

# COMPETENCY TO STAND TRIAL IN JUVENILE COURT: An Overview of the Law

## Youth Advocacy Division Committee for Public Counsel Services<sup>1</sup>

1. Standard: Competency to Stand Trial -“whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding **and** whether he has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402 (1960) (emphasis added)
  - a) Massachusetts follows the *Dusky* standard. *Commonwealth v. Kostka*, 370 Mass. 516, 522 (1971), *Commonwealth v. Crowley*, 393 Mass. 393 (1984), *Commonwealth v. Lyons*, 426 Mass. 466, 469 (1998).
  - b) “[A] person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subject to trial.” *Drope v. Missouri*, 420 U.S. 162, 171 (1975), See also, *Commonwealth v. L’Abbe*, 421 Mass. 262, 266 (1995).
  - c) A full hearing must be held if doubt exists as to the defendant’s competence. *Commonwealth v. Vailes*, 360 Mass. 522, 524 (1971). “This doubt which necessitates a hearing has been more fully described as a ‘substantial question of possible doubt.’” *Id.* quoting *Rhay v. White*, 385 Mass. 833, 886.
  - d) “The trial, conviction or sentencing of a person charged with a criminal offense while he is legally incompetent violates his constitutional rights of due process.” *Vailes*, 360 Mass. at 524. (14<sup>th</sup> Amendment and Article 12 of Mass. Declaration of Rights)
2. Standard: Competency to Tender a Plea/Admission and Waive Counsel -In addition to finding a defendant competent, a court must also determine that a guilty plea or waiver of counsel is done knowingly and voluntarily. *Godinez v. Moran*, 509 U.S. 389, 400 (1993).
  - a) Courts do not have to make a competency determination whenever a defendant wants to plea or waive counsel; a competency determination only has to be made if the court has reason to doubt the defendant’s competency. *Id.* at 402, fn. 13.
  - b) A plea must be voluntary “with sufficient present ability to consult with [a] lawyer with a reasonable degree of rational understanding and whether [the defendant] has a rational as well as factual understanding of the proceedings against [her].” *Commonwealth v. Conaghan*, 433 Mass. 105 (2000).

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3. Burden and Standard of Proof - The burden of proof is on the Commonwealth to prove the defendant is competent by a preponderance of the evidence. *Commonwealth v. Crowley*, 393 Mass. 393, 400 – 402 (1984), *Commonwealth v. Lyons*, 426 Mass. 466, 469 (1998).
4. When can Competency be Raised? Competency can be raised at any stage of the proceedings. *Conaghan*, 433 Mass at 110. It can also be raised on appeal.
  - a) In *Conaghan*, the defendant filed a motion for a competency evaluation four and one-half years after she plead guilty to manslaughter. The SJC overruled the trial courts denial of the motion and remanded the case for the defendant to be examined by an expert on battered women syndrome.
  - b) When the issue is raised for the first time on appeal, the proper means for addressing it is through a motion for new trial. *Commonwealth v. Simpson*, 428 Mass. 646 (1999) In *Simpson*, on the third day of trial, in which the defendant represented himself with stand-by counsel, the defendant delivered his opening statement which was “implausible, rambling, considerably incriminatory, largely immaterial, and unquestionably ineffective.” Prior to trial and about two months after he was indicted, the defendant’s first attorney requested a competency evaluation. The defendant did not completely participate in the evaluation so no conclusion on the defendant’s competency was made. After the opening statement, no one requested a competency evaluation. The SJC stated that a ‘substantial question of possible doubt’ as to the defendant’s competence existed after the defendant’s opening and his subsequent behavior.
  - c) In *Commonwealth v. Hill*, 375 Mass. 50 (1978) the defendant’s competency was first raised after a jury waived trial and conviction, on a motion for new trial. “Inquiry into the defendant’s claim of incompetence should not be easily foreclosed on the ground of waiver, since ‘it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently waive his right to have the court determine his capacity to stand trial.’” quoting *Pate v. Robinson*, 383 U.S. 375, 384 (1966). In this case, the defendant’s conviction was set aside. The SJC found that the trial judge should have initiated, on his own, an evidentiary hearing to determine if the defendant was competent. The judge was able to observe the defendant, had psychiatric reports regarding the defendant, and testimony of experts as to the defendant’s conduct and condition.
  - d) In *Tate v. State of Florida*, 864 So.2d 44 (Fla. 2003) the issue was raised on appeal from a conviction for first degree murder. Lionel Tate was 12 years old at the time of the offense. The court of appeals reversed Tate’s conviction because the trial court did not order a competency evaluation. The defendant’s age and lack of previous exposure to the criminal justice system mandated that the court should have addressed the issue of competency.

“At a minimum, under the circumstances of this case, the court had an obligation to ensure that the juvenile defendant, who was less than the age of

fourteen, with known disabilities raised in his defense and who faced mandatory life imprisonment, was competent to understand the plea offer and the ramifications thereof, and understood the defense being raised and the state's evidence to refute the defense position, so as to ensure that Tate could effectively assist in his defense." *Id.* at 51.

5. Who can Raise the Issue? Defense counsel, the prosecution or the Judge can raise the issue. G. L. c. 123 § 15 (d)

- a) If sufficient reason exists to doubt the defendants' competency, the judge must raise it sua sponte and hold a hearing. *Commonwealth v. Vailes*, 360 Mass. 522 (1971), *Commonwealth v. Hill*, 375 Mass. 50, 54 (1978). "When there is doubt as to whether the defendant satisfies [the *Dusky*] test, the judge must, on his own initiative, conduct a full hearing on the issue." *Kostka*, 370 Mass. at 522.
- b) G. L. c. 123 § 15 (a) – "*Whenever a court of competent jurisdiction doubts whether a defendant in a criminal case is competent to stand trial ...it may at any stage of the proceedings after the return of an indictment or the issuance of a criminal complaint against the defendant, order an examination of such defendant to be conducted by one or more qualified physicians or one or more qualified psychologists. Whenever practicable, examinations shall be conducted at the court house or place of detention where the person is being held. When an examination is ordered, the court shall instruct the examining physician or psychologist in the law for determining mental competence to stand trial...*"
- c) Defense counsel does not violate any rule of professional conduct by raising competency, even where the client does not want the issue raised. *Commonwealth v. Simpson*, 428 Mass. 646, 648 (1999)
- d) Mass. R. Prof. C. 1.14 R Client Under a Disability:
  - (a) "*When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.*"
  - (b) "*If a lawyer reasonably believes that a client has become incompetent or that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, and if the lawyer reasonably believes that the client is at risk of substantial harm, physical, mental, financial, or otherwise, the lawyer may take the following action. The lawyer may consult family members, adult protective agencies, or other individuals or entities that have authority to protect the client, and, if it reasonably appears necessary, the lawyer may seek the appointment of a guardian ad litem, conservator, or a guardian, as the case may be. The lawyer may consult only those individuals or entities reasonably necessary to*"

*protect the client's interests and may not consult any individual or entity that the lawyer believes, after reasonable inquiry, will act in a fashion adverse to the interests of the client. In taking any of these actions the lawyer may disclose confidential information of the client only to the extent necessary to protect the client's interests."*

6. Who can Conduct an Evaluation? – One or more qualified physician or qualified psychologist can perform an evaluation. Mass. G. Law ch.123 § 15 (a), (b).

- a) *"Qualified physician", a physician who is licensed pursuant to section two of chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department; provided that different qualifications may be established for different purposes of this chapter. A qualified physician need not be an employee of the department or of any facility of the department. G. L. c. 123 § 1*
- b) *"Qualified psychologist", a psychologist who is licensed pursuant to sections one hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department, provided that different qualifications may be established for different purposes of this chapter. A qualified psychologist need not be an employee of the department or of any facility of the department. G. L. c. 123 § 1*
- c) A defendant can be required to submit to an examination by one expert of the Commonwealth's choosing where a court-appointed expert has concluded that the defendant is not competent. *Commonwealth v. Seng*, 445 Mass. 536 (2005). In *Seng*, the defendant was evaluated by a designated forensic psychologist. The psychologist determined that the defendant was not competent to stand trial. The Commonwealth moved for an independent evaluation, which the judge allowed. The SJC upheld the allowance of the Commonwealth's motion for an independent evaluation. The court reasoned, that the Commonwealth bears the burden of proof, G.L.c. 123 § 15 does not precluded the Commonwealth from calling its own experts, and an expert can not form a credible opinion without examining the defendant. The court further stated that *"'psychiatry is a profession where experts often disagree' and a judge would benefit, in making difficult decisions from the 'opportunity to hear from more than one expert on the issue of the defendant's competency.'"* *Id.* at 542 quoting *United States v. Weston*, 36 F. Supp. 2d 7, 15 (D.D. C 1999). See *Commonwealth v. Lamb*, 372 Mass. 17, 24, 360 N.E.2d 307 (1977), quoting *Commonwealth v. Smith*, 357 Mass. 168, 178, 258 N.E.2d 13 (1970) (*"Judicial experience with psychiatric testimony makes it abundantly clear that it would be unrealistic to treat an opinion . . . by an expert on either side of [an] issue as conclusive"*).
- d) Competency evaluation conducted by Commonwealth's expert does not violate the defendant's rights against self incrimination. *Seng*, 445 Mass. at 545-546. A competency evaluation has a "limited, neutral purpose." *Id.* quoting *Estelle v. Smith*, 451 U.S. 454, 465 (1981). The evaluator does not have to ask whether

the defendant committed the crime, but would ask “*what he was accused of, who the important people are in the court room and what are their roles, or what will the consequences be if he is found guilty, all with a view to evaluating his understanding of the proceedings and his ability to participate in his defense.*” *Seng*, 445 at 546. In *Seng*, the court looked to Mass. Rule Crim. P. 14 (b) (2) (B) (ii) (criminal responsibility) and G.L. c. 233 § 23B for protecting a defendant when incriminating statements are made during the competency evaluation. A judge can withhold said evidence from the Commonwealth and the report can be redacted. *Id.* at 546 -547. The report will not be provided to the Commonwealth unless “*the judge determines that the [competency expert’s] report contains no matter, information, or evidence which is based upon statements of the defendant as to his mental condition at the time of or his criminal responsibility for the alleged crime or which is otherwise within the scope of the privilege against self-incrimination*” *Id.* citing Mass. R. Crim. P. 14 (b) (2) (B) (iii). Mass. R. Crim. P. 14 was amended effective September 17, 2012 to expand this section to include mental health examinations for the purposes other than criminal responsibility consistent with *Seng*.

- e) Mass. Rule Crim. P. 14 (b) (2) (B) (ii) provides: “No statement, confession, or admission, or other evidence of or obtained from the defendant during the course of the examination, except evidence derived solely from physical examinations or tests, may be revealed to the prosecution or anyone acting on its behalf unless so ordered by a judge.”
- f) G.L. ch. 233 § 23B. Admissibility of Statements of Defendant in Criminal Case Made by Him While Undergoing Psychiatric Examination. “*In the trial of an indictment or complaint for any crime, no statement made by a defendant therein subjected to psychiatric examination pursuant to sections fifteen or sixteen of chapter one hundred and twenty-three for the purposes of such examination or treatment shall be admissible in evidence against him on any issue other than that of his mental condition, nor shall it be admissible in evidence against him on that issue if such statement constitutes a confession of guilt of the crime charged.*”
- g) See Mass. R. Crim. Pro. R. 14(b) (2) (B) ii for further information regarding the Commonwealth’s ability to have an expert examine the juvenile if the juvenile’s expert bases her opinion in whole or in part on the juvenile’s statements regarding his mental condition at the relevant time. The rule also provides that the experts are to prepare reports and sets forth the required content of the reports and the timing of the exchange.

7. Discovery Obligations. Mass. R. Crim. P. 14 (b)(2) provided that if “a defendant intends at trial to raise as an issue his or her mental condition at the time of the alleged crime, or if the defendant intends to introduce expert testimony on the defendant’s mental condition at any stage of the proceeding, the defendant shall, within the time provided for the filing of pretrial motions by Rule 13(d)(2) or at such later time as the judge may allow, notify the prosecutor in writing of such intention.” The notice shall state:

- (i) “whether the defendant intends to offer testimony of expert witnesses on the issue of the defendant's mental condition at the time of the alleged crime or at another specified time;
- (ii) the names and addresses of expert witnesses whom the defendant expects to call; and
- (iii) whether those expert witnesses intend to rely in whole or in part on statements of the defendant as to his or her mental condition.”

Mass. R. Crim. Pro. 14(2)(C) states that: “Upon showing of necessity, the Commonwealth and the defendant may move for other material and relevant evidence relating to the defendant's mental condition.”

#### 8. When Should a Hearing be Conducted?

- a. A hearing on the defendant's competency must be held where “*there exists ‘a substantial question of possible doubt’ as to whether the defendant is competent to stand trial.*” *Crowley* 393 Mass. 393, 399. If an inquiry into the defendant's competency is not made when a “substantial question of possible doubt” exists, the defendant's constitution right to a fair trial would be deprived. *Id.*

#### 9. Evidence at the Hearing

- a. In *Commonwealth v. Crowley*, there was little support that the defendant was competent. Both the defense and Commonwealth called experts; the experts agreed that the defendant suffered from chronic psychosis but did not agree on the issue of competency. The Commonwealth's expert did testify that the defense attorney would have a difficult time communicating with his client. The defense attorney also testified that he could not communicate with his client in a meaningful way and the defendant could not assist in the preparation of his defense. The trial judge found the defendant competent. The defendant appealed his conviction on the ground that the judge improperly placed the burden on him to disprove competency and applied the wrong standard. The SJC set the verdict aside and remanded the case.
- b. “A defendant's demeanor at trial and response to questioning by the judge [are] relevant to a decision on the merits of the competency issue.” *Commonwealth v. DeMinico*, 408 Mass. 230 (1990) quoting *Commonwealth v. Hill*, 375 Mass. 50, 50 (1978). In *DeMinico* the evidence supported the judges finding that the defendant was competent, even though there was some expert testimony to the contrary.
- c. In *Commonwealth v. Prater*, 420 Mass 569, experts from both side testified that the defendant had a low IQ and suffered from psychiatric problems. However, the experts disagreed as to the defendant's competence to stand trial. The judge weighs the credibility of the experts and in this case, the SJC found that, on the record, there was sufficient evidence to find the defendant competent.

Substantial deference is given to a judge's findings as the judge had an opportunity to see the witness and make an evaluation. *Id.* at 574.

10. Defendant Found Incompetent – When a defendant is found incompetent to stand trial, “the case shall be stayed until such time as the defendant becomes competent to stand trial, unless the case is dismissed.” G. L. ch. 123 § 15 (d).
  - a) G. L. ch. 123 §16 (a) – *“The court having jurisdiction over the criminal proceedings may order that a person who has been found incompetent to stand trial or not guilty by reason of mental illness or mental defect in such proceedings be hospitalized at a facility for a period of forty days for observation and examination; provided that, if the defendant is a male and if the court determines that the failure to retain him in strict security would create a likelihood of serious harm by reason of mental illness, or other mental defect, it may order such hospitalization at the Bridgewater state hospital; and provided, further, that the combined periods of hospitalization under the provisions of this section and paragraph (b) of section fifteen shall not exceed fifty days.*
  - b) G.L ch. 123 § 16 (b) – *“During the period of observation of a person believed to be incompetent to stand trial or within sixty days after a person is found to be incompetent to stand trial or not guilty of any crime by reason of mental illness or other mental defect, the district attorney, the superintendent of a facility or the medical director of the Bridgewater state hospital may petition the court having jurisdiction of the criminal case for the commitment of the person to a facility or to the Bridgewater state hospital. However, the petition for the commitment of an untried defendant shall be heard only if the defendant is found incompetent to stand trial, or if the criminal charges are dismissed after commitment. If the court makes the findings required by paragraph (a) of section eight it shall order the person committed to a facility; if the court makes the findings required by paragraph (b) of section eight, it shall order the commitment of the person to the Bridgewater state hospital; otherwise the petition shall be dismissed and the person discharged. An order of commitment under the provisions of this paragraph shall be valid for six months. In the event a period of hospitalization under the provisions of paragraph (a) has expired, or in the event no such period of examination has been ordered, the court may order the temporary detention of such person in a jail, house of correction, facility or the Bridgewater state hospital until such time as the findings required by this paragraph are made or a determination is made that such findings cannot be made.”*
  - c) G.L ch. 123 § 8 – Retention of Persons Whose Discharge Would Create Likelihood of Serious Harm; Judicial Proceedings for Commitment:
    - (i) *After a hearing, unless such hearing is waived in writing, the district court or the division of the juvenile court department shall not order the commitment of a person at a facility or shall not renew such order unless it finds after a hearing that (1) such person is mentally ill, and (2) the*

*discharge of such person from a facility would create a likelihood of serious harm.*

*(ii) After hearing, unless such hearing is waived in writing, the district court or the division of the juvenile court department shall not order the commitment of a person at the Bridgewater state hospital or shall not renew such order unless it finds that (1) such person is mentally ill; (2) such person is not a proper subject for commitment to any facility of the department; and (3) the failure to retain such person in strict custody would create a likelihood of serious harm. If the court is unable to make the findings required by this paragraph, but makes the findings required by paragraph (a), the court shall order the commitment of the person to a facility designated by the department.*

*(iii) The court shall render its decision on the petition within ten days of the completion of the hearing, provided, that for reasons stated in writing by the court, the administrative justice for the district court department may extend said ten day period.*

*(iv) The first order of commitment of a person under this section shall be valid for a period of six months and all subsequent commitments shall be valid for a period of one year; provided that if such commitments occur at the expiration of a commitment under any other section of this chapter, other than a commitment for observation, the first order of commitment shall be valid for a period of one year; and provided further, that the first order of commitment to the Bridgewater state hospital of a person under commitment to a facility shall be valid for a period of six months. If no hearing is held before the expiration of the six months commitment, the court may not recommit the person without a hearing.*

*(v) In the event that the hearing is waived and on the basis of a petition filed under the authority of this chapter showing that a person is mentally ill and that the discharge of the person from a facility would create a likelihood of serious harm, the district court or the division of the juvenile court department which has jurisdiction over the commitment of the person may order the commitment of the person to such facility.*

*(vi) In the event that the hearing is waived and on the basis of a petition filed under the authority of this chapter showing that a person is mentally ill, that the person is not a proper subject for commitment to any facility of the department and that the failure to retain said person in strict security would create a likelihood of serious harm, the district court or the division of the juvenile court department which has jurisdiction over a facility, or the Brockton district court if a person is retained in the Bridgewater state hospital, may order the commitment of the person to said hospital.*

- d) The case can be dismissed on “the date of the expiration of the period of time equal to the time of imprisonment which the person would have had to serve prior to becoming eligible for parole if he had been convicted of the most serious crime with which he was charged in court and sentenced to the maximum sentence he could have received, if so convicted.” G. L. c. 123 §16



(f). This “date of expiration” is calculated by looking at the maximum sentence allowed for the single most serious crime the defendant is charged with. *Foss v. Commonwealth*, 437 Mass. 584 (2002).

Children charged on a delinquency complaint are not subject to “imprisonment” so there is an open question whether the date of expiration would be based on the DYS classification grid or the commitment time of age 18. In *Abbott A v. Commonwealth*, 458 Mass. 24 (2010), the court stated that the statutory limitation of §16(f) does not apply to a juvenile charged as a delinquent. Where a juvenile, charged as a delinquent is detained under c, 278 § 58 A (dangerousness), the length of detention cannot exceed the length of time the juvenile could be committed to DYS.

A case can also be dismissed in the interest of justice. *G. L. c. 123 §16 (f)*.

- e) The case can also be dismissed under *G.L. c. 123 § 17 (b)* if the defendant “*can establish a defense of not guilty to the charges pending against the person other than the defense of not guilty by reason of mental illness or mental defect, he may request an opportunity to offer a defense thereto on the merits before the court which has criminal jurisdiction. The court may require counsel for the defendant to support the request by affidavit or other evidence. If the court in its discretion grants such a request, the evidence of the defendant and of the commonwealth shall be heard by the court sitting without a jury. If after hearing such petition the court finds a lack of substantial evidence to support a conviction it shall dismiss the indictment or other charges or find them defective or insufficient and order the release of the defendant from criminal custody.*” In *Commonwealth v Hatch*, 438 Mass. 618 (2003) the court explained the process for dismissal under section 17 (b). First, the defense must make a preliminary showing that the request for dismissal should be allowed. The defense should submit affidavits and other evidence would support the claim that the defendant has a “specific and meritorious defense to the pending charges.” *Id.* at 620. If the judge allows the request to present a defense “on the merits” the standard the judge should use is whether there is a “lack of substantial evidence to support a conviction” *Id.* quoting *G.L. c. 123 § 17(b)*. The SJC articulates this standard as “whether a rational jury could find the defendant guilty beyond a reasonable doubt,” and the judge’s personal view regarding the evidence should not come into play. *Hatch* at 623. The defense has the right to call witnesses at this hearing. *Id.* at 624.

- 11. Juvenile Standard in Massachusetts – Massachusetts does not have a separate standard for juveniles and age and/or developmental issues are not addressed in our statutes.
- 12. An Incompetent Defendant can be Held on Bail.
  - a) *Commonwealth v. Torres*, 441 Mass. 499 (2004) – a judge may conduct a bail hearing for a defendant who has been found incompetent to stand trial.
- 13. An Incompetent Juvenile can be Held Pursuant to a Dangerousness Hearing (GL c. 276 § 58A).

- a) *Abbott A. v. Commonwealth, supra* at 33, “[I]t is not a per se violation of due process to hold a hearing under § 58A to determine an incompetent person’s dangerousness, regardless of whether that person is an adult or a juvenile.” As in *Commonwealth v. Torres, supra*, the court looked to 3 factors in deciding whether there was a due process violation in having a § 58A hearing: 1) the private interest that will be affected by the hearing; 2) the Commonwealth’s interest in the outcome of the hearing; and 3) the risk that the juvenile’s incompetency during the hearing will erroneously deprive him of his liberty.” If a judge were to conclude that, because of the person’s incompetency, the judge is unable to obtain adequate information to make a reliable dangerousness determination.” *Abbott A.* at 33.
- b) The period of incompetency tolls the 90 days under § 58A. *Abbott A. supra*. Mass. R. Crim. P. 36 (b) (2) (C) (speedy trial)
- c) Detention under § 58A is limited by the requirements of due process, which are three fold:
  - a. The juvenile can’t be held in custody for more than a reasonable time needed to determine whether there is a substantial probability that she will become competent;
  - b. The juvenile must be making enough progress toward competency for the judge to conclude that it is actually going to happen in the “foreseeable future,” and
  - c. Even if the above two conditions exist, a juvenile cannot be detained for an unreasonable period of time.
- d) There must be judicial review on these due process requirements every ninety days.