

Sponsored by The Iowa State Bar Association's Family Law and Juvenile Law Section

Juvenile Law Seminar

Practice Pointers Regarding Competency

9:30 a.m.-10:15 a.m.



Presented by

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Juvenile Competency

THE LEGAL FRAMEWORK AND EMERGING ISSUES

Juvenile Competency

What is the Standard?

Whether the Child has a "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." *Dusky v. United States*, 362 U.S. 402 (1960).

The only Iowa appellate law on juvenile competency applied the Dusky standard. See *In re A.B.*, 2006 WL 469945 *3 (Iowa Ct. App. 2006).

The right to be tried while competent is a due process right, and should be distinguished from different, but related concepts of capacity or diminished capacity.

Should the Adult and Child Standard be the Same?

Some courts/commentators have suggested that the competency standard in Juvenile Court could be lower than adult court due to the rehabilitative nature of Juvenile Court. Others have rejected this notion because even rehabilitation sanctions "can and do involve a major loss of a child's liberties" *In re the Welfare of D.D.N.*, 582 N.W.2d 278, 280-81 (Minn. Ct. App. 1998).

Our Supreme Court has not addressed the question, but has noted that the increasingly punitive nature of Juvenile Courts necessitates maintaining due process protections for juveniles. *State v. Lyle*, 2014 WL 3537026 (Iowa 2014).

Historical Background

Common Law Rule of 7s: Children under 7 lacked the capacity to commit a crime. Children 7-14 were presumed incapable of committing a crime. Children 14 and over were prosecuted in the same courts as adults.

When Juvenile Courts were created at the beginning of the 20th century, "the assumption of juvenile incompetence was at the heart of the juvenile court system." Redding & Frost (2001).

The Due Process revolution after *In re Gault* and increasingly punitive nature of juvenile courts revived due process protections like competency, and although the US Supreme Court has never addressed the question, every state except Oklahoma recognizes that juveniles have the right to be adjudicated only when competent.

Iowa's Reliance on Adult Competency Statute

In re A.B. discussed potential problems with applying Iowa Code Chapter 812 to children.

812 limits the scope of competency evaluations to "mental disorders", but developmental immaturity is just as likely to result in competency problems.

812 allows for competency restoration, but some children have never reached the standard in the first place, and may not be brought to competence by medication or treatment.

What is a reasonable time period before dismissing a case in Juvenile Court? *A.B.* says the remedy for a lack of competency is not necessarily dismissal. 812 says if the defendant cannot be restored to competency in a "reasonable amount of time" the case may be dismissed.

A.B. held that developmental immaturity is a basis for lack of competency, and that the case should not be dismissed without periodic reviews, and suggested dismissal could happen at 18 months, or when there is a finding that there is no substantial probability that the Child will acquire competence in a reasonable period of time.

Trend Towards Juvenile Specific Competency Statutes

Because of the unique issues with juvenile competency, many states have developed juvenile-specific competency statutes. See Larson and Grisso, *Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers*.

Juvenile Specific Issues: 1) developmental immaturity as an issue; 2) differences in diagnosis, like comorbidity in juveniles; 3) juveniles present with a "constellation of issues"; 4) language development; 5) need for juvenile specific assessment/interviews; 6) how should issue be raised; 7) who should have the burden?

Research on Prevalence of Competency Issues in Juvenile Court

Recent research indicates that competency problems are significantly more common among juveniles than we previously understood.

35% of 11-13 year olds are significantly impaired.

22% of 14 and 15 year olds were significantly impaired.

More than one half of the 11-13 year olds were significantly impaired if they had an IQ below 74.

Especially important because more than 20% of children in detention centers have IQs under 74.

Research also indicates that 50% of 11-13 year olds with special education plans had competency issues.

Problems with Identifying Competency as an Issue in Juveniles

Issues related to developmental immaturity are harder to identify than traditional adult competency issues like psychosis.

Juvenile defense attorneys are often not well trained in child development, and may face ethical issues in raising competency as an issue. See David Katner, *The Ethical Struggle of Usurping Client Autonomy by Raising Competency in Delinquency and Criminal Cases*, 16 S. Cal. Interdis. L. J. 293 (2007).

Research indicates juvenile defense attorneys raise competency in about half of the cases where they have concerns.

Red Flags Regarding Juvenile Competency

- Age
- Special Education Eligibility
- I.Q.
- Mental Health Diagnoses
- Verbal Comprehension
- Processing Speed
- Memory/Recall
- Decision-Making
- Struggling with open-ended questions

Juvenile Adjudicative Competency Interview

Guide for clinical interviews that is juvenile-specific

Requires Juvenile to respond to specific questions about trial process (e.g. what does pleading guilty mean? What happens if you plead guilty).

Measures decision-making ability by giving the juvenile opportunity to demonstrate rational decision-making skills.

Who should have the burden of proving competency or lack of competency?

In Iowa, there is a "presumption of competence." This means that the defendant must rebut this presumption. Applying this presumption to adults has been held constitutional by the US Supreme Court in *Medina v. California*.

A growing number of states put the burden on the state to prove competency in juvenile court, especially for younger juveniles.

Query: Does a presumption of competence, especially for children under 14, fly in the face of the research indicating a higher prevalence of competency problems, as well as other legal presumptions regarding the capacity of juveniles?

What should happen when a child is found incompetent?

- 1) Assess whether child can be brought/restored to competence?
- 2) Periodic reviews?
- 3) Placement? Where can a child be "restored?"
- 4) CINA?
- 5) Mental Health Placement?
- 6) Who is responsible for placement/cost prior to adjudication?
