



CHILDREN'S POLICY AND LAW INITIATIVE OF INDIANA

The Compelling Need for Clarity: A Cornerstone Right of Children To Be Competent to Stand Trial in Juvenile Delinquency Proceedings

Indiana is one of only five states that do not have statewide competency to stand trial requirements – no clear standard or evaluation process – for juveniles, according to the National Center for Juvenile Justice.¹

Over the past two decades, 33 states have developed specialized statutes or court rules for determining competency to stand trial in juvenile court.² These states recognize that children are different from adults and therefore require special evaluation criteria.

Creating Indiana's first statutory standard for juvenile competency to stand trial would help align our state's juvenile court practices with the juvenile system's original purpose: rehabilitation. Through this legislation, we can create a process that allows courts and service providers to identify and respond to an individualized child's needs without violating the child's due process rights or subjecting the child to deep involvement in the justice system.

Due process requires that criminal defendants are competent, meaning they (1) have a rational and factual understanding of the proceedings against them and (2) have sufficient present ability to consult with their lawyers with a reasonable degree of understanding.³ Courts have recognized that this requirement extends to juveniles in delinquency proceedings as well.

In Indiana, the process of determining competency to stand trial for *adults* is defined by I.C. § 35-36-3-1. There is **no Indiana statute for determining whether a child prosecuted for a delinquent act is competent to stand trial** and the Indiana Supreme Court has expressly held that **the adult competency statute does not apply to minors because it is too rigid.**⁴ Indiana's juvenile courts can order mental and physical evaluations under Ind. Code § 31-32-12-2, but this statute is not centered on competency, provides no guidance on how to conduct a competency determination, and includes no process for what to do if a child is found to lack competence.

THE IMPORTANCE OF A JUVENILE STANDARD

Juvenile justice stakeholders agree that the unique issues arising in juvenile competency to stand trial assessments make the adult standard unsuitable for children. It is critical that Indiana develop a separate process for juvenile defendants for the following reasons:

¹ The other states without any established juvenile standard for CST are Montana, North Dakota, Rhode Island, and Alaska.

² The remaining states apply the adult standard to children.

³ *Dusky v. U.S.*

⁴ *In re KG.*

1. Adolescents have different clinical disorders and symptoms than adults. While competency is typically raised in adult criminal court due to major mental illness or intellectual disability, the symptoms of these disorders are less common among youth. However, common childhood mental health conditions (such as ADHD) that are unlikely to impair an adult defendant's competency can severely impact a child's case-related functioning.
2. Adolescents' developmental status in and of itself might prevent them from being found competent. Even without any mental health or developmental disability, young children may not have the social or cognitive capacity to make independent decisions. A comprehensive study found that approximately 35% of juveniles below the age of 15 had "significantly impaired" capacities for understanding trial-related matters.⁵ Indiana must determine whether developmental immaturity may underlie a juvenile's lack of competency to stand trial.
3. The evaluations and services required to determine and address Competency to Stand Trial are not the same for children and adults. The forensic examiners who perform competency to stand trial evaluations on adult defendants may lack the training necessary to determine whether a child is competent. Additionally, children who are found incompetent may not respond to the same restoration procedures that are effective with adult defendants. Some children may not be "restorable" at all due to cognitive capacity, and a different process must be developed to divert these children from delinquency system involvement.
4. The system should be uniform. Because Indiana lacks a clear statutory standard and evaluation procedure for children, every county in Indiana currently has a different process for determining juvenile competency to stand trial.

From fall 2019 through 2020, the Children's Policy and Law Initiative has hosted an ongoing dialogue on juvenile competency with stakeholders from across the state, including judges, public defenders, prosecutors, probation officers, mental health officials and community members.

The overwhelming consensus is clear: Indiana's lack of a clear competency statute for juveniles has resulted in uncertainty and confusion among lawyers and judges, as well as inconsistent results for juvenile defendants. As a result, too many children – very young children and those with serious mental health needs or developmental disabilities – are caught up in the juvenile system—a system that creates its own trauma for these children, with no appropriate services.

RECOMMENDATION

Indiana should enact laws establishing a clear standard for Juvenile Competency to Stand Trial. The legislation should provide for an age- and developmentally-appropriate evaluation process, a timeline for restoration services for children who are determined to be capable of restoration, and a procedure that will allow children unable to attain competency to acquire the services they need without a juvenile adjudication. Along with statutory requirements, new resources to support the statute's implementation must be identified and developed.

⁵ MacArthur Juvenile Adjudicative Competence Study.

The Children's Policy and Law Initiative of Indiana (CPLI) is a member organization of the National Juvenile Justice Network, www.njjn.org. Please visit CPLI at www.cpliofindiana.org.