

Juveniles' Competence to Stand Trial

What to do when you have a “reason to doubt”

Trial



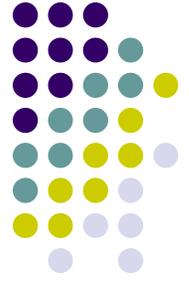
- Competence to stand trial is distinct and entirely separate from other competency issues like competence to waive *Miranda* rights, insanity at the time of the offense and civil competence.

Reason to Doubt



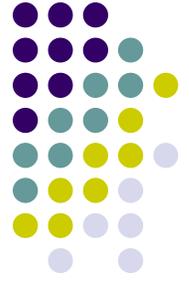
- Wis. Stat. § 938.30(5)(a): if probable cause exists that the juvenile committed the alleged offense and “there is **reason to doubt** the juvenile’s competency to proceed” the court shall order a competency evaluation

Legal Definitions



- Wis. Stat. § 971.13: “person who lacks substantial mental capacity to understand the proceedings or assist in his or her own defense”
- “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.” *Drope v. Missouri*, 420 U.S. 171 (1975); *Dusky v. U.S.*, 363 U.S. 388 (1960).

Practical Application



- It does not mean only cases where the juvenile “doesn’t have a clue what is going on.”
- It does not require definitive proof that the juvenile does not understand the proceedings.
- All that is required is “some evidence raising doubt as to his competence.” *State v. McKnight*, 65 Wis.2d 582, 223 N.W.2d 550 (1974).

Key Factors Signifying a Reason to Doubt

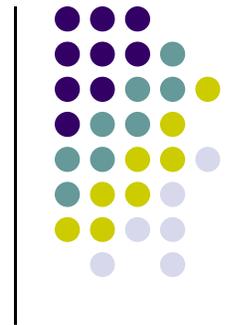


Factors that should prompt counsel to consider whether a competency evaluation is necessary:

- Difficulty communicating with the client about the case
- Age
- Limited intellectual functioning
- Limited verbal or comprehension skills
- Poor academic record and/or placement in special education
- History of emotional or behavioral problems

**Strategic Reasons NOT to raise
competency when counsel has a
reason to doubt:**





● None

If there is a reason to doubt competence you **MUST** raise it.



- *State v. Johnson*, 133 Wis.2d 207, 395 N.W.2d 176 (1986): “We hold that, where defense counsel has a reason to doubt the competency of his client to stand trial, he must raise the issue with the trial court. The failure to raise the issue of competency makes the counsel’s representation, “[fall] below an objective standard of reasonableness.”
- “We believe that considerations of strategy are inappropriate in mental competency situations. Thus, we hold that strategic considerations do not eliminate defense counsel’s duty to request a competency hearing.”
- *State v. Haskins*, 139 Wis.2d 257, 407 N.W.2d 309 (Ct. App. 1987): “When defense counsel has a reason to doubt the competency of his client and fails to raise the issue with the trial court, his representation is deemed to be deficient.”

What is the burden and who has it?



- The party raising the issue has the burden.
- The suggestion of incompetency must be supported by facts giving rise to the doubt.
State v. McKnight, 65 Wis.2d 582.

How much do you tell the court?



Attorney/client privilege issues:

State v. Meeks, 2003 WI 104: “an attorney’s opinions, perceptions, and impressions of a client’s competency to proceed are protected by the attorney-client privilege.”

Points to Raise in Support of the Competency Claim



- Limited intellectual functioning
- Limited verbal or comprehension skills
- Poor academic record and/or placement in special education
- History of emotional or behavioral problems
- Age

Research on Juvenile Competence



- MacArthur Foundation, “Juvenile Adjudicative Competence Study”
- four sites nationwide
- 927 youth, 466 adults – in detention/jail and in the community
- measures of understanding and decision making specifically for trial preparation



- juveniles aged 11-13 were more than 3 times as likely as individuals 18-24 to be “seriously impaired” on competence/relevant abilities
- juveniles 14-15 were twice as likely as young adults to be “seriously impaired”
- individuals less than 15 were less likely to recognize the risks inherent in decision making and less likely to think about long-term consequences of their choices
- juveniles with IQs lower than 85 were more likely to be “significantly impaired” in abilities relevant for competence to stand trial than juveniles of average intelligence
- more than half of juveniles of all below-average 11-13 year olds were “significantly impaired” range on abilities related to competence
- more than 40% of all below-average 14-15 year olds were in the “significantly impaired” range on abilities related to competence

Inadequate Factual Understanding of Court Process by Age

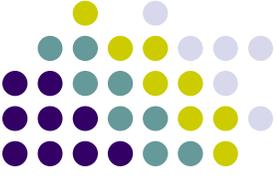


	11-13	14-15	16-17	18-25
Role of Prosecutor	58	32	20	13
Role of Defense Attorney	22	10	8	10
Role of Judge	55	52	46	50
Rights Given up when entering admission	85	72	63	54

Examples of how youth have difficulties for developmental reasons



- “just don’t know things” (poor factual understanding)
simple lack of exposure to legal matters
often can be taught if this is the only problem
- difficulty grasping concepts
a “right”
Pleading “not guilty” “telling the truth”
- difficulty grasping attorney relationship
difficulty understanding attorney privilege
capacity to disagree with one’s attorney
the capacity to listen to counsel and oppositionality
- time perspective
imagining the future
delay vs. immediate relief



Process: court appoints an expert to evaluate your client



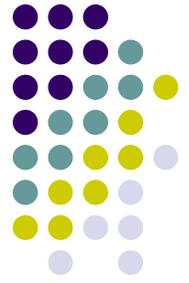
- Wis. Stat. §938.295(a): expert appointed and exam conducted
- Wis. Stat. §938.295(b)3: If you object to the examiner the court shall appoint a different examiner

Issues to raise with the evaluator before he meets your client



- plea bargaining is likely to be involved
- the evidence is uncertain so that the child's ability to provide a coherent, personal account of events is likely to be relevant
- the trial likely will involve many witnesses
- the trial likely will require a complex legal defense
- the child will likely have to testify
- the trial is likely to be lengthy
- the child has few sources of social support

Evaluator's Report



Wis. Stat. § 938.295(2)(b)3

Report must include:

- opinion regarding the juvenile's present mental capacity to understand the proceedings and assist in his or her defense;
- if conclusion is that the juvenile is incompetent, the examiner's opinion regarding the likelihood that the juvenile, if provided with treatment, may be restored to competency within time frame of 938.30(5)(e)1 [within 12 months or the length of the max sentence if that's shorter]

Hearing



Wis. Stat. § 938.30(5)(a)3

- must be held within 10 days of plea hearing if juvenile in secure custody
- must be held within 30 days of plea hearing if juvenile is not in secure custody

Burden at the hearing



State v. Garfoot, 207 Wis.2d 214, 558 N.W.2d 626 (1996): state must prove by the greater weight of the credible evidence that the juvenile is capable of understanding the fundamental nature of the trial process and of meaningfully assisting his counsel.

What if the evaluator determines that your client is competent?



- How did the evaluator ask the client to demonstrate his ability to apply the factual knowledge to his real-life circumstances?
- Did the client understand the impact of this adjudication on possible future actions?
- Did the evaluator ask him if he understood the impact on his ability to choose a career?

Court's options at the hearing



Wis. Stat. § 938.30(5)(d)2

If the court determines the juvenile is not competent to proceed, the court shall suspend the proceedings and

- order the district attorney to file a JIPS petition *or*
- order the county to file a chapter 51 petition

Procedure after finding of incompetence



Wis. Stat. § 938.30(5)(e):

- juvenile shall be periodically reexamined
- written report filed every 3 months and within 30 days before the expiration of the Ch. 51 commitment order or JIPS dispositional order
- if the report says juvenile is competent, court shall hold a hearing within 10 days after the court receives the report
- if after the hearing the court determines that the juvenile is competent then the court shall terminate the commitment or dispositional order and resume the delinquency proceeding

Summary



Think about raising competency when your client:

- has a history of or current evidence of serious mental illness or developmental disability
- is under age 14
- appears to have learning problems, grade delays, or other significant academic challenges

Helpful Articles and Studies



- Thomas Grisso, The Competence of Adolescents as Trial Defendants, 3 Psych. Pub. Pol. & Law 3, 7 (1997)
- Grisso, Steinberg, Woolard, et al. (2003), Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. Law and Human Behavior, 27, 333-363.
- Vance L. Cowden and Geoffrey R. McKee, Competency to Stand Trial in Juvenile Delinquency Proceedings – Cognitive Maturity and the Attorney-Client Relationship, 33 U. Louisville J. of Fam. L. 629 (1995).
- MacArthur Foundation; MacArthur Juvenile Adjudicative Competence Study; www.mac-adoldev-juvjustice.org
- McKee G. and Shea, S. (1999) Competency to stand trial in family court: characteristics of competent and incompetent juveniles