

## Abstract

Similar to adult defendants, youth found incompetent to stand trial may be provided services to restore/remediate competence abilities. Although adult competence restoration is a frequently studied area, information regarding juvenile services is largely unavailable. A survey was designed and administered to members of the National Association of State Mental Health Program Directors, Forensic Division to gather data on jurisdictional juvenile remediation practices. Participants provided information regarding competency evaluations, remediation services, legal educational services, and remediation time frames and outcomes.

## 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 disability, 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 51-item survey focused upon four main areas:

- Juvenile competence evaluations
- Juvenile competence remediation services
- Legal education services and service providers
- Remediation outcomes

### Participants

Thirty-two 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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## Results

### Survey Participants

- Total of 32 jurisdictions responded
  - 21 jurisdictions with remediation services
  - 11 jurisdictions without remediation services

### Juvenile Competence Evaluations

Thirteen of the 32 jurisdictions 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=18)

- Yes (n=14) factors: e.g., dangerousness, current living situation
- No (n=5) 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=20)

Outpatient	17
Inpatient	13
Detention	10
Outpatient Only	3
Inpatient Only	2
Both In & Outpatient	11

### Remediation Services Provided

Type of Services	Inpt (n=12)	Outpt (n=17)
Medication management	12	11
Legal education, individual format	8	15
Legal education, group format	3	3
Case management	9	11
Individual therapy/counseling	10	11
Group therapy/counseling	9	8
Substance use services	7	9
Parent/Caretaker services	5	6

### Legal Education Enhancement

#### 18 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)
  - One hour sessions
- Enhancement Tools**
  - Vignettes, role play & didactic lectures
  - Manualized materials (e.g., games, workbooks, flashcards)
  - Two states specifically addresses developmental immaturity.
- Legal Education Service Providers**
  - Most jurisdictions utilize masters-level clinicians (9), social workers (6), remediation counselors w/ B.A. (5), psychologists (5), teachers (3), psychiatrists (2), attorneys (2).
  - 73% of the jurisdictions reported that those providing legal ed. services are different personnel from those performing the competence evaluations.

## Allowable Remediation Time Frames (n=19)

Figure 1. Provision Period Time Frames

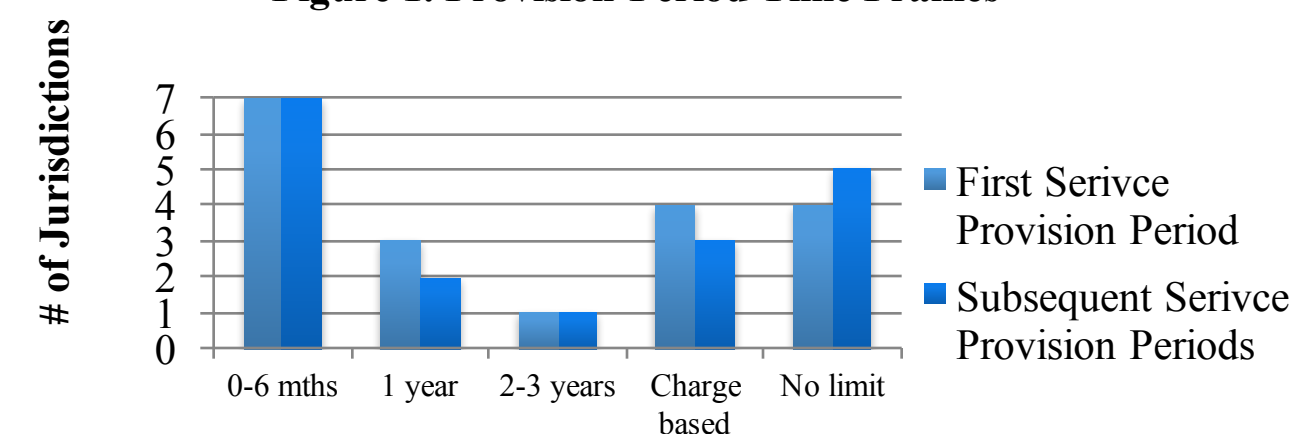
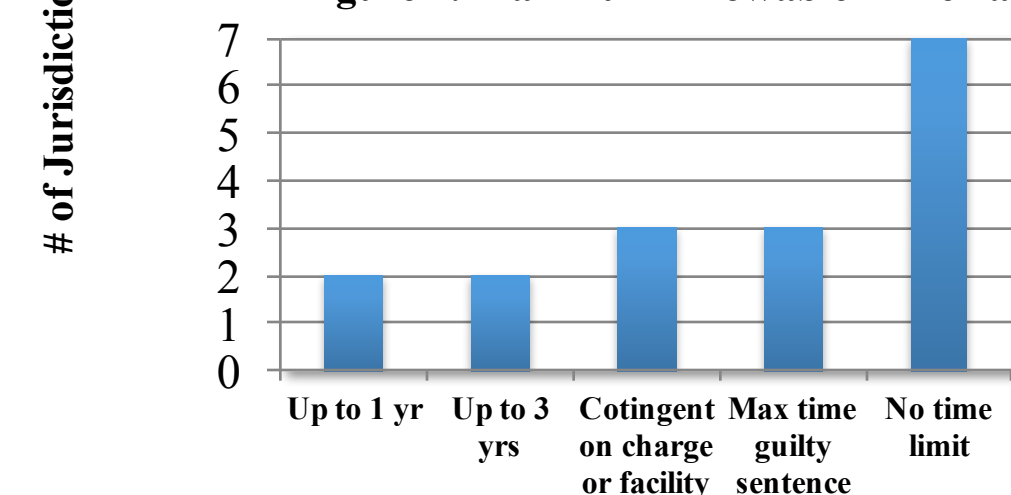


Figure 2. Maximum Allowable Timeframe



## Outcomes

- 5 jurisdictions reported annual outcome data for 2012
- Ranged from 2 to 122 youth/jurisdiction received services
- Outcomes for successful remediation (n=4) 57% overall
- Average timeframe for those youth remediated to competence (n=4) 3 to 6 months

## Discussion

The data indicates 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 64% 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. Results indicate that most juvenile remediation services are provided on an outpatient 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 two states surveyed reported providing legal educational services to specifically address competence deficits resulting from immaturity. Timeframes for provision of remediation services vary, with the majority of jurisdictions using a timeframe of less than six months, several jurisdictions using the nature of the crime to determine the allowable period for remediation. Further, many jurisdictions did not place limitations on remediation provision periods.