to offer restoration services to youth of different ages?
 - Trained forensic examiners only
 - BA level trained staff with experience working with youth
 - AA level staff with extensive experience supervising youth in various settings?
- How much training and supervision do they need to become effective and efficient?
- What exactly are their responsibilities? Teaching, mentoring, case management, treatment, advocacy, risk management?
- How do they coordinate with families, evaluators, program administrators, judges, and attorneys?
- Where do they offer services to the youth, how often, and for how long?



Different approaches to providing restoration services

- Florida program began primarily as an inpatient program in 1997.
- The Virginia juvenile competency program began as a statutorily mandated community-based program in 2001.
- The Maryland program began as a residential, community-based program with some inpatient services offered to 15 % of youth in 2006.
- The Louisiana program began as a regional, inpatient, and community-based program in 2006 .
- Other smaller programs beginning in cities and counties around the USA.



What are the possible outcomes of restoration services

- A youth can be determined to be incompetent to stand trial but likely restorable in the foreseeable future.
 - They continue receiving services for another three months.
- A youth can be determined to be restored to competency.
 - The youth continues through the adjudicative process.
- Charges can be dismissed with or without prejudice.
 - The youth returns to the community with or without the charges being contingent on future behavior.
- The youth can be determined by the court to be unrestorably incompetent at which time all charges must be dropped.
 - The youth is released, committed or certified.
 - Can use a CHINS petition in Virginia



The outcome of restoration services for youth

- McGaha, Otto, McClaren & Petrla (2001)
 - 400 youth ordered into restoration services in Florida
 - Most common diagnoses were Conduct Disorder (57%) and Attention Deficit Disorder (37%)
 - 17% carried a psychotic disorder diagnosis
 - Youth remained in a residential placement on average for 217.5 days
 - 71% were determined by the courts to have been restored to competency
- Warren, DuVal, Komarovskaya, Chauhan, Buffington-Vollum & Ryan (2009)
 - 563 referrals referred to program in Virginia with all services provided on an outpatient basis
 - Overall 73% were restored to competency on average in between 61 to 90 days
 - Highest rates of restoration were obtained by youth with no mental illness and no Intellectual disabilities (91%) and the lowest among youth with significant intellectual deficits (47%).



What are some of the unanswered questions?

- Is the standard for competency the same in juvenile and adult court?
- How should unrestorable but potentially violent youth be handled by the court system?
- How much decisional capacity should a youth be able to demonstrate at young ages such as 8 through 12 years?
- How much is the standard for competency contextualized and calibrated by the seriousness of the crime and the complexity of the legal proceedings facing a youth?
- How do cultural and ethnic factors play into the provision of services?
