

RESTORING COMPETENCY TO YOUTH IN THE JUVENILE JUSTICE SYSTEM  
IN RURAL AREAS IN NORTHERN CALIFORNIA

By

Rebecca Doane-Dixon

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Yvonne Doble, Advisor

Marian Vasilevich, Community Partner

Geneva Shaw, Second Reader

Geneva Shaw, Program Graduate Coordinator

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## **Abstract**

### **RESTORING COMPETENCY TO YOUTH IN THE JUVENILE JUSTICE SYSTEM IN RURAL AREAS IN NORTHERN CALIFORNIA**

Rebecca Doane-Dixon

Juvenile Justice has become a complex and growing system in the United States. What began as a rehabilitative system is increasingly becoming more punitive. As this transformation is occurring, protections and new regulations have not been implemented at the same pace. This has left youth vulnerable and locked out of the protections they deserve. This project proposed a draft protocol for one county, based on established protocols, recommended practices and an ecological perspective on youth engagement. Considerations in this protocol include: brain development, developmental maturity, learning style, viewing competency as a relative term, malingering and implementing services in a rural area. Youth across the United States are being incarcerated at higher rates. One of the protections adopted in Juvenile Justice is the Competency to Stand Trial (CST). Federal law establishes the requirements for competency, however the implementation process at state and county levels varies widely. The under developed protocol leaves our youth and community at risk of negative consequences; no youth should ever be unjustly incarcerated. The protocol of this project serves as a base for practitioners applying competency restoration services. I strongly recommend that the local juvenile justice system, evaluators and mental health work collaboratively to

establish a more detailed and in-depth competency restoration protocol.

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## **Introduction**

Ensuring that a youth is competent to stand trial is a law in the United States. It has been in place since the 1960 case Dusky vs. United States, which the United States Supreme Court ruled all criminal defendants must be competent to stand trial. This means that the accused understands the charges, legal process against them and that they are able to assist their lawyer in their own defense (Fortunati, Morgan, Temporini, Southwick, Coric & Feuerstein, 2006).

Competency to stand trial is a constitutional right, and is designed to serve in the best interest of the juvenile. In an article by Redding & Frost (2001) they explain how the adjudicative competence doctrine serves three important interests; (1) it ensures that defendants are able to assist in their defense. (2) It increases the likelihood that a defendant's decisions are autonomous decisions reflecting their wishes. (3) It preserves the dignity of the criminal justice process by ensuring that defendants have a moral understanding of the purposed of the proceedings against them (p.354). Competency should not be confused with the issue of sanity. It is not a measure of whether or not the defendant can be held criminally responsible, rather if the individual is capable of engaging in the pretrial and trial proceedings.

While there are programs developed to introduce and reinforce the knowledge about court proceedings and legal rights, there is no manual developed for the person providing the information to the juvenile. Cases and best approach may vary depending

on the specifics and context in which they are deemed incompetent, formalizing the steps to restoring competency could serve as a very useful tool in the process.

Formalizing best practices for competency restoration would guide practitioners, to provide consistent service, especially with the growing number of competency cases. There is a lot of evidence suggesting that many young offenders often do not meet the legal standards of competence. In a study by Ghetti and Redlich (2001), they stated that, “Competence to stand trial (CST) is the most frequently requested type of forensic mental health evaluation, with an estimated 60,000 evaluations requested annually” (p.35). To compound the issue, there is a lack of guidance in standards in performing this service. This leads to a high degree of variation in the methods and tools being utilized. Ghetti and Redlich (2001) went on to explain that many of the professionals who are performing these services have minimal training in the area.

Competency in juvenile proceedings is very important and should be determined at the earliest point in a case. Competency for youth is determined in an assessment administered by a licensed professional. Jackson, Warren & Coburn (2014) explain, “It is a functional assessment that addresses capacities rather than knowledge, is contextual in nature, and is calibrated according to the complexity of the legal situation facing each defendant (p.2). Generally speaking, this means that defendants are able to assist in their defense and able to discuss and understand the facts and trial decisions.

While the idea and notion of restoring competency is a great step and protection for incarcerated youth, there are many issues and obstacles to consider in this process. First it is important to understand a brief history of the juvenile justice system and how

competency restoration was put in place. With this knowledge, one may then come to understand how competency restoration can best be administered and the issues that may arise in achieving this. This includes the training that is required by the practitioners and how to effectively engage the youth with the information. One must consider the language, learning method and brain development and maturity of the youth.

It is also important to examine current practices and the most effective way to provide competency restoration services to youth. The protocols used in Florida, Virginia, and Santa Clara County, included competency restoration steps that were consistent throughout them, which is indicative of potential practices that outline the structure for developing a protocol.

In the examination and development of a protocol I explored important considerations regarding competency and the juvenile justice system. This included the challenges of individual learning style, malingering, brain development and maturity. I also examined the challenges of implementing competency restoration, in rural areas in northern California, which included limited availability of practitioners and resources.

This information was explored with an ecological framework consistently in the forefront. This framework was chosen because this is a complex process that incorporates many different individuals and systems and these factors heavily influence how this process can be achieved. Recommendations have been compiled from best practices, while recognizing the context of being situated in a rural area.

## **History**

As the juvenile justice system has progressed and transformed over time, different protections have been put in place to for youth. Some of these protections are based on constitutional rights, while others are based on the best interest of the youth. One of the more recent issues that have come up in juvenile justice is the determination of competency for youth to stand trial. “Requiring competence is a protective measure for criminal defendants against wrongful conviction, and it affords defendants some protection in making autonomous decisions” (Reisner, Piel & Miller, 2013, p.87). The concept of a youth being competent to stand trial in the juvenile justice system is based on constitutional rights. “The right to due process and a fair trial, as guaranteed by the Fifth and Sixth Amendments respectively, are commonly thought of as cornerstones of the criminal justice system” (National Juvenile Justice Network, 2012). The process of determining the competency and how cases are handled in the juvenile justice system has not been well established in many states and counties.

It is quite easy to access information on adults in the justice systems and all the rights that they are afforded. One may question why we are not developing and implementing more protections for youth who are even more vulnerable. Youth are not receiving proper protections and are likely to end up in situations that are detrimental to their mental state and future, therefore increasing negative impact on the communities they reside in. “With increasing frequency, juvenile justice professionals express concern over the difficulties of serving youth who "do not belong" in the juvenile justice system” (Burrell, Kendrick & Blalock, 2008, p.1).

The juvenile justice system began as a way to help children through a rehabilitative process rather than punishment. Bohland (2011) described that “Specifically, these courts wanted to be flexible, informal, focus on individual needs, rehabilitate, and maintain confidentiality” (p.2). In doing this, juveniles did not receive the same protections as adults in ‘due process’. Since then, there has been an increase in the establishment of protections for juveniles. Bohland (2011) went to to explain what this incorporated:

Juveniles have the right to timely notice of charges; the right to be "represented by counsel retained by [parents], or if they are unable to afford counsel, that counsel will be appointed to represent the child"; the right to protect themselves against self-incrimination; the right to cross-examine witnesses; and the right to a 'beyond a reasonable doubt' standard in delinquency cases (p.3).

As time went on, it appeared that the number of juveniles entering into the justice system was rising. There was also an increase in sentencing options and harsher punishments. “In addition, therapeutic goals of intervention were replaced with those of deterrence, incapacitation, and punishment” (Merlo & Benokos, 2003, p.280).

It was also apparent that the same protections were not granted to all juvenile defendants. Some of these issues were remedied during *In re Gault*, where

The Court closely examined the juvenile court system, ultimately determining that, while there are legitimate reasons for treating juveniles and adults differently, juveniles facing an adjudication of delinquency and

incarceration are entitled to certain procedural safeguards under the Due Process Clause of the Fourteenth Amendment (uscourts.gov, n.d.)

As the juvenile justice system progressed into a more punitive system, more rights were afforded to juveniles. During this process there have been several supreme court cases that have affected and increased due process rights to juvenile offenders. The ones that were most influential include *Kent v. United States* and *In re Gault*. However, one area that is still lacking is in the area of competency for juvenile court. “At this time there are no constitutional requirements or criteria in the juvenile court system” (Bradley, Mayzer, Schefter, Olufs & Miller, 2012, p. 2420). The legal standard that has been established for competency is defined in *Dusky V. United States*, this was established for adult court. Some states and counties have, however, developed their own protocols. It should be noted that while “juvenile trial competency is not explicitly recognized in many U.S. jurisdictions, it is not disallowed in any” (Helburn, Hawk & Tate, 1996, p. 574).

## **Methodology**

I conducted a review of previous research and literature exploring effective practices for developing a framework for competency restoration for juveniles in Humboldt County. I also examined models and practices that are currently being used in various counties and states for restoring competency to juveniles. The framework utilized in this process is an ecological systems framework. I chose this framework to organize findings in a cohesive way as well as how concepts relate to one another.

The ecological theory framework theorized by Bronfenbrenner, “suggested that person–environment interactions take place at four different levels of systems: microsystem, mesosystem, exosystem, and macro system” (Chan & Ho, 2008, p.840). The environment in which a person is situated has a great impact on their process. The process of competency restoration is complex and comprised of many influential factors. For example, the individual's biological state, emotional process, the law, available resources, youth advocates and much more.

Examining the setting, the microsystem, in which the youth will be restored has an impact in the effectiveness of the information being given. According to Stokols (1996), these environmental settings, which possess multiple physical, social, and cultural dimensions, “can influence a variety of health outcomes, including physical health status, developmental maturation, emotional well-being, and social cohesion” (p.294). Comprehensive integration and understanding of the influential factors of restoration,

will better equip designated professionals and advocates to deal with the challenges that arise.

I researched various protocols and information that different states and counties have implemented across the United States. I thoroughly examined Santa Clara County, Virginia and Florida because they had the most information available as well as the most established process. While I set out to examine numerous documents outlining protocols being utilized, the information available was limited. Many states and counties follow the eight step process laid out by the law, but have not implemented much beyond that. This process led me to conduct research on the history, implementation, origin of practices and additional consideration in the discourse of competency protocols in juvenile justice

## **Literature Review**

The specific requirements of Competency restoration as outlined by the law serve as a guide to all information researched. While it is very important to consider this, through my research I found a number of other factors that should contribute to the method in which competency restoration is applied. These include brain development, developmental maturity, learning styles, viewing competency as a relative term, the issue of malingering, and being situated in a rural area. Examining these considerations really lends to the idea of an ecological framework by incorporating the many aspects that affects one's life.

### **Brain Development**

Although the juvenile justice system has changed over time, it is still very important to recognize the developmental and mental states of the children who are introduced into the system. There are a numerous scientific studies that show that teenagers brains are far less developed than those of adults. "Specifically, research demonstrates that children's brains are still developing in ways that affect their impulse control and their ability to choose between antisocial and acceptable courses of action" (Bohland, 2011, p. 197). With this recognition and developments in social systems research, it seems necessary the competency restoration be implemented with a sound method.

Studies on brain development support the idea that people of different ages have different capabilities. “Structural and functional neuroimaging studies using magnetic resonance imaging and electroencephalography have shown that brain maturation continues through adolescence and into early adulthood” (Bradley et al, 2012, p.2420). “The term executive function is used to describe the capacity that allows us to control and coordinate our thoughts and behavior” (Blakemore & Choudhury, 2006, p.297). This would directly correspond with the ability to think about the future and control impulses. One of the most significant parts of brain development involve the prefrontal cortex. “The prefrontal cortex is critical to many cognitive abilities that are considered particularly human, and forms a large part of a neural system crucial for normal socio-emotional and executive functioning” (Teffer & Semendeferi, 2012, p.191). Executive functioning includes skills such as impulse control, selective attention, attention shifting, working memory, problem solving, planning, and decision making. In a study by Nelson, Leibenluft, McClure & Pine (2005) they discussed how the prefrontal cortex also moderates activity in other areas of the brain such as the limbic system with is the area that generates emotions (p.165). In studies, the limbic system in adolescents is activated more in response to stimuli, whereas adults tended to engage more in cognitive abilities that modulated their responses. “This may explain why adolescents are frequently described as emotional, and why they react strongly to certain social stimuli without thinking through the consequences” (Bradley et al, 2012, p. 2415).

It should be noted that beyond normal developmental immaturity, many disorders may interfere with an adolescent's ability to fully meet the *Dusky* criteria in ways

different from adults. These include deficits associated with attention (e.g., attention deficit hyperactivity disorder), anxiety, and learning (Grisso & Steinberg, 2005, p.623), as well as schizophrenia, bipolar disorder, depression, and conduct disorder.

### **Developmental Maturity**

As was mentioned, the criteria for competency is outlined in *Dusky v. United States*. While this may be enough for adults in the justice system, when applying this same standard to juveniles, developmental immaturity should be considered. Studies have shown differences in how adolescents deal with the justice system depending on age and maturity. One significant study was conducted by Grisso, Steinberg, Woolard, Cauffman, Scott & Graham in 2003, where he found that, Younger adolescents also show more compliance with authorities, perceive a lower likelihood of negative consequences, and recognize fewer long-term consequences (p.363). The differences in these outcomes would indicate that psychosocial skills vary with maturity. In fact, Bradley et al (2012) states that, “Cognitive and psychosocial skills are still developing throughout adolescence” (p.2418). Thus, even when some juveniles meet the *Dusky* standard, they may still lack the competency required to effectively participate in criminal trials. While this is a process in the adolescent’s development, it is also influenced by the societal expectations that are in place, as well as expectations of one’s self changing as they reach a higher level of maturity.

While competency to stand trial is based on one’s ability to understand the court procedures and be able to use counsel appropriately, another factor that affects this

process is the youth's maturity level. There is not a legal mandate to assess a juvenile's maturity however many evaluators do. In a report by Bradley et al (2012) they define social maturity as the ability to understand the long-term consequences of their decisions and to avoid being unduly influenced by others (p.2411). So then, in order to understand if a youth has the ability to possess the skills that are necessary to display competency, it is also necessary to make sure they are at the appropriate maturity level to be able to do so. It is important to consider that developmental level or functional age can vary greatly from actual age and should be considered independent of age. The report goes on to state that:

Each of these competency-related abilities is contingent on developmental status and an appreciation of the extent to which juvenile offenders possess competency-related abilities is necessary to ensure that they can navigate through the criminal justice process free from coercion and are adjudicated in a developmentally appropriate way (Bradley et al, 2012, p.2420).

There has also been research that suggests that age, mental illness and IQ are commonly directly linked to competency. It has been found that many children younger than age 13 or 14 are incompetent. Also IQ is consistently related to competency, "with likelihood of competence declining with lower IQ scores" (Grisso et al, 2003, p.345). There is a similar correlation in regards to those with mental illness, retardation and special education placements being more likely to be incompetent. Grisso (2003) who

has done a lot of research on the topic urges attorneys to routinely consider the possibility of incompetence when the above factors are present.

### **Learning Styles and Culture**

Each individual has a different style of learning which affects the way one receives and processes information. In an article about learning styles, the author Hatami (2013) refers to it as the natural, habitual and preferred way of absorbing, processing and retaining new information and skills (p.488). There is no one correct style of learning and each seem to have their own pros and cons. The article goes on to state that diagnosing learning styles and then matching them to teaching methods can greatly enhance learning. While some may argue that people could benefit from being able to use different learning styles, it is still supported in research that learning can progress more quickly and easily when teaching style matches learning style. I would assert that in the case of Humboldt County's restoration process, that the teaching style be directly corresponded with the learning style of the individual receiving competency restoration, as it is a one on one service.

The most commonly studied and utilized theory on learning styles has been done by Fleming and is called VARK, visual, oral, read/write and kinesthetic. In an article by Rolfe and Cheek (2012) they briefly describe the learning styles and how they best receive information. Visual/verbal learners are efficient when presented with visual information in the form of written language. This would include things like lectures that have slides to go along with them or textbooks. The visual/non-verbal learning style is

most proficient when presented with visual information like pictures and diagrams. This type of learner may remember something by mentally visualizing a picture of it. The tactile/kinesthetic learner is most efficient with hands-on style being able to be active and practice what they've learned. Auditory/verbal learning style works when information is given in spoken language such as lectures, groups discussion or audio tapes. While learners may be versatile and this theory can not be applied to all situations, it may serve as a helpful guide in getting started and making sure the material is presented in a way that is suitable for the learner.

While I ran into trouble accessing a direct information on how culture may also influence learning styles, it seems clear that there must be a relationship between culture and learning. Culture can be described as “a certain commonality of meaning, customs and rules (not a homogeneous entity) shared by a certain group of people and setting a complex framework for learning and development” (Trommsdorf and Dasen, 2001, p. 3004). If this idea is accepted than it would claim that there is a connection between culture and learning. This could be viewed as socio-cultural and we have to acknowledge that “learning cannot be separated from the contexts in which it occurs and to reconceptualize cognition and learning as activities that occur through social interaction” (Lattuca, 2002, p.711). Then it would be important to consider both the contextual experience where learning has previously occurred for the individual as well as the current one in which one will be working in competency restoration. For example, if teaching is generally done by an authority figure, peer or family member and how they information is relayed can be important and useful information.

### **Competency as a Relative Term**

There are arguments that while the law is in place, it may not be sufficiently assessing competency and protecting the rights of defendants. Requiring that a criminal defendant be competent has a modest aim. Redding and Frost (2001) describe it as requiring only a minimal capacity to comprehend and communicate. They go on to describe that beyond the three legal requirements, competency has come to include the defendant's ability to understand legal strategy, relate to defense attorney and communicate effectively, and ability to follow courtroom proceedings, tolerate stress of trial and behave appropriately in court (p.360) One of the other issues that they explore is the black and white idea of competency. "The court has refused to differentiate varying standards of competence. While psychiatrists and scholars may find it useful to classify the various kinds and degrees of competence, the Due Process Clause does not impose these additional requirements" (Redding & Frost, 2011, p.355).

It shall be more useful to consider competency to stand trial as a contextual idea with gradations. Heilbrun et al (1996) explained that, context shall be shaped by many considerations such as severity of charges and associated penalties, characteristics of the attorneys and judge, nature of the plea of other defense options (p.574). The usefulness and importance of this idea has been shown in the behavioral science research. One such study was measured by conducting the Competency Screening Test (CST) on a group of incarcerated and non-incarcerated individuals ranging in age. The results found that "CST scores increased with age, with the 12-year-old group significantly lower than the two 15-year-old groups; in turn the 15-year-old groups were significantly lower than the

adult group” (Heilbrun, Hawk & Tate, 1996 p.574). While it may be evident that age and maturity affect competency to stand trial, this is not an established protocol in the juvenile justice system. This leaves an unclear line for the task of determining competency and there are many factors that should be taken into consideration in this process; including age, whether they fall within normal behaviors for their age range, presence of mental illness, learning disorders, and cognitive impairments.

### **Malingering**

Another factor that should be of consideration in competency cases is the idea of malingering. “Malingering in the medico-legal context of the criminal courts is generally for one of two purposes: to present as incompetent to stand trial or to successfully plead not guilty by reason of insanity” (McDermott, Dualan & Scott, 2013, p.290). There have been several theories that work to explain the motivations for malingering. Walters (2006) notes that offenders may mangle for a variety of reasons, including for example relocation, attention or amusement (p.25). In another study by McDermott & Sokolov (2009), they found that offenders may mangle for two reasons; to secure desired medication or to transfer out of the general population (p.755). Individuals may also choose to mangle for other reasons, some which include postponing sentencing and being placed in a rehabilitation facility rather than jail or to gain access to psychiatric services and medications. One of these theories has been proposed by Rogers (1994) as the adaptational model which explains that the mangle is confronted with an adverse situation; in order to avoid conviction, one will claim mental illness (p.545). The

American Psychiatric Association describes malingering as the intentional production of false or grossly exaggerated physical or psychological symptoms motivated by external incentives. The issue that arises for clinicians in this scenario comes with doubting whether or not someone is really experiencing the symptoms or not. Not attending to the symptoms that an individual is claiming to have is negligent.

### **Santa Clara, Virginia and Florida's Models**

I examined the models of Competency Restoration Programs that were outlined in Santa Clara County, Virginia and Florida. These models seemed to have the most information available. All three of the models followed the same outline in competency cases with the following scenario; (1) A doubt is raised regarding competency (2) Court determines if an evaluation should be done (3) If there is a doubt, proceedings are suspended. If there is not a doubt, proceedings continue. (4) Court orders a competency evaluation. (5) If minor is found incompetent and is likely to be restored, competency restoration services are ordered. If minor is found competent, proceedings continue. If minor is found incompetent and unlikely to have competency restored, charges are dropped and other services may be initiated. (6) Reviews are conducted to see if minor has attained competency. While the general outline of these models follows the same sequence, each one has their own specifications.

In Santa Clara, both there is both a Competency Restoration Supervisor and Counselor. They both meet with minor to make an individualized plan. The Counselor is to meet with the minor at least two times per week, three is preferred. The Supervisor is

also required to meet with the minor every thirty days to evaluate progress. In Santa Clara, they will provide interactive competency restoration curriculum that is tailor to the individual.

In Virginia they also follow the guidelines written out above. They have established curriculum that is useful in teaching the minor in restoration services. I did attempt to obtain a copy of this curriculum and was unable to access it online. They meet with the minor two to three times a week. They evaluate progress in three month increments.

Florida is one of the states with the most developed protocol. They follow the above guidelines; however, they will not include age and maturity as a factor in determining competency. Florida has various programs throughout the state that administer services to youth. Twin Oaks Juvenile Development is a statewide program through the Department of Children and Families that provides services to incompetent youth due to Mental Illness, Intellectual Disability, Autism or Dual Diagnosis. One of the unique things about Florida is that they have a program, Apalachicola Forest Youth Camp which is able to provide competency restoration services to juvenile who are incompetent due to mental illness or mental retardation. This camp provides restoration services as well as building self-esteem, anger management, accepting responsibility and much more.

## Results

Given the history of the juvenile justice system and the lack of statutes in regards to competency restoration for juveniles, there is an identified need to create a more formal protocol for competency restoration. Having a formalized process will ensure protections for juveniles and making sure that due process is being provided. The steps compiled were done with the best interest and outcome for the juvenile in the forefront. It is an effort to ensure that each juvenile is being treated in the same manner and with the same amount of diligence, with considerations being made to meet the individual needs of the juvenile for which services are being provided. It will serve to provide all competency restoration practitioners with a clear design to follow to assure no difference in care and services to juveniles. The full protocol can be located in Appendix A. The main areas that were addressed in the protocol include:

- (1) Goal/Philosophy
- (2) Legal Process in the process of addressing competency
- (3) Qualifications of Competency Restoration Counselor
- (4) Consideration of Least Restrictive Placement

The Goal and philosophy of the protocol were based on a few different factors, the main focus being to meet the needs of the youth with best practice methods being utilized. The goal also had to account for the legal process and requirements that are necessary for competency restoration as outlined by the law. These two factors combined outline the mission of the protocol.

Included in the protocol I have specified time periods, tools and individuals/parties to be involved in the different steps. This protocol was developed by researching what other counties

and states are doing to address competency restoration services. This protocol serves as a base for services provided and discusses recommendations based on my research. I also recommend next steps that could be taken by the county to ensure that competency restoration is being applied in the most effective and comprehensive manner possible.

Law guides the initial steps that are taken in the competency process. The legal process, which is defined in the protocol, is formulated from the national standard. While the states and counties have the option to implement their own protocols and standard in the competency restoration process, this yet to be done in any Northern California county. I suggest implementing additional steps in the preparation of the individualized Competency Restoration Services Plan.

### **Best Practice**

As the protocol I designed laid out the baseline for the steps to be taken in competency restoration, incorporating the considerations above would be best practice. This would include brain development, developmental maturity, learning styles and culture, competency as a relative term and the issue of malingering. These considerations would be of great importance both while determining competency and while implementing competency restoration services.

The considerations of brain development, maturity, competency as a relative term and malingering would be incorporated into Step 2 of the protocol when the designated professional determines competency. As was mentioned above, competency is a complex issue that needs to account for many things. An awareness and understanding of brain development, maturity and how this affects reasoning abilities in youth at different stages would be best practice. For

example, as noted there are adolescents who may meet the Dusky criteria; however, they “may nonetheless lack the decisional competence required to effectively participate in criminal trials” (Bradley et al, 2012, p. 2420). More importantly, they simply may not have the ability to truly understand the complex and long term trajectory that is involved in the court process. Bradley et al. (2012) go on to state that, “Development of the ability to debate pros and cons, the ability to weigh long-term and short-term consequences of one’s decisions, and abstract thinking are especially relevant to juvenile adjudicative competency” (p.2420).

The development of an individualized Competency Restoration Services plan would include learning method and culture of the client, which would be addressed in Step 5 of the protocol. As was mentioned, there are various methods of learning and presenting material in the manner consistent with learning style provides the most efficient way for information to be received. Incorporating various styles would include verbal interaction, printed material, the construction of diagrams or dioramas and video or computer presentations. A best practice consideration would include researching the cultural background of the juvenile to explore how learning has historically been introduced. The primary language which the juveniles speaks and reads should be present on the learning materials as well as in verbal communication.

It is necessary for lawmakers and clinicians to work together to continue researching and formulating standards on the issue of competency. Ideally composing a legal structure for competency to be a relative would make the space to weigh all the contextual pieces surrounding individuals to make a determination and recommendation tailored specifically to them. A competent defendant should possess many of the cognitive and emotional capacities that are

necessary during a trial. It would also be useful to establish guidelines in regards to the issues of mental illness or mental retardation, psychiatric diagnosis and IQ score. There may be reasons that competency is questioned based on the attorney's failure to effectively communicate with a client who may have poor education, cultural differences or mental illness.

Another area that would improve the fidelity of competency hearings is raising the awareness and training of those involved in the process including, attorneys, judge, prosecutors and clinicians. Since the juvenile justice system was created to be rehabilitative rather than punitive, some may assume that the proper protections are in place for juveniles; however, as the system has shifted to be more penal, the statutes have not changed at the same pace. This has left room for injustices to occur. As was seen in Florida, the issue of competence is not raised due to the fact that there is a lack of training and understanding of the issue (Redding & Frost, 2001, p.355). The more educated people are on the topic of competency, the more effectively it can be addressed.

## **Conclusion**

As I began this project, I had a vision of how the process would unfold and the information I would be examining. The idea was to review already established protocols and utilize the components that demonstrated best practice and could be reasonably implemented in rural areas in Northern California. As my research progressed, I realized that the success of this project would require the support and investment of many important players for the competency restoration process to provide protection to incarcerated youth. The formation of a multi disciplinary team, which could include but not be limited to representatives from the local justice system, psychologists, school officials, community leaders and the highest branches of mental health could collaborate on how to navigate local implementation. Understanding how juvenile justice works, current regulations and how and why those regulations came into place is critical to the advocacy of such a multifaceted and deeply systemic protocol.

It became apparent through my research that a more formal protocol needs to be enacted throughout the United States. A formalized plan also gives all parties involved in the legal process a clear definition of how the process is to be handled. While the input of each county on how these provisions will work is critical to addressing the needs of specific areas, the greater need is for a universal protection for juveniles, which could be addressed by the intervention of federal law. I believe that is the only real way to ensure that our juveniles are being treated consistently throughout whatever legal process they face.

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## **Appendix A: Outline of Recommended Protocol for Competency Restoration**

### **Goal/Philosophy:**

To provide appropriate competency restoration services to juveniles, in the least restrictive and most efficient manner possible with the goal that each juvenile will become knowledgeable about the court process and their legal situation to ensure due process in the legal system.

### **Steps In Competency Restoration Cases:**

- 1) A doubt is raised as to whether or not a minor is competent to stand trial. This is done by the court, Probation Officer or Attorney.
  - a. Judge must then make initial determination of possible incompetency.
- 2) Competency is determined by Psychiatrist or Clinical Psychologist with specialized training in evaluating juveniles.
  - a. If youth is found competent, proceedings continue.
  - b. If youth is found incompetent, proceedings are suspended and competency restoration is ordered.
  - c. Court finds youth incompetency and Unlikely to attain competence in the foreseeable future.
    - i) Court shall dismiss the juvenile court petition and terminate the court's jurisdiction.
    - ii) Court shall encourage parties to cooperate and obtain appropriate voluntary services for the minor and their family.

- 3) Competency Multi-Disciplinary Team meeting is held to prepare a plan for ancillary services that are to be provided by probation and mental health services.
  - a. Minor is assigned a Competency Restoration Counselor.
  - b. An individualized Competency Restoration Services Plan will be prepared.
    - i) Individualized plan will determine the most appropriate environmental setting to restore competency in.
    - ii) Individualized plan will also determine the learning method of the minor and administer services in the most comprehensive way for this individual.  
  
This may include one on one verbal interaction, printed material, video or computer presentations and must be in the primary language of the minor.
- 4) Competency Restoration Services are implemented.
  - a. Competency Counselor meets with youth 1-2 times a week, as determined based on need.  
  
Plan will be fluid and on-going.
  - b. Counselor will test minor at various intervals, as decided in meeting, to determine if the minor has attained competency.
- 5) The minor must demonstrate that they;
  - Have a rational as well as a factual understanding of the proceedings against the minor, and
  - Have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding;
  - OR
  - Unlikely to attain competence within the foreseeable future.

#### **Qualifications of Competency Restoration Counselor**

- Position of Case Manager or Clinician

- 2 or more year's experience working with youth
- Have developed awareness of learning styles
- Able to provide psycho-education
- Ability to effectively communicate and build rapport with youth

### **Consideration of Least Restrictive Placement**

- Incarcerated/Juvenile Hall
- Community
- Mental Health Hospital/Therapeutic Treatment Home

## Appendix B: Welfare and Institution Code 709

### Welfare and Institution Code 709

709. (a) During the pendency of any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency. A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended.

(b) Upon suspension of proceedings, the court shall order that the question of the minor's competence be determined at a hearing. The court shall appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency. The expert shall have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence. The Judicial Council shall develop and adopt rules for the implementation of these requirements.

(c) If the minor is found to be incompetent by a preponderance of the evidence, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction. During this time, the court may make orders that it deems appropriate for services, subject to subdivision (h), that may assist the minor in attaining competency. Further, the court may rule on motions that do not require the participation of the minor in the preparation of the motions. These motions include, but are not limited to, the following:

- (1) Motions to dismiss.
- (2) Motions by the defense regarding a change in the placement of the minor.
- (3) Detention hearings.
- (4) Demurrers.

(d) If the minor is found to be competent, the court may proceed commensurate with the court's jurisdiction.

(e) This section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or 602.

(f) If the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals described in Article 1 (commencing with Section 4620) of Chapter 5 of Division 4.5, or his or her designee, to evaluate the minor. The director of the regional center, or his or her designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)), and shall provide the court with a written report informing the court of his or her determination. The court's appointment of the director of the regional center for determination of eligibility for services shall

not delay the court's proceedings for determination of competency.

(g) An expert's opinion that a minor is developmentally disabled does not supersede an independent determination by the regional center whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(h) Nothing in this section shall be interpreted to authorize or require the following:

(1) The court to place a minor who is incompetent in a developmental center or community facility operated by the State Department of Developmental Services without a determination by a regional center director, or his or her designee, that the minor has a developmental disability and is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(2) The director of the regional center, or his or her designee, to make determinations regarding the competency of a minor.