

# JUVENILE COMPETENCY TO STAND TRIAL



**PREPARED BY**  
**The National Center for State Courts**

## Staff

Teri Deal

Lauren Hope Forbush

Bailey Chenevert

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## National Center for State Courts

*Court Consulting Services*

Michael Buenger, Executive Vice President of NCSC

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300 Newport Avenue

Williamsburg, VA 23185-4147

Phone: (303) 293-3063

Fax: (303) 308-4326

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[ncsc.org](http://ncsc.org)





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## DEFINITIONS



### WHAT IS CST?

Competency to stand trial (CST, also known as competency to proceed [CTP]) describes a defendant's ability to understand and rationally engage with the court procedures happening to and around them, as well as assist their counsel. Without CST, the Sixth Amendment right to a fair and free trial is seriously compromised.

While the concept of CST originates in judicial proceedings from centuries ago, it became standardized in the U.S. in 1960 when the Supreme Court ruled that Milton Dusky was unfit to stand trial due to severe mental illness. Schizophrenia left him unable to understand the proceedings against him or assist his counsel in his defense. That case, *Dusky vs. United States*, set a precedent that defendants must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against [them] (*Dusky v. United States*, 362, U.S. 402 (1960) | *Juvenile Competency Attainment Research & Development Center*, n.d.).”

More than simply having knowledge of the court system, CST implies that a defendant can weigh their options and avoid making decisions that will harm them in the long term. When a defendant is incompetent to stand trial (IST) due to a mental illness or intellectual disability, they are vulnerable to unfair proceedings or subpar defense. Usually, IST is due to a mental illness or intellectual disability.

The issue of youth competency is ubiquitous in judicial proceedings since youth are cognitively underdeveloped compared to adults. However, youth are usually assumed to be competent even though they have poorer impulse control than adults, lack future orientation, and are more susceptible to peer influence due to an underdeveloped frontal lobe (Steinburg et al., 2015). The causes of IST can differ for adolescents compared to adults; in addition to mental illness and intellectual disability, youth may be too developmentally immature to proceed.

## WHAT IS RESTORATION/REMEDICATION?

In both juvenile and criminal court, once the issue of competency is raised, the defendant must be evaluated. The entity responsible for competency evaluations varies by state. For example, depending on the jurisdiction, they may be a mental health professional, like a social worker with a bachelor's degree or a psychiatrist, or a primary care doctor. If found IST (or incompetent to proceed [ITP]), defendants are expected to have their competency restored or remediated with the help of professionals while their case is suspended.

Restoration and remediation programs look different depending on the resources in the jurisdiction and the needs of the individual. Generally, it involves educating defendants on the court system and providing appropriate psychiatric and medical care. The process can take a few weeks to several years, and many states have statutes imposing a time limit so that the case does not continue indefinitely. It may occur in a variety of settings, including the person's home or community, a hospital, a treatment center, or a psychiatric institution. Generally, restoration is expected to occur in the least invasive manner possible; in-patient treatment should be a last resort effort.

In juvenile court, competency restoration is often referred to as remediation. Restoration implies that the individual was competent to proceed some point, and now competency must be restored. For youth found IST, the goal is to *become* competent, which would naturally happen at a certain developmental and maturation level if no mental illness or intellectual disability interferes. Their remediation may look the same as an adult's restoration, or it may be more adolescent-oriented, applying age-appropriate learning and careful scheduling to not disrupt the young person's social and educational development. Juvenile remediation accounts for the immense cognitive changes young people undergo as they age; the disruption of social activity and educational attainment

that occurs while they are engaging in the court system could significantly negatively impact their development. Furthermore, in juvenile cases, especially nonviolent ones, charges may be dismissed because remediation seems unlikely or too time-consuming. Additionally, many juveniles are unlikely to reoffend in adulthood due to maturation, so whether they need to be restored and tried at all is another question state courts need to consider (Steinburg et al., 2015).

Again, the restoration/remediation process does not occur indefinitely. At some point, a defendant may be found irreparably IST, in which case their charges may be dropped or other arrangements made depending on the severity of the allegations against them.

## RESEARCH ON JUVENILE COMPETENCY








Juvenile courts were established from the recognition that children are different from adults. Evaluating a youth's competency status can be more complex than evaluating an adult's because of the rapid developmental changes occurring (Steinburg, et al., 2015). Because of this, juvenile courts seek to rehabilitate, not punish, and procedures often look different than those of criminal court. This difference is not always the case, however, for competency procedures.

### **Only 27 States Have Separate Competency Standards for Juveniles**

Researchers and court professionals have recommended that states have separate competency standards for youth and adults, but not all have adopted such standards (Larson and Grisso, 2011). The lack of separate competency standards for juvenile court is an important issue for states to address because adolescents' underdeveloped cognitive abilities may limit their access to fair court proceedings and informed court decisions.

Steinburg et al. (2015) summarized the research on psychosocial maturity, which is measured by six factors that increase over time and ebb around age 25. Of these factors, impulse control, future orientation, and resistance to peer influence are especially connected to competency. Without these developmental skills, youth may have difficulty disagreeing with lawyers or other authority figures making court decisions on their behalf. Thus, they may be less likely to meet *Dusky* standards of competency than adults, even in the absence of other mental illnesses or intellectual disabilities. This is particularly common in youth 14 years and younger. Still, many state statutes do not specify that psychosocial or developmental immaturity can cause IST, and even fewer presume IST for juvenile defendants who are irrefutably immature based on their age.

In 2011, Larson and Grisso published a guide for lawmakers developing juvenile competency statutes. It is the most thorough resource to date, citing developmental and legal experts to make recommendations on all facets of CST evaluations and remediation. Nine years later, Panza et al. (2020) compiled all existing juvenile CST statutes and reported how much they aligned with Larson and Grisso's 2011 recommendations. Here's what they found:

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|---|---|
|    | <p>37 of the 50 states had statutes mentioning juvenile CST, 10 of which simply applied adult CST statutes to juveniles.</p>  |
|    | <p>Most states (31 of the 37) indicated that mental illness and intellectual disability were predicates for ITP, but few included developmental immaturity (15 of 37).</p>  |
|    | <p>11 states had an age-based assumption of incompetence (ranging from age 10 to age 14).</p>   |
|   | <p>Most states did not specify under which conditions the question of a juvenile defendant's competency should be raised (35).</p> <ul style="list-style-type: none"> <li>• Five of those states had age-based requirements (e.g., youth under a certain age must be questioned/evaluated).</li> <li>• Three had case-based (e.g., the requirement that more serious charges like first-degree murder presume the defendant's CST is in question and must be evaluated).</li> </ul> |
|  | <p>Only six states specify that defendants have a right to counsel before and during evaluations as is recommended; 30 allude to this right in some way, such as referencing the attorney's role in competency evaluations.</p>   |
|  | <p>Twenty-five states provided time length recommendations for remediation ranging from 60 days to 5 years in statute, and only two specified different recommendations for different treatment settings.</p>   |
|  | <p>The four states that most closely followed Larson's and Grisso's recommendations (Colorado, Georgia, Ohio, and Oklahoma) were only consistent with 57% of them.</p>  |



Panza et al.'s (2020) article showed a widespread lack of consideration of the competency-related challenges unique to developmentally immature defendants. For example, other studies have reported that consideration of psychosocial development is lacking in many jurisdictions. In an analysis of 649 juvenile competency evaluations in Colorado, McCormick et al. (2021) found that psychosocial development as a cause of incompetence (23.8%) did not occur as often as mental illness (43.7%) and intellectual disorder (33.1%).

It is important to note that the consideration of mental illness and intellectual disabilities is not a misguided one - multiple studies found that youth in the court system are likely to have coexisting mental disorders (Chien et al., 2016; Bath et al., 2015). However, psychopathology is not the only factor influencing a youth's competency status. Their maturity level is also an important consideration. IST determinations based on developmental concerns are infrequent and happen to young people age 14 and younger. McCormick et al. (2021) reported that 64.2% of developmentally IST defendants in their sample were age 12 and younger, and much of the rest were between 13 and 14 years old (34.4%). This finding supports Larson and Grisso's (2011) suggestion that youth of a certain age be presumed ITP due to immaturity, which touches on rationale for a lower age of juvenile court jurisdiction; all states have age boundaries so that when youth engage in prohibited conduct, they do not necessarily have to engage with the criminal legal system. For example, in 11 states, youth must be at least ten years old for their behavior to be labeled "criminal."

Researchers have concluded that the *Dusky* two-pronged standard of competency - which does not include maturity as a standard - is often the primary consideration in juvenile competency concerns. Some prosecutors have reported being suspicious that defendants act immaturely to avoid consequences (Bryant et al., 2015). Likewise, surveys of court professionals in several states found that attorneys were generally less knowledgeable about the competency evaluation process than they were the *Dusky* standard and that attorneys are often concerned that the need for an evaluation will go unnoticed during the proceedings (Berryessa & Reeves, 2020; Jackson et al., 2014).

Overall, this research suggests a need for more education on juvenile competency. However, educating court professionals on the topic may be challenging, considering that the research is sparse and there is little to no state data to reference. Even less literature is available on the effectiveness of juvenile competency remediation programs.

## COMPETENCY REMEDIATION

For youth who are determined to be IST, remediation services can vary considerably. Depending on the state and local resources and the individual being remediated, youth may undergo educational treatment (counseling, tutoring, etc.), medical treatment (psychiatric evaluations, inpatient care, etc.), or a combination of the two. State-level data on the use or outcomes of these programs are also limited. In 2020, Pirelli and Zapf attempted a meta-analysis of the topic's existing literature and found that it would not be statistically possible to identify elements of effective programs due to a lack of robust data. One study's sample included data on 61 youth determined to be IST and ordered to a remediation program in Connecticut (Chien et al., 2016). They found one significant predictor of successful remediation: IQ score. Those with higher IQs were more likely to be remediated, which suggests that cognitive impairments may be a significant barrier to a young person's competency attainment.

Additionally, as Bath and Gerring (2014) noted, there are no evidence-based practices for juvenile remediation that court actors can reference. For young people that must complete a remediation program, the research on juvenile competency remediation is just as sparse and varying as the programs themselves. One survey of 130 youth who completed a remediation program in Virginia found that the youth were largely satisfied with the program (Jackson et al., 2014). In this particular program, youth were assigned a counselor who created and facilitated an individualized curriculum. This curriculum, delivered several times per week, included information about the judicial system and court actors and was delivered in several media: animated video, lecture, workbooks, etc.

However, some remediation programs receive criticism for testing memorization of information, not comprehension. Memorization of court process information might not be the same thing as attaining competency, which entails that an individual be able to think through a situation rationally and thoughtfully, not just be able to repeat relevant information. On this note, the

youth in Jackson et al.'s (2014) study generally seemed to have an easier time grasping concrete parts of the curriculum, like factual information, than a rational understanding of abstract concepts such as reasonable doubt. This shows the ability of many young people to parrot curricula without understanding it fully. Thus, remediation programs need to test both factual and rational understanding of the proceedings. Without this consideration, young people may “prove” their competency by repeating concrete material and without demonstrating rational understanding.

In the past few years, several states have used the available information on juvenile competency and corrected their processes accordingly. For example, the Utah Department of Human Services has a statewide juvenile remediation program that has been adopted by other state courts and is continuously improving. They provide an outpatient program with a ten-module curriculum taught by professionals in health services (a bachelor's degree is required). The professional adapts the activities to each youth's individualized needs, ranging from flashcards to crossword puzzles to a physical “walk” through the trial process. Each year, between 10 and 20 youth are taught with this curriculum, and the program receives about three times as many evaluation orders. The program works with the University of Utah to collect data, monitor implementation, and adapt the curriculum.

The Colorado Department of Human Services' outpatient remediation program is based on Utah's curriculum. The program contracts with professionals across the state to perform remediation services and provides them with curriculum, training, and technical support. Their resources can be found on their public [provider portal](#).

Like Utah, Colorado has made ongoing improvements to their program. They have found that one training cannot address each young person's needs, so individualization is an important next step. For example, what is effective in teaching a 10-year-old will likely be different than what is effective for a 17-year-old. Unlike Utah, Colorado processes hundreds of juveniles in their remediation program. Their focus also extends to everything else that could impact a juvenile in court, like mental health and medical conditions, in addition to substance abuse interventions.

Comparatively, the following summaries of remediation programs in three states demonstrate other ways jurisdictions address competency remediation (This information was pooled from online, not in-person, sources.):

- [California](#): In Santa Clara County, youth found IST are assigned a Competency Restoration Counselor who they meet with about three times a week and engage in multimedia presentations tailored to the individual's age, cognitive abilities, communication skills, language, and other considerations. These meetings usually occur in the youth's home. A supervisor and an independent evaluator are assigned to check on the progress of remediation every 30 days, and the youth must pass a competency test three times before being determined to be restored (Superior Court of California, Santa Clara County).
- [Louisiana](#): The Office of Behavioral Health and the Bureau of Legal Services manage the state's Juvenile Competency Restoration Program, which holds classes for youth determined ITP to help them achieve a factual and rational understanding of the proceedings against them. The program takes an average of 8 weeks to complete (*Juvenile Competency Restoration Program / La Dept. of Health*).
- [Florida](#): The Juvenile Incompetent to Proceed (JITP) Program provides competency restoration services to juveniles in Florida through case management and competency training. If necessary, the case manager coordinates mental health services. The program can occur either at the youth's residence or on-site at a campsite contracted by the Department of Children and Families (*Juvenile Incompetent to Proceed Program*).

There is no evidence-based program for remediation, and juvenile remediation comes with its own specific concerns. For the developmentally immature, the best route for attaining competency may be time and aging. Still, court cases cannot be paused indefinitely, and youth deserve swift justice.

## CONCLUSION

Research from the past decade shows that the issue of juvenile competency is still an underexplored one. Studies in the area are often lacking rich, generalizable data. Additionally, statutes on juvenile competency and state restoration programs vary widely, with some states foregoing them altogether. Interest appears to be growing, however; several states have amended or introduced juvenile competency statutes in the last two years. There are also reliable resources for states and researchers looking to develop juvenile competency standards or remediation programs, such as Larson and Grisso's recommendations report (2011). The conversation around juvenile competency must also address whether remediation is the best route for young people in the justice system and how states can better serve these youth with a modern understanding of mental health and development.

## OTHER RESOURCES

[National Youth Screening and Assessment Partners](#)

[Juvenile Justice Geography, Policy, Practice & Statistics](#)

[University of Virginia's JUVENILE COMPETENCY ATTAINMENT RESEARCH & DEVELOPMENT CENTER](#)

[National Conference of State Legislatures' list of states with juvenile competency laws and citations](#)

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