

JUVENILE COMPETENCY TO STAND TRIAL: CURRENT PROCESS, GAPS, AND OPPORTUNITIES FOR CHANGE

KAISA MARSHALL, PHD

NEW MEXICO SENTENCING COMMISSION

JUVENILE COMMITTEE MEETING

MARCH 27, 2026

Competency to Stand Trial

- CRIMINAL DEFENDANTS (& YOUTH) MUST BE ABLE TO MEANINGFULLY PARTICIPATE IN THE CASE AGAINST THEM.
- CAN BE RAISED AT ANY TIME DURING PROCEEDINGS
- **NEW MEXICO STATE'S VERSION OF THE *DUSKY* STANDARD (NMRA 5-602.1)**
 - **(A) SUFFICIENT PRESENT ABILITY TO CONSULT WITH THE DEFENDANT'S LAWYER WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING,**
 - **(B) A RATIONAL AS WELL AS FACTUAL UNDERSTANDING OF THE PROCEEDINGS AGAINST THE DEFENDANT, AND**
 - **(C) THE CAPACITY TO ASSIST IN THE DEFENDANT'S OWN DEFENSE AND TO COMPREHEND THE REASONS FOR PUNISHMENT.**

Relevant Symptom Assessment- Youth Psychopathology

- THIS LOOKS DIFFERENT IN YOUTH SINCE THE MOST COMMON REASONS YOUTH ARE FOUND NOT COMPETENT VARY FROM THOSE OF ADULTS
- COMMON IMPAIRING MENTAL HEALTH PROBLEMS FOR YOUTH:
 - NEURODEVELOPMENTAL DEFICITS (E.G., INTELLECTUAL DISABILITY, AUTISM SPECTRUM DISORDER, ADHD, FASD)
 - EMOTIONAL DISTURBANCES (E.G., PTSD, DEPRESSION, DMDD)
 - DEVELOPMENTAL IMMATUREITY (AGE, LACK OF APPRECIATION)
 - IN RARE CASES: PRODROMAL/PSYCHOTIC SYMPTOMS
- INTERACTION WITH NORMAL DEVELOPMENT

THE NATURE OF ADOLESCENT DEVELOPMENT

Unique to each person:

Idiosyncratic

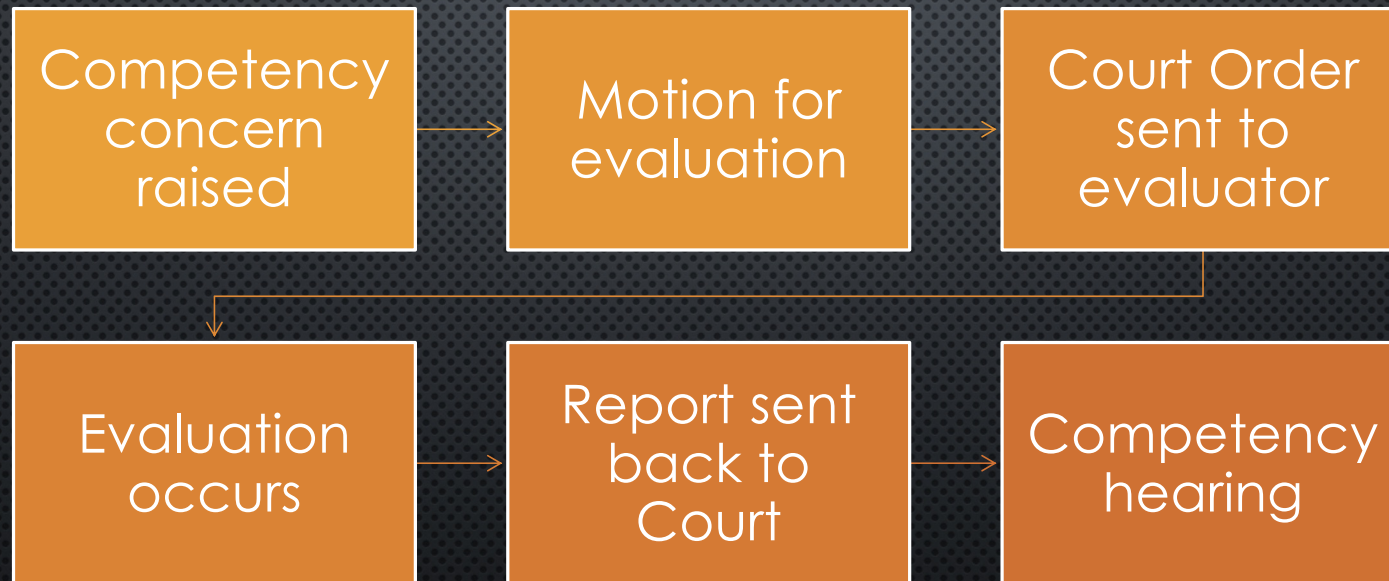
Domain-specific

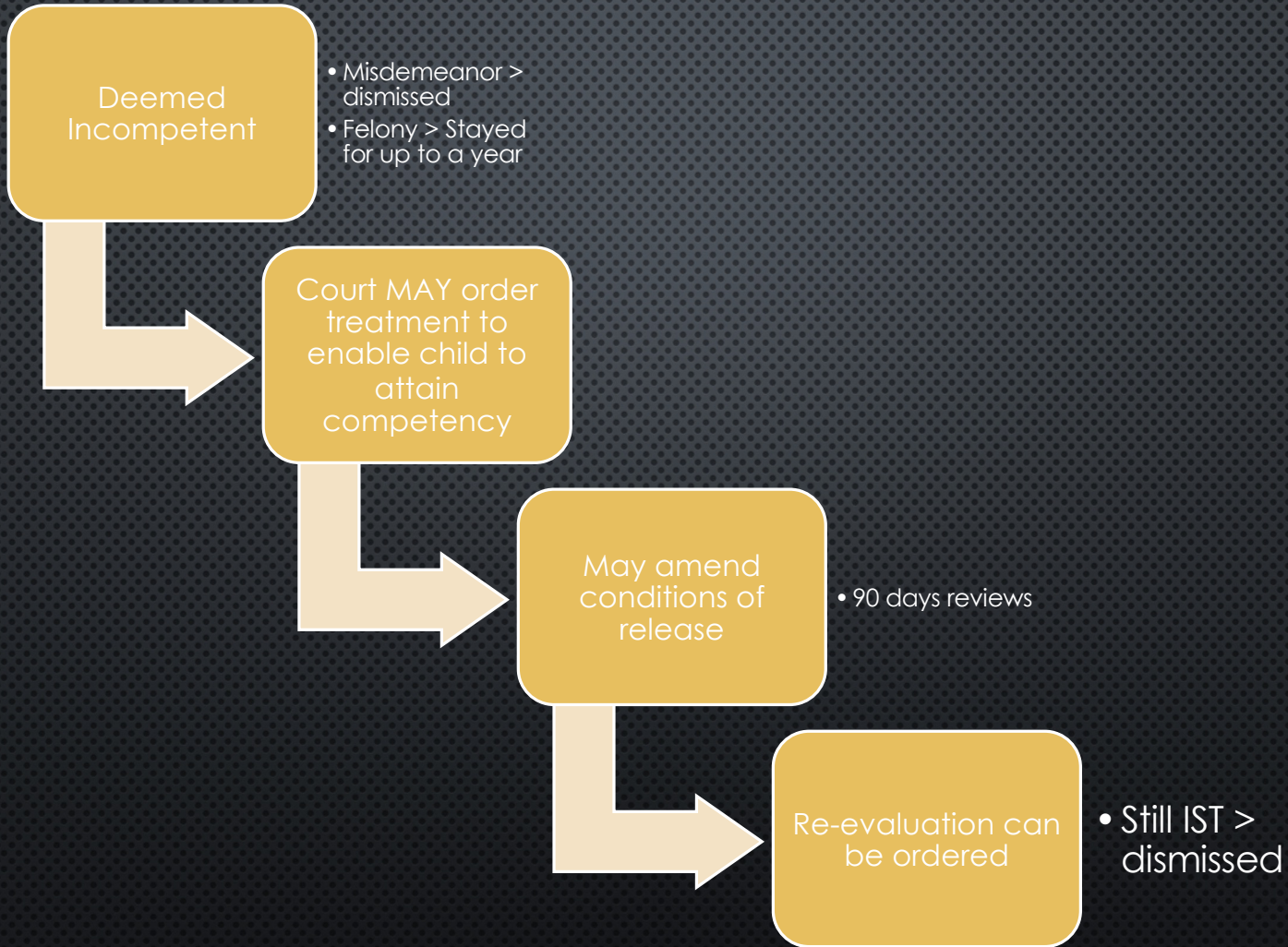
Not linear



Moving target

CURRENT PROCESS





Notably less developed than adult rules/system

Ambiguity can allow for flexibility

Also leaves gaps that have unintended consequences

EXISTING GAPS

No definition of competency standard to be used

Predicate reasons a child can be found not competent not identified

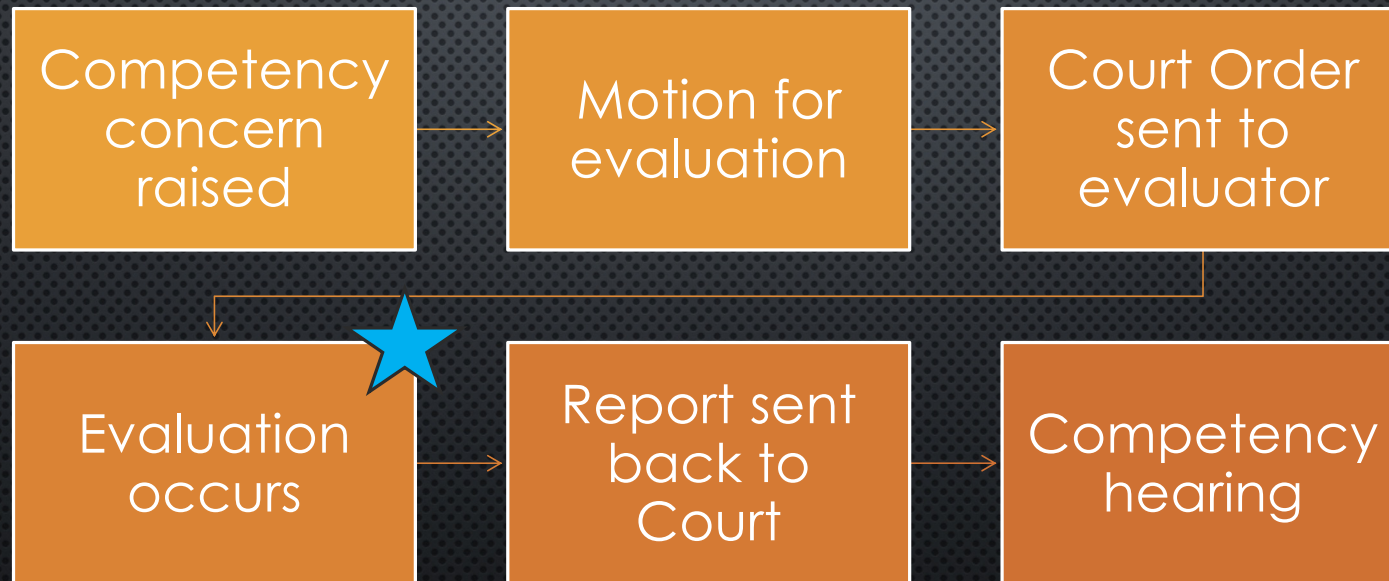
No definition what competency restoration is
- Who provides and pays for restoration not identified

Limited clarity about what should be occurring at 90-day reviews

Does not specify that a competency evaluation must occur

Examiner Qualifications not addressed

CURRENT PROCESS

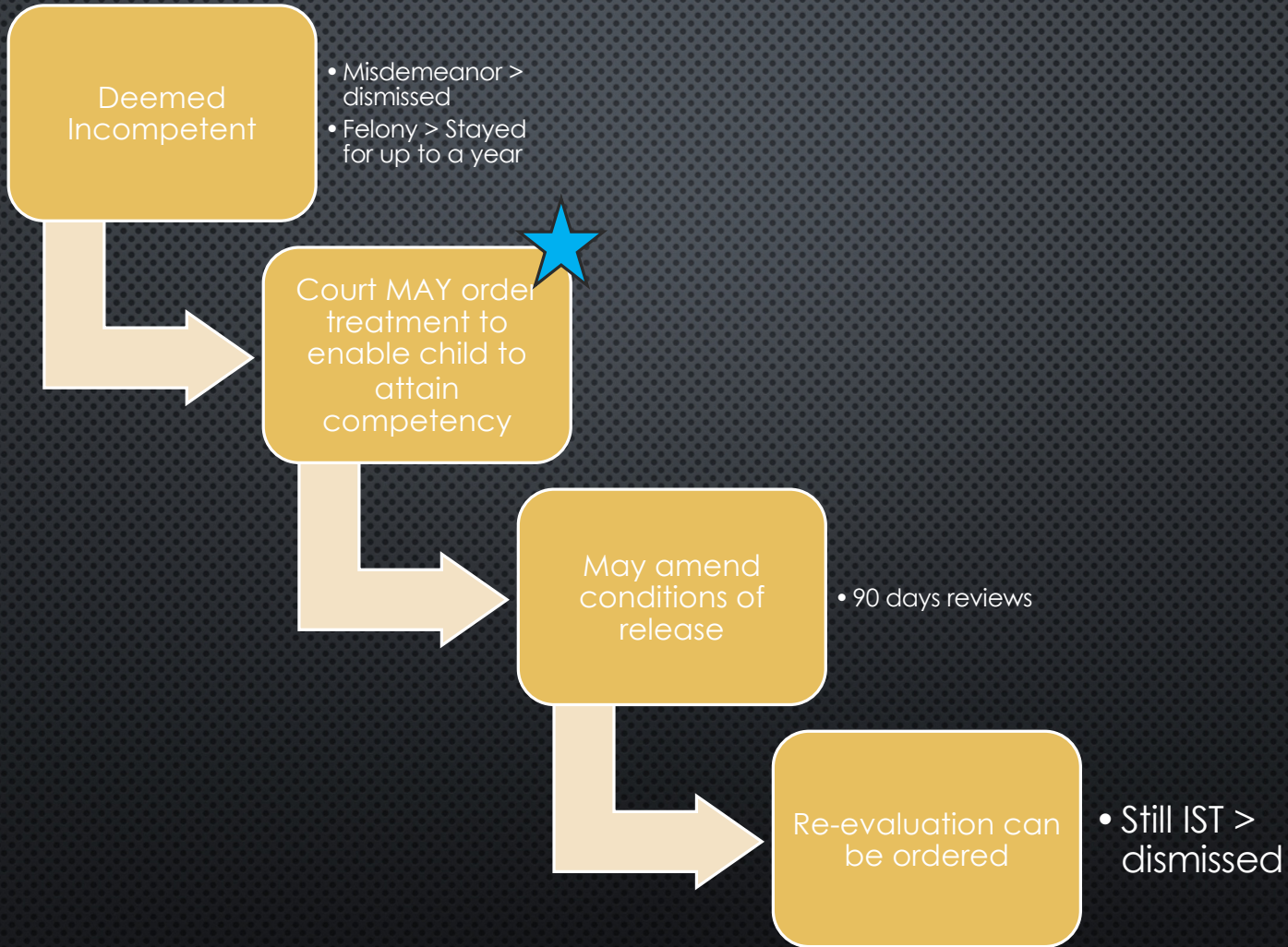


B. Mental examination. Upon motion and upon good cause shown the children's court judge shall order a mental examination of the respondent child before making any determination of competency.

- WHAT'S MISSING:
 - IDENTIFICATION OF THE STANDARD USED FOR COMPETENCY DETERMINATION
 - IDENTIFICATION OF PREDICATE REASONS FOR INCOMPETENCY
 - CLARIFICATION THAT THIS SHOULD BE AN EVALUATION OF THE YOUTH'S COMPETENCY
 - QUALIFICATION OF EVALUATORS

B. Mental examination. Upon motion and upon good cause shown the children's court judge shall order a mental examination of the respondent child before making any determination of competency.

- CONSEQUENCE OF LIMITED CLARITY:
 - POOR QUALITY EVALUATIONS
 - INAPPROPRIATE INFORMATION INCLUDED > PREJUDICED AGAINST YOUTH
 - NOT ENOUGH INFORMATION INCLUDED > COURT LEFT WITHOUT AN UNDERSTANDING OF WHAT INTERVENTION WOULD BE NEEDED FOR YOUTH TO ATTAIN COMPETENCY
 - NO CONNECTION BETWEEN A PREDICATE REASON AND COMPETENCY IMPAIRMENTS > INAPPROPRIATE CONCLUSIONS
 - EVALUATIONS NOT CONDUCTED IN DEVELOPMENTALLY SENSITIVE MANNER
 - CASES CAN BE INAPPROPRIATELY DISMISSED > JUSTICE IS NOT CARRIED OUT



D. Proceedings on finding of incompetency. (2) where appropriate, the court may order treatment to enable the respondent child to attain competency to stand trial;

- WHAT'S MISSING:
 - DEFINITION OF COMPETENCY RESTORATION OR COMPETENCY ATTAINMENT
 - WHO IS RESPONSIBLE FOR TREATMENT
 - CLARIFICATION ABOUT WHAT IS CONSIDERED AN APPROPRIATE TIME TO ORDER TREATMENT

D. Proceedings on finding of incompetency. (2) where appropriate, the court may order treatment to enable the respondent child to attain competency to stand trial;

- CONSEQUENCE:
 - COURT DOES NOT KNOW WHAT IS APPROPRIATE TO ORDER FOR TREATMENT
 - LACK OF RESPONSIBILITY FOR PROVIDING SERVICES
 - INAPPROPRIATE TREATMENT IS RECOMMENDED > DOES NOT ADDRESS COMPETENCY ATTAINMENT
 - NO TREATMENT OCCURS > CASE IS DISMISSED
 - YOUTH IS RELEASED. NO INTERVENTION HAS OCCURRED > YOUTH IS AT GREATER RISK
 - YOUTH'S CASE IS STAYED (UNDER SUPERVISION OF COURT FOR A YEAR) WITHOUT RECEIVING MEANINGFUL TREATMENT

What is the aim of restoration services?

- MATCH SERVICES TO THE UNIQUE COMPETENCY RELATED NEEDS OF EACH YOUTH
- BASED ON:
 - IDENTIFIED FUNCTIONAL LIMITATIONS LED TO FINDING OF INCOMPETENT
 - CAUSES OF THOSE LIMITATIONS
- TAILOR TREATMENT TO STRENGTHEN THOSE IDENTIFIED AREAS OF INABILITY THAT ARE INTERFERING WITH COMPETENCY

Restoration Program Modalities

- PHARMACOLOGICAL
 - REMISSION OF SYMPTOMS CAUSING RELEVANT DEFICITS
- PSYCHOTHERAPEUTIC
 - REMISSION OF SYMPTOMS CAUSING RELEVANT DEFICITS
- PSYCHOEDUCATIONAL
 - TEACHING OF INFORMATION THAT IS LACKING
- SKILLS TRAINING
 - TRAINING IN SKILLS TO ALLEVIATE RELEVANT DEFICITS
- CASE MANAGEMENT
 - MAINTAIN STABILITY AND ENHANCE FUNCTIONING SO YOUTH BENEFITS FROM OTHER SERVICES

Restoration Success

STUDIES OF OUTCOMES IN SPECIFIC PROGRAMS:

~ 70-75% OF PARTICIPANTS DISCHARGED AS COMPETENT

JACKSON, 2018; MCGAHA, ET AL., 2001; WARREN, ET AL., 2009; 2019

SURVEY OF COMMUNITY-BASED RESTORATION PROGRAMS NATIONALLY

60 – 95% (AVERAGE OF 80%) DISCHARGED COMPETENT

KRUH ET AL., 2022

Considerations

1. DEFINE COMPETENCY STANDARD (ROTHERHAM?)
2. DEFINE COMPETENCY RESTORATION/ATTAINMENT
3. INCLUDE MENTAL ILLNESS/INTELLECTUAL DISABILITY AS A PREDICATE REQUIREMENT AS WELL AS DEVELOPMENT AND MATURITY
4. PROVIDE MORE SPECIFIC INFORMATION ABOUT WHAT SHOULD BE OCCURRING AT 90-DAY REVIEWS
5. INCLUDE THAT TREATMENT RECOMMENDATIONS NEED TO MAP ON TO THE DEFICITS THAT WERE IDENTIFIED AS IMPAIRING COMPETENCY
6. SPECIFY THAT A COMPETENCE TO STAND TRIAL EVALUATION SHOULD OCCUR
7. IDENTIFY WHO IS RESPONSIBLE FOR OVERSEEING RESTORATION/ATTAINMENT TREATMENT

Other Considerations

- DIVERSION OPTIONS
- DETERMINE WHAT INFORMATION SHOULD BE INCLUDED IN A MOTION
- SHOULD THERE BE AN AGE CUT OFF
- QUALIFICATIONS OF EVALUATORS
- IF IST DUE TO IMMATURITY > JUDGE'S DISCRETION FOR HOW TO HANDLE CASE
- REGION SPECIFIC:
 - RESOURCES FOR RESTORATION
 - DEVELOPMENT OF QUALIFIED WORKFORCE



THANK YOU!

CONTACT INFORMATION:

KKMARSHALL@SALUD.UNM.EDU