

Juvenile Justice GPS (Geography, Policy, Practice, Statistics) is a project to develop an online repository providing state policy makers and system stakeholders with a clear understanding of the juvenile justice landscape in the states. The site layers the most relevant national and state level statistics with information on state laws and practice and charts juvenile justice system change. In a landscape that is highly decentralized and ever-shifting, JJGPS provides an invaluable resource for those wanting to improve the juvenile justice system. We hope that the information will be used as a platform for inspiring change and finding solutions that have been applied in other places.

Juvenile Competency Procedures

Currently, all jurisdictions but the following six have either statutes, court rules or case law outlining the procedures under which juvenile competency to stand trial is decided: Alaska, Hawaii, Mississippi, Oklahoma, Oregon, and Rhode Island.

In fact, Oklahoma has specific case law from the state Court of Criminal Appeals explaining that since juvenile proceedings are not criminal but rehabilitative, it was the intent of the legislature not to have the competency statutes apply to juveniles. (*G.J.I. v. State*, 778 P.2d 485 (1989))

The Dusky Standard

Typically, both juvenile and adult competency statutes are based on the *Dusky* standard, taken from the 1960 United States Supreme Court case. Under that case, “the test must be whether he has 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, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960))

However, the Wyoming Supreme Court warns that these standards should be applied in the light of juvenile norms. (*In the Interest of SWM v. State*, 299 P.3d 673 (2013))

As an example, Georgia’s new definition of juvenile incompetency, effective in 2014, reads: ‘Incompetent to proceed’ means lacking sufficient present ability to understand the nature and object of the proceedings, to comprehend his or her own situation in relation to the proceedings, and to assist his or her attorney in the preparation and presentation of his or her case in all adjudication, disposition, or transfer hearings.

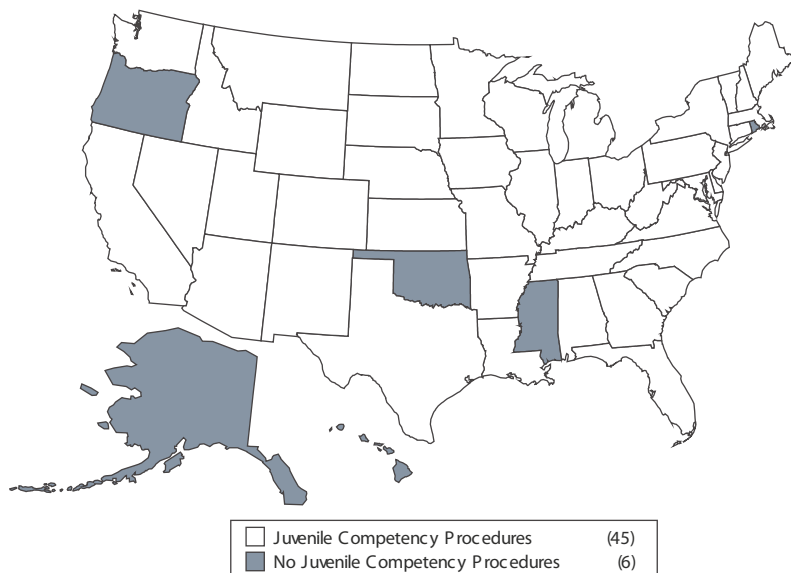
Under the Arizona version of the *Dusky* standard, a juvenile is incompetent if he or she does not have sufficient present ability to consult with the juvenile’s lawyer with a reasonable degree of rational understanding or who does not have a rational and factual

understanding of the proceedings against the juvenile.

In Kentucky, incompetency to stand trial under the *Dusky* standard means, as a result of mental condition, lack of capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one’s own defense.

The test for determining an accused juvenile’s competency to stand trial in North Dakota is whether the accused has 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.

States with Juvenile Competency Procedures



Factors Used in Determining the Dusky Standard

States use a variety of factors to reach the determination as to whether or not a juvenile meets the *Dusky* Standard.

For example, in Arkansas, in reaching an opinion about the juvenile's fitness to proceed, the examiner must consider and make written findings regarding an opinion on whether the juvenile's capabilities entail: an ability to understand and appreciate the charges and their seriousness; an ability to understand and realistically appraise the likely outcomes; a reliable episodic memory so that he or she can accurately and reliably relate a sequence of events; an ability to extend thinking into the future; an ability to consider the impact of his or her actions on others; verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner; and logical decision-making abilities, particularly multi-factored problem solving or the ability to take several factors into consideration in making a decision.

In Idaho, the examiner or evaluation committee can employ any method of examination that is accepted by

the examiner's profession for the examination of juveniles alleged not to be competent, provided that such examination must, at a minimum, include formal assessments of the juvenile in each of the following domains: cognitive functioning; adaptive functioning; clinical functioning; comprehension of relevant forensic issues; and genuineness of effort.

To assist the court's determination of competency in Maine, the State Forensic Service examiner's report must address the juvenile's capacity and ability to: appreciate the range of possible dispositions that can be imposed in the proceedings against the juvenile and recognize how possible dispositions imposed in the proceedings will affect the juvenile; appreciate the impact of the juvenile's actions on others; disclose to counsel facts pertinent to the proceedings at issue including the ability to articulate thoughts; the ability to articulate emotions; and the ability to accurately and reliably relate a sequence of events. The juvenile being tested must also: display logical and autonomous decision making; display appropriate courtroom behavior; testify relevantly at proceedings; and

demonstrate any other capacity or ability either separately sought by the juvenile court or determined by the examiner to be relevant to the juvenile court's determination.

North Dakota case law identifies four, nonexclusive factors relevant to determining whether the evidence before the trial court should reasonably have raised a doubt as to the juvenile's competency: (1) the juvenile's irrational behavior; (2) the juvenile's demeanor before the trial court; (3) any prior medical opinions on the competency of the juvenile to stand trial; and (4) any questioning of the juvenile's competency by counsel before the trial court.

Juvenile's Age as a Factor in Determining the Dusky Standard

Some states use the juvenile's age as a factor in deciding his or her competency. For example, the juvenile's age or immaturity can be used as one basis for determining the juvenile's competency in: Georgia, Idaho, Maine, Maryland, Vermont.

Juvenile Competency								
State	Legal Authority	Factors	Definitions	Dusky Standard	Age as Factor	Procedures	Recent Law	Transfer Procedures
Alabama	■	■		■				
Alaska								
Arizona	■		■	■	■	■		
Arkansas	■	■		■	■			
California	■	■		■		■		
Colorado	■		■	■		■		
Connecticut	■			■	■	■	■	■
Delaware	■	■	■	■	■	■	■	
Dist. of Columbia	■		■	■		■		■
Florida	■	■		■		■		
Georgia	■	■	■	■	■	■	■	■
Hawaii								
Idaho	■	■		■	■	■	■	
Illinois	■			■				
Indiana	■	■				■		
Iowa	■			■		■		
Kansas	■			■		■		
Kentucky	■			■				■
Louisiana	■	■	■	■		■		■
Maine	■	■		■	■	■	■	■
Maryland	■	■	■	■	■	■		■
Massachusetts	■			■				
Michigan	■	■		■	■	■	■	
Minnesota	■	■		■		■		
Mississippi								

Sometimes this is referred to as “Chronological immaturity,” meaning a condition based on a juvenile’s chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or mental retardation.

On the other hand, age alone does NOT render a person incompetent in: Arizona, Connecticut, Delaware, Montana, and Virginia.

In Michigan, a juvenile 10 years of age or older is presumed competent to proceed unless the issue of competency is raised by a party. A juvenile younger than age 10 is presumed incompetent to proceed.

In Arkansas, if a juvenile is younger than 13 at the time of the alleged offense and is charged with capital murder or murder in the first degree there is a presumption that the juvenile is unfit to proceed and he or she lacked capacity to possess the necessary mental state required for the offense charged; to conform his or her conduct to the requirements of law; and to appreciate the criminality of his or her conduct. The prosecution must overcome these presumptions by a preponderance of the evidence.

In Ohio, if the juvenile who is the subject of the proceeding is fourteen years of age or older and if the juvenile is not otherwise found to be mentally ill, intellectually disabled, or developmentally disabled, it is rebuttably presumed that the juvenile does not have a lack of mental capacity. This presumption applies only in making a determination as to whether the juvenile has a lack of mental capacity.

Juvenile Competency Statutes Applied to Transfer Statutes

A few jurisdictions specifically mention the applicability of their juvenile competency statute to their statute transfer provisions regarding the transferring a juvenile case to criminal court. The juvenile competency statute specifically applies to the transfer statute in: the District of Columbia, Georgia, Kentucky, Louisiana, and Maryland.

In Nevada, the juvenile court cannot certify a juvenile for criminal proceedings as an adult if the juvenile court specifically finds by clear and convincing evidence that the juvenile is developmentally or mentally

incompetent to understand the situation and the proceedings of the court or to aid the juvenile’s attorney in those proceedings.

Under Texas law, a juvenile alleged by petition or found to have engaged in delinquent conduct who as a result of mental illness or mental retardation lacks capacity to understand the proceedings in juvenile court or to assist in the juvenile’s own defense is unfit to proceed and must not be subjected to discretionary transfer to criminal court as long as such incapacity endures.

In Virginia, with certain statutory exceptions, if a juvenile 14 years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court must, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and can retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate Circuit Court having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate Circuit

Juvenile Competency								
State	Legal Authority	Factors	Definitions	Dusky Standard	Age as Factor	Procedures	Recent Law	Transfer Procedures
Missouri	■							
Montana	■			■	■			
Nebraska	■							
Nevada	■			■				■
New Hampshire	■							
New Jersey	■	■		■		■		
New Mexico	■					■		
New York	■			■		■		
North Carolina	■			■		■		
North Dakota	■	■		■		■		
Ohio	■	■		■	■	■	■	
Oklahoma								
Oregon								
Pennsylvania	■	■		■		■		
Rhode Island								
South Carolina	■			■				
South Dakota	■	■		■		■	■	■
Tennessee	■					■		
Texas	■			■		■		■
Utah	■	■		■		■	■	
Vermont	■	■		■	■	■		
Virginia	■			■	■	■		■
Washington	■		■	■		■		
West Virginia	■					■	■	
Wisconsin	■		■			■		
Wyoming	■	■		■		■		

Court must be subject to the following conditions: the juvenile is competent to stand trial, the juvenile is presumed to be competent and the burden is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the evidence.

Not-with-standing a finding by the juvenile court in Maine that the juvenile is competent to proceed in a juvenile proceeding, if the juvenile is subsequently bound over for prosecution in the Superior Court or a court with a unified criminal docket, the issue of the juvenile's competency can be revisited.

Likewise in South Dakota, not-with-standing a finding by the court that the juvenile is competent to proceed in a juvenile proceeding, if the juvenile is subsequently transferred to criminal court the issue of the juvenile's competency can be revisited.

In Connecticut, the juvenile competency statute does not apply to a transfer hearing.

Recently Enacted Juvenile Competency Statutes

Recently, several states have enacted new juvenile competency statutes: West Virginia in 2010; Idaho, Maine, and Ohio in 2011; Connecticut, Delaware, and Utah in 2012; Michigan and South Dakota in 2013. New Georgia law will be taking effect in 2014.

Juvenile Competency Definitions

Some state statutes provide valuable definitions. Delaware defines the term *Competency Evaluator* to mean an expert qualified by training and experience to conduct juvenile competency evaluations, familiar with juvenile competency standards, and familiar with juvenile treatment programs and services.

In Louisiana, *Insanity* means a mental disease or mental illness which renders the juvenile incapable of distinguishing between right and wrong with reference to the conduct in question, as a result of which the juvenile is exempt from criminal responsibility.

A *Competency Hearing* in Maryland means a hearing to determine whether a juvenile alleged to be delinquent is mentally competent to participate in a waiver hearing, an adjudicatory hearing, a disposition hearing, or a violation of probation hearing.

Recent State Case Law

The issue in a 2010 Louisiana appellate court case was whether the juvenile court is divested of jurisdiction when a juvenile is indicted in criminal court at a time when competency proceedings are pending in the juvenile court.

In this case, after the indictment was filed and before the juvenile court held a hearing on the competency issue, the state objected to the juvenile court's exercise of jurisdiction and moved to dismiss the proceedings. The juvenile court denied the state's motion, and said a competency hearing would be conducted to determine the juvenile's capacity to proceed.

The Louisiana appellate court held that in those cases where the competency of the juvenile is raised in juvenile court before the state secures an indictment, the state has no authority to get an indictment until the juvenile has been found competent. If the juvenile is found competent in the juvenile court, trial in the criminal court is not prevented. Only those juveniles who are found incompetent would be shielded from criminal prosecution. (*State in the Interest of T.C.*, 35 So.3d 1088 (2010))

In 2013, the Supreme Court of Colorado held that the differing treatment of indigent juveniles and indigent adult defendants with regard to the entitlement to a second competency evaluation at state expense did not constitute an equal protection violation.

The Colorado high court went on to explain that the divergent purposes of the adult and juvenile justice systems can logically demand divergent procedures and procedural protections. Consequently, the competency procedures applicable in juvenile justice proceedings can validly differ in important ways from those used in the criminal context.

The state high court found that no

Equal Protection violation occurred here. The General Assembly's establishment of a comprehensive system for the rehabilitation of juvenile offenders—which seeks to provide care and guidance, in contrast to the punitive focus of the criminal justice system—provides a rational basis for denial of an initial and second competency evaluation as a right in the juvenile justice system, even though a criminal defendant would be entitled to both.

In order to protect an alleged juvenile offender's welfare in a juvenile justice proceeding, the state has a very different role than it does in a criminal prosecution: that of *parens patriae*.

In fact, the juvenile competency provisions—unlike the adult provisions—explicitly require the court, prosecution, probation officer, guardian ad litem, defense counsel, and parent or legal guardian to actively safeguard an alleged juvenile offender's right not to be tried or sentenced while incompetent to proceed.

The Colorado Supreme Court concludes that the General Assembly could reasonably and rationally view this arrangement as more conducive to achieving the less adversarial, more intimate, informal and protective proceeding the United States Supreme Court identified as the aspirational goal of the juvenile justice system. (*In the Interest of W.P.*, 295 P.3d 514 (2013))

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