

## Abstract

Similar to adult defendants, youth who have been found incompetent to stand trial are often provided services to remediate competence abilities. Although adult competence to stand trial and restoration are frequently studied areas, information regarding juvenile remediation/restoration is largely unavailable. A survey was administered to the fifty members of the National Association of State Mental Health Program Directors, Forensic Division to gather juvenile remediation information in each of the states. General information regarding juvenile competency evaluations, remediation service information and outcomes, and cost and funding for remediation services was collected.

## Introduction

Competence is essential for the Constitutional right to due process *Dusky v. United States*, 1960:

- a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding &
- whether he has a rational as well as factual understanding of the proceedings against him."

The primary distinction between adult and juvenile incompetence is that in addition to mental illness and intellectual disabilities, juveniles are often deficient in competence abilities due to developmental immaturity.

- Developmental immaturity often interferes with the decision-making and rational understanding requirements for competence. If an individual has been found incompetent, a court may order the defendant to receive competence remediation services. Depending on the jurisdiction, services may differ in several ways.

## Methods

### Instrument

Computerized 53-item survey focused upon four main areas:

- Juvenile competence evaluations
- Juvenile competence remediation services
- Legal education services and service providers
- Costs of providing remediation services

### Participants

Fifty National Association of State Mental Health Program Directors (NASMHPD) Forensic Directors, or designees from their respective agencies, who are able to provide information regarding this study's subject area.

### Procedure

An electronic correspondence was emailed to prospective participants via a national listserv, describing the nature and purpose of the study and included a link to the survey. Follow up emails were sent directly to the NASMHPD members.

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## Preliminary Results

### Survey Respondents

Total of 22 states/jurisdictions responded

- 12 states/jurisdictions with remediation services
- 10 states/jurisdictions without remediation services

### Juvenile Competence Evaluations

6 of the 22 states allow for developmental immaturity, either alone or in combination with either mental illness and/or intellectual disability.

- 8 states reported that the state statute does not require evaluators to identify the reason for the incompetence, provided the youth demonstrate functional impairment in competence abilities

### Remediation Service Settings

#### Least Restrictive Setting (n=13)

- Yes (n=9) factors: e.g., dangerousness, current living situation
- No (n=4) factors: e.g., availability of type of services is limited to a particular setting, automatic initial transfer to inpatient unit

#### Locations for Remediation Services (n=12)

Inpatient only	1
Inpatient & outpatient	3
Outpatient & detention center	2
Inpatient, outpatient & detention center	4
Outpatient, detention center & other (e.g., school, home)	1
Inpatient, outpatient, detention center & other	1

### Remediation Services Provided

Type of Services	Inpt (n=9)	Outpt (n=11)
Medication management	9	6
Legal education, individual format	7	8
Legal education, group format	3	3
Case management	7	7
Individual therapy/counseling	7	6
Group therapy/counseling	6	6
Substance use services	4	5
Parent/Caretaker services	3	3

### Legal Education Enhancement

#### 11 states/jurisdictions provide legal educational services

- Most provide individual or a combination of individual & group formatted sessions.
- None reported providing legal education in a group only format.

#### Frequency and duration

- 2-3x per week or weekly (individual) & daily (group)
- 30 minute or one hour sessions

#### Enhancement Tools

- Vignettes, role play & didactic lectures
- Manualized materials (e.g., games, workbooks, flashcards)
- One state specifically addresses developmental immaturity during legal education.

#### Legal Education Service Providers

- Most states/jurisdictions utilize masters-level clinicians, social workers and/or psychologists.
- 60% of states/jurisdictions have a bachelors degree minimum requirement to provide legal education, 30% require masters degrees.

### Allowable Remediation Time Frames (n=11)

Figure 1. Provision Period Time Frames

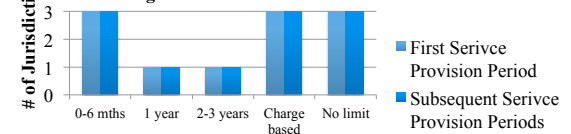
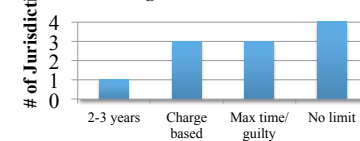


Figure 2. Maximum Allowable Timeframe



### Remediation Outcomes & Service Costs (n=5)

- 151 total youth received remediation services
- 94 total youth were remediated to competence
- Average length of time to achieve remediation
- 122 days
- Approximate annual costs of providing remediation services
- A range from \$300 to \$250,000

## Discussion

This project is still in the process of data collection and more participant responses are required to gain a broader picture of remediation services availability nation-wide. The data thus far indicate that a growing number of jurisdictions recognize developmental immaturity as a factor for incompetence, provided impairment in competence abilities are present. With regard to national remediation services, while over 50% of states indicated that remediation services are provided to incompetent youth, this percentage is likely to be an over-representation of the actual number of states that provide remediation services to incompetent youth. Preliminary results indicate that most juvenile remediation services are provided on a non-inpatient basis, which correlates with existing data on juvenile incompetence that show factors other than mental illness (e.g., intellectual disability and developmental immaturity) impacting youth's competence abilities. Legal educational enhancement is a common component of most state's remediation service programs. However, despite the number of youth who may be incompetent due to factors relating to developmental immaturity, only one state surveyed reported providing legal educational services to specifically address competence deficits resulting from immaturity. Timeframes for provision of remediation services vary, with several jurisdictions using the nature of the crime to determine the allowable period for remediation. Further, several jurisdictions did not place limitations on remediation provision periods. Due to the limited data on remediation outcomes and cost of services at this present time, researchers are unable to draw inferences on these subject areas.