

EVALUATING JUVENILES' COMPETENCE TO STAND TRIAL: METHODS, EMERGING STANDARDS, AND CONTROVERSIES

Kimberly Larson, J.D., Ph.D.



Agenda

Part I: Competence to Stand Trial: Legal Standards & Youths' Capacities

- ▣ Competence to stand trial
 - What it is
 - How it has been applied in juvenile court
- ▣ Youths' capacities related to competence to stand trial
 - Research evidence
 - Relevance to CST

Part II: Evaluating Juveniles' CST: Evolving Standards for Practice

- ▣ Application of the Law, Theory, & Research: Implications for Clinical Practice
- ▣ Performing evaluations for juvenile CST

BASICS: COMPETENCE TO STAND TRIAL



CST

Why competence to stand trial is required

- ▣ **Fundamental fairness:** Trying a defendant without capacity to participate is trying an absent defendant
- ▣ **Integrity of legal process:** Counsel without assistance of defendant demeans the legal system itself
- ▣ **Constitutional protection:** Assures individual autonomy...no one can waive or exercise one's individual rights but oneself...deciding about rights without understanding would be no protection at all

The *Dusky* Standard for Competence to Stand Trial



A defendant must have:

...sufficient **present** ability to **consult with his attorney** with a reasonable degree of rational understanding..

...and a **rational** as well as **factual understanding** of the proceedings against him (*Dusky v. U.S.*, 1960)

Dusky standard cont'd

This standard includes **decision making ability** associated with waiver of constitutional rights and deciding on pleading
(*Godinez v. Moran*, 1993)

Competence to waive right to counsel is part of the CST standard (*Godinez*), but competence to actually represent oneself is a separate competency
(*Indiana v. Edwards*, 2008).

What Competence is not....

- ❑ Not mere presence of a serious mental disorder, or mental retardation
- ❑ Depends on what the person actually can or cannot do that is relevant for participating in one's defense

CST abilities usually considered important for being able to "perform the tasks"

Capacity for factual and rational understanding of...

- Nature of the trial process
- Accused of a crime
- Court will decide guilt
- Could be punished
- What possible sentences are
- Meaning of possible pleas
- Roles and functions of trial participants
- What trial process involves ("trial process" is pretrial preparation and events through trial)

CST abilities (cont'd)

Ability to assist counsel...

- Capable of comprehending counsel's inquiries
- Capable of responding to counsel inquiry and providing relevant information
- Can handle the demands of trial process (won't decompensate under stress, demeanor won't jeopardize fairness, can testify relevantly)

CST abilities (cont'd)

Decisional ability...

- Able to make decisions based on rational beliefs and perceptions
- Able to process/weigh information
- Not judged by the quality of the decision
 - One can choose what others would consider foolish...as long as one is not influenced by irrational beliefs one cannot control (e.g., due to delusions related to mental illness)

What is required beyond "factual understanding?"

- ▣ Clarifying the difference between "factual" and "rational" understanding
 - Factual is "awareness", rational is "belief" (some examples)
 - Synonyms for rational in legal/forensic literature: "appreciation," "perception"

HOW CST HAS BEEN APPLIED IN JUVENILE COURT



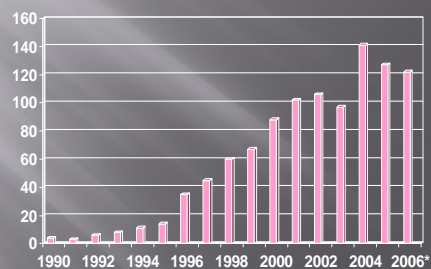
From “no issue” to “major issue”

- ❑ CST not necessary in early (civil) juvenile court
- ❑ In re Gault (1967) to 1990
 - Introduced due process in juvenile courts
 - But did not produce attention to CST for juveniles
- ❑ 1990s reform of juvenile law after wave of juvenile homicides in late 1980s
 - The “superpredator” scare and legislation
 - Increase in transfer/waiver of youths to criminal court at younger ages
 - E.g., Tate
 - Increase in penalties if remained in juvenile court

Reaction...

- ❑ Defense bar began raising the issue of juveniles’ CST in mid- to late-1990s
- ❑ Homicide rate declined rapidly after 1995
- ❑ The new “get tough” laws did not change
- ❑ J-CST has grown as an issue in 2000s

Increase in CST Referrals in One State Forensic Service



Evolution of Juvenile CST Laws

- ☐ Since mid-1990s, appellate courts have begun to rule on how to apply CST in juvenile court
- ☐ Revision of state statutes began relatively recently.
 - Over 23 states now have statutes specifically defining CST in juvenile court: e.g., Arizona, California, Florida, Georgia, Louisiana, Maine, Michigan, Maryland, Minnesota, Texas, Virginia
- ☐ Other states take their guidance from rules and standards in criminal law

Accepted in most states...

- ☐ CST applies in juvenile court
 - Only exception: Oklahoma
- ☐ The same standard (a state's equivalent of *Dusky*) is used in juvenile court as in criminal court
 - Factual and rational understanding of proceedings
 - Ability to assist counsel
 - Decision making capacities
- ☐ Youth must be capable of "independent" understanding and decision making (no proxies)
- ☐ Incompetence requires remediation in order for the trial to proceed

California JCST

(WELFARE AND INSTITUTIONS CODE)

Who may raise: minor's counsel or the court

Standard: Mirrors *Dusky* language

If Competence in Doubt: [C]ourt finds substantial evidence raises a doubt ...the proceedings shall be suspended.
s. 709 (a)

Evaluation & Underlying Conditions:

- ☐ Hearing + expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency.

Who may evaluate:

- ☐ The expert shall have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence.

s. 709 (b)

California (cont'd)

Procedure?

- ❑ BOP: preponderance of the evidence
- ❑ ...all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction.
- ❑ During this time, the court may make orders that it deems appropriate for services, subject to subdivision (h), that may assist the minor in attaining competency.
s. 709(c)
- ❑ If youth is CST, the court may proceed
s. 709(d)
- ❑ If the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals ...or his or her designee, to evaluate the minor. The director of the regional center, or his or her designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act + written report.
s. 709(f)

APPLYING LEGAL STANDARDS, THEORY & RESEARCH IMPLICATIONS FOR PRACTICE

Questions that CST laws may not answer...

- ❑ Does a defendant have to be as competent in juvenile court as in criminal court?
 - Appears to be answered in CA?
 - No "juvenile norms language"
- ❑ Are CST clinical evaluation methods with adults adequate for children?
 - Answered in CA law by requirement of juvenile forensic expert?
 - Implementation of quality control through various models
- ❑ Can juveniles be incompetent if their incapacities are related to immaturity (without mental illness/mental retardation)? If so, what are the implications for "restoring" competence?
 - CA answers in the affirmative, but remediation practices across the state are still being determined.

Revisited later...

Why criminal CST traditions don't apply well in juvenile court...

- ❑ Juvenile courts are fundamentally different from criminal courts
- ❑ Adolescents are fundamentally (developmentally) different from adults

Before proceeding with the legal / evaluation issues,

How are adolescents different?

HOW DO KIDS THINK?

What science tells us about
children's and adolescents'
decision-making abilities

- ❑ Before 15-16, youth on average are not as well equipped intellectually as adults
- ❑ By 15-16, youth on average have the intellectual equipment similar to adults on average.
- ❑ So why do parents of 15-17 year olds say they sometimes "do the stupidest things," and why do those teenagers say, "I just wasn't thinking?"

There is more to "decision making" than intellectual ability.

What's involved in using your intellectual abilities to make decisions

- ▣ Recognize that a problem exists (e.g., that there is a risk involved)
- ▣ Delay response in order to consider options and consequences
- ▣ Consider more than short-range gains
- ▣ Consider more than merely what others might want you to do
- ▣ Risk Recognition and Appreciation
- ▣ Impulse Control
- ▣ Time Perspective
- ▣ Autonomy (Resistance to Peers and Authority)

Sometimes called
"judgment" capacities

Summing Up: Adolescents tend to be...

- ▣ Less able to control impulses and more driven by the thrill of rewards
- ▣ More short-sighted and oriented to immediate gratification
- ▣ Less able to resist pressure from peers

Psychosocial maturity continues to develop into early adulthood, long after adolescents have become as "smart" as adults

What is the evidence that youth are different from adults in abilities related to CST?

The MacArthur Juvenile Adjudicative Competence Study (2000-2003)



- ▣ Philadelphia, Gainesville, Los Angeles, and North/East Virginia (Coordinating site, Univ of Mass. Medical School)
- ▣ Youths and adults in detention centers and jails, and in communities in targeted neighborhoods
- ▣ Received measures of abilities related to competence to stand trial

Is Factual Understanding a significant developmental issue?

- ▣ On average, youths may have poorer factual understanding of trial-related matters than adults
- ▣ But many have the capacity to learn what they do not know
- ▣ No reasons to believe adolescents are “slower to learn facts” than adults if instructed
- ▣ So, poor factual understanding typically should be remediable, absent mental retardation or learning disabilities

What about rational understanding?

- ▣ Poor Rational Understanding is significant impairment in one’s ability to apply or use information when
 - interpreting events
 - making decisions
- ▣ Sources of impaired rational understanding:
 - Due to mental illness
 - Due to intellectual disability
 - Due to developmental immaturity

Conclusions from research on juveniles' CST abilities...

- ❑ We would expect most adolescents to be competent to stand trial, compared to adults
 - Little significant difference between 15-17 year olds and adults
 - And 15-17 year olds are "most" adolescents in juvenile court
- ❑ We would expect more young adolescents (under 15) to be incompetent to stand trial compared to adults
 - But still only a minority would be incompetent
- ❑ The important differences are more in "rational understanding" and "decision making" than in "factual understanding"
 - Often "factual understanding" can be remediated
 - Teaching "rational understanding" may be more questionable/difficult, but some research does indicate it *may* be possible

EVALUATING JUVENILES' CST

EVOLVING STANDARDS FOR PRACTICE



The Clinical Process

Ecology of the Evaluation
Resources and Concepts
Preparing for the Evaluation
Data Collection
Interpreting and Reporting the Results



The Clinical Process

Ecology of the Evaluation

Who performs them, where,
and under what conditions

Resources and Concepts

Preparing for the Evaluation

Data Collection

Interpreting and Reporting the Results



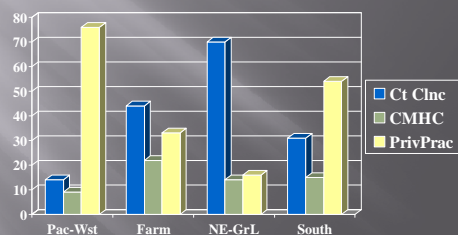
Who should perform these evaluations?

- ☐ Statutory requirements vary a great deal across states
 - Individual examiners
 - Interdisciplinary teams
 - Multiple individual examiners
- ☐ Evolving standards for qualifications...
 - Child background
 - Forensic experience in CST
 - Ability to diagnose and specify treatment and prognosis for child mental disorders

Models for Juvenile Court Forensic Evaluation Services

- ☐ Court Clinic Model
 - Offices in the juvenile court building, salaried clinicians
- ☐ Community Mental Health Model
 - Offices in CMHCs or hospitals, not in juvenile courts
- ☐ Private Practitioner Model
 - Private practitioners in community, typically on panel or list of clinicians available to the court, paid by case or hour

Percent of Cities in Regions of U.S. (87 of largest 100) Using the Three Models

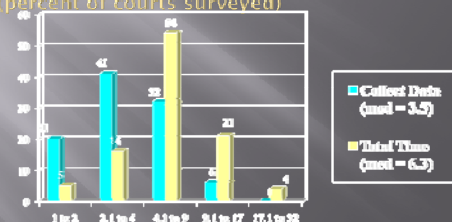


Place and Time Restrictions


- Where the evaluation should take place
 - Least restrictive alternative
 - Community-based or detention whenever possible
 - Inpatient when necessary
- Attending to appropriate physical conditions for the assessment
- How long is allowed for evaluation?
 - Nationally, ranges from 10 to 60 days
 - Many clinicians feel that at least 20 days is needed to do a good job
 - Conflict: Potentially lengthens detention

National Survey: Hours Spent on Average J-CST Evaluation

(percent of courts surveyed)



The Clinical Process



Ecology of the Evaluation

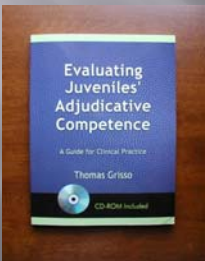
Resources and Concepts

Preparing for the Evaluation

Data Collection

Interpreting and Reporting the Results

Evaluating Juveniles' Adjudicative Competence: A Guide for Clinical Practice



Thomas Grisso
Professional Resource Press
2005
172 pages

Contents of the Guide

- ▣ Legal, Forensic, and Developmental Concepts for J-CST Evaluations
- ▣ Preparation for the Evaluation
 - ❖ Referral – Determining scope and methods
 - ❖ The Defense Attorney – Making contact
 - ❖ The Caretakers – Making contact and invitations
 - ❖ Records, interviews and testing

The Guide (cont'd)

▣ The Data Collection Process

- ❖ Preparing the youth and caretakers
- ❖ Obtaining a developmental and clinical history
- ❖ Evaluating developmental and clinical status
- ❖ Assessing competency abilities
- ❖ Exploring caretakers' perceptions of youth's adjudication

The Guide (cont'd)

▣ Interpretation of Data

- ❖ Formulating opinions related to competency
- ❖ Formulating remediation
- ❖ Writing the report

▣ Appendices (reproduced in the guide's CD)

- The Clinicians' Records Form
- The Interview Guides
- The "Juvenile Adjudicative Competence Interview" (JACI)
- The "Attorney CST Questionnaire"

See "legal professionals' guide"
for using examiners' opinions...

- I. The Legal Standard and Process
- II. Taking a Developmental Perspective
- III. Understanding Clinicians' Evaluations
- IV. Using Clinicians' Opinions

Both manuals:

Professional Resource Press

Orders@prpress.com



Evaluation of Juveniles' Competence to Stand Trial

Ivan Kruh & Thomas Grisso
Oxford University Press
2009
225 pages



Content of "Evaluation of JCST"

- ▣ Foundation
 1. The Legal Context
 2. Forensic Mental Health Concepts
 3. Empirical Foundations and Limits
- ▣ Application
 4. Preparation for the Evaluation
 5. Data Collection
 6. Interpretation
 7. Report Writing and Testimony

A Conceptual Framework for What CST Evaluations Should Answer

(Grisso, 1988, 2003)

- ▣ Functional
- ▣ Causal
- ▣ Contextual
- ▣ Dispositional

- ▣ Functional
 - Does the youth have serious deficits in relevant capacities?
 - Referring to the competency abilities that are considered in most states

(cont'd)☐ **Causal**

- What are the reasons for the deficits?
- E.g., MI, Intellectual Disability, Dev Immaturity

☐ **Contextual**

- How might the deficits impact the youth's case?

☐ **Dispositional**

- What are the prospects for attaining competence by improving relevant abilities?
What methods, and how long?

Some Key Concepts when Thinking about Functional Deficits☐ **Understanding**

- E.g., "What is a defense lawyer?
What is the defense lawyer's role?"

☐ **Appreciation**

- E.g., "How can defense lawyers help, and what do you believe about their value?"

☐ **Reasoning**

- E.g., "How would you decide whether or not to get a defense lawyer?"

What is the examiner's proper role?

- ☐ Provide information for the court relevant for its decision about competency
 - Not to discover mental health needs generally
 - Not for "criminal responsibility" or mitigation
 - Not for disposition if found delinquent
- ☐ Examiner's CST opinion on bottom line is usually welcome, but the examiner does not "determine" competency or incompetency

The Clinical Process

Ecology of the Evaluation

Resources and Concepts

Preparing for the Evaluation

Clarifying the evaluation's scope/purpose

Getting records

Determining who will participate

Preparing the participants

Data Collection

Interpreting and Reporting the Results



Preparing for the Evaluation

- ▣ Taking Stock of the Scope and Purpose of the CST evaluation
- ▣ Getting records
- ▣ Participants and Process
- ▣ Role of counsel & care taker
- ▣ Cultural Considerations

Data Collection

Notice of limits of confidentiality

Clinical/developmental interview
(history and current status)

Psychological testing (sometimes)

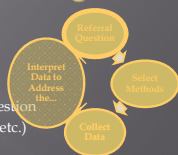
Assessing competence abilities



Interpreting & Reporting the Results

I. Purpose and Process

- ▣ What is this report about?
 - Providing the legal definition and referral question
 - Identifying what has been assessed (abilities, etc.)
- ▣ Notification of warning to youth and parents
- ▣ Listing all sources of information



II. Clinical / Forensic Data or Information

- ▣ Subsections...
 - Behavioral, Developmental and Health history
 - Current Psychological Status
 - Data Regarding Functional CST abilities
- ▣ Data only - no interpretations
- ▣ Relevant data only + Incriminating Data *Never*

(cont'd)

III. Opinions and Recommendations

- ▣ Subsections:
 - CST abilities; reasons for any deficits in CST abilities; potential for remediation
 - Remediation Subsection: How do we answer these basic questions?
 1. Can the youth be remediated?
 2. If so, where and how?
 3. How long will it take?

Questions and Discussion

Kimberly.Larson@umassmed.edu