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STANDARD FOR DETERMINING COMPETENCE TO STAND TRIAL IN MOST JURISDICTIONS

The prevailing test of competence to stand trial in most jurisdictions is whether the respondent (a) by reason of mental disease or disorder is (b) unable at the time of plea or trial to (i) understand the nature and purpose of the proceedings or (ii) consult and cooperate with counsel in preparing and presenting the defense. *E.g.*, *Dusky v. United States*, 362 U.S. 402 (1960); *In the Matter of W.A.F.*, 573 A.2d 1264, 1265, 1267-68 (D.C. 1990); *In the Matter of Erick B.*, 4 Misc.3d 202, 206, 777 N.Y.S.2d 253, 257 (N.Y. Fam. Ct., Brooklyn Cty 2004); ME. REV. STAT. ANN. tit. 15, § 3318-A(2) (2017). *See generally* Linda A. Szymanski, *Juvenile Competency Procedures* (National Center for Juvenile Justice Oct. 2013).

In those States in which the adult criminal code or caselaw sets forth specific standards for assessing competence to stand trial but the juvenile code does not, the courts have differed as to the applicability of the adult standards to juvenile delinquency cases. *Compare In the Matter of K.G.*, 808 N.E.2d 631, 639 (Ind. 2004) (“juveniles alleged to be delinquent have the constitutional right to have their competency determined before they are subjected to delinquency proceedings” but “the adult competency statute is not applicable in making that determination”), *with In the Matter of the Welfare of D.D.N.*, 582 N.W.2d 278, 281 (Minn. App. 1998) (adult competency standards apply: “the level of competence required to permit a child’s participation in juvenile court proceedings can be no less than the competence demanded for trial or sentencing of an adult”), *and with In the Matter of Carey*, 241 Mich. App. 222, 233-34, 615 N.W.2d 742, 748 (2000) (adult statutes apply but “competency evaluations should be made in light of juvenile, rather than adult, norms”), *and In re J.M.*, 172 Vt. 61, 68, 769 A.2d 656, 662 (2001) (similar to *Carey*, *supra*), *and In the Interest of SWM*, 299 P.3d 673, 678 (Wyo. 2013)

(similar to *Carey, supra*). See also *In the Matter of W.A.F.*, 573 A.2d at 1265 & n.4, 1266, 1267-68 (D.C. juvenile statute establishing competency standard that differs from adult court rule failed to “adequately protect[]” juveniles’ due process “right not to be tried while incompetent”; due process requires that “procedure followed in adult criminal prosecutions . . . be applied to juvenile delinquency proceedings”); *Timothy J. v. Superior Court*, 150 Cal. App. 4th 847, 860-62, 58 Cal. Rptr. 3d 746, 754-55 (2007) (juvenile can seek a finding of incompetency to stand trial based on “developmental immaturity” that does not constitute “a mental disorder or developmental disability”).

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Dusky v. United States, 362 U.S. 402 (1960) (holding that persons charged with violating the law must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and a “rational as well as factual understanding of the proceedings against him.”).

Jackson v. Indiana, 406 U.S. 715 (1972) (holding that juveniles committed solely on the basis of incompetence to stand trial cannot be held more than a *reasonable period* of time than is necessary to determine whether capacity may be restored sometime in the foreseeable future).

Godinez v. Moran, 509 U.S. 389 (1993) (differentiating between the determination of competence to stand trial, which focuses on the youth’s ability to understand and assist, and the standard for knowing and voluntary, which is instead focused on whether the youth understands the consequences of his or her decisions).

Cooper v. Oklahoma, 517 U.S. 348 (1996) (holding that a defender may raise an incompetence defense at any time during a trial).

Timothy J. v. Superior Court, 58 Cal. Rptr. 3d 746 (Ct. App. 2007) (holding that minors could be found incompetent to stand trial on the basis of developmental maturity alone, using a standard that required evidence of a mental disorder or developmental disability).