

Youth Competence: Considerations for Juvenile Defenders



The Competence LEGAL STANDARD

- Does the state apply *Dusky*?
- Does the law include “rationality”
- Are there youth specific factors (like immaturity)?
- Are there definitions?
- Are there cases or rules?

The Competence EVALUATION

- Is there a set timeframe for the evaluation/report?
- Must it occur in the least restrictive setting?
- Are there minimum qualifications for the examiner?
- What is the examiner expected to provide in the report?



The Competence PROCEDURE

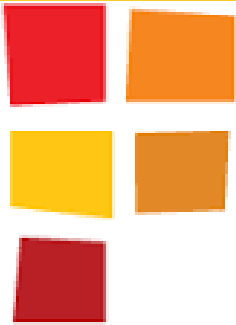
- Who can raise the issue?
- Is there a presumption (competent or incompetent)?
- Who has the burden of proof?
- What is the standard of proof?
- Are there protections against self-incrimination?
- **What happens upon a finding of incompetence?!**

+ The Prevailing Legal Test

Common Law 2 Part Standard

Whether the individual by reason of mental disease or disorder is unable at the time of plea or trial to:

- a) Understand the nature and purpose of the proceedings, or
- b) Consult and cooperate with counsel in preparing and presenting the defense.



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Understanding of

- The nature and seriousness of the charges;
- Purpose of a trial & possible consequences;
- Pleas and the nature of plea agreements; &
- The role of various participants in the court process (e.g., defense counsel, prosecutor, judge, the youth herself as the defendant).

consult and
cooperate in
preparing
defense

Communication Skills

(receptive and expressive)

- Ability to comprehend the defender's questions and inquiries;
- Ability to discern what information is relevant to the defender's questions; and
- Ability to articulate the relevant information related to the defender's questions.

Decision-making and Planning Skills

- Ability to appreciate time
- Ability to appreciate or weigh likely outcomes
- Ability to consider the evidence
- Ability to understand the rights they will relinquish to enter a plea

Trial Skills

- Endure the stress of trial;
- Maintain demeanor;
- Testify relevantly, if necessary; and
- Follow the flow of the proceedings.