

# Competency to Stand Trial in Family Court: Characteristics of Competent and Incompetent Juveniles

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Competency to stand trial (CST) has been among the most thoroughly researched psycholegal issues in the past 20 years. However, little attention has been given to CST in juveniles facing delinquency or criminal proceedings. In a sample of 112 pretrial juvenile defendants undergoing court-ordered CST evaluations, 14 percent of the sample was judged incompetent to stand trial (IST). Sixty-one (55%) were considered to have one or more examiner-cited competency deficits that might lead the court to a finding of IST. Only age, intelligence level, and history of previous juvenile arrest differentiated competent from incompetent juveniles. Implications of the results for raising the CST issue in family or circuit courts are discussed as are suggestions for future research.

Every defendant facing criminal charges has a constitutional right to be competent to stand trial. That is, one must have a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and have a "rational as well as factual understanding of the proceedings against him".<sup>1</sup> Criminal defendants are presumed to be competent to stand trial unless the issue of incompetency is raised by the defense, judge, or

(rarely) the prosecution. For a competency to stand trial (CST) evaluation to be ordered by the court, a "bona fide doubt" of the defendant's competency must exist.<sup>2</sup> However, the threshold for raising the CST issue is neither high nor precise.<sup>3</sup> Because of the emphasis on cognitive functions such as reasoning and understanding in *Dusky v. U.S.*,<sup>1</sup> evidence of a defendant's present or past mental illness, low intelligence, history of head injuries, or psychiatric treatment is often the basis for the competency motion.<sup>4</sup> Although every state and the federal jurisdiction has legislation defining CST (many simply adopting the language of *Dusky*),<sup>1</sup> competency to stand trial in juvenile proceedings is not necessarily recognized by stat-

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ute in each state.<sup>5</sup> Further, although there is a substantial line of cases defining the parameters of the CST issue with adult defendants,<sup>6-12</sup> there are few comparable cases in juvenile proceedings.<sup>13-16</sup> The present study, therefore, attempts to identify demographic, historical, clinical, and offense characteristics relevant to juveniles' competency to stand trial.

The competency to stand trial of adult defendants has been among the most thoroughly researched psycholegal issues in the past 20 years.<sup>17, 18</sup> The most extensive research has been on the development of psychometric measures of CST, which have attempted to translate the criteria in *Dusky v. U.S.*<sup>1</sup> into psychological and behavioral "functions" or "competency abilities."<sup>4</sup> Examples of such instruments are the Competency Screening Test,<sup>19</sup> the Georgia Court Competency Test,<sup>20</sup> the Computer-Assisted Determination of Competence to Proceed (CADCOMP) inventory,<sup>21</sup> and most recently, the MacArthur Competency Assessment Tool-Criminal Adjudication.<sup>22</sup>

The most direct translation of the *Dusky*<sup>1</sup> standard into a CST device was developed by McGarry<sup>23</sup> following a review of all appellate cases in which CST was raised. McGarry<sup>23</sup> isolated 13 different "functions" of CST described by Grisso<sup>4</sup> as an ability to: (1) realistically consider the possible legal defenses; (2) manage one's own behavior to avoid trial disruptions; (3) relate to an attorney; (4) participate with an attorney in planning legal strategy; (5) understand roles of various participants in the trial; (6) understand court procedure; (7) appreciate the charges; (8) appreciate the range and na-

ture of possible penalties; (9) realistically perceive the likely outcome of the trial; (10) provide an attorney with available pertinent facts concerning the offense; (11) challenge prosecution witnesses; (12) testify relevantly; and (13) be motivated to self-defense. McGarry<sup>23</sup> and Gutheil and Appelbaum<sup>24</sup> have listed sample questions for each function as a semistructured interview, the most common method of assessment of CST.<sup>25</sup>

Although adult pretrial defendants have been studied extensively, little attention has been given to CST in juveniles facing delinquency or criminal proceedings.<sup>5, 18, 26-28</sup> Current reforms focusing on more severe penalties for adolescent offenders, prosecution of early teens as adults,<sup>29</sup> indictment for certain crimes regardless of the defendant's age,<sup>30</sup> and the possibility of the death penalty for defendants as young as age 16<sup>31</sup> graphically highlight the importance for research in the area of juvenile CST in delinquency and waiver proceedings.

The current literature of empirical studies of juvenile CST comprises only three published articles. Savitsky and Karras<sup>32</sup> found significant differences among age groups on the Competency Screening Test<sup>19</sup> and concluded that neither 12-year-olds nor 15- to 17-year-olds were equivalent to adults in understanding trial proceedings. Cowden and McKee,<sup>5</sup> in a study of 136 juveniles ages 9 to 16 who were undergoing court-ordered CST evaluations, found that age, severity of current diagnosis, and history of remedial education differentiated incompetent from competent juveniles. In their study, less than 60 percent were judged clearly

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competent to stand trial by their psychiatric and psychological examiners in contrast to a higher than 90 percent CST rate found in adult defendants.<sup>17</sup> Cooper<sup>26</sup> found that among 112 adjudicated delinquents ages 13 to 16 years, 110 adolescents (98.2%) failed to meet the competency "cut score" on a juvenile-modified version of the Georgia Court Competency Test<sup>20</sup>; however, all of these juveniles' understanding of court increased after specific group-based training. Cooper also found that full scale IQ positively correlated with competency.

In a recent study of 108 juveniles and 145 adults undergoing court-ordered CST evaluations, McKee<sup>33</sup> found that global and specific trial competencies correlated with increases in age, with 15- and 16-year-olds equivalent to adults except for understanding plea bargaining. However, when CST was measured as a ratio of trial abilities to trial deficits, preteens, early adolescents, and mid-adolescents were, respectively, 16, 8, and 3.5 times more likely than adult defendants to be assessed as incompetent to stand trial by their psychiatric examiners.

The present study compares the demographic, historical, clinical, and offense characteristics of preadjudicatory juveniles (under age 17) assessed by their case psychiatrist as competent (CST) or incompetent to stand trial (IST) following their court-ordered evaluation. On the basis of existing research,<sup>5, 26, 32-34</sup> it is hypothesized that age, severity of diagnosis, and history of remedial education will be associated with juveniles' competency to stand trial.

## Materials and Methods

**Subjects** The sample comprised all consecutively registered court-ordered pretrial juvenile defendants evaluated for CST between January 1994 and January 1997 at a university-affiliated forensic hospital.

The sample comprised 101 (90.2%) male subjects and 11 (9.8%) female subjects. Twenty (18.3%) were Caucasian and 89 (81.7%) were African-American. Subjects had a mean age of 14.2 years (SD = 1.8) with 14 (12.6%) age 12 years or less, 15 (13.5%) age 13, 23 (20.7%) age 14, 30 (27.0%) age 15, and 29 (26.1%) age 16. Juveniles over 16 years of age are considered adult defendants by South Carolina law. Twenty percent of the subjects were placed below the 7th grade, 67 percent were in grades 7, 8, or 9, and 12 percent were in at least the 10th grade. Almost all (89.5%) were in some type of remedial education. As a measure of socioeconomic status (SES), the annual family income of 71 percent of the juveniles in this study was under \$20,000. Fifty-six (50.0%) were currently living in the custody of the state (e.g., South Carolina State Department of Social Services).

**Procedure** All examinations were completed at South Carolina's only forensic hospital authorized by statute to conduct court-ordered evaluations for CST and criminal responsibility. Each juvenile was examined individually by a team of a board-certified psychiatrist and staff MSW social worker. Each evaluation consisted of: (1) a preinterview review of legal records including the authorizing court order, police incident report(s), war-

rant(s), and if applicable, witness and defendant statements; (2) a preinterview review of any available medical, school, or other records; (3) an interview by the social worker with one of the juvenile's parents or family members; (4) a one- to two-hour psychiatric interview including a formal mental status examination and assessment of CST based on the McGarry<sup>23</sup> "functions" as a semistructured instrument; (5) referral for psychological evaluation at the psychiatrist's discretion; and (6) a forensic psychiatric report that included the defendant's diagnosis, description of competency abilities and deficits, and opinion regarding competency to stand trial. A total of eleven board-certified psychiatrists, seven (63.6%) with added qualifications in forensic psychiatry, evaluated the subjects of this research. No juvenile was examined by more than one psychiatric examiner during the study period.

Demographic, historical, clinical, and offense data were collected from each juvenile's hospital chart and prior medical, psychological, and educational reports along with accompanying legal, police, and court documents. Demographic data comprised the juvenile's sex, race, age, educational status and placement (e.g., remedial student), family SES, and custodial status (e.g., in foster care). Historical data comprised the juvenile's history of family stability (e.g., raised by parents or adopted); victimization by physical abuse, neglect, and/or sexual abuse, grade failure; school expulsion or truancy; arrest record; and correctional institutional placement. Clinical data comprised the juvenile's number of prior

suicide attempts, history of mental health and/or substance abuse treatment, family history of mental illness, and the examining psychiatrist's opinion of the juvenile's principal diagnosis and IQ category. Offense data comprised the juvenile's most serious charge, number of charges, substance use during the offense, and mental state at time of offense.

## Results

Because of the lack of published research describing juvenile defendants undergoing court-ordered CST evaluations, the characteristics of this sample are presented in detail.

**Historical Characteristics** Fifty-five (49.1%) of the juveniles in this sample had been raised by one or both of their biological parents. Almost 30 percent (29.6%) of the juveniles had suffered molestation, neglect, or physical abuse. Nearly all of the juveniles (95.5%) had failed at least one grade in school and had histories of truancy (70.4%) or suspension (87.9%). The majority had a record of previous arrest(s) (70.0%) or juvenile correctional placement (57.6%).

**Clinical Characteristics** Twelve percent of the juveniles were evaluated as having "no diagnosis" on Axis I. The principal Axis I diagnosis of the other subjects included: schizophrenia (2.8%), major depression (13.9%), pervasive developmental disorder (.9%), anxiety disorder (.9%), adjustment disorder (8.3%), substance abuse (5.6%), conduct disorder (29.6%), oppositional disorder (6.5%), attention deficit disorder (16.7%), and other disorder (2.8%). More than one-fourth (25.7%) of the juveniles were diagnosed

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with borderline intellectual functioning (BIF), and 15 percent were assessed as having mental retardation (MR). Thirty-eight percent were dually diagnosed with either BIF or MR and a disorder on Axis I. Less than three percent (2.9%) were diagnosed with BIF or MR only. Less than 10 percent (9.5%) received "no diagnosis" on either axis. Despite the juveniles' comparatively young age, almost one-half (47.6%) had received at least one psychiatric hospitalization, had made at least one suicide attempt (40.0%), or had received drug abuse treatment (40.2%) or mental health services (79.4%). The majority (59.7%) had a family history of mental illness.

**Offense Characteristics** As a group, the juveniles referred for CST evaluations faced serious felony charges including murder (9.4%), kidnapping (12.3%), criminal sexual conduct (17.0%), assault and battery with intent to kill (7.5%), armed robbery (10.4%), burglary (1.9%), drug possession (5.7%), grand larceny (28.3%), or other felony charges (.9%). Less than seven percent (6.6%) were charged with status offenses. Forty percent (39.2%) of the juveniles faced only one charge, 19.6 percent had two charges, and the remainder (41.2%) faced three or more charges. Thirty-one percent (30.8%) of the juveniles had consumed either alcohol or illicit drugs at the time of their alleged offenses. Although the vast majority (93.1%) were considered by their psychiatric examiners to be legally sane, a significant minority (6.9%) displayed either cognitive or volitional deficits, suggesting reduced criminal responsibility for their charges.

**Competency to Stand Trial** Ninety-six (85.7%) of the juveniles were considered by their examiners to meet South Carolina's statutory definition of CST.\* By the same standard, 16 (14.3%) were evaluated as IST.

Of the 96 considered CST, 45 (46.7%) were reported to display one or more trial competency deficits, results that seriously challenge the presumption of CST in juvenile cases. Chi-square analyses were completed to determine the relationship between the CST and IST group demographic, historical, clinical, and offense characteristics based on data collected from hospital charts and/or accompanying legal, police, and court documents. Table 1 displays the demographic, historical, clinical, and offense characteristics differentiating CST and IST juvenile defendants.

## Discussion

The present sample had significantly high rates of mental illness and emotional disturbance, physical and sexual victimization, low intellectual functioning, educational disruption, institutional placement, poverty, family mental illness, and parental marital instability, suggesting that these characteristics may be the most likely basis for raising the issue of CST in family court. Of the 25 variables, however, only three (age, intelligence, and

\* SC Code § 44-23-410: Whenever a judge of the circuit court, county court, or family court has reason to believe that a person on trial before him, charged with the commission of a criminal offense, is not fit to stand trial because such person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall . . . order examination of such person by two examiners designated by the Department of Mental Health.

**Table 1**  
**Demographic, Historical, Clinical, and Offense Characteristics of CST and IST Juvenile Defendants Court-Referred for Evaluation of Competency to Stand Trial<sup>a</sup>**

Characteristic	CST <sup>b</sup> (n = 96) %	IST <sup>c</sup> (n = 16) %	p
<b>Demographic</b>			
Sex			
Male	86.1	13.9	.488
Female	81.8	18.2	—
Race			
Caucasian	85.0	15.0	.761
African-American	85.4	14.6	—
Age, mean (years)	14.6	12.1	.000*
In-school student	56.9	45.5	.359
Remedial student	91.8	76.9	.133
Public assistance	39.6	33.3	.513
In non-parental care	49.0	56.3	.591
<b>Historical</b>			
Raised by parent(s)	36.5	43.8	.579
Molestation victim	27.0	23.1	.537
Abuse victim	33.3	46.2	.283
Neglect victim	23.0	46.2	.089
Suspended/expelled	90.9	72.7	.122
Truant	72.3	57.1	.339
Prior arrest	76.6	30.8	.001*
Juvenile detention	63.0	25.0	.014
<b>Clinical</b>			
Major mental illness	22.8	50.0	.074
Borderline/retarded	38.2	56.3	.002*
Prior suicide attempt	40.9	36.4	.785
Mental health services	78.4	85.7	.413
Substance abuse services	44.3	16.7	.065
Family mental health history	63.9	36.4	.085
<b>Offense</b>			
Charge: violent crime	55.6	62.5	.607
Charge: two or more	65.6	56.3	.471
Substance use at offense	34.5	10.0	.117
Legally sane at offense	95.1	60.0	.036

<sup>a</sup>Probabilities are corrected for familywise error (.05/27 = .002). No significant differences between age groups (<13 years old, 13 and 14, 15 and 16) and all other variables. \* = significant.

<sup>b</sup>CST, juveniles found competent to stand trial by their psychiatrist examiners.

<sup>c</sup>IST, juveniles found incompetent to stand trial by their psychiatrist examiners.

prior juvenile arrest) were significantly related to clinical opinions of the juveniles' competency to stand trial.

These data support the hypothesis of the current study that age is related to CST. However, the results are not con-

gruent with the conclusion of Cowden and McKee<sup>5</sup> that severity of diagnosis or history of remedial education differentiate levels of trial competency in juveniles. The inconsistency may be because of differences in definitions of these char-

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acteristics. In the previous study,<sup>5</sup> severity of diagnosis included mental illness and retardation as a composite variable, whereas history of remedial education comprised placement in special education services or any alteration in the juvenile's regular educational progress (e.g., repeating grades). The data from the current study suggest that the differentiating factor in juveniles' CST may be subnormal intelligence or lack of information rather than mental illness or alternative educational placements *per se*.

CST is more likely to be found in older adolescents of at least low average intellect who have previous experience in family court proceedings. Age and intelligence comprise aspects of cognitive aptitude as suggested by the "rational understanding" prong of the *Dusky v. U.S.*<sup>1</sup> standard. Older juveniles are more likely developmentally to have entered the formal operations stage of cognitive maturity that is consistent with adult thinking and problem-solving.<sup>35</sup> Further, higher levels of intelligence facilitate defendants' abilities to make reasoned judgments about legal decisions over which they (including juveniles) have sole, ultimate authority (e.g., what plea to enter, whether to waive a jury trial, whether to appeal the court's verdict, or whether to be one's own lawyer). To certain authors,<sup>36</sup> the defendant's capacity to make intelligent, knowing, and voluntary choices is the central feature of CST. Age and intellect have been found in previous studies<sup>5, 26</sup> to be related to juveniles' competency to stand trial as well as other areas of decision-making.<sup>37</sup>

The findings in this study that prior

family court experience enhances a juvenile's CST reflects the "factual understanding" prong of *Dusky*.<sup>1</sup> In previous research, prior juvenile arrest was not related to CST<sup>5</sup> but was negatively related to certain juveniles' (low-intellect African-American males under 15 years old) competent understanding of their *Miranda* rights.<sup>38</sup> The inconsistency of these findings suggests that further research in this critical area is needed because, in many jurisdictions, an adolescent's history of delinquent adjudications may prompt transfer to adult court. Whether a juvenile would be CST if transferred to circuit court would be relevant to waiver proceedings. *Kent v. U.S.*<sup>39</sup> mandates the consideration of the juvenile's sophistication and maturity before a decision to waive jurisdiction is made. Addressing CST during the waiver process makes sense in that it would prevent transferring an adolescent who is IST to a court that would then be unable to hold a trial.

The study of juveniles' CST is in its infancy, with many areas of research necessary. Much progress can be made by determining the usefulness of various adult CST inventories for juvenile defendants. Comparisons of pretrial juveniles with adolescents from the general population on such instruments might shed light on the actual base rates of IST in adolescents and thus address whether the presumption of CST is valid in family court proceedings and in superior court trials following juvenile transfer. The current data raise serious questions about whether such presumptions are warranted with juvenile defendants. More than 14

percent of adolescents in the present study were judged incompetent to stand trial by their psychiatric examiners compared with adult IST rates of less than 10 percent.<sup>17</sup> Of those juveniles judged CST, almost half (46.9%) had one or more examiner-cited deficits that could lead the court to consider the juvenile as not fit for trial. The high juvenile IST rate of this study is consistent with previous research<sup>5, 26, 33</sup> and indicates that many adjudicated juveniles may likely be undetected incompetents.

Restoration of incompetent juveniles is another significant area of research that is only beginning to be studied.<sup>26, 40</sup> A significant policy issue is whether post-IST restoration commitment statutes based on the defendant's mental illness or disability apply when the juvenile's incompetency is due solely to young age and normal cognitive immaturity. The present study suggests that young, low-IQ, cognitively immature, and court-inexperienced adolescents would likely comprise most juvenile post-IST treatment groups. Whether adult restoration programs are applicable to such adolescents is as yet undetermined.

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