

**REPORT OF
THE VIRGINIA COMMISSION ON YOUTH**

**STUDY OF JUVENILE
COMPETENCY ISSUES IN
LEGAL PROCEEDINGS**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 42

**COMMONWEALTH OF VIRGINIA
RICHMOND
1999**



COMMONWEALTH of VIRGINIA

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January 13, 1999

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TO: The Honorable James S. Gilmore, III, Governor of Virginia

and

Members of the Virginia General Assembly

The 1998 General Assembly, through House Joint Resolution 69, requested that the Virginia Commission on Youth "be directed to study the adjudication of competency in juvenile delinquency proceedings."

Enclosed for your review and consideration is the report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledge their input into this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Thomas M. Jackson, Jr." with a stylized flourish at the end.

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Chairman

Delegate Eric I. Cantor
Delegate L. Karen Darner
Senator J. Randy Forbes

Delegate Phillip A. Hamilton
Senator R. Edward Houck
Delegate Jerrauld C. Jones
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Norma M. Clark
Gary L. Close
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I. Authority for Study

Section 9-292 of the *Code of Virginia* establishes the Commission on Youth and directs it to “. . . study and provide recommendations addressing the needs of and services to the Commonwealth’s youth and their families.” Section 9-294 provides that the Commission has the power to “undertake studies and gather information and data in order to accomplish its purposes. . .and to formulate and presents its recommendations to the Governor and members of the General Assembly.”

The 1998 General Assembly enacted House Joint Resolution 69 requesting the Commission on Youth to conduct a study examining issues related to a juvenile’s competency to stand trial in Juvenile Court proceedings. In fulfilling its legislative mandate, the Commission on Youth undertook the study.

II. Members Appointed to Serve

The authorizing legislation required the Commission on Youth to study juvenile competency in legal proceedings. The Commission received presentations and briefings three times in the summer and fall of 1998. The members of the Commission are:

Del. Thomas M. Jackson, Jr. (Hillsville), Chair
Sen. Yvonne B. Miller (Norfolk), Vice Chair
Del. Eric I. Cantor (Henrico)
Del. L. Karen Darner (Arlington)
Del. Phillip Hamilton (Newport News)
Del. Jerrauld C. Jones (Norfolk)
Del. Robert F. McDonnell (Virginia Beach)
Sen. J. Randy Forbes (Chesapeake)
Sen. R. Edward Houck (Spotsylvania)
Mr. Gary C. Close (Culpeper)
Ms. Michelle Harris (Norfolk)
Mr. Douglas Jones (Alexandria)

III. Executive Summary

Competency to stand trial is a due process protection provided by the U.S. Constitution. The standard to evaluate competency has been articulated in the U.S. Supreme Court *Dusky* and *Drope* rulings. Assessment of competency generally includes the defendant’s factual understanding of the charges and legal proceedings, ability to rationally understand the proceedings, and ability to communicate information to counsel. *The Code of Virginia* does not address the issue of a juvenile’s right to competency when transfer to Circuit Court is not at issue.

Statutory reforms to the juvenile justice system in 1996 have elevated the importance of a juvenile's competency to stand trial. In assessing juvenile competency, there is the additional challenge of how to appropriately incorporate adolescent development, given the impact of age and maturity on the ability to understand and communicate. Statewide surveys of Judges, prosecutors, and public defenders conducted by the Commission on Youth found that 68% of the respondents believe competency for juveniles is a relevant concern. Less than half of the jurisdictions have a standard process in place to handle the evaluation or necessary follow-up services. Additionally, there is an absence of service options to provide restoration to incompetent juveniles.

Based on these findings, it is recommended that the *Code of Virginia* be amended to effect the following recommendations and that sufficient funds are allocated for service provisions.

A. Establishment of Competency

Recommendation 1

Amend the *Code* to establish a process for raising the issue of a juvenile's competency to stand trial in delinquency proceedings. The issue can be raised by the Defense Counsel, Judge or Commonwealth's Attorney. Competency is presumed; there must be a court order before the evaluation can be ordered.

Recommendation 2

The statutory definition of juvenile competency should encompass the *Dusky* and *Drope* standards of having sufficient present ability to consult with one's attorney with a reasonable degree of rational understanding, a rational as well as a factual understanding of the proceedings, and the capacity to assist in preparing one's defense.

Recommendation 3

Age or age-related developmental factors unrelated to the child's capacity to understand or assist in his defense cannot be the sole basis for a finding of incompetency.

B. Competency Evaluations

Recommendation 4

Competency evaluations are to be conducted on an outpatient basis unless hospitalization is clinically indicated.

Recommendation 5

Evaluators (and restorers) must be licensed professionals with training and experience specific to working with juveniles and have forensic training in the evaluation of juveniles.

C. Time Limits

Recommendation 6

Timeframe for the completion of the competency evaluation cannot exceed ten days once the required information is provided to the evaluator.

Recommendation 7

If the Judge finds the juvenile incompetent but restorable, the Judge shall stay the proceedings and order restoration services. The court must review the juvenile's progress towards competency every three months until competency is restored.

Recommendation 8

If not dismissed with prejudice at an earlier time, the charges against an unrestorable incompetent juvenile shall be dismissed one year after the date of arrest for misdemeanor charges and three years after the date of arrest for felony charges.

D. Dispositional Options

Recommendation 9

If the Judge finds the juvenile incompetent and unrestorable, there are four options:

- a) commit the juvenile to a mental health facility under Section 16.1 355 et. seq.;
- b) certify the juvenile under Section 37.1-65.1;
- c) file a Child in Need of Supervision (CHINS) petition, placing the individual on supervised probation and ordering treatment; or
- d) release the juvenile.

E. Service Needs

Recommendation 10

The Department of Mental Health, Mental Retardation and Substance Abuse Services should maintain sufficient facility capacity to conduct approximately twenty-five juvenile competency evaluations on an in-patient basis annually.

Recommendation 11

Funding for the development and dissemination of competency assessment and restoration tools should be provided to the Department of Mental Health, Mental Retardation and Substance Abuse Services. (\$60,600)

Recommendation 12

Funding restoration services, ranging from home-based to placement in a secure setting, should be contracted out on a regional basis by the Department of Mental Health, Mental Retardation and Substance Abuse Services. (\$1,244,710)

Recommendation 13

Funding for two administrative staff should be provided to the Department of Mental Health, Mental Retardation and Substance Abuse Services to oversee the juvenile competency evaluations and restoration contracts. (\$112,280)

IV. Study Goals and Objectives

In response to the study mandate of HJR 69, the following goals were developed by staff and the study workgroup and approved by the Commission on Youth:

- A. Ascertain the need for a standard for juvenile competency to stand trial for delinquency and status offenses when transfer to Circuit Court is not at issue;
- B. Determine whether adult standards and procedures to evaluate competency should apply to juveniles;
- C. Assess current system capacity for juvenile competency evaluations;
- D. Determine whether adult standards and procedures to provide restoration treatment are applicable to juveniles; and
- E. Assess current system capacity for juvenile restoration services.

The objectives of the workgroup were to:

1. Identify adult competency requirements established by the U.S. Supreme Court decisions;
2. Identify and review state statutes addressing juvenile competency;
3. Review Virginia's legal procedures and service system for the evaluation of adult competency and provision of restoration services;
4. Review clinical literature on forensic juvenile evaluations;
5. Review Virginia's training materials for juvenile competency evaluations;
6. Determine Virginia's current practice in raising the issue of juvenile competency and provision of restoration services;
7. Develop statutory schema (if indicated) to address juvenile competency and restoration;
8. Forecast number of juvenile competency evaluations requested, proportion of juveniles to be found incompetent, and costs for services; and
9. Develop recommendations to address juvenile competency in legal proceedings.

V. Methodology

In response to the study resolution, a workplan was developed and presented to the Commission Youth for their approval in June 1998. The study methodology was comprised of five activities: workgroup review and deliberations; a review of the legal and clinical literature; a statewide survey effort of system professionals; in depth review of Florida's system for handling juvenile competency; and analysis of the current prevalence of juvenile competency evaluations. Each approach will be discussed in the paragraphs which follow.

A. WORKGROUP

In order to respond to the study mandate, the Commission on Youth convened a workgroup of professionals having expertise in juvenile competency.

Serving on the workgroup were representatives of the following:

- Juvenile & Domestic Relations District Court Judges;
- Court Service Unit staff;
- Public Defenders;
- Commonwealth's Attorneys;
- the Office of the Attorney General;
- Department of Juvenile Justice;
- Department of Mental Health, Mental Retardation and Substance Abuse;
- Forensic evaluators;
- the University of Virginia Institute for Law, Psychiatry, and Public Policy;
- Richmond Behavioral Health Authority; and
- University of Richmond Law School.

A complete listing of the workgroup membership is provided in Appendix B.

The workgroup met nine times between May and December 1998 and presented its process and recommendations to the Commission in June, August, November, and December.

The study workgroup developed a question grid to guide the study effort, which included conceptual/legal issues, procedural issues, and agencies and systems.

	Conceptual/Legal	Procedural	Agencies/Systems
Evaluation of Competency	Does competency matter? For whom does it matter? How is it defined?	Who is qualified to perform the evaluations? What are timeframes for evaluations?	What is the system capacity for performing competency evaluations? Who pays for evaluations?
Restoration to Competency	Is restoration an appropriate term when applied to juveniles?	Who is qualified to provide restoration services? What are timeframes for evaluations?	What agency is responsible for restoration? Who pays for restoration?
Unrestorably Incompetent Juvenile	What are appropriate dispositions of the unrestorably incompetent juvenile?	What is an appropriate timeframe before a juvenile is deemed unrestorable? Should charges be dismissed with or without prejudice?	Who pays for services?

The workgroup reviewed the current procedures for evaluation of competency of both juveniles and adults. This review involved the professional experiences of workgroup members, an analysis of fiscal data collected from the Supreme Court and the Department of Mental Health, Mental Retardation, and Substance Abuse Services, and an analysis of data collected in the Commission on Youth statewide survey effort to Juvenile and Domestic Court Judges, Commonwealth's Attorneys, Public Defenders, and forensic evaluators. (See Section C for further detail.) In addition, the workgroup reviewed current forensic training offered by the Institute for Law, Psychiatry and Public Policy at the University of Virginia and discussed whether this training will need to be augmented if a specific statute is created in the *Code*.

The workgroup examined in depth the procedures used for restoration in Florida, including that state's training manual.¹ Alvin Butler, director of the Florida restoration program, reviewed Florida's statutes and procedures in a presentation to the Commission on Youth and a second, in-depth presentation to the workgroup and interested members of the community.

B. LITERATURE REVIEW

The workgroup reviewed other states' statutes to determine whether competency is addressed for juveniles being tried in Juvenile Court and, in applicable states, to analyze the legal description of their evaluation of juvenile competency and restoration. A review of the impact of the Juvenile Justice Reform Act of 1996 was conducted to ascertain whether the consequences of involvement with Virginia's Juvenile Court system had changed enough to warrant competency considerations to be raised. The workgroup reviewed the scientific literature, including clinical research, on the topic of juveniles and competency to stand trial.

C. SURVEYS

The Commission on Youth surveyed Juvenile Court Judges, Commonwealth's Attorneys, Public Defenders and forensic evaluators (including Court Service Unit psychologists) identified as having experience with juvenile competency. The surveys were developed to solicit information on whether competency had been brought up in the specific jurisdiction, whether the parties involved felt the *Code* provided enough guidance to consider and determine juvenile competency and whether localities had standard procedures to address juvenile competency and restoration. The survey also included questions regarding disposition of those deemed unrestorably incompetent. (See Appendices E through H for survey instruments.) This material was analyzed in order to identify current practice and develop cost projections for the enactment of juvenile competency provisions.

¹ University of South Florida Department of Mental Health Law & Policy. Otto, Randy K., ed. *Juveniles' Competencies in the Justice System—A Guide for Judges, Attorneys and Mental Health and Retardation Professionals*. Second ed. Tampa, FL: University of South Florida, 1997.

D. QUANTITATIVE ANALYSIS

Commission on Youth staff reviewed Virginia Supreme Court records to identify the number of competency evaluations that had been paid for through the Criminal Fund in FY 97 and FY 98. A forecast of caseloads and projected service costs was also conducted by staff. The Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) provided information from state hospitals regarding the number of competency evaluations for juveniles done on an in-patient basis in FY 97 and FY 98. The staff conducted a historical analysis of adult competency evaluations compiled by University of Virginia Institute for Law, Psychiatry and Public Policy to aid in developing forecast methodologies. A detailed description of the quantitative analysis is presented in Section VII.

VI. Background

In the last decade, as crimes committed by juveniles have become more violent, society has responded by shifting the focus of Juvenile Court from rehabilitation to a more punitive approach. Reform of juvenile justice systems nationally and in Virginia can be characterized as the increased criminalization of Juvenile Court procedures. Specific Virginia examples include the statutory reforms of 1994² in which the age of transfer for trial to Circuit Court was dropped from 15 to 14 and Juvenile Court Judges received the ability to determinantly sentence a juvenile to a juvenile correctional facility for up to seven years. The 1996 Virginia Juvenile Justice Reform Act³ created both mandatory waiver and prosecutorial transfer to Circuit Court for certain classes of crimes, opened up Juvenile Court proceedings and records of all juveniles age 14 and older charged with felonies, and allowed juvenile dispositions to be factored into voluntary adult sentencing guidelines. Variations on these reforms were adopted throughout the country, creating new challenges for a juvenile justice system seeking to balance its rehabilitative role with due process concerns.

In light of these statutory changes, concern has been raised by members of the legal community about the issue of competency for juveniles who are being tried in Juvenile Court. Juveniles who have been transferred to Circuit Court have always been expected to meet criteria for competency to stand trial. In determining whether issues of competency are relevant in Juvenile Court proceedings, the Commission determined it necessary to review the concept of competency and the procedures which are applied to adult defendants.

A. SUPREME COURT RULINGS

According to the U.S. Constitution, an individual must be able to participate meaningfully in his trial. If an individual is mentally incapable of meaningful participation

² See *House Document 81, Report of the Commission on Youth on the Study of Serious Juvenile Offender*, 1994, for additional detail.

³ See *House Document 37, Report of the Commission on Youth on the Study of Juvenile Justice Reform*, 1996, for additional detail.

in his trial, then having a trial is an “empty” right, because it cannot be fulfilled. This concept was articulated in 1966 in the *Pate v. Robinson* Supreme Court decision that a trial of an incompetent defendant violates the Constitution’s due process requirement. (See Appendix C for this and other Supreme Court decision listings.) The standard for competency is established in two U.S. Supreme Court Cases, *Dusky v. U.S.* and *Drope v. Missouri*. *Dusky* establishes that a defendant must have “sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational, as well as a factual, understanding of the proceedings against him,” while *Drope* establishes that the defendant must have the capacity “to assist in preparing his defense.” An additional U.S. Supreme Court case, *Jackson v. Indiana*, suggests that, if the defendant is incompetent, the likelihood of restorability must also be considered.

Although these are the only explicit competency requirements in Supreme Court decisions, several other abilities have become accepted as part of competency to stand trial criteria. These include the ability to understand the charges, current legal situation, relevant facts, legal issues and procedures, potential legal defenses and dispositions. Competency in its forensic application has come to include the defendant’s ability to understand the roles of the personnel in the courtroom, to relate to the defense attorney and communicate effectively, including explaining pertinent facts surrounding the alleged offense, and legal strategy. Competency also entails the ability to follow and understand courtroom proceedings, including tolerating the stress of the trial process and behaving appropriately in the courtroom. In *Pate v. Robinson*, the Court established that a hearing must be held to establish the defendant’s competency when the issue is raised. The Court indicated that the burden of proof of incompetency lies with the defendant in *Medina v. California*, but found that clear and convincing evidence was too stringent a standard for this burden in *Cooper v. Oklahoma*.

In *Godinez v. Moran*, the Court decided that the standard for pleading guilty and waiving the right to counsel is the same as that for competency to stand trial. There has been a great deal of legal and clinical controversy surrounding the degrees and types of competencies, although varying standards have not been differentiated by the Court. The Supreme Court has not directly enunciated a decision regarding juvenile competency to stand trial, save for the *In re Gault* decision which requires due process safeguards to be present in Juvenile Court proceedings.

B. ASSESSING COMPETENCY IN ADULTS

An adult defendant’s competency assessment generally includes four areas: a factual understanding of the charges and legal proceedings; the ability to rationally understand the process (including the ability to appreciate the significance of specific legal circumstances in the individual’s own defense); the ability to communicate information to counsel; and the defendant’s reasoning and decision-making capabilities.

These domains may be assessed through the use of open-ended questions, structured or semi-structured interviews. The wide range of interview and assessment formats available can assist the clinician in the evaluation of all defendants.⁴

C. CONCEPTS OF COMPETENCY IN JUVENILES

The primary investigator of the scientific studies conducted regarding the ability of juveniles to meet criteria for competency to stand trial is Thomas Grisso. A review of the literature reveals that, as in other developmental areas, competency to stand trial is developed as a young person grows in the emotional and cognitive spheres.⁵

It is known that competency in adults is most frequently compromised because of mental illness, mental retardation, or impairment in psycho-legal ability.⁶ Mental illness can often be treated and, in many cases, a mildly- and at times a moderately-mentally retarded adult can learn the needed information to meet the *Dusky* or *Drope* standard. Mental illness is a legitimate concern for juveniles, but the prevalence of mental illness is generally lower for them and will become an issue less frequently. However, assessment of competency in juveniles has, as an additional challenge, how to appropriately incorporate juvenile development into a competency evaluation, given the impact of age and maturity.

Although many adults with mental retardation have been found competent to stand trial, this may not be the case with juveniles. The scientific literature indicates that, although older adolescents having IQ scores in the average range function at about the same level of competency as adults with average IQ scores, adolescents with lower IQ scores function far lower than adults with similarly low IQ scores. Juveniles age 15 to 17 years who have low IQ scores perform worse on competency testing than do 12 year olds with average IQ scores. Other factors such as poor educational history, learning disabilities, and mental disorders also affect juvenile competency.

It is recognized that children develop in several spheres simultaneously.⁷ Examples of development stages in the cognitive and social spheres are provided in Chart 1. In the mid 1960's, Anna Freud described developmental lines which are evidenced in the several accomplishments a toddler must attain in order to attend

⁴ Cruise, Keith R. and Richard Rogers. "An Analysis of Competency to Stand Trial: An Integration of Case Law and Clinical Knowledge." *Behavioral Sciences and the Law*, 1998, pp. 35-50; Grisso, Thomas. "Juvenile Competency to Stand Trial: Questions in an Era of Punitive Reform." *Criminal Justice*, 1997, pp. 4-11.

⁵ Cooper, Deborah K. and Thomas Grisso. "Five Year Research Update (1991-1995): Evaluations for Competence to Stand Trial." *Behavioral Sciences and the Law*, 1997, pp. 347-364; Cruise and Rogers. *Behavioral Sciences and the Law*; Bonnie, Richard J. and Thomas Grisso. *Adjudicative Competence and Youthful Offenders*, 1998 (UnPub); "Focus on Juvenile Competency Grows as Emphasis of Local Systems Shifts." *Mental Health Law Reporter*, 1998, p. 26.

⁶ Cooper and Grisso; Bonnie and Grisso.

⁷ Timothy Telford Yates ("Theories of Cognitive Development") and Alayne Yates ("Childhood Sexuality"). *Child and Adolescent Psychiatry – A Comprehensive Textbook*. First ed. Baltimore: Williams & Wilkins, 1991, pp. 109-129 and 195-215, respectively.

preschool and learn.⁸ (See Chart 2.) Children progress along each of these lines at slightly different rates, e.g., a child who is toilet trained may or may not be able to separate easily from his primary caretaker. A child may be ready for preschool before or after the age of 4 but, on average, most children will be ready by age 4. Therefore, a juvenile's stage in cognitive and social development is particularly relevant to the assessment of competency. One can understand a juvenile's attainment of competency to stand trial as following developmental lines. The relevancy of specific cognitive and social development milestones in the context of competency is summarized in Chart 3.

In school, skills related to the assessment of competency to stand trial (such as learning about the procedures in government) are taught beginning in the fourth or fifth grade. There is a substantial increase in the level of this knowledge between the ages of 10 and 13.⁹ By age 13, most children can accurately identify most of the trial participants, their roles, and the purpose of a trial on a simplistic level.¹⁰ Prior to this age, much of what the young child "knows" is affected by how questions are asked. A study using open-ended questions found that 13 year olds knew less than other studies had found; it is presumed that some form of multiple choice questions had been used in the original studies. However, clinicians do not fully understand what facts most children know and when.

To meet some of the competency criteria, such as whether a juvenile defendant understands the information his attorney is giving him, related data can be used to ascertain a juvenile's capacity. In his review of the literature, Grisso reports that studies of the understanding of Miranda rights showed that 10 to 12 year olds had a significantly poorer understanding than 13 to 15 year olds, who had significantly poorer understanding than 17 to 23 year olds. Juveniles 15 to 16 years of age with average IQ performed about the same as adults with average IQ. Those with a low IQ (<80) performed significantly poorer than adults with similar IQ. The understanding of Miranda rights was lower in juveniles from lower socio-economic groups.¹¹

In discerning whether the juvenile is able to appreciate the significance of legal circumstances for his own defense, relevant research can be divided into two main areas. The first involves the juvenile defendant's comprehension that all of the facts

⁸ Freud, Anna. *Normality and Pathology in Childhood—Assessments of Development*. Madison: International Universities Press, 1965, pp. 62-92.

⁹ Grisso. "The Competence of Adolescents as Trial Defendants." *Psychology, Public Policy, and Law*, 1997, pp. 3-32.

¹⁰ Grisso. *Criminal Justice*.

¹¹ Grisso. *Psychology, Public Policy, and Law*.

Chart 1

Developmental Lines Leading to Preschool

	Dependency --> Emotional self-reliance and object relationships	Suckling --> rational eating	Wetting & soiling --> Bladder & bowel control	Egocentricity --> Companionship	Body --> Toy and Play --> Work
0-12 months	Primary caregiver & child are one	Nursed on demand Weaning Transition to self feeding	Free to wet and soil	Other children are either unimportant or are seen as just disturbing the mother-child relationship	Play with skin; no distinction between mom and child
12-18 months	Primary caregiver's role is to fulfill child's needs <u>now</u>		Toilet training introduced	Other children = lifeless objects, like toys	Transitional object -- soft toy/blanket (mine and it makes me feel good)
18-24 months					Soft toys in general
2-3 years					
3-4 years	<i>Remembers good aspects of primary caregiver, even if not getting own way</i>	<i>Self feeding</i>	<i>Child identifies with cleanliness</i>	<i>Other children are helpmates in carrying out a task (play, build, mischief)</i>	<i>Play with items</i>
4-5 years		Food no longer equal to primary caregiver	Cleanliness for its own sake		Pleasure in finished product
5-6 years				Other children are partners and real people, too	Appreciation of work

Italicized Area = readiness for preschool

Source: Virginia Commission on Youth Graphic 1998, *Normality and Pathology in Childhood—Assessments of Development*, Anna Freud (1996)

Chart 2

Developmental Lines of Competency

	Understand legal process	Appreciate significance of legal circumstances for own defense	Ability to communicate information to counsel		Reasoning and decision-making	
Developmental Sphere	Cognitive	Cognitive	Cognitive	Social	Cognitive	Social
Tasks	Understand: charges and potential penalties; court personnel and their roles; what attorney explains; and proceedings in court	Understand the concept of rights which can be asserted or waived	Give accurate accounting of experience	Understand advocacy role of attorney	Understand long term consequences of decisions; not focus on short term consequences Weigh information presented and make decision	
Comments	<i>Beginning of this is taught in fourth and fifth grades</i>	<i>Research shows this ability begins about the age of 12 with abstract thinking.</i>	<i>Requires remembering sequence of events</i>	<i>Must understand that, in this instance, all adults are not on the same side</i>	<i>Must be able to imagine hypothetical situations or conditions that do not exist and never experienced and make a decision</i>	<i>Peer approval is important in decision-making.</i>

Source: Virginia Commission on Youth Graphic, 1998, developed by Cheryl Al-Mateen, Ph.D., Virginia Commonwealth University Medical College of Virginia

Chart 3

Cognitive and Social Development

	COGNITIVE	SOCIAL
0-6 months	<p>Sensori-Motor Association between action and effects; something exists even if you don't see it; language begins.</p>	<p>Trust v. Mistrust Primary caregiver will love and care for me; develops attachment.</p>
6-12 months		
12-18 months		<p>Autonomy v. Shame and Self-Doubt Parents are most significant others; primary caregiver is used as base from which to explore; self-assertion (battles for control).</p>
18-24 months		
2-3 years		
3-4 years	<p>Pre-Operative Further acquisition and use of language; symbolic play seen; thought is tied to concrete reality (can't think about thought); reason dominated by perception; conclusions are based on what he feels or would like to believe (magical thinking); can only attend to one aspect of reality at a time; developing sequencing.</p>	<p>Initiative v. Guilt Family members are most significant others; learning to make or act like (pretend play); increasing importance of child-child relationships.</p>
4-5 years		
5-6 years		<p>Industry v. Inferiority Neighborhood and school are significant others; learning to be good at making things; wanting to learn; peer group relationships are more important; same gender parent is important, but also turns to other adults for models for identification; parents no longer all-knowing or all-powerful.</p>
6-7 years		

Chart 3
Cognitive and Social Development (cont.)

	COGNITIVE	SOCIAL
7-8 years	<p>Concrete Operations Mastering of classes, relations and quantities; learns reasoning from premise to whole; conceptual organization takes on stability and coherence; laws are mandates that are made and controlled by persons in authority.</p>	
8-9 years		
9-10 years		
10-11 years		
Adolescence	<p>Formal Operations Conquest of thought; generate hypotheses or propositions in the absence of concrete referents; thinking about thought (introspection); future orientation; deductive reasoning; increase in abstract thinking allows one to deal with laws and principles.</p> <p>Early: capacity for abstract thinking; laws are consensual agreements among members of society for the collective benefit.</p> <p>Late: hypothesis formation and testing; use of hypothetical situations under stress; laws are derived from Universal Principles.</p>	<p>Identity v. Identity Diffusion Peer group and outgroups are most significant others; push toward independence; battles for authority with adults; shifting alliance from family to peers; developing romantic relationships. Developmental egocentrism results in higher sense of invulnerability ("It may happen to others, but not me.") and resultant risk-taking behaviors.</p> <p>Others' values are very important. May vary between extreme deference to others' judgment and making choices, primarily in opposition to others' recommendations. May have fluctuation in self-esteem, vacillating between overconfidence and great uncertainty.</p>

Source: Virginia Commission on Youth Graphic, 1998 of Information in *Child and Adolescent Psychiatry - A Comprehensive Textbook*, Yates, Alayne and Yates, Timothy Telford, 1991

involved in the legal process actually apply to him, i.e., that there is potential jeopardy associated with the trial. The second addresses the notion that the juvenile is able to understand the concept that he has rights which can be either asserted or waived, but cannot be taken away. Research shows that this involves abstract thought, or the ability to draw conclusions, which does not start to develop until the onset of adolescence. Grisso reports that research has shown that non-delinquent 13 and 14 year olds tend to see rights as bestowed upon them by authority, which can revoke them as well. Delinquents between 15 and 16 years of age seem to feel that rights are conditional and not automatic.¹² Studies conflict in their conclusions about whether this invulnerability makes an actual difference in adolescent decision-making specifically related to competency.

The ability to communicate information to one's attorney involves both cognitive and social accomplishments. On a cognitive level, this requires the defendant to give an accurate accounting of his experiences, which requires remembering the sequence of events. For reasoning and decision-making, the defendant's ability to weigh information to make a decision is given consideration. This may involve imagining several hypothetical situations or conditions that do not exist and have never been experienced in order to make a decision. The defendant must consider the potential consequences of several options, subjectively considering the desirability and probability of the potential consequences. It is recognized that adolescents give greater thought to any anticipated gains rather than possible losses or negative risks, especially if there is a delay before the losses. In most normal IQ adolescents, this ability seems to be the same as in adults after the age of 14 or 15.

Socially, competency concerns address whether the defendant understands the advocacy role of the attorney. For certain defendants this could be a problem, because developmentally adolescents tend to believe (from previous experience) that all adults 'work together', and will not take 'their' side. Studies have also found that adolescents, particularly younger ones, are more prone to volunteer inaccurate information to persons in authority under pressure.¹³ One study found that juvenile defendants were more often skeptical about the intended benefit of legal counsel and their rights when applied to their own situation. Some juveniles thought that their probation officer was more on their side than their attorney. Finally, the importance of peer opinion in decision-making must also be weighed when assessing juveniles.

The literature informs us that juveniles age 13 and under are at greater risk than most adults of having deficits in the abilities needed to be a competent defendant. Those that are age 14 to 16 come closer to adults in possessing necessary abilities to be found competent. However, it is recognized that there is a wide range of abilities that any group of 14 year olds may have. Some adolescents will know certain

¹² Ibid.

¹³ Ibid

information; others are developing more slowly. Many adolescents may not be able to use their abilities consistently, such as when under stress, because the skill is too new. It is important to note that delinquents are more likely to develop more slowly because statistically they have more intellectual deficits, learning disabilities, emotional disorders, or decreased educational opportunities.

D. CURRENT SYSTEM IN VIRGINIA

In Virginia, the question of adult competency may be raised by the defense attorney, the Commonwealth's Attorney, or the Judge. The competency evaluation may be performed on a psychiatric outpatient basis. This evaluation may take place in a jail or wherever the defendant is being housed, usually through the auspices of the local Community Services Board. If hospitalization is required, the maximum length of stay is 30 days. Section 19-2-169.1 indicates that the evaluation must be performed by "at least one psychiatrist, clinical psychologist or master's level psychologist who is qualified by training and experience in forensic evaluation." A written report is generated and provided to the defense and Commonwealth's Attorney and the Judge. The report addresses the defendant's capacity to understand the proceedings and assist the attorney. In the event the defendant is found to be incompetent, the evaluator will also address in the evaluation any need for treatment.

If the adult defendant is found to be incompetent to stand trial, the defendant is ordered into treatment to restore competency, which generally occurs on an outpatient basis. If restoration is to occur on an inpatient basis, the director of the facility (state hospital) is to report to the Court as soon as the defendant is restored or to provide updates to the Court every six months on the likelihood of the individual's being restored to competency. If the defendant is found competent, the criminal process continues. If found restorable, the Court may order continued treatment for periods not to exceed six months before the next hearing. If found unrestorable and likely to remain so for the foreseeable future, then the Court must order that the defendant be civilly committed for inpatient psychiatric treatment, civilly certified to a training center, or released. Charges against the defendant must be dismissed within five years of the defendant's felony arrest (one year after a misdemeanor arrest) or the maximum term the defendant could have received if convicted of the crime, whichever is less.

Currently, mental health practitioners in the Commonwealth receive training on the evaluation of adult competency through training at the Institute of Law, Psychiatry and Public Policy of the University of Virginia. There is a five-day basic training held four times during the year. During this training, one is taught about the basic principles of forensic mental health, including competency and insanity (mental status at the time of the offense) evaluations. Training includes an overview of state and Federal Court systems in general and Virginia's Court system specifically. One is taught the differences between forensic practice and standard mental health practice, including how to gather relevant clinical information and to develop a report that will be useful to the legal system and training in expert testimony.

There is a similar basic training available to those evaluating juveniles. The University of Virginia Institute also has a five-day juvenile basic training which covers the issues addressed in the adult competency training, as well as issues specific to juveniles: the Juvenile Justice system, transfer to Circuit Court, maturity, risk assessment with juveniles, and treatment and dispositional alternatives for juveniles. For practitioners who have already completed the adult training, there is an annual one-day juvenile update which addresses child-specific issues.

Currently, approximately 600 Competency to Stand Trial evaluations are conducted for adults each year in Virginia. Of these defendants, 15-20% are found incompetent to stand trial. There is no data indicating how many of these defendants are unrestorably incompetent. Services for adults are paid for by the Criminal Fund (competency evaluations and court testimony), Community Service Boards (evaluation and restoration), and the DMHMRSAS (inpatient services and institutional care).

As there is no statutory guidance regarding juvenile competency, there are neither standard procedures in place nor a designated source(s) for funding evaluation or restoration services. Practices vary across the state and are discussed in detail in the following section.

The workgroup reviewed statutes from other states regarding competency and restoration. (See Charts 4 and 5.) With respect to competency, there are several similarities. There is no age threshold for the issue of competency to be raised. All states presume competency to be present and require a court order for an evaluation of incompetency, incapacity, or unfitness to stand trial. Probable cause must be established before evaluations are undertaken. Legal proceedings are suspended while the issue of competency is resolved, although those hearings which do not require the juvenile's presence or involvement may proceed. The state or locality generally pays for evaluation and restoration treatment. The evaluator's report is always submitted to the Judge, and some states also indicate that the prosecutor, defense attorney or guardian ad litem should receive the report. Others are silent as to whom will receive the report. Some states clearly establish 5th amendment protections, indicating that information gathered for the report cannot be used during adjudication, while the remaining states do not address this issue.

The juvenile statutes of Arizona, Massachusetts, Tennessee and Texas refer in large part to parallel adult statutes. However, there is considerable variation in defining the group of juvenile offenders for which the issue of competency is relevant. Similarly, despite *Dusky* and *Drope* standards, the definition of competency is not consistent among the states. In Arizona, the definition of competency for juveniles is different than that for adults. Most states specify that incompetency may be related to mental illness or mental retardation/deficiency. Only Arizona states specifically that incompetency

Chart 4

State Juvenile Code Provisions for Juvenile Competency to Stand Trial

	Juvenile Offense Distinctions	Basis of Incompetency	Definition of Competency				No. of Evaluators	Licensure of Evaluators	Location of Evaluation	Timeframes	Report Components
			R	A	C	F					
AZ	Delinquency; Incurability; Criminal Proceeding	Not Mental illness or Mental retardation alone	x	x	x	x	2 or more	Physician ¹ Psychologist	May be inpatient if client will not submit to evaluation. Or adequate exam is not possible on outpatient basis.	Conducted NTE 30 days + 15 day extension. Report completed within 30 days.	Name of each expert; description of exam and any test results; description of facts for basis of conclusion; opinion as to competency. If incompetent, nature of mental disorder; prognosis; most appropriate form and place of treatment in state; whether incompetent to refuse treatment; necessity for and limitations of psychotropic medication. Report sealed.
DC	Delinquency; Transfer/Waiver Status offender	Mental illness; Moderate mental retardation	x	x	x	x			Outpatient, unless psychiatrist says inpatient is needed.	Inpatient, conducted NTE 21 days.	
FL	Delinquency	Mental retardation; Mental illness	x	x ²		x	2-3				Capacity to appreciate charges and penalties, understand adversarial nature of proceedings, disclose pertinent facts to counsel, display appropriate behavior in court, testify relevantly. If incompetency is from MI/MR, must address whether treatment or training is needed.
KS	Delinquency	Mental retardation; Mental illness	x	x	x	x	2	Physician; Psychologist	Outpatient. If need inpatient, may commit for up to 60 days + 60 day extension.		

R = Rational Understanding of Proceedings; A = Ability to Assist in Defense; C = Capacity to Assist in Defense; F = Factual Understandings of Proceedings
NTE - Not to Exceed

¹ Familiar with state's competency standards and statutes; familiar with the treatment, training & restoration programs that are available in the state; certified by the court as meeting court developed guidelines using recognized programs or standards. At least one must be a psychiatrist. Defendant and state may stipulate to only one expert.
² Competency specifically includes: ability to appreciate charges/allegations; range and nature of penalties; understand adversarial nature of legal process, disclose pertinent facts to counsel; display appropriate courtroom behavior and testify relevantly.

State Juvenile Code Provisions for Juvenile Competency to Stand Trial (cont.)

	Juvenile Offense Distinctions	Basis of Incompetency	Definition of Competency				No. of Evaluators	Licensure of Evaluators	Location of Evaluation	Timeframes	Report Components
			R	A	C	F					
LA	Delinquency						2-3	Physician; ³ Psychologist		Completed w/in 30 days of order.	
MA	Delinquency	Mental retardation; Mental illness					1 or more	Physician; Psychologist	Whenever practicable, in Court-house or place of detention; follow-up inpatient evaluation if needed	NTE 20 days + 20-day extension	Clinical findings bearing on issue of competence; opinion as to whether defendant needs treatment/care by the Dept. Format of report included in statute.
MN		Mental retardation; Mental illness	x	x	x	x	1	Physician; Psychologist ⁴	Outpatient. Inpatient if needed (or child not entitled to release)	NTE 60 days	Notify Court immediately if imminent risk of serious danger to another person or imminently suicidal or otherwise needs emergency treatment. Report: diagnosis, whether can understand proceedings and participate in defense, imminent needs as shown. If incompetent, any treatment needed to attain competency, appropriate treatment alternatives in area by choice order, whether can be treated on outpatient basis; when likely to attain competency; whether unwilling to participate.
NE	Any case under Juvenile Code		x	x	x	x	1	Physician; Psychologist ⁵	Residential or nonresidential	NTE 30 days + 30 days extension	Basic needs of juvenile; recommendations or continuous and long-term care.
NM	Delinquency; Status Offense						1				

R = Rational Understanding of Proceedings; A = Ability to Assist in Defense; C = Capacity to Assist in Defense; F = Factual Understandings of Proceedings
NTE - Not to Exceed

³ Physicians who are licensed to practice in medicine in Louisiana and who have been in the actual practice of medicine for not less than three consecutive years immediately preceding the appointment and who are qualified by training or experience in forensic evaluations. No more than one may be a coroner or any one of his deputies. In lieu of one physician, a psychologist who is licensed to practice in Louisiana and has been doing so for 3 years may be appointed.

⁴ Licensed physician or licensed psychologist "who is knowledgeable, trained and practicing in the diagnosis and treatment of the alleged impairment"

⁵ "Physician, surgeon, psychiatrist, duly authorized community health service program, or psychologist"

State Juvenile Code Provisions for Juvenile Competency to Stand Trial (cont.)

	Juvenile Offense Distinctions	Basis of Incompetency	Definition of Competency				No. of Evaluators	Licensure of Evaluators	Location of Evaluation	Timeframes	Report Components
			R	A	C	F					
NY		Mental retardation; Mental illness; Developmentally disabled					2	Physician; Psychologist	Outpatient		
SC	Criminal or civil contempt	Mental retardation; Mental illness	x	x	x	x	2	Other ⁶	Any suitable place	If conducted inpatient, NTE 15 days +15 day extension. Exam w/in 15 days of receipt court order; report w/in 5 days.	Diagnosis clinical findings bears on whether person is capable of understanding the proceedings and assisting in defense, and if there is substantial probability that he will attain that capacity in the foreseeable future.
TN	Delinquency; Unruly	Mental retardation; Mental illness									
TX	Delinquency Status Offender	Mental retardation; Mental illness	x	x	x	x	1	Psychologist Other ⁷			
WI	Delinquency		x	x	x	x		Physician; Psychologist	Outpatient unless a risk to self or others or guardian agrees to inpatient.	Hearing 10 days after plea for juvenile in secure custody; 30 days if not in secure custody.	Nature of exam; identify those interviewed, records reviewed, tests administered; present capacity to understand proceedings and assist in his or her defense; likelihood or restoration; facts upon which opinions are based.
WY	Delinquency		x ⁸	x ⁹	x ¹⁰		1	Physician; ¹¹ Psychologist	Outpatient	If inpatient is needed, eval. NTE 15 days	

R = Rational Understanding of Proceedings; A = Ability to Assist in Defense; C = Capacity to Assist in Defense; F = Factual Understandings of Proceedings
NTE - Not to Exceed

Source: Virginia Commission on Youth Analysis of State Statutes Referenced, Fall 1998

⁶ "Examiners designated by the Dept. of Mental Health...or...the Dept. of Disabilities and Special Needs...or by both.."

⁷ "Physician, psychiatrist, psychologist...if examination is to determine...mentally retarded, the examination must [include] an interdisciplinary team recommendation.

⁸ "Comprehend his position"

⁹ "Cooperate with counsel"

¹⁰ "Conduct his defense in a rational manner"

¹¹ "Licensed and qualified physician, surgeon, psychiatrist designated by the court to aid in determining the physical and mental condition of the child."

Chart 5

State Juvenile Code Provisions for Restoration of Juvenile Competency to Stand Trial

	Restorative Environments	Restoration Process	Reports	Hearings	Restore Until	If Unrestorable	Dismissal of Charges	Other
AZ	Least restrictive environment	Establish probable cause; start within 6 months of finding of incompetency; 180 days with 6-month extensions	Every 60 days	Every 6 months	If <u>Dangerous Juvenile</u> : until 15-21 months or maximum sentence exceeded If <u>Other</u> : cannot restore within 240 days; turns 18; or maximum sentence expired.	Attempt to commit	<u>Misdemeanor</u> : with prejudice <u>Felony</u> Not a serious offense - with prejudice Serious offense - without prejudice	Must appoint guardian ad litem
DC		<u>Delinquent</u> (MI or Moderate MR): commit <u>CHINS</u> (MI or Moderate MR): commit <u>Transfer</u> (MI only): continue until restored. If not restored by 21, commit:						Competency evaluation results can be used in dispositional hearing.
FL	Least restrictive alternative consistent with public safety. Court determines whether child meets criteria for secure placement. ¹²	Treatment plan created/ submitted within 30 days. <u>Felony</u> : commit for treatment or training; <u>Misdemeanor</u> : no restoration. If incompetent because of <u>age</u> or <u>immaturity</u> or anything not MI/ MR: no restoration	Every 180 days	Every 6 months	2 years	Dismiss	If not restored at 2 years and cannot be restored within additional year	
KS	Commit for treatment up to 90 days							
LA		Commit/place in custody of parents/suitable person in conditions in the best interests of the child and the public			Time of maximum disposition	Release on probation/place in custody of suitable person/ commit to suitable treatment facility		
MA	Hospitalize	Observe up to 40 days; NTE 50 days total (incl. initial comp. Evaluation); may commit up to 6 months + 1 year extension			Time of minimum sentence before eligible for parole			Periodic reviews

¹² Requires secure placement if cannot survive with help of willing family/friends/alternative services or will inflict serious bodily harm to self or others and less restrictive setting is inappropriate

State Juvenile Code Provisions for Restoration of Juvenile Competency to Stand Trial (p. 2)

	Restorative Environments	Restoration Process	Reports	Hearings	Restore Until	If Unrestorable	Dismissal of Charges	Other
MN	Felony only - commitment. If doesn't meet commitment criteria, file CHIPS (Child in Need of Protection and Services) or release.	Every 180 days					Delinquency: 19 th birthday/21 st if extended jurisdiction Delinquency cases: 1 year; Cases pending certification: 3 years	
NM		Judge may order treatment.					Mistrial if found incompetent during adjudicatory hearing	
NY	For a designated felony, in a residential facility	Misdemeanor: commit for up to 90 days (dismiss petition); Felony: commit for up to 1 year; may extend annually	45 days; every 90 days	Annually	A reasonable period of time to determine whether will attain capacity in foreseeable future/18 th birthday	Dismiss	On 18 th birthday	Time spent in the custody counts towards disposition time
SC					Maximum sentence	Initiate commitment proceedings within 60 days; if not committed, release, dismiss charges		
TN		Initiate commitment or voluntary admission if meets criteria; if doesn't meet criteria, release to appropriate guardian						
TX		Temporary or extended mental health services may be ordered if incompetent			Treat until 120 days after turns 18	If discharged before age 18, may dismiss with prejudice or continue. If not discharged by 18, transfer proceedings to Criminal Court.		
WI			Every 3 months				12 mos. or max. sentence for adult committing alleged act.	
WY		Commit if meets criteria and discuss charges. If does not meet criteria, may continue with adjudication and disposition.						

may not be found by virtue of mental illness or retardation alone. In general, the states all prefer that evaluations be performed on a psychiatric outpatient basis.

The states vary as to the number of evaluations required to establish competency, as well as to the qualifications of the evaluator(s). Some states note specifically that the parents may choose to pay for a private evaluator for the initial evaluation. In general, however, a licensed physician, psychiatrist, or psychologist must perform the evaluation. Some states specify what the evaluator should include in the report. Only Arizona specifies that the evaluator must give an ultimate opinion as to whether the juvenile is competent.

States may have established rules regarding restoration to competency and disposition of unrestorable juveniles based on the nature of the offense or the reason for the incompetency. As with evaluations, states generally prefer that restoration occur on a psychiatric outpatient basis. Restoration may occur for a varied length of time, depending on the state. As can be seen in these charts, similarly, the requirements for update reports and hearings varies significantly from state to state.

VII. Findings and Recommendations

The Juvenile Court was created in 1899. Before a separate court system was established, the issue of competency to stand trial was considered relevant for both juveniles and adults. The original purpose of Juvenile Courts throughout the United States was in keeping with the principle of *parens patriae*. The Court was not one of record, there were no ramifications of findings of the Juvenile Court in later adult proceedings, and the primary goal was that of treatment and rehabilitation. Prior to the enactment of the *Gault* decision, due process was not a characteristic of Juvenile Court proceedings and therefore the concept of competency to stand trial was irrelevant.

Juveniles were recognized as having the constitutional right of due process in *In re Gault*. These rights included the right to notice of charges, assistance of counsel, confrontation and cross-examination of witnesses, and the privilege against self-incrimination. *McKeiver v. Pennsylvania* found that juveniles do not have the right to a jury trial. In *In re Winship*, the Court concluded that the standard for adjudication of delinquency must be beyond a reasonable doubt, as in adult cases.

Because the *Code of Virginia* is silent on the issue of juvenile competency, one of the workgroup's first tasks was to ascertain the frequency with which the issue was formally raised in court proceedings. This was accomplished through two different methodologies. The first approach was to track the number of reimbursements out of the Criminal Fund administered by the Supreme Court of Virginia for the evaluation of juvenile defendants' competency to stand trial. To begin an initial identification of localities where competency evaluations had been court-ordered, ten jurisdictions were

selected. These jurisdictions were selected either on their volume of court intakes or through anecdotal reports that the issue of juvenile competency has been raised. The data runs and manual search through the Supreme Court voucher system served to identify both communities where competency had been raised and the names of individuals who were on contract with local Community Service Boards to conduct competency evaluations. The names of these individuals were included in a data base of forensic evaluators receiving a survey question from the Commission on Youth asking their opinion on statutory levels of guidance provided in the statute for the consideration and determination of competency evaluations of juveniles. The second methodology involved a written survey of all Juvenile and Domestic Relations Judges, Commonwealth's Attorneys, public defenders and individuals who perform juvenile competency evaluations either contractually or as a part of their responsibilities as Court psychologist for a Juvenile Court Service Unit. The findings from both these research methodologies are discussed on the following sections.

A. QUANTITATIVE ANALYSIS

The Department of Mental Health, Mental Retardation and Substance Abuse Services maintains a data base on the services provided in their facilities. According to this data, in FY 98 seven juveniles were evaluated for competency in a state facility, for a total of 231 bed days. Three of these juveniles were provided restoration services in a facility setting for a total of 498 bed days. However, the majority of juveniles are evaluated on an outpatient basis. The Community Service Board (CSB) is the local entity charged with the provision of mental health services to the community. Some CSB's have professionals on staff who may conduct competency evaluations for both adults and juveniles. According to DMHMRSAS data on CSB's, eight evaluations of juvenile competency were conducted by staff in FY 98. However, it appears that in the majority of cases the Community Services Board has contractual relationships with licensed psychologists or psychiatrists to conduct juvenile competency evaluations when ordered by the Court. In these instances the clinician conducts the evaluation and submits a voucher for reimbursement out of the Criminal Fund administered by the Executive Secretary of the Office of the State Supreme Court. The vouchers are coded by statutory authority for reimbursement and filed by the date which the voucher is processed. As there is no specific statutory reference for a juvenile competency evaluation, initial data runs were conducted on all vouchers processed in Juvenile and Domestic Relations and Combined District Courts for mental health evaluations and mental examinations. Each of these vouchers was then located through a manual search and examined to determine whether the case involved a juvenile and a competency evaluation. Among vouchers there was inconsistency in information on ages and charges. However, there were adequate notations to indicate that competency evaluations were conducted.

Initially ten jurisdictions were selected for a data run to identify the number of competency evaluations ordered by the Court for a juvenile delinquency or status offense case. These ten jurisdictions were selected based on either their large Juvenile

Court caseload or by anecdotal reports of the occurrence of an order for a juvenile competency evaluation. Once the statewide surveys were received, an additional data run was conducted for those jurisdictions where respondents reported having actual experience with juvenile competency proceedings. These additional data runs substantiated the presence of competency evaluations for juveniles in an additional twelve communities. Multiple evaluations for the same juvenile were counted only once for the purposes of this study. The following data analysis is based on the results of the manual search through the voucher reimbursement files.

Table 1

**Jurisdictions Identified as Having Courts
Which Ordered a Juvenile Competency Evaluation**

FY 97		FY 98	
Campbell (1)	Orange (1)	Brunswick (1)	Newport News (7)
Chesterfield (1)	Richmond (11)	Charlottesville (1)	Norfolk (12)
Fairfax (5)	Roanoke (1)	Danville (2)	Pittsylvania (3)
Franklin (3)	Virginia Beach (5)	Fairfax (9)	Richmond (41)
Lynchburg (4)	Williamsburg (2)	Franklin (3)	Virginia Beach (2)
Newport News (7)	Wise (2)	Loudoun (7)	Williamsburg (3)
Norfolk (10)	York (1)	Lynchburg (9)	Winchester (2)
			York (1)
Total Number of Juveniles 54		Total Number of Juveniles 103	
Total Number of Jurisdictions 14		Total Number of Jurisdictions 15	
Total Reimbursement Requests \$19,354		Total Reimbursement Requests \$49,190	

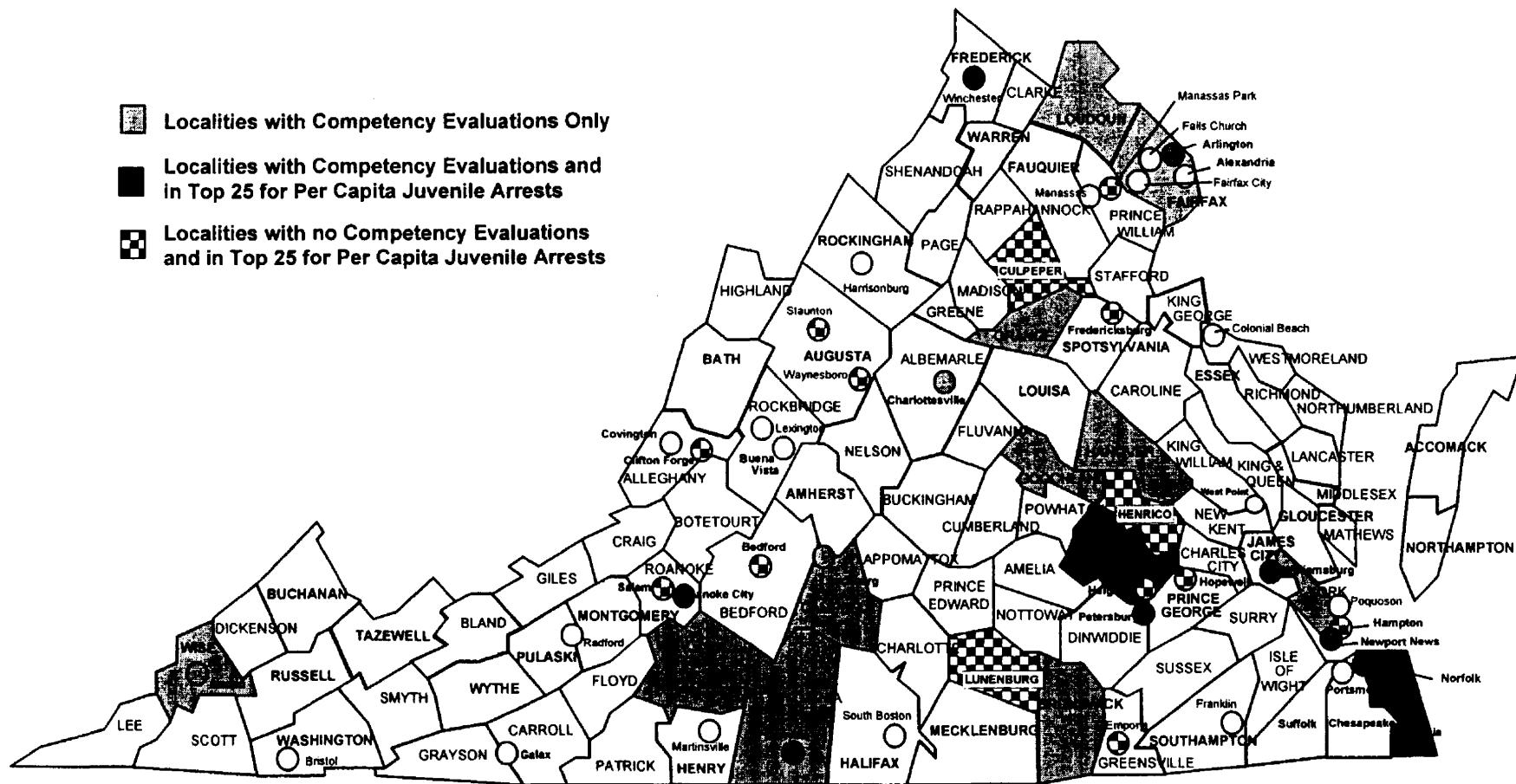
Source: Virginia Commission on Youth Analysis of Supreme Court of Virginia Disbursement Vouchers, Fall 1998

With the exception of the larger jurisdictions, these districts show no strong discernible pattern in factors which influence the raising of competency in Juvenile Court proceedings. An analysis was done by juvenile arrest rates; the results are displayed on the map which follows. There was no significant correlation found between volume and types of arrests and the issue of competency. While not all the jurisdictions raising the issue of juvenile competency have public defenders, jurisdictions having public defenders account for 83% of the Juvenile Courts in which the issue of juvenile competency has been raised. With the presence of defense counsel specializing in juvenile cases, it stands to reason that this specialized counsel would perhaps provide more strenuous advocacy on behalf of their clients than that provided by other types of counsel.

The number of evaluation requests has almost doubled from FY 97 to FY 98, as have the reimbursement requests. In every community which raised the issue of competency in FY 97 which also ordered a competency evaluation for a juvenile in FY 98, the number of juveniles evaluated has increased. The most significant increase is

Localities Requesting Competency Evaluations

25 (19%) of the localities in Virginia were reported to have had competency evaluations of 169 juveniles during the past two years; 11 of these localities were in the top 25 for per capita juvenile arrests.



Source: Virginia Commission on Youth graphic/analysis of Virginia Supreme Court Data, Virginia State Police Uniform Crime Reports 1997 arrest data, and U.S. Census Bureau 1996 provisional juvenile population data, Fall 1998.

seen in the City of Richmond, where the number of juveniles evaluated for competency increased almost four fold from FY 97 to FY 98. Despite the absence of statutory guidance to address the issue of juvenile competency, it is obvious that the issue is being raised and handled in a variety of ways throughout the state.

B. SURVEY FINDINGS

A total of 262 surveys on the issue of juvenile competency were disseminated across the state. As stated earlier, all Juvenile and Domestic Relations Court Judges, Commonwealth's Attorneys and Public Defender offices were surveyed, as were individuals identified through reimbursement payments as evaluators of juvenile competency. A total of 161 responses were received, for a response rate of 61%. Both public defenders and Juvenile Court Judges had a 74% response rate; 53% of the Commonwealth's Attorneys responded; and 46% of the evaluators returned the survey instrument. When asked if the issue of competency was relevant when transfer was not an issue in a juvenile court proceeding, 68% of the respondents agreed that it was. All public defenders felt competency was relevant. The majority of prosecutors (62%) felt competency was relevant, although this group of respondents had the largest number reporting competency was not relevant in Juvenile Court proceedings (30%). Only 6% of the Juvenile and Domestic Relations Court Judges felt competency was not relevant.

With respect to the *Code of Virginia's* providing guidance for the consideration of competency, a total of 46% said guidance was not provided. Forty-four percent of Commonwealth's Attorneys reported the *Code* provided guidance for the consideration of competency. One-third of the Judges felt guidance for the determination of competency was provided, and one-quarter of the public defenders and evaluators shared this perception. However, all four respondent groups cited very different sections of the *Code* as the source of guidance in the consideration of competency of juveniles when transfer is not an issue. The different cites are provided in Table 2.

Table 2

Survey Respondents' Code Citation for Guidance in the *Consideration* of Juvenile Competency

	Judges	Commonwealth's Attorneys	Public Defenders	Evaluators
Adult Competency (§19.1-169-169.4)		√		√
Juvenile Transfer (§16.1-269.1)	√	√	√	√
Adjudication of Mental Illness (§16.1-278.11)			√	
Mental Examination and Care (§16.1-275)			√	
Common Law	√			

Source: Commission on Youth HJR 69 Juvenile Competency Survey Analysis, 1998

With respect to the Code's providing guidance to the determination of competency for juveniles, 55% reported the state statutes were deficient in that regard. The cites which were used for the determination of juvenile competency are provided in Table 3.

Table 3

**Survey Respondents' Code Citation for Guidance
in the Determination of Juvenile Competency**

	Judges	Commonwealth's Attorney	Public Defenders	Evaluators
Adult Competency (§19.2-169.2-169.5)	√	√		√
Juvenile Transfer (§16.1-269.1)	√	√		
Involuntary Commitment (§16.1-335-348)	√		√	
Mental Examination and Care (§16.1-275)	√			

Source: Commission on Youth HJR 69 Juvenile Competency Survey Analysis 1998

These survey results reflect the general level of confusion that the absence of a specific statute for juvenile competency has engendered. When asked if the Code should be amended to address the issue of juvenile competency, 62% of the Judges reported that it should be. Of those respondents having experience with the issue of juvenile competency, when asked if the adult standards and procedures should be adopted for juveniles, 66% answered in the affirmative, and 79% stated the standards and procedures should be adopted in total.

It is important to note that not all of the respondents had actual experience with the issue of competency orders for juvenile cases. A total of 65% of the respondents reported that they have been involved in proceeding in which the issue of competency was raised. Based on the survey responses, the issue appears to be raised most often by the defense counsel, although the Judge was noted to be the person who raises the issue in a small proportion of the cases. Slightly less than one-quarter (24%) of the respondents with experience with juvenile competency said the number of times the issue has been raised has increased over the last two years, while 58% reported the number of cases had remained the same.

When asked about the existence of standard procedures in place to handle pre-restoration competency evaluations of juveniles, 43% of the respondents with experience with the issue reported their jurisdictions had a process in place. However, the perceptions varied considerably by the respondents as shown in Table 4.

Table 4

**Survey Respondents' Report of Standard Procedures
In Place To Handle Pre-Restoration Competency Evaluations**

	Yes	No	Missing
Judges	23 of 51 (45%)	25 of 51 (49%)	3 of 51 (6%)
Commonwealth's Attorneys	13 of 36 (36%)	20 of 36 (56%)	3 of 36 (8%)
Public Defender	6 of 10 (60%)	4 of 10 (40%)	0 of 10 (0%)
TOTAL	42 of 97 43%	49 of 97 (51%)	6 of 97 (6%)

Source: Commission on Youth Survey Data Analysis, November 1998

The absence of 'standard' procedures in place to handle the provision of restoration services or follow-up evaluations for juvenile competency was reported by 62% and 65% percent of the respondents respectively. Of the Judges who have experience in applying dispositional options, 16 of the 39 (41%) were satisfied with the options available to them.

Of the total number of respondents to the survey, 59% have not received any training on the issue of juvenile competency. The professional group having the lowest training rate on the issue was Commonwealth's Attorneys, with only six prosecutors indicating they have been trained. Of the respondents who did receive training, that training was provided by one of three providers, as displayed in Table 5.

The survey results indicated that there was a need for statutory clarification on the relevancy of competency in Juvenile Court proceedings, standards by which juvenile competency should be evaluated, and procedures to order the provision of restoration services if the juvenile was found not competent to stand trial.

Table 5

Survey Respondents Receiving Competency Training

TRAINING ENTITY	Judges	Commonwealth's Attorneys	Public Defenders	Evaluators	TOTAL TRAINED AT EACH
Institute of Law, Psychiatry, and Public Policy, U.Va.	12 of 71	0 of 63	3 of 12	6 of 12	21 of 158 (13%)
Public Defender Commission	4 of 71	1 of 63	7 of 12	1 of 12	13 of 158 (8%)
Supreme Court of Va.	30 of 71	0 of 63	0 of 12	0 of 12	30 of 158 (19%)

Source: Commission on Youth Survey Data Analysis, November 1998

STATUTORY RECOMMENDATIONS

1. Establishment of Competency

Findings

Enactment of determinant juvenile sentencing and the factoring of juvenile dispositions in adult sentences have resulted in the need for additional due process protections in Juvenile Court proceedings. The majority of justice system professionals surveyed favored the adoption of the adult competency standards and procedures in juvenile competency matters. Competency evaluations have been ordered for 112 juveniles in FY 98, despite unclear guidance in the Code about whether competency is relevant in Juvenile Court procedures and how juvenile competency is to be determined. The workgroup felt that the 'parens patriae' function of the Court should remain for those charged with status offenses, as these offenders do not have the same degree of liberty restrictions potentially imposed on delinquents. Based on the survey results and national statutory review, the workgroup decided that proposed legislation should parallel Virginia's adult statute with respect to defining competency. Sections 19.2-169 (1-4) provide statutory guidance for the determinations of competency in adults. These standards incorporate the Dusky and Drope decisions by the Supreme Court. The workgroup reviewed the implications of simply transposing the adult competency procedures in total to the juvenile system in the event a juvenile defendant is found incompetent and determined that the current system without additional modifications would be inadequate. To reflect the uniqueness of adolescence and the role of Juvenile and Domestic Relations Court versus Circuit Court, departures from the adult statute are suggested. These departures address the professional licensure of individuals who can conduct the competency evaluations and provide restoration services, required timeframes for the evaluation of competency, duration of restoration services, and dispositional options.

Recommendation 1

Amend the Code to establish a process for raising the issue of a juvenile's competency to stand trial in delinquency proceedings. The issue can be raised by the Defense Counsel, Judge or Commonwealth's Attorney. Competency is presumed; there must be a court order before the evaluation can be ordered.

Recommendation 2

The statutory definition of juvenile competency should encompass the *Dusky* and *Drope* standards of having sufficient present ability to consult with one's attorney with a reasonable degree of rational understanding, a rational as well as a factual understanding of the proceedings, and the capacity to assist in preparing one's defense.

2. Barriers to a Finding of Incompetence

Findings

The issues of age and immaturity were reviewed at length with respect to their relationship to the consideration of a juvenile's competency to stand trial. In the discussion of the impact of age and related developmental factors, the workgroup recognized that the infancy defense has not been formally defined in the Commonwealth of Virginia, although it is present in Common Law. Similarly, concerns regarding competency to be Mirandized or to

confess were briefly considered. While it was recognized that, on one hand, for developmental reasons many juveniles under the age of approximately 14 would in all likelihood not be found competent to stand trial, it was the unanimous decision of the workgroup that a juvenile charged with an offense should not escape Court-imposed sanctions solely on account of his age. The goal of any statutory revision is to insure due process protections, while at the same time allowing the Court to intervene to provide both services and consequences to juveniles who are incompetent and break the law. It was concluded that neither age nor immaturity alone unrelated to the juvenile's capacity or ability to assist in their defense should result in a finding of incompetency.

Recommendation 3

Age or age-related developmental factors unrelated to the child's capacity to understand or assist in his defense cannot be the sole basis for a finding of incompetency.

3. Competency Evaluations

Findings

The policy of the Commonwealth for both juveniles and adults has been to provide mental health services in the least restrictive setting consistent with public safety needs. This policy would argue for a strong reliance on outpatient competency evaluations for juveniles whenever possible. It is developmentally more disruptive for juveniles than adults to be separated from their primary caregivers for extended periods of time. It is important for juveniles to be evaluated and treated in the community near their parents and support system. In addition, there is limited facility space for juveniles in the mental health system and current studies are examining ways to further decrease the availability of mental health facility space for adolescence. Although the term "outpatient" in this context may encompass competency evaluation conducted in secure detention homes, the emphasis should be placed on avoiding the unnecessary hospitalization of juveniles for the evaluation of competency.

Recommendation 4

Competency evaluations are to be conducted on an outpatient basis unless hospitalization is clinically indicated.

Findings

Florida's experience indicates that it is very likely that the number of competency evaluations requested for juveniles will increase once an authorizing statute has been enacted. Consequently, there is a need to increase the number of trained evaluators. Those qualified to conduct competency evaluations should have independent licensure and be trained to work with children and adolescents. In addition, the practitioner should complete training in the forensic evaluation of juveniles approved by the Commissioner of the Department of Mental Health, Mental Retardation, and Substance Abuse Services. The workgroup noted that the Commissioner might consider indicating what type of training outside of Virginia would be equivalent, in consideration of practitioners having prior expertise who move into Virginia.

As with the adult statute, the workgroup assumed that the majority of juvenile competency evaluations will be conducted either directly by staff at local Community Service Boards (CSB) or through contracts administered by the CSB. Given the geographic distribution of juvenile secure detention homes across the state, it is likely that, in some instances, evaluations will be needed for an individual who is detained outside of the Court's and the original CSB's catchment area. When this occurs, it is contemplated that the CSB serving the court will be responsible for contacting the CSB within the detention home's service area to request the evaluation. In the event that testimony would be required, the courts are encouraged to utilize current technologies, including tele-testimony in order to minimize the drain on CSB resources, while ensuring that due process requirements are met.

There is a shortage of Ph.D.-level psychologists and child and adolescent psychiatrists employed by CSBs. CSB staff is comprised primarily of Licensed Clinical Social Workers (LCSW), who have specific training in working with juveniles. For these reasons it is imperative that LCSWs, as well as psychiatrists and doctoral-level psychologists, be specified in the statute as professionals qualified to participate in training to perform forensic evaluations on juveniles.

Recommendation 5

Evaluators (and restorers) must be licensed professionals with training and experience specific to working with juveniles and have forensic training in the evaluation of juveniles.

4. Timeframes

Findings

For consequences to have meaning for a juvenile, they must have immediacy. Adult procedures for evaluations and duration of restoration services need to be modified for application to juvenile defendants found incompetent.

Recommendation 6

Timeframe for the completion of the competency evaluation cannot exceed ten days once the required information is provided to the evaluator.

Recommendation 7

If the Judge finds the juvenile incompetent but restorable, the Judge shall stay the proceedings and order restoration services. The court must review the juvenile's progress towards competency every three months until competency is restored.

Recommendation 8

If not dismissed with prejudice at an earlier time, the charges against an unrestorable incompetent juvenile shall be dismissed one year after the date of arrest for misdemeanor charges and three years after the date of arrest for felony charges.

5. Dispositional Options

Findings

The adult statute provides three options when the defendant is found to be incompetent and, based on expert opinion, cannot be restored to competence. The options are: commitment to a mental health facility; certification to a mental retardation facility; or release. Many juveniles who would be found unrestorably incompetent will not meet certification or commitment criteria. Release by the court is considered to be an inappropriate response in many cases. Juvenile Court Judges have the ability to order treatment services to non-delinquent youth through CHINS and CHINSup proceedings.

Recommendation 9

If Judges find the juvenile incompetent and unrestorable, there are three options:

- a) commit the juvenile to a mental health facility under Section 16.1-355 et. seq.;**
- b) certify the juvenile under Section 37.1-65.1;**
- c) file a Child in Need of Supervision (CHINS) petition, placing the individual on supervised probation and ordering treatment; or**
- d) release the juvenile.**

6. Service Needs

Findings

The Criminal Fund currently pays for competency evaluations. It is estimated that 609 juvenile competency evaluations will be ordered in the course of a year. Fewer than 20% of the Judges, Commonwealth's Attorneys and Public Defenders have received any training on the issue of juvenile competency. A small number of juveniles (projected at 49) will require competency evaluations in a facility setting. It is estimated that 20% of the juveniles evaluated will be found incompetent and require restoration services. There are few existing services for incompetent juveniles who require a residential setting as a part of restoration. The private sector has the capacity to develop service continuums for restoration of competency on a regional basis. The DMHMRSAS forensic unit lacks the staff to administer regional contracts for restoration services.

Recommendation 10

The Department of Mental Health, Mental Retardation and Substance Abuse Services should maintain sufficient facility capacity to conduct approximately twenty-five juvenile competency evaluations on an in-patient basis annually.

Recommendation 11

Funding for the development and dissemination of competency assessment and restoration tools should be provided to the Department of Mental Health, Mental Retardation and Substance Abuse Services. (\$60,600)

Recommendation 12

Funding restoration services, ranging from home-based to placement in a secure setting, should be contracted out on a regional basis by the Department of Mental Health, Mental Retardation and Substance Abuse Services. (\$1,244,710)

Recommendation 13

Funding for two administrative staff should be provided to the Department of Mental Health, Mental Retardation and Substance Abuse Services to oversee the juvenile competency evaluations and restoration contracts. (\$112,280)

VIII. Acknowledgments

In addition to the individuals who served on the HJR 69 workgroup, the Virginia Commission on Youth extends its appreciation to the following agencies and individuals for their assistance and cooperation on this study:

The Brown Schools
Alvin Butler

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Cumberland Hospital
Jay Ziehl

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Office of Executive Secretary, Supreme Court of Virginia
Sandy Carrison
Larry Davidson
Don LaCido

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Ken Blaylock
David Stock

University of Virginia Institute of Law, Psychiatry, and Public Policy
Jeffery Slutzky

Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services
Rhonda Gilmer

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HOUSE JOINT RESOLUTION NO. 69
House Amendments in [] — February 17, 1998

Directing the Commission on Youth to study the adjudication of competency in juvenile delinquency proceedings.

Patrons—Rhodes, Cantor, Darner, Deeds, Hamilton, Jackson and Jones, J.C.; Senators: Houck and Miller, Y.B.

Referred to Committee on Rules

WHEREAS, the Code of Virginia in § 16.1-269.1 A 3 establishes that a juvenile must be competent to stand trial in order to be transferred to circuit court and tried as an adult; and

WHEREAS, Title 16.1 of the Code of Virginia does not provide for a juvenile's right to be competent or standards for adjudicating competency in juvenile delinquency proceedings; and

WHEREAS, judges and attorneys differ in their approaches to the adjudication of competency; and

WHEREAS, the use of adult standards for competency engenders confusion among attorneys, judges, and forensic evaluators regarding application of such standards to juveniles; and

WHEREAS, the determination of competency of a juvenile should include developmental considerations, cognitive abilities and maturity factors, although there are no clear guidelines in the field of mental health to address the cumulative effect of these factors; and

WHEREAS, furthermore, the Commonwealth lacks clear procedures and protocols for the placement and effective treatment of juveniles found to be incompetent to stand trial; and

WHEREAS, there are no standardized payment mechanisms for treatment for the restoration of competency of juveniles; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Commission on Youth be directed to conduct a study on establishing a standard to determine competency of juveniles in delinquency proceedings. The Commission is directed to examine the state's policies and procedures and services applicable to these issues with the goal of developing statutory guidance and the mechanisms to implement appropriate Code provisions. An advisory task force shall be established to assist the Commission in its work. Membership shall be comprised of representatives of juvenile and domestic relations district court judges, Commonwealth's attorneys, the Virginia State Bar, local community service boards, [the Department of Juvenile Justice's] court service units, and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

All agencies of the Commonwealth shall assist the work of the Commission, upon request.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

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Passed By		Passed By The Senate	
The House of Delegates			
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Date: _____		Date: _____	
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Clerk of the House of Delegates		Clerk of the Senate	

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U.S. Supreme Court Citations

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Louisiana

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Wyoming

Wyo.Stat. § 14-6-219 (1998)
Wyo.Stat. § 14-6-201 (1998)
Wyo.Stat. § 7-11-301 (1998)

55. Do you believe the Code should be amended to specifically address the issue of competency of juveniles to stand trial in Juvenile Court? *(Please check one.)*

Yes *(If YES, please go to question 56.)*

No *(If NO, please go to question 55a.)*

55a. If NO, why should the Code not be amended to specially address juvenile competency? *(Please explain.)*

56. If the Code was to be amended to specifically address the issue of juvenile competency, do you believe the standards and procedures which currently apply for adults should be adopted? *(Please check one.)*

Yes *(If YES, please go to question 56a.)*

No *(If NO, please go to question 57.)*

Not familiar with adult standards and procedures *(Please go to question 57.)*

56a. If YES, should the standards and procedures be adopted in total or only specific parts? *(Please check one.)*

In total *(Please go to question 57.)*

In part *(Please go to question 56b.)*

56b. Please list the specific parts of the standards and procedures which should be adopted. *(Please list.)*

57. If standards and procedures for the evaluation of juvenile competency were to be developed, should they differentiate between any of the following? *(Check all that apply.)*

Juvenile delinquency proceedings heard in J&DR Court

Juvenile transfer proceedings

Transferred/waived juveniles tried in Circuit Court

No differentiation

58. Has the issue of competency of a juvenile ever been raised in any Juvenile Court proceedings over which you presided? *(Please check one.)*

Yes *(If YES, please go to questions 58a, 58b and 58c.)*

No *(If NO, thank you for your time; you are finished with the survey.)*

58a. Since July 1, 1996, how many cases have resulted in an order for a competency evaluation of a juvenile before your court?

_____ Delinquency cases

_____ Transfer cases

58b. Who has most often raised the issue of competency? *(Please check one.)*

Defense Counsel

Judge

Commonwealth's Attorney

58c. How has the number of cases in which the issue of competency of a juvenile been raised changed over the last two years? *(Please check one.)*

Increased

Stayed the same

Decreased

59. Does your jurisdiction have a standard procedure in place to handle pre-restoration competency evaluations of a juvenile? *(Please check one.)*

Yes

No

60. Does your jurisdiction have a standard procedure in place to handle juvenile restoration services? *(Please check one.)*

Yes No

61. Does your jurisdiction have a standard procedure in place to handle follow-up evaluations for juvenile competency? *(Please check one.)*

Yes No

62. Who has conducted the pre-restoration competency evaluations? *(Check all that apply.)*

- Community Service Board staff
- Private clinician under contract
- Public mental health hospital
- Don't know
- Other (Explain.) _____

63. Have you been satisfied with the pre-restoration competency evaluations? *(Please check one.)*

- Yes *(If YES, please go to question 64.)*
- No *(If NO, please go to question 63a.)*

63a. Please identify those areas in the evaluation process with which you were not satisfied. *(Check all that apply.)*

- Lack of clarity in the *Code of Virginia*
- Length of time to complete evaluation
- Contents of evaluation report
- Agency conflict over payment procedures
- No one trained in jurisdiction to conduct evaluation
- Absence of restoration options
- Other (Explain.) _____

64. Have you had difficulty accessing restoration services for an incompetent juvenile? *(Please check one.)*

Yes No

65. Have you had experience applying the dispositional options for an unrestorable, incompetent juvenile defendant pursuant to §19.2-169.3? *(Please check one.)*

- Yes *(If YES, please go to question 65a.)*
- No *(If NO, please go to question 66.)*

65a. Were you satisfied with each of the following dispositional options? *(Please check one for each option.)*

Release

Yes No Not applicable; no experience

Commitment to a State Mental Health Facility

Yes No Not applicable; no experience

Certification to a State Mental Retardation Facility

Yes No Not applicable; no experience

66. Are there any other comments or concerns you would like to express regarding the issue of juvenile competency to stand trial? *(Please attach additional pages if necessary.)*



VIRGINIA COMMISSION ON YOUTH

HJR 69 COMMONWEALTH'S ATTORNEY SURVEY ON JUVENILE COMPETENCY

The 1998 Session of the Virginia General Assembly enacted House Joint Resolution 69 directing the Virginia Commission on Youth to study the issue of juvenile competency to stand trial. As part of this study, the Commission is surveying all Commonwealth's Attorneys to collect opinions and information on issues related to juvenile competency to stand trial. Please return the survey by **September 25, 1998**. If you have any questions, contact Nancy Ross at (804) 371-2481. The General Assembly of Virginia and the Virginia Commission on Youth thank you for your assistance in this important study effort.

1. Do you believe the matter of competency is an issue in Juvenile Court proceedings (when transfer is not a concern)?
 Yes No

2. Do you believe the Code provides guidance regarding the consideration of competency of a minor in delinquency proceedings in Juvenile Court?
 Yes (If YES, please go to question 2a.)
 No (If NO, please go to question 3.)

2a. If YES, what Code section(s) provide the Court with guidance? (Please list.)

3. Do you believe the Code provides guidance regarding the determination of competency of a minor in transfer proceedings in the Juvenile Court?
 Yes (If YES, please go to question 3a.)
 No (If NO, please go to question 4.)

3a. If YES, what Code section(s) provide the Court with guidance? (Please list.)

4. Has the issue of competency of a juvenile ever been raised in any Juvenile Court cases you have prosecuted?
 Yes (If YES, please go to question 4a.)
 No (If NO, please go to question 12.)

4a. Since July 1, 1996, how many of your cases have resulted an order for a competency evaluation of a juvenile? (Please estimate.)
 _____ Delinquency Cases _____ Transfer Cases

5. If the issue of the competency of a juvenile is raised, who most often raises it? (Please check one.)
 Defense Counsel Judge Commonwealth's Attorney

6. Which of the following best represents the change in the number of cases in which the issue of competency of a juvenile has been raised over the last two years? (Please check one.)
 Increased Decreased Don't Know

7. Who has conducted the pre-restoration competency evaluation? (Check all that apply.)

- CSB staff
 Private clinician under contract
 Do not know
 Public mental health hospital
 Other (Explain.) _____

8. Does your jurisdiction have a standard procedure in place to handle pre-restoration competency evaluations of a juvenile?

- Yes No

9. Does your jurisdiction have a standard procedure in place to handle juvenile restoration services?

- Yes No

10. Does your jurisdiction have a standard procedure in place to handle follow-up evaluations for juvenile competency?

- Yes No

11. Have you been satisfied with the pre-restoration evaluations?

- Yes (If YES, proceed to question 12.)
 No (If NO, proceed to question 11a.)

11a. If NO, please identify those areas in the pre-restoration evaluation process with which you were not satisfied. (Check all that apply.)

- Lack of clarity in the Code of Virginia
 Contents of evaluation report
 No one in jurisdiction trained to conduct evaluation
 Difficulty in receiving information
 Length of time to complete evaluation
 Agency conflict over payment procedures
 Absence of restoration options
 Other (Explain.) _____

12. Have you had difficulty in accessing restoration services for an incompetent juvenile?

- Yes No

13. Have you received any training in the issue of juvenile competency?

- Yes (If YES, proceed to question 13a.)
 No (If NO, proceed to question 14.)

13a. If YES, who provided the training? (Check all that apply.)

- Institute of Law and Psychiatry, UVA
 Public Defender Commission
 Supreme Court of Virginia
 Other (Explain.) _____

14. If the Code was to be amended to specifically address the issue of juvenile competency, do you believe the standards and procedures which currently apply to adults should be adopted?

- Yes (If YES, proceed to question 14a.)
 No (If NO, proceed to question 15.)
 Not familiar with adult standards and procedures (Proceed to question 15.)

14a. If YES, should the standards and procedures be adopted in total or only in specific parts? (Please check one.)

- In total (Please go to question 15.)
 In part (Please go to question 14b.)

14b. Please specify the specific parts of the standards and procedures which should be adopted. (Please list citations.)

15. If standards and procedures for the evaluation of juvenile competency were to be developed, should they differentiate between any of the following? (Check all that apply.)

- Juvenile transfer proceedings
- Transferred/waived juveniles heard in Circuit Court
- Juvenile delinquency proceedings heard in J&DR Court

16. Have you had experience in requesting the dispositional options for an unrestorable, incompetent juvenile defendant pursuant to §19.2-169.3?

- Yes (If YES, proceed to question 16a.)
- No (If NO, proceed to question 17.)

16a. Were you satisfied with each of the following dispositional options? (Please check one for each option.)

Release

- Yes
- No
- Not applicable; no experience

Commitment to a State Mental Health Facility

- Yes
- No
- Not applicable; no experience

Certification to a State Mental Retardation Facility

- Yes
- No
- Not applicable; no experience

17. Are there any other comments or concerns you would like to express regarding the issue of juvenile competency to stand trial? (Please attach additional pages if necessary.)

PLEASE RETURN THE COMPLETED SURVEY BY SEPTEMBER 25, 1998 TO:

Nicole Turner, Assistant Legislative Research Analyst
Virginia Commission on Youth
Suite 517B, General Assembly Building
910 Capitol Street
Richmond, Virginia 23219-0406
FAX (804) 371-0574



VIRGINIA COMMISSION ON YOUTH

HJR 69 PUBLIC DEFENDER SURVEY ON JUVENILE COMPETENCY

The 1998 Session of the Virginia General Assembly enacted House Joint Resolution 69 directing the Virginia Commission on Youth to study the issue of the competency of juveniles to stand trial. As part of this study, the Commission is surveying all Public Defenders to collect opinions and information on issues related to juvenile competency to stand trial. Please return the survey by **September 25, 1998**. If you have any questions, contact Nancy Ross at (804) 371-2481. The General Assembly of Virginia and the Virginia Commission on Youth thank you for your assistance in this important study effort.

1. Do you believe the matter of competency is an issue in Juvenile Court proceedings (when transfer is not a concern)?

Yes

No

2. Do you believe the Code provides guidance regarding the consideration of competency of a minor in delinquency proceedings in Juvenile Court?

Yes (If YES, please go to question 2a.)

No (If NO, please go to question 3.)

2a. If YES, what Code section(s) provide the Court with guidance? (Please list.)

3. Do you believe the Code provides guidance regarding the determination of competency of a minor in transfer proceedings in the Juvenile Court?

Yes (If YES, please go to question 3a.)

No (If NO, please go to question 4.)

3a. If YES, what Code section(s) provide the Court with guidance? (Please list.)

4. Has the issue of competency of a juvenile ever been raised in any Juvenile Court cases you have defended?

Yes (If YES, please go to question 4a.)

No (If NO, please go to question 12.)

4a. Since July 1, 1996, how many of your cases have resulted in an order for a competency evaluation of a juvenile? (Please estimate.)

_____ Delinquency Cases

_____ Transfer Cases

5. If the issue of the competency of a juvenile is raised, who most often raises it? (Please check one.)

Defense Counsel

Judge

Commonwealth's Attorney

6. Which of the following best represents the change in the number of cases in which the issue of competency of a juvenile has been raised over the last two years? *(Please check one.)*
- Increased Decreased Don't Know
7. Who has conducted the pre-restoration competency evaluation? *(Check all that apply.)*
- CSB staff Public mental health hospital
- Private clinician under contract Other *(Explain.)* _____
- Do not know
8. Does your jurisdiction have a standard procedure in place to handle pre-restoration competency evaluations of a juvenile?
- Yes No
9. Does your jurisdiction have a standard procedure in place to handle juvenile restoration services?
- Yes No
10. Does your jurisdiction have a standard procedure in place to handle follow-up evaluations for juvenile competency?
- Yes No
11. Have you been satisfied with the pre-restoration evaluations?
- Yes *(If YES, proceed to question 12.)*
- No *(If NO, proceed to question 11a.)*
- 11a. If NO, please identify those areas in the pre-restoration evaluation process with which you were not satisfied. *(Check all that apply.)*
- Lack of clarity in the *Code of Virginia* Length of time to complete evaluation
- Contents of evaluation report Agency conflict over payment procedures
- No one in jurisdiction trained to conduct evaluation Other *(Explain.)* _____
- Difficulty in receiving information
12. Have you had difficulty in accessing restoration services for an incompetent juvenile?
- Yes No
13. Have you received any training in the issue of juvenile competency?
- Yes *(If YES, proceed to question 13a.)*
- No *(If NO, proceed to question 14.)*
- 13a. If YES, who provided the training? *(Check all that apply.)*
- Institute of Law and Psychiatry, UVA Supreme Court of Virginia
- Public Defender Commission Other *(Explain.)* _____
14. If the *Code* was to be amended to specifically address the issue of juvenile competency, do you believe the standards and procedures which currently apply to adults should be adopted?
- Yes *(If YES, proceed to question 14a.)*
- No *(If NO, proceed to question 15.)*
- Not familiar with adult standards and procedures *(Proceed to question 15.)*

14a. If YES, should the standards and procedures be adopted in total or only in specific parts? *(Please check one.)*

In total *(Please go to question 15.)*

In part *(Please go to question 14b.)*

14b. Please list the specific parts of the standards and procedures which should be adopted. *(Please list citations.)*

15. If standards and procedures for the evaluation of juvenile competency were to be developed, should they differentiate between any of the following? *(Check all that apply.)*

Juvenile transfer proceedings

Transferred/waived juveniles heard in Circuit Court

Juvenile delinquency proceedings heard in J&DR Court

16. Have you had experience in requesting the dispositional options for an unrestorable, incompetent juvenile defendant pursuant to §19.2-169.3?

Yes *(If YES, proceed to question 16a.)*

No *(If NO, proceed to question 17.)*

16a. Were you satisfied with each of the following dispositional options? *(Please check one for each option.)*

Release

Yes

No

Not applicable; no experience

Commitment to a State Mental Health Facility

Yes

No

Not applicable; no experience

Certification to a State Mental Retardation Facility

Yes

No

Not applicable; no experience

17. Are there any other comments or concerns you would like to express regarding the issue of juvenile competency to stand trial? *(Please attach additional pages if necessary.)*

PLEASE RETURN THE COMPLETED SURVEY BY SEPTEMBER 25, 1998 TO:

Nicole Turner, Assistant Legislative Research Analyst

Virginia Commission on Youth

Suite 517B, General Assembly Building

910 Capitol Street

Richmond, Virginia 23219-0406

FAX (804) 371-0574



VIRGINIA COMMISSION ON YOUTH

HJR 69 JUVENILE COMPETENCY EVALUATORS SURVEY

The 1998 Session of the Virginia General Assembly enacted House Joint Resolution 69 directing the Virginia Commission on Youth to study the issue of competency of juveniles to stand trial. As part of this study, the Commission is surveying all individuals who have been identified as having experience in conducting juvenile competency evaluations to collect opinions and information on issues related to juvenile competency.

Please return the survey by **September 25, 1998**. If you have any questions, contact Nancy Ross at (804) 371-2481. The General Assembly of Virginia and the Virginia Commission on Youth thank you for your assistance in this important study effort.

1. How many competency evaluations ordered by the Juvenile Court for juvenile defendants have you conducted since July 1, 1996? *(Please estimate number of cases.)*

_____ Competency evaluations for delinquency proceedings

_____ Competency evaluations for transfer proceedings

2. In what capacity did you conduct the evaluations? *(Please check all that apply.)*

CSB staff

CSU staff

Hospital staff

Private contractor

Other *(Explain.)* _____

3. Have you received any training on the issue of juvenile competency?

Yes *(If YES, please go to question 3a.)*

No *(If NO, please go to question 4.)*

3a. If YES, who provided the training? *(Please check all that apply.)*

Institute of Law and Psychiatry, UVA

Supreme Court of Virginia

Virginia Public Defender Commission

Other *(Explain.)* _____

4. Do you believe the matter of competency is an issue in Juvenile Court proceedings (when transfer is not a concern)?

Yes

No

5. Do you believe the *Code* provides you guidance regarding the consideration of competency in juvenile court proceedings?

Yes *(If YES, please go to question 5a.)*

No *(If NO, please go to question 6.)*

5a. If YES, to which Code section(s) do you refer for guidance? *(Please list.)*

6. Do you believe the Code provides you guidance regarding the restoration of competency for juvenile court proceedings?

Yes *(If YES, please go to question 6a.)*

No *(If NO, please go to question 7.)*

6a. If YES, to which Code section(s) do you refer for guidance? *(Please list.)*

7. If the Code was to be amended to specifically address the issue of juvenile competency, do you believe the standards and procedures which currently apply for adults should be adopted?

Yes *(If YES, please go to question 7a.)*

No *(If NO, please go to question 8.)*

7a. If YES, should the standards and procedures be adopted in total or only in specific parts? *(Please check one.)*

In total *(Please go to question 8.)*

In part *(Please go to question 7b.)*

7b. Please list the specific parts of the standards and procedures which should be adopted. *(Please list citations.)*

8. If the Code was to be amended to specifically address the issue of restoration of juvenile competency, do you believe the standards and procedures which currently apply for adults should be adopted?

Yes *(If YES, please go to question 8a.)*

No *(If NO, please go to question 9.)*

8a. If YES, should the standards and procedures be adopted in total or only specific parts? *(Please check one.)*

In total *(Please go to question 9.)*

In part *(Please go to question 8b.)*

8b. Please list the specific parts of the standards and procedures which should be adopted. *(Please list citations.)*

9. What factors do you think should be assessed in a juvenile competency evaluation? *(Check all that apply.)*

Psychopathology

Intellectual functioning

Maturity

Autonomy in decision-making

Decisional capacity

Other *(Explain.)*

10. If standards and procedures for the evaluation of juvenile competency were to be developed should they differentiate between any of the following? *(Check all that apply.)*

- Juvenile transfer proceedings
- Transferred/waived juvenile trials held in Circuit Court
- Juvenile delinquency proceedings heard in J&DR Court
- Other *(Explain.)* _____

11. Please rank the following in order of their importance to you prior to conducting a juvenile's competency evaluation. *(Please rank from one to seven, with one being the most important information.)*

- ___ School records
- ___ Delinquency records
- ___ Court Service Unit records
- ___ Psychological test results
- ___ Previous treatment records
- ___ Department of Juvenile Justice records
- ___ Other *(Explain.)* _____

12. Are there any other comments or concerns you would like to express regarding the issue of juvenile competency to stand trial? *(Please attach additional pages if necessary.)*

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