



Capacity to Proceed to Trial in Juveniles

CINDY C. COTTLE, PH.D.

APRIL 22, 2021

Topics

- ▶ Translate CST legal standard into psycho-legal constructs
- ▶ Summarize the age-related and psychosocial factors associated with adjudicative competence
- ▶ Summarize research findings of CST among young adolescents



Competency Standard

G.S. 15A-1001 and G.S. 7B-2401

[N]o person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

Translating Capacity to Proceed into Psychosocial Developmental Factors

Statutory Language:	Understand Nature and Object of Proceedings	Comprehend Situation in Reference to the Proceedings	Assist in defense in rational/reasonable manner
Terminology:	Factual Understanding	Rational understanding and appreciation	Ability to assist and attend
Constructs assessed:	Terminology, purpose and sequence of hearings, roles of judge/attorneys and court counselor, name of charges, possible dispositions, actual rights, options, adversarial context	Youths' perceptions/beliefs about the implications of legal concepts and decisions. Ex: how "rights" apply to them, understand possible dispositions, ability to weigh facts and assess risks and potential consequences, adversarial context	Ability to pay attention, maintain self-control, to testify, communicate with attorney without undue influence from others, ability to trust attorney, manage stress of hearings/trial, decision-making capacity (Godinex v Moran, 1993)
Potential problems: "Mental illness/defect"	(Developmental age), (immaturity), intellectual disability	(Age), (immaturity), intellectual disability	(Age), (immaturity), ADHD, autism, anxiety, PTSD, depression

Legal Criteria	Forensic- Psychological Construct	Possible Assessment Methods
Mental Illness	Mental Illness	Interview, mental status exam, psychological testing, mental health records, interview with caregivers & others
Mental Defect	Developmental disability, intellectual disability, neurological condition	IQ testing, records (school, mental health), interviews with caregivers & others
Ability to understand nature and object of proceedings	Factual understanding of purpose of adjudication and hearings, roles of participants, name/seriousness of charges, possible penalties, possible pleas, adversarial nature, potential consequences/risks	Forensic interview and testing (Juvenile Adjudicative Competence Interview)
Ability to comprehend his own situation in reference to the proceedings	Ability to appreciate role as juvenile (“defendant”), rights as (to plea, to testify, to remain silent), potential consequences and risks, and role as active participant in the context of working with a defense attorney	Forensic interview and testing
Ability to Assist in his defense in a rational or reasonable manner	Ability to attend, maintain self-control, ability to testify, ability to make decisions in a rational manner and without undue influence	Behavioral observation, interview with attorney, and forensic interview and testing
Capacity to Learn	What degree of remediation would be required if the person is not competent?	Forensic interview and testing (and re-testing for retention and ability to apply concepts)

Concepts Relevant to Adolescent Development:

- ▶ Perceived Autonomy: Youths' dependency on others; degree to which youths make decisions independently or take independent responsibility for making decisions. Lack of perceived autonomy: passivity, inattention, acquiescence to authority or peers.
- ▶ Perceptions of Risk: Some youths are more accepting of negative risks than when they were younger or than they will when they are older. Related to risk/reward system.
- ▶ Time Perspective: a sense of time ("long time"); the capacity to consider longer term consequences, to balance longer term losses against short term gains.
- ▶ Abstract/Concrete thinking: The ability to think in hypothetical terms and to draw conclusions or make inferences.
- ▶ Self-Regulation: Children and adolescents have difficulty regulating behavior and impulses.

What to assess when assessing “maturity?”

Some have called for development of an instrument that specifically evaluates psychosocial maturity as related to adjudicative competence. Researchers (e.g., Larson and Grisso (2011), Ferguson et al., 2010, and others) recommended assessing:

- ▶ Developmental stage
- ▶ Responsibility: Autonomy, self-reliance, clarity of identity;
- ▶ Temperance: Ability to delay action, to think through issues, and to seek advice where needed;
- ▶ Perspective: Ability to acknowledge the complexity of a situation and frame a decision within context;
- ▶ Judgment, reasoning, and decision-making ability
- ▶ Future orientation
- ▶ Risk perception

Summary of Research Studies Investigating CST in Young Adolescents

- ▶ There are not many studies pertaining to adolescent CST and even fewer related to children aged 10 and younger. (2 prior to 1990; 15 in the 1990s; and 25 in the 2000s)

“We note that developmental research has not examined the average decision-making capacities of youth below age 12. But youth older than that – e.g., 12-13 – have been found, on average to be at higher risk of having efficient decision-making capacities compared to adolescents and adults (30% of 11-13 yo). “

- ▶ There is no specific age when capacities should be present.
- ▶ In general, abilities are more variable at earlier ages than at older ages, both between individuals and within a specific person
- ▶ Adolescents (at any age) are affected by situational factors (e.g., stress, highly charged emotions). Reasoning becomes more impaired and influenced by these factors and by emotion. Less reliance on logic/objective data.

Summary of Research Studies Investigating CST in Young Adolescents

Study	Age	Main Findings
Cunningham, K. (2020)		10-year update: 2010-2019
Bath, E. et al (2015)	8-22	Younger adolescents were found NCST due to “developmental immaturity”
Vance, L., Cowden, & McKee, G. (1995)	9-16	All 9-and 10-year-olds were NCST
Peterson-Badali et al (1997)	7-12	Substantial difficulties with basic terminology, understanding of pleas or roles of authority figures, rights (of confidentiality) and advocacy role of attorney; Inability to weigh strength of evidence
Warren, J. et al (2019)	8-18	Competency training/attainment study. Youths aged 8-10 were more likely to have charges dismissed. 66% of youths aged 8-10 attained capacity; 80% of 11-13 year-olds attained capacity.
Panza & Fraser (2015)	8+	Age moderated the effect of attention on reasoning. The strength of this effect decreased with age.

Factors associated with age-related incompetency

- ▶ Juveniles aged ≤ 15 years were more likely to have been adjudicated incompetent than those aged ≥ 16 years (Bath, Reba-Harrelson, Peace, Shen, & Liu, 2015).
- ▶ Younger adolescents are more susceptible to changes in adjudicative competence related abilities, such as intellectual functioning. Therefore, small decreases in cognitive abilities are associated with larger deficits (Kivisto et al., 2011)
- ▶ Youths who had previously received mental health treatment have been found to be more likely to be adjudicated competent than those who had not (Bath et. Al, 2015)
- ▶ Youth between 11 and 13 were less likely to focus on long-term consequences of their decisions.
- ▶ Repeated exposure to the justice system does not always lead to improved understanding (common misconception) – Grisso, Steinberg, Woolard, Cauffman, Scott, et al. (2003)

Recommendations of Researchers

- ▶ Larson and Grisso (2011) proposed a multi-tiered system with youths aged 10 and under being assumed non-rebuttably incompetent; those aged 11–13 years being assumed incompetent unless questioned, evaluated, and adjudicated competent; and those aged 14 years and older assumed competent unless questioned, assessed, and adjudicated incompetent.
- ▶ Mandatory evaluation of AC for all youth under a specified age (e.g., 16 and under; Ferguson et al., 2010; Rapisarda & Kaplan, 2016).
- ▶ Abrams et al. (2019) recommended implementing an age limit so that youths under a specified age would not be involved in the juvenile justice system at all. They argued that few adolescents below 12 years of age are involved in the juvenile court system, most who are involved only have misdemeanor or status offense charges, and these youths are disproportionately Black. Setting a federal minimum age law would thus likely help eliminate unnecessary AC evaluations of very young children and reduce racial disparities in the juvenile justice system.

Recommendations of Researchers

- ▶ Attorneys and researchers have advocated for clear legal standards pertaining to developmental immaturity as a cause of incompetence (O'Donnell & Gross, 2012; Viljoen et al., 2010).
- ▶ Katner (2015) suggested that incorporating immaturity into juvenile competency standards could assist courts in increasing diversion and decreasing recidivism by identifying youths who are likely to be amenable to treatment.
- ▶ Scholars and juvenile justice agencies urged wide-spread distribution of information about developmental immaturity within juvenile justice systems during the last decade, in order to increase the likelihood that youths are afforded developmentally appropriate due process protections (Hughes & McPhetres, 2016; Larson & Grisso, 2011; NJJN, 2012)

Recommended Resources

- ▶ Video Clips from Juvenile Justice & Adolescent Brain: Is Healthy Neurodevelopment a Civil Right?
<https://clbb.mgh.harvard.edu/jjsymposium/>
- ▶ Cunningham KA. Advances in juvenile adjudicative competence: A 10-year update. *Behav. Sci. Law.* 2020;38:406–420.
<https://doi.org/10.1002/bsl.2478>

Recommended Resources and References

- ▶ Bath, E., & Gerring, J. (2014). National trends in juvenile competency to stand trial. *Journal of the American Academy of Child & Adolescent Psychiatry*, 53, 265–268. <https://doi.org/10.1016/j.jaac.2013.11.015>
- ▶ Bath, E., Reba-Harrelson, L., Peace, R., Shen, J., & Liu, H. (2015). Correlates of competency to stand trial among youths admitted to a juvenile mental health court. *The Journal of the American Academy of Psychiatry and the Law*, 43, 329–339. Retrieved from. <http://jaapl.org/content/43/3/329.long>
- ▶ Bath, E., Sidhu, S., & Stepanyan, S. (2013). Landmark legislative trends in juvenile justice: An update and primer for child and adolescent psychiatrists. *Journal of the American Academy of Child & Adolescent Psychiatry*, 52, 671–673. <https://doi.org/10.1016/j.jaac.2013.03.017>
- ▶ Bradley, A., Mayzer, R., Schefter, M., Olufs, E., Miller, J., & Laver, M. (2012). Juvenile competency and responsibility: Public perceptions. *Journal of Applied Social Psychology*, 42, 2411–2432. <https://doi.org/10.1111/j.1559-1816.2012.00947.x>

- ▶ Bryant, A., Matthews, G., & Wilhelmsen, B. (2015). Assessing the legitimacy of competence to stand trial in juvenile court: The practice of CST with and without statutory law. *Criminal Justice Policy Review*, 26, 371–399. <https://doi.org/10.1177/0887403413515999>
- ▶ Cauffman, E., & Steinberg, L. (2012). Emerging findings from research on adolescent development and juvenile justice. *Victims & Offenders*, 7, 428–449. <https://doi.org/10.1080/15564886.2012.713901>
- ▶ Chien, J., Coker, K., Parke, S., Tejani, N., Sirken, R., Sanchez-Jaquez, C., ... Azeem, M. (2016). Predictors of competency to stand trial in Connecticut's inpatient juvenile competency restoration program. *The Journal of the American Academy of Psychiatry and the Law*, 44, 451–456. Retrieved from. <http://jaapl.org/content/44/4/451.long>
- ▶ Cooper, D., & Grisso, T. (1997). Five-year research update (1991-1995): Evaluations for competence to stand trial. *Behavioral Sciences & the Law*, 15, 347–364. [https://doi.org/10.1002/\(SICI\)1099-0798\(199722/06\)15:3<347::AID-BSL270>3.0.CO;2-K](https://doi.org/10.1002/(SICI)1099-0798(199722/06)15:3<347::AID-BSL270>3.0.CO;2-K)
- ▶ Felthous, A. (2011). Commentary: Competence to stand trial in juveniles and the judgment model. *The Journal of the American Academy of Psychiatry and the Law*, 39, 327–331. Retrieved from. <http://jaapl.org/content/39/3/327.long>
- ▶ Ferguson, A., Jimenez, M., & Jackson, R. (2010). Juvenile false confessions and competency to stand trial: Implications for policy reformation and research. *The New School Psychology Bulletin*, 7(1), 62–77. Retrieved from. <https://pdfs.semanticscholar.org/b8ac/7988c31a15c981a9c504696a67f640b682da.pdf>
- ▶ Florida Legislature, Office of Program Policy Analysis and Government Accountability. (2013). Juvenile and adult incompetent to proceed cases and costs (Report No. 13–04). Retrieved from <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1304rpt.pdf>

- ▶ Fogel, M., Schiffman, W., Mumley, D., Tillbrook, C., & Grisso, T. (2013). Ten year research update (2001–2010): Evaluations for competence to stand trial (adjudicative competence). *Behavioral Sciences & the Law*, 31, 165–191.
<https://doi.org/10.1002/bsl.2051>
- ▶ Grisso, T. (2005). *Evaluating juveniles' adjudicative competence: A guide for clinical practice*. Sarasota, FL: Professional Resource Press.
- ▶ Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., & Graham, S. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, 27, 333–363.
<https://doi.org/10.1023/A:1024065015717>
- ▶ Soulier, M. (2012). Juvenile offenders: Competence to stand trial. *The Psychiatric Clinics of North America*, 35, 837–854 <https://doi.org/10.1016/j.psc.2012.08.005>
- ▶ Warren, J. I., Jackson, S. L., Skowysz, B. E., Kiefner, S. E., Reed, J., Leviton, A. C. R., ... Walls, G. G. (2019). The competency attainment outcomes of 1,913 juveniles found incompetent to stand trial. *Journal of Applied Juvenile Justice Services*, 6, 47–74.
Retrieved from. <http://npjjs.org/jajjs/>
- ▶ Yanofski, J. (2010). Recognizing immaturity as a cause of juvenile incompetency to stand trial. *The Residents' Journal*, 5(6), 9–10. *The American Journal of Psychiatry*.
https://ajp.psychiatryonline.org/pb/assets/raw/journals/residents-journal/2010/June_2010.pdf