

Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers

The National Youth Screening and Assessment Project, part of the John D. and Catherine T. MacArthur Foundation's Models for Change Initiative recently released a guide for policymakers who are considering creating juvenile competence to stand trial legislation. Authored by Kimberly Larson, J.D., Ph.D. and Thomas Grisso, Ph.D., the guide outlines the sixteen most important points lawmakers must consider in the creation of such legislation. Statutory language examples are provided throughout the guide on each of the sixteen key issues. The complete guide is available online at www.modelsforchange.net/publications/330.

This guide provides a comprehensive look at juveniles' competence to stand trial. It will be of use not only to those considering drafting legislation in this area or currently creating juvenile competence to stand trial laws in their state, but also to judges who are addressing the issue of competence within their courts. Attorneys and mental health professionals can also use it to learn more about the application of competence to juveniles.

Outline of the Guide:

The Guide is divided into four Modules, each of which outlines essential components for consideration in that domain when drafting JCST statutes. The four Modules are:

- (1) Definitions of Competence to Stand Trial:** Addresses the underlying reasons for a finding of incompetence, how these might differ for juveniles, the relationship between developmental immaturity and incompetence, and the level of ability required to meet the Dusky standard in juvenile proceedings.
- (2) Procedural Issues:** Addresses when attorneys and judges should consider raising the issue of incompetence with juveniles and the potential burdens/standards of proof and related presumptions that might be employed in the juvenile competence setting.
- (3) Competence Evaluations by Mental Health Examiners:** Addresses the appointment of counsel at the time of juveniles' evaluation, protection against self-incrimination, where the evaluation should take place, considerations regarding time limits for the evaluation, and appropriate content for evaluations and reports regarding juveniles' competence to stand trial.
- (4) Remediation and Legal Disposition of Incompetent Juveniles:** Addresses the current state of our knowledge and research regarding remediation services, the length of time that should be allowed to attempt the remediation of juveniles' competence-related abilities, dispositions in cases in which juveniles are incompetent and cannot be remediated, and provision of services in the event that incompetence cannot be remediated.

Key Recommendations:

- (1) **Psychological “predicates” or Underlying Reasons for a Finding of Incompetence.** To be in line with recent research findings, in addition to traditional reasons such as mental illness or intellectual disability, legislatures should include developmental immaturity as a basis for a finding of incompetence in juvenile proceedings.
- (2) **Legal Protections in the Evaluation Process.** Juveniles should have the right to counsel prior to any evaluation of competence occurring, as well as during the evaluation process.
- (3) **Protection Against Self-Incrimination.** Statutes pertaining to juveniles’ competence to stand trial should provide as much protection against the use of self-incriminating information in future proceedings as is afforded adults in competency evaluations performed in criminal courts. That degree of protection will vary across states.
- (4) **Qualifications of the Examiner.** Examiners performing juvenile competence evaluations should have at least juvenile clinical and forensic expertise.
- (5) **Location of the Evaluation.** Evaluations of juveniles’ competence to stand trial should take place in the least restrictive setting appropriate given the youth’s psychological and security needs.
- (6) **Time Limits for Evaluation.** Fourteen to twenty-one days for juvenile clinical forensic evaluation allows clinicians to perform quality evaluations, while balancing the juveniles’ and the courts’ interests in avoiding unnecessary delay.
- (7) **Content of the Evaluation and Report.** States should list and define specific content areas to be addressed, while leaving some discretion to courts and evaluators. Examples are provided within the guide.
- (8) **Remediation Services.** Statutes should provide for placements and services that will accomplish remediation of deficits of incompetent youth. The types of services should differ depending upon the underlying cause of the incompetence finding (e.g., mental illness, intellectual disability, or developmental immaturity). The youth’s condition should be matched to the appropriate remediation setting, with hospitalization only for youth who have a psychiatric condition warranting hospital level care.
- (9) **Provision of Services in the Event that Incompetence Cannot be Remediated.** In line with the rehabilitative foundations of the juvenile courts, when youth’s charges are dismissed due to irremediable incompetence, statutes should provide legal options for courts to hear the case under its care and protection provisions in order to provide any necessary social and clinical services to those youth.

Visit the John D. and Catherine T. MacArthur Foundation’s Models for Change Initiative Website to download the full document at www.modelsforchange.net/publications/330.