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A Review of Maryland's Juvenile Justice System: Are the Adjudicative Competency Standards and Procedures Incompetent?

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A REVIEW OF MARYLAND’S JUVENILE JUSTICE SYSTEM:
ARE THE ADJUDICATIVE COMPETENCY STANDARDS AND
PROCEDURES INCOMPETENT?

*Kaitlin O’Dowd**

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I. INTRODUCTION

The architects of America's juvenile justice system originally crafted a rehabilitative model.¹ However, piece-by-piece, rehabilitation has been demolished.² The system's foundation is no longer recognizable; all that remain are tiny fragments of this reform.³ As such, the current juvenile justice system's operations are problematic.⁴ Children accused of crimes, ranging "from nearly trivial to life-threatening offenses," face more punitive consequences than ever before.⁵ The distinction between the juvenile justice system and the adult criminal justice system is blurred.⁶ The lack of difference between the two systems presents concerns about children's due process rights in the juvenile justice system.⁷

When the juvenile justice system was created, children were not explicitly afforded due process rights in the same manner as adults.⁸ The nature of the proceedings and the system's goal toward diagnosis and prescription rather than adjudication and punishment were the bases for the absence of due process protections for children.⁹ Despite the juvenile justice system's recent shift toward adjudication and punishment, the Supreme Court of the United States has rarely spoken on the issue of juvenile rights¹⁰ or whether adults' rights in the criminal justice system also apply to juveniles.¹¹ The most notable case for children's due process rights, *In re Gault*, addressed

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1. NAT'L RSCH. COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 33-34 (Richard J. Bonnie et al. eds., 2013).
2. *Id.* at 34.
3. *Id.*
4. *Id.* at 32-33.
5. *Id.* at 20.
6. *Id.*
7. *Id.* at 34.
8. *Id.*
9. *Id.*
10. See *Overview of US Supreme Court Decisions*, JUV. SENT'G PROJECT, <https://juvenilesentencingproject.org/us-supreme-court-decisions/> [<https://perma.cc/J9B5-5MXF>] (last visited Nov. 3, 2022) (listing the few juvenile rights' cases decided by the Supreme Court since 2005).
11. Laurence Steinberg, *Juveniles on Trial: MacArthur Foundation Study Calls Competency into Question*, 18 CRIM. JUST. 20, 21 (2003).

juveniles' various due process rights when facing adjudication,¹² yet, the Court failed to address competency.¹³ Under the Court's adult competence standard, as prescribed in *Dusky v. United States*,¹⁴ courts are likely to find juveniles incompetent more often than adults due to a juvenile's age, developmental status, and intellectual capabilities.¹⁵ Accordingly, the due process right concerning competency to stand trial, explicitly afforded to adults in the criminal justice system, must also apply to juveniles in the juvenile justice system.¹⁶

Many states across the nation recognize the importance of competency for juveniles in the juvenile justice system; these states have robust statutory schemes relating to juvenile adjudicative competency.¹⁷ However, Maryland's statutes and procedures do not fully account for juvenile competency, rendering them ineffective.¹⁸ Maryland's legislature must answer the critical call to protect Maryland's children and their due process rights and enact much-needed change to its juvenile justice system.

This comment explores juvenile adjudicative competency and how its application must evolve to reflect recent social science research.¹⁹ This comment also specifically examines Maryland's statutes and procedures on juvenile adjudicative competency.²⁰ Part II provides background on competency in criminal proceedings and its relation to due process rights.²¹ Part III discusses children's due process rights and the importance of incorporating adjudicative competency into these rights.²² Part IV examines and analyzes juvenile competency statutes across the nation.²³ Part V compares Maryland's statutes and procedures to those of other states to identify where Maryland's statutory scheme lacks in protecting children's due process rights.²⁴ Lastly, Part VI will present recommendations for

12. *In re Gault*, 387 U.S. 1, 30–31 (1967).

13. Steinberg, *supra* note 11.

14. *See Dusky v. United States*, 362 U.S. 402, 402 (1960).

15. Steinberg, *supra* note 11.

16. *See infra* notes 71–86 and accompanying text.

17. David R. Katner, *Eliminating the Competency Presumption in Juvenile Delinquency Cases*, 24 CORNELL J.L. & PUB. POL'Y 403, 438–50 (2015).

18. *Id.* at 443–44.

19. *See infra* Section III.B.1.

20. *See infra* Part V.

21. *See infra* Part II.

22. *See infra* Part III.

23. *See infra* Part IV.

24. *See infra* Part V.

Maryland's legislature to afford every Maryland child the same due process rights as adults.²⁵

II. COMPETENCY: THE ULTIMATE DUE PROCESS RIGHT

A. *Setting the Competency Standard*

The American criminal justice system has historically recognized that criminal defendants who are incompetent to stand trial cannot face prosecution.²⁶ Competence to stand trial, or adjudicative competence, involves a criminal defendant's ability to participate in the legal proceedings against him.²⁷ There are two concerns associated with incompetent defendants: the accuracy of the trial and the defendant's ability to make rational decisions regarding their defense.²⁸ These concerns are critical because they speak to a defendant's ability to participate in his or her trial.²⁹ Accordingly, a defendant cannot waive an assertion of competency.³⁰

Adjudicative competency is integral in "preserving the dignity of the criminal process, reducing the risk of erroneous convictions, and protecting the defendant's decision-making autonomy."³¹ Despite its importance, adjudicative competency lacked a uniform standard until the Supreme Court reexamined the issue of competency in 1960.³² In *Dusky v. United States*, the Court examined whether a defendant diagnosed with schizophrenia was competent to stand trial despite his inability to properly assist his counsel.³³ The defendant was oriented to time and place and could recall the events surrounding his charge.³⁴ However, he genuinely believed that he was framed for the crime, which impacted the defendant's ability to assist his attorney in

25. *See infra* Part VI.

26. Sara R. Faber, *Competency, Counsel, and Criminal Defendants' Inability to Participate*, 67 DUKE L.J. 1219, 1222 (2018).

27. Douglas Mossman et al., *AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial*, 35 J. AM. ACAD. PSYCHIATRY L., S3, S3 (2007).

28. Faber, *supra* note 26, at 1223.

29. *Id.* at 1224.

30. *Id.* at 1223.

31. Richard J. Bonnie & Thomas Grisso, *Adjudicative Competence and Youthful Offenders*, in *YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE* 73, 76 (Thomas Grisso & Robert G. Schwartz eds., 2003).

32. *Dusky v. United States*, 362 U.S. 402, 402 (1960); *see also* *Youtsey v. United States*, 97 F. 937, 947 (6th Cir. 1899) (holding that the defendant had a substantial right to an investigation of his sanity and whether it significantly interfered with his trial preparation).

33. Mossman, *supra* note 27, at S5.

34. *Id.*

his defense.³⁵ Ultimately, the Court found the defendant's orientation and memory of the events insufficient to establish competency; therefore, he could not stand trial.³⁶ In its holding, the Court provided the current standard for competency: (1) "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and (2) "whether [the defendant] has a rational as well as factual understanding of the proceedings against him."³⁷

Dusky's holding is rooted in constitutional protections afforded to criminal defendants.³⁸ Specifically, a defendant's right to be competent before standing trial focuses on fundamental fairness, provided by procedural and substantive due process.³⁹ A criminal defendant's participation in his or her own trial is "essential to an adversary system of justice[.]" making competency evaluations before trial fundamental to a fair and equitable justice system.⁴⁰ Adequate participation from defendants requires the mental capacity to assist with their case.⁴¹

Twenty years later, in *Drope v. Missouri*, the Supreme Court elaborated on the *Dusky* standard, holding that "a person may not stand trial if '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.'"⁴² In *Drope*, the Court also emphasized the constitutional involvement with the incompetence doctrine.⁴³ The Court explained how competency is "so 'fundamental to an adversary system of justice' that conviction of an incompetent defendant, or failure to adhere to procedures designed to assess a defendant's competence when doubt has been raised, violates the due process clause."⁴⁴ Furthermore, in *Pate v. Robinson*, the Court noted that "the conviction of an accused person while he is legally

35. *Id.*

36. *Id.*

37. *Dusky*, 362 U.S. at 402.

38. See generally Laurie Ragatz et al., *Competency to Proceed to Trial Evaluations and Rational Understanding*, 59 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 1505 (2015) (discussing competency to stand trial as being rooted in fundamental fairness).

39. U.S. CONST. amend. XIV, § 1; Ragatz, *supra* note 38, at 1516.

40. Ragatz, *supra* note 38, at 1505–06 (citation omitted).

41. *Id.* at 1516.

42. *Drope v. Missouri*, 420 U.S. 162, 171 (1975); Faber, *supra* note 26, at 1225.

43. Bonnie & Grisso, *supra* note 31, at 94–95; *Drope*, 420 U.S. at 175.

44. Bonnie & Grisso, *supra* note 31, at 94–95 (quoting *Drope*, 420 U.S. at 172).

incompetent violates due process.”⁴⁵ Accordingly, adult criminal defendants are explicitly afforded the due process right to be competent to stand trial.⁴⁶ Whether juveniles have this right is still unclear.⁴⁷

B. Raising Competency: Standards and Procedures

The *Dusky* standard is an integral part of challenging a defendant’s competency.⁴⁸ In practice, the standard encapsulates three parts: (1) understanding, (2) reasoning, and (3) appreciation.⁴⁹ Understanding requires a defendant to have factual knowledge of the judicial process and its operation.⁵⁰ Reasoning and appreciation encompass a defendant’s ability to provide relevant information to counsel and apply legal considerations to the case.⁵¹ Even with these guidelines, the standard is still a bit vague. *Dusky*’s holding does not specify which mental conditions render a defendant incompetent, leaving a multitude of diagnoses and situations for the basis of a defendant’s incompetence.⁵²

Procedurally, raising competency is not a challenge. The defense, the prosecution, or the court can raise concerns or question a defendant’s competency.⁵³ A defendant does not need a medical diagnosis to raise the issue of competency.⁵⁴ Each jurisdiction has codified its own standards and procedures for raising competency.⁵⁵ In *Pate*, the Supreme Court also held that the Due Process Clause requires courts to hold a hearing on a defendant’s competence when there is a “bona fide doubt” as to the defendant’s adjudicative competence.⁵⁶ While the Court did not provide a threshold for what constitutes doubt, the Court recommended that courts consider “a defendant’s irrational behavior, . . . demeanor at trial, and any prior

45. *Pate v. Robinson*, 383 U.S. 375, 378 (1966).

46. See Christina L. Riggs Romaine et al., *Evaluation of Juvenile Competency to Proceed: Applying the Dusky Standard*, 10 J. FORENSIC PSYCH. PRAC. 1, 1–2 (2010) (explaining the history and current status of juvenile competency standards compared to adult competency standards).

47. *Id.* at 2.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. Mossman et al., *supra* note 27, at S5.

53. Faber, *supra* note 26, at 1222–23.

54. Mossman et al., *supra* note 27, at S44.

55. *Id.* at S3–5.

56. *Pate v. Robinson*, 383 U.S. 375, 385 (1966); Mossman et al., *supra* note 27, at S6; 725 ILL. COMP. STAT. ANN. 5/104-11 (West 2022).

medical opinion.”⁵⁷ Before a competency hearing, a defendant must undergo a competency evaluation.⁵⁸ Once the evaluation is complete, the court will hold a hearing to determine the defendant’s competence.⁵⁹

III. IS COMPETENCY INCORPORATED INTO CHILDREN’S DUE PROCESS RIGHTS?

A. *The Due Process Rights Explicitly Afforded to Children*

While America’s juvenile justice system aims to treat children differently than adults, the distinction between the two systems is often blurred.⁶⁰ Courts are increasing the penalties and punishments for children.⁶¹ This increase presents due process concerns for children.⁶² In 1967, the Supreme Court finally addressed the rights and protections afforded to children in juvenile proceedings.⁶³ The seminal case, *In re Gault*, extended children only some of the constitutional protections afforded to adults.⁶⁴ The Court set out specific constitutional rights that children are entitled to during their delinquency adjudications: (1) the right to notice of charges, (2) the right to counsel, (3) the right to confrontation of witnesses, and (4) the right not to be forced to incriminate oneself during the proceedings.⁶⁵ Even though *In re Gault* extended some due process rights to children, many jurisdictions did not implement these protections because they found them futile.⁶⁶ Additionally, *In re Gault* did not discuss pre-adjudication or post-adjudication due process rights.⁶⁷ Thus, competency was notably omitted.⁶⁸ The Court has yet to expressly address juvenile adjudicative competency but has

57. *Drope v. Missouri*, 420 U.S. 162, 180 (1975); Mossman et al., *supra* note 27, at S12.

58. Mossman et al., *supra* note 27, at S7.

59. *Id.*

60. Bonnie & Grisso, *supra* note 31, at 73.

61. *Id.*

62. *Id.*

63. Jay D. Blitzman, *Gault’s Promise Revisited: The Search for Due Process*, 69 *JUV. & FAM. CT. J.* 49, 49–50 (2018).

64. *Id.* at 54–55.

65. *In re Gault*, 387 U.S. 1, 32–34, 41, 43–45, 55, 57 (1967). The Court did not address Gerald Gault’s claims that he had a right to appellate review and a transcript of proceedings. *Id.* at 58.

66. Bonnie & Grisso, *supra* note 31, at 73.

67. *See Gault*, 387 U.S. at 31–58; Blitzman, *supra* note 63, at 50.

68. Mossman et al., *supra* note 27, at S52.

highlighted its importance.⁶⁹ Despite the absence of precedent, research shows that children may be incompetent to stand trial by virtue of simply being a child.⁷⁰

B. Why Incorporation of Competency is Crucial

Juvenile adjudicative competency's importance lies in the cognitive and psychosocial distinctions between adults and children.⁷¹ Cognitively, certain areas of the brain are not developed until approximately age twenty-five.⁷² The brain's limbic system, which affects a person's emotional responses to stimuli, matures during puberty.⁷³ The frontal lobes, which control judgment, decision-making, and planning, do not develop until about age twenty-five.⁷⁴ Children entering the juvenile justice system possess undeveloped cognitive skills,⁷⁵ affecting their ability to make decisions during their adjudication in the following ways:

[The] juvenile's ability to understand the long-term consequences of his actions and decisions in court; his ability to avoid being unduly influenced by others including his lawyer and the judge; the maturity of his decision-making related to waiving legal rights or taking pleas; and his ability to understand legal jargon, the legal process, the charges against him, and the weight of legal decisions are all potentially impaired by the adolescent immaturity gap.⁷⁶

The same cannot be said for adults.⁷⁷ Developmentally, children have not achieved psychosocial maturity, which encapsulates "progress toward greater future orientation, better risk perception,

69. *See id.* *See also* *Dusky v. United States*, 362 U.S. 402, 402 (1960) ("[T]he 'test must be whether [the juvenile 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.") (citation omitted).

70. *See* Bonnie & Grisso, *supra* note 31, at 73–74.

71. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333, 335 (2003).

72. Colleen M. Berryessa & Jillian Reeves, *The Perceptions of Juvenile Judges Regarding Adolescent Development in Evaluating Juvenile Competency*, 110 J. CRIM. L. & CRIMINOLOGY 551, 558 (2020).

73. *Id.*

74. *Id.*

75. *Id.* at 560.

76. *Id.*

77. *See* Grisso et al., *supra* note 71, at 335.

and less susceptibility to peer influence.”⁷⁸ This is crucial for adequate participation in one’s trial process.⁷⁹ In an adjudicatory context, children may choose to waive important rights because of their need for instant gratification instead of making a choice in their future interest.⁸⁰ Adults, however, are more likely to make decisions in their future interest because of their psychosocial maturity.⁸¹

Despite the cognitive and psychosocial differences between children and adults, the law only affords a long-standing emphasis on the importance of adult competence.⁸² Nevertheless, juvenile competency’s importance has drastically increased over the past fifteen years as the system has become more punitive than rehabilitative.⁸³

Nonetheless, research on juvenile adjudicative competency is lacking.⁸⁴ This absence exists for the following reasons: (1) several states do not explicitly recognize juvenile competency by statute; (2) juvenile proceedings are intended to be nonadversarial and rehabilitative; (3) appellate courts rarely have the opportunity to examine juvenile competency because few juvenile cases are appealed; (4) many juveniles who are considered incompetent are overlooked; and (5) the majority of juvenile cases are in family court, as opposed to criminal court, which voids “the need for the due process questions routinely raised in criminal court.”⁸⁵ Insufficient research specifically on juvenile adjudicative competency may correlate with a reduced emphasis on competency for system-involved children.⁸⁶ However, an abundance of social science research can lay the foundation for a crucial change.

1. Research Concerning Juvenile Adjudicative Competency

The first study on juvenile adjudicative competency was conducted in 1984,⁸⁷ and the most recent study was conducted in 2003.⁸⁸

78. *Id.*

79. *Id.* at 335–36.

80. *Id.* at 335.

81. *Id.*

82. Dana Royce Baerger et al., *Competency to Stand Trial in Preadjudicated and Petitioned Juvenile Defendants*, 31 J. AM. ACAD. PSYCHIATRY L. 314, 314 (2003).

83. *See* Romaine et al., *supra* note 46, at 1–2.

84. *See* Baerger et al., *supra* note 82, at 315.

85. *Id.*

86. Grisso et al., *supra* note 71, at 334.

87. Jeffery C. Savitsky & Deborah Karras, *Competency to Stand Trial Among Adolescents*, 19 ADOLESCENCE 349, 349 (1984); Baerger et al., *supra* note 82, at 315.

88. *See* Grisso et al., *supra* note 71, at 335–36.

Almost twenty years have passed since the last study; the conclusions are outdated. In the most recent study, researchers administered a comprehensive survey of juvenile adjudicative competency, which examined children's understanding, reasoning, and appreciation,⁸⁹ the crux of the *Dusky* standard for adjudicative competence.⁹⁰ To measure understanding, this study assessed "comprehension of courtroom procedures and personnel and the defendant's rights at trial."⁹¹ To measure reasoning, researchers assessed a defendant's "recognition of information relevant to a legal defense and the ability to process information for legal decision making."⁹² Finally, researchers measured appreciation by assessing if a participant's "legal decision making [was] influenced by symptoms of mental illness, such as delusional thinking[.]" to determine participants' "ability to recognize the relevance of information for [their] own situation[s]."⁹³ Researchers found that children fifteen years old and younger "are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding."⁹⁴ When compared to adult criminal defendants who are mentally ill and would likely be considered incompetent by an evaluator, "approximately one third of 11- to 13-year-olds, and approximately one fifth of 14- to 15-year-olds are as impaired in [terms of] adjudicative competence."⁹⁵ Thus, children under the age of fifteen are more likely to be incompetent to stand trial.⁹⁶

2. External Factors Affecting Juvenile Adjudicative Competency

More research exists on the composition of children involved in the juvenile justice system than on juvenile adjudicative competency.⁹⁷ This research highlights external factors that influence a child's adjudicative competency beyond basic developmental concerns.⁹⁸

89. *Id.*

90. *See supra* notes 38–41 and accompanying text.

91. Grisso et al., *supra* note 71, at 339–40.

92. *Id.* at 340.

93. *Id.*

94. *Id.* at 356.

95. *Id.*

96. *Id.*

97. *See generally* NAT'L CONF. STATE LEGISLATURES, JUVENILE JUSTICE GUIDEBOOK FOR LEGISLATORS: MENTAL HEALTH NEEDS OF JUVENILE OFFENDERS 4 (2011) [hereinafter MENTAL HEALTH NEEDS OF JUVENILE OFFENDERS], <https://www.ncsl.org/documents/cj/jjguidebook-mental.pdf> [<https://perma.cc/2NS9-TYE8>] (analyzing external factors that affect children in the juvenile justice system).

98. *Id.*

Approximately two-thirds of children “under [fifteen] in juvenile detention have an IQ lower than 89, while only one-third [of children] in the general community have an IQ lower than 89.”⁹⁹ This statistic demonstrates the prevalence of intellectual deficits for children involved with the system. The Grisso study also found that children with below-average intelligence are more likely to be impaired in abilities related to competency and found that there is a greater proportion of children in the juvenile justice system of below-average intelligence than children in the community.¹⁰⁰ Youths under the age of fifteen are impaired in their abilities to (1) make choices, (2) comply with authority, (3) recognize risks, and (4) understand future consequences.¹⁰¹ Accordingly, there is a higher risk that children in the juvenile justice system lack adjudicative competence.¹⁰²

Furthermore, children generally know less about the legal system.¹⁰³ This lack of knowledge is compounded by children’s “[u]nderdeveloped cognitive and reasoning abilities, poor risk assessment skills, and shortsighted, emotional impulses[, which] further [prevents] juveniles from understanding the proceedings against them and making informed decisions.”¹⁰⁴ There are also competency concerns with below-average-intelligence children in the juvenile justice system because of mental health concerns.¹⁰⁵ Poor mental health impacts a child’s ability “to understand the adjudicatory process and to thoughtfully participate in and make decisions as part of that process.”¹⁰⁶ Approximately sixty-five to seventy percent of the two million children arrested each year in the U.S. have a mental health issue.¹⁰⁷ One in four of these children “suffer from a mental illness so severe that it impairs his or her ability to function as a young person and grow into a responsible

99. NAT’L CONF. STATE LEGISLATURES, JUVENILE JUSTICE GUIDEBOOK FOR LEGISLATORS: ADOLESCENT DEVELOPMENT & COMPETENCY 8 (2011) [hereinafter ADOLESCENT DEVELOPMENT & COMPETENCY], <https://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf> [<https://perma.cc/4UNU-S3AB>].

100. Grisso et al., *supra* note 71, at 356.

101. *Id.*

102. *Id.*

103. ADOLESCENT DEVELOPMENT & COMPETENCY, *supra* note 99, at 7.

104. *Id.*

105. *Id.* at 7–8.

106. MENTAL HEALTH NEEDS OF JUVENILE OFFENDERS, *supra* note 97, at 6–7 (noting that incompetence is further complicated by limited guidance in law on how to deal with developmental immaturity).

107. *Id.* at 2.

adult.”¹⁰⁸ Emotional disorders, like anxiety and depression, are significantly higher among children in the juvenile justice system than among other children.¹⁰⁹ Thus, it is evident that children in the juvenile justice system not only lack sufficient developmental maturity for adjudicative competency but also are affected by a multitude of external factors that hinder their competency status.¹¹⁰

Childhood trauma is another external factor related to juvenile adjudicative competency.¹¹¹ Children involved in the juvenile justice system are more likely to have experienced trauma than other groups of people.¹¹² As many as half of the children involved in the juvenile justice system “experience chronic health and psychological impairments related to trauma.”¹¹³ Traumatic events includes “physical abuse, sexual abuse, domestic violence, community violence, and/or disasters.”¹¹⁴ When children are exposed to traumatic events it overwhelms their ability to cope,¹¹⁵ creating mental health issues, aggressive and defiant behavior, and developmental issues.¹¹⁶ Stress can affect development by impairing brain and nervous system growth, which “may limit the brain from developing to its full potential.”¹¹⁷ Trauma can affect competency because it impacts a child’s ability to think clearly, reason, and problem-solve.¹¹⁸ Also, symptoms associated with traumatic events and stress “may worsen as a result of juvenile justice system involvement. Court hearings, detention, and incarceration are inherently stressful, and stressful experiences that are not traumatic *per se* can exacerbate traumatic symptoms.”¹¹⁹ Thus, children in the juvenile justice system are likely to suffer from additional adverse side effects of childhood trauma.

108. *Id.*

109. *Id.* at 3 (estimating that one in every thirty-three children and one in eight adolescents are affected by depression).

110. *Id.* at 4.

111. JULIAN D. FORD ET AL., NAT’L CTR. FOR MENTAL HEALTH & JUV. JUST., TRAUMA AMONG YOUTH IN THE JUVENILE JUSTICE SYSTEM: CRITICAL ISSUES AND NEW DIRECTIONS 1 (2007).

112. *Id.*

113. *Id.* at 2.

114. *Id.* at 1.

115. *Id.*

116. *Id.*

117. *What is Child Trauma?*, NAT’L CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/what-is-child-trauma/trauma-types/complex-trauma/effects> [<https://perma.cc/J2QV-SX77>] (last visited Nov. 3, 2022).

118. *Id.*

119. FORD ET AL., *supra* note 111, at 3.

IV. COMPETENCY COMPARISON: HOW DO OTHER STATES MEASURE UP?

Several states recognize the importance of juvenile adjudicative competency and have codified this essential due process right for children.¹²⁰ However, adjudicative competency statutes are inconsistent across the United States.¹²¹ There is debate about the proper standard for competency.¹²² Some states incorporate *Dusky* into their juvenile proceedings, some states have independent competency standards for juvenile proceedings, and others do not mention competency at all.¹²³

Thirty-seven states have statutes governing juvenile adjudicative competency in some manner, such as Colorado, California, and Maryland.¹²⁴ These statutes vary in protections for children.¹²⁵ Some states have comprehensive statutes that address the necessary components for competency; others lack them.¹²⁶ Some states “either do not prescribe a definition or incorporate the test used in criminal courts[,]” which leaves ambiguity for application.¹²⁷ For example, Colorado’s comprehensive competency statute states that a child cannot be tried or sentenced if they are incompetent “based on an intellectual or developmental disability, mental health disorder, or lack of mental capacity.”¹²⁸

Conversely, four states do not have a juvenile adjudicative competency statute: Alaska,¹²⁹ Montana,¹³⁰ North Dakota,¹³¹ and

120. Katner, *supra* note 17, 438–50.

121. *Id.*

122. See Romaine et al., *supra* note 46, at 2–3.

123. *Id.* at 2.

124. Nancy Ryba Panza et al., *Statutes Governing Juvenile Competency to Stand Trial Proceedings: An Analysis of Consistency With Best Practice Recommendations*, 26 PSYCH., PUB. POL’Y, & L. 274, 276 (2020). These states include Alabama, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Kansas, Louisiana, Maryland, Maine, Michigan, Minnesota, Missouri, North Carolina, Nebraska, New Hampshire, New Jersey, New Mexico, Nevada, New York, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Utah, Virginia, Vermont, Wisconsin, and Wyoming. *Id.* at 281. Connecticut and Kentucky have bills currently pending for a change to their statutes. *Id.* at 276.

125. *Id.* at 282.

126. *Id.*

127. Bonnie & Grisso, *supra* note 31, at 96.

128. COLO. REV. STAT. ANN. § 19-2.5-102(25) (West 2022).

129. Panza et al., *supra* note 124, at 96.

130. Montana’s case law held that its Youth Court Act is constitutional despite failing to recognize a juvenile’s right to competency. *Id.*

Rhode Island.¹³² The remaining ten states do not have juvenile-specific statutes for competency—they only incorporate their adult criminal statutes into their juvenile competency scheme.¹³³ Despite the lack of statutory authority, some of these states rely upon case law to recognize the importance of juvenile competency.¹³⁴ For example, the Massachusetts Supreme Judicial Court recently examined whether a juvenile’s due process rights were violated when a trial court denied the juvenile’s motion to continue his arraignment for a competency evaluation.¹³⁵ In answering this question, the court discussed how “a more searching inquiry into competency prior to arraignment may be justified” for children.¹³⁶ The court cited recent social science research to support this assertion, including the inability of children to understand the legal system and the prevalence of mental health issues among system-involved children.¹³⁷ Based on this recent research, the court noted that “a judge faced with a potentially incompetent juvenile might well benefit from the opinion of a medical expert in assessing the juvenile’s competency prior to arraignment.”¹³⁸ With this precedent, the Massachusetts court distinguishes between adults’ and children’s competency evaluations based on updated research.¹³⁹ This distinction is important since Massachusetts has only one statute for competency for both adults and children.¹⁴⁰

The lack of consistency must be remedied because it presents due process concerns for children involved in the juvenile justice system.¹⁴¹ For uniformity, it is essential to analyze all the various juvenile adjudicative competency statutes across the United States.¹⁴² A recent study evaluated four key components when examining the

131. North Dakota’s case law affords children the right to be competent to stand trial, but there are no statutes recognizing this right. *Id.*

132. *Id.*

133. *Id.* These states include Hawaii, Iowa, Illinois, Indiana, Massachusetts, Mississippi, Pennsylvania, South Carolina, Washington, and West Virginia. *Id.* at 276–77. Either the juvenile code mentions the adult code, or the adult code refers the application to juvenile court. *Id.*

134. *Id.*

135. *Commonwealth v. Carson C.*, 187 N.E.3d 361, 365 (Mass. 2022).

136. *Id.* at 368.

137. *Id.*

138. *Id.*

139. *See generally Carson C.*, 187 N.E.3d (noting that age and immaturity alone may contribute to a juvenile’s inability to understand the import of legal proceedings and that juvenile records have long-lasting ramifications).

140. *See MASS. GEN. LAWS ANN.* ch. 123, § 15 (West 2022).

141. Panza et al., *supra* note 124, at 279–80, 283.

142. *Id.* at 275, 281–83.

definition of competency across various State statutes: (1) the “aspects of functioning” that constitute adjudicative incompetence, (2) the application of developmental immaturity in the law, (3) the depth of the definition of competency, and (4) “the degree of ability required for competence.”¹⁴³ The results showed that thirty-one states require mental illness or intellectual disability as a predicate for incompetency, and only fifteen of these states include developmental immaturity.¹⁴⁴ For the second component, the study found that all thirty-seven states allow judicial discretion for competency determinations.¹⁴⁵ For example, four states have codified a per se assumption of incompetence for children ages twelve to fourteen.¹⁴⁶ Meanwhile, “five states use an age-based presumption of incompetence with ages ranging from 10–14.”¹⁴⁷ This illustrates the lack of uniformity in applying the competency standard to juveniles. Regarding the level of detail for defining competency, thirty states “go beyond a general definition [of competency by including] broad cognitive concepts,” and eleven states “list overly specific functional abilities.”¹⁴⁸ Some of the competency-related abilities listed include the ability to “engage in appropriate courtroom behavior, to testify relevantly, to display emotions, to understand the meaning of an oath, and to understand the potential consequences of the proceedings.”¹⁴⁹ Conversely, eight states list abilities for determining competency “in a broad sense,” and eleven states only provide “a general legal standard.”¹⁵⁰ These components include the “ability to assist” counsel, a “factual understanding,” “rational understanding,” and “the ability to make decisions.”¹⁵¹ Finally, the study examined “the degree of ability required for competence” and found that thirty-three states did not explicitly provide a degree.¹⁵²

A. California: The Model State

Examining California’s juvenile adjudicative competency statutes is beneficial because the State is reforming its juvenile justice

143. *See id.* at 276.
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.* at 276, 278.

system.¹⁵³ California is slowly replacing its Division of Juvenile Justice with other types of programming to help children typically involved in the juvenile justice system.¹⁵⁴ Specifically, California is closing its juvenile detention centers, creating county-level services for children who would have been involved in the juvenile justice system, establishing an Office of Youth and Community Restoration to evaluate evidence-based policies, and implementing a rehabilitative model for children involved with delinquency.¹⁵⁵

Before this reform, in 2011, California overhauled its juvenile competency statutes to better align with research on juvenile adjudicative competency.¹⁵⁶ The updated statute is more comprehensive, stating minors are incompetent when they “lack[] sufficient present ability to consult with counsel and assist in preparing the minor’s defense with a reasonable degree of rational understanding, or lack[] a rational as well as factual understanding of the nature of the charges or proceedings against them.”¹⁵⁷ The statute further denotes that “[i]ncompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity.”¹⁵⁸ If a child undergoes a competency evaluation, California’s statute lists areas the evaluation must cover, and it explicitly states what the subsequent report must entail.¹⁵⁹

153. David Hervey & Michael D. Tanner, *Progress on Juvenile Justice Reform in California*, CATO INST.: CATO AT LIBERTY BLOG (Dec. 22, 2021 11:38 AM), <https://www.cato.org/blog/progress-juvenile-justice-reform-california> [<https://perma.cc/KN7B-HXWR>].

154. *Id.*

155. *See id.*

156. NAT’L JUV. JUST. NETWORK, *ADVANCES IN JUVENILE JUSTICE REFORM: 2009–2011*, at 9 (2012).

157. CAL. WELF. & INST. CODE § 709(a)(2) (West 2022).

158. *Id.*

159. *Id.* § 709(b)(3).

The expert shall personally interview the minor and review all of the available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, and court records, and any other relevant information that is available. . . . The expert shall gather a developmental history of the minor. . . . The expert shall administer age-appropriate testing specific to the issue of competency unless the facts of the particular case render testing unnecessary or inappropriate. The expert shall be proficient in the language preferred by the minor, or, if that is not feasible, the expert shall employ the services of a certified interpreter and use

California also has precedential case law for juvenile adjudicative competency.¹⁶⁰ In *Timothy J. v. Superior Court*, the court discussed whether a mental disorder or developmental disability constituted juvenile incompetency.¹⁶¹ Relying on *Dusky*, the court did not see a “difference between a condition that results from a developmental disability and one that results from developmental immaturity.”¹⁶² The Supreme Court in *Dusky* failed to discuss this difference.¹⁶³ However, the court in *Timothy J.* emphasized that there is no functional difference between a developmental disability and a developmental immaturity for the purposes of determining juvenile adjudicative competency.¹⁶⁴ The California court concluded that there is no significant difference between an incompetent adult who functions at the mental capacity of a ten-year-old and a normal ten-year-old whose mental development and capacity are not equal to that of a normal adult.¹⁶⁵ Relying on research and data, the court found that a developmentally immature juvenile can be incompetent without underlying mental or developmental abnormalities, and age alone can be the basis for incompetency.¹⁶⁶ Thus, the younger a juvenile is, the less likely they can satisfy the *Dusky* standard.¹⁶⁷

V. THE CRITICAL CALL TO MARYLAND’S LEGISLATURE

The proper call to Maryland’s legislature is a complete overhaul of the juvenile justice system.¹⁶⁸ However, changing the entire juvenile justice system is a daunting task.¹⁶⁹ The change cannot happen instantly—it must be gradual.¹⁷⁰ In the meantime, one area must be

assessment tools that are linguistically and culturally appropriate for the minor.

Id.

160. *See, e.g.*, *Timothy J. v. Super. Ct.*, 150 Cal. App. 4th 847, 851 (2007).

161. *Id.* at 858.

162. *Id.* at 859.

163. *Id.*

164. *See id.* at 860.

165. *Id.* at 861.

166. *Id.* at 860.

167. *Id.* at 861.

168. *See generally* NAT’L RSCH. COUNCIL, *supra* note 1, at 15–16 (discussing the advances in behavioral research which creates the need for a complete juvenile justice reform).

169. *See In re Gault*, 387 U.S. 1, 13 (1967) (noting that the court did not consider the entire process relating to juvenile).

170. *See supra* text accompanying note 72.

prioritized: due process rights.¹⁷¹ As mentioned, the system is no longer focused on rehabilitation.¹⁷² Instead, the current system mimics the adult criminal justice system, focusing on punishment.¹⁷³ However, children are not afforded the same due process rights that adults are explicitly afforded in the criminal justice system.¹⁷⁴ As due process rights are foundational to the criminal justice system children must be guaranteed these rights.¹⁷⁵ Thus, there is a necessity to extend due process rights to children, including the right to be competent to stand trial.

Maryland's legislature must provide statutory and procedural changes to afford children their due process rights and prevent adjudicative-incompetent children from entering the juvenile justice system.¹⁷⁶ Maryland's statutory scheme inadequately details the process of determining competency to protect this essential due process right.¹⁷⁷ The scheme does not define incompetency and primarily discusses competency procedures rather than competency determination.¹⁷⁸ The Maryland legislature can use its power to enact statutory procedures.¹⁷⁹ Specifically, the legislature can statutorily eliminate the competency presumption for children under fourteen years old.¹⁸⁰ In doing so, the legislature can ensure that all children are adequately evaluated for competency prior to adjudication. These changes are critical to ensure an incompetent child does not enter into Maryland's juvenile justice system and that children are afforded their due process rights, including the right to be competent to stand trial.¹⁸¹ Accordingly, the legislature must amend the juvenile adjudicative competency statutory scheme.

A. *Call For Statutory Change*

Maryland's current statutory scheme for juvenile adjudicative competence neither sufficiently defines competency nor provides

171. *See Gault*, 387 U.S. at 30–31 (establishing juveniles' rights to a fair trial and due process).

172. NAT'L RSCH. COUNCIL, *supra* note 1, at 122.

173. *Id.* at 39.

174. *See supra* text accompanying note 8.

175. *See Gault*, 387 U.S. at 20 (noting that children must be guaranteed due process rights).

176. *See infra* Sections V.A–B.

177. *See* MD. CODE ANN., CTS. & JUD. PROC. §§ 3-8A-01, 3-8A-17 to -17.12 (West 2022); *see also infra* Section V.A.

178. CTS. & JUD. PROC. §§ 3-8A-01, 3-8A-17 to -17.12.

179. *See infra* Section V.B.

180. *See infra* Section V.B.

181. *See infra* Section V.B.

guidance on how to determine competency,¹⁸² thereby rendering it ineffective. The first statute in the scheme only mentions competency as grounds for a stay of the proceedings.¹⁸³ Specifically, after the filing of a delinquency petition, the court, by its own motion, motion of the child's counsel, or the State's motion, must stay proceedings and order a competency evaluation if the court finds that

(i) [t]here is probable cause to believe that the child has committed the delinquent act; and (ii) [t]here is reason to believe that the child may be incompetent to proceed with a waiver hearing . . . , an adjudicatory hearing . . . , a disposition hearing . . . , or a violation of probation hearing.¹⁸⁴

The statute does not clarify what makes a child incompetent to proceed.¹⁸⁵ The rest of the statutory scheme fails to do so as well, as it only provides procedural guidance to courts and attorneys.¹⁸⁶ The remaining sections in the scheme discuss the scope of a competency evaluation,¹⁸⁷ the report containing findings from the evaluation,¹⁸⁸ the competency hearing,¹⁸⁹ findings of competency,¹⁹⁰ competency attainment services,¹⁹¹ and dismissals.¹⁹² These sections do not provide substantive guidance for determining adjudicative incompetence for children.¹⁹³ Therefore, the statute cannot serve as a competency roadmap for courts and attorneys. With no guidance, there is inadequate protection for children's due process right to competency.¹⁹⁴

Not only does the statutory scheme for competency fail to prescribe the determination of juvenile adjudicative competency, the definitional section of the Juvenile Causes Subtitle inadequately defines some quintessential competency terms.¹⁹⁵ It is important to

182. CTS. & JUD. PROC. §§ 3-8A-01, 3-8A-17 to -17.12.

183. *Id.* § 3-8A-17.1.

184. *Id.* § 3-8A-17.1(a)(1).

185. *See id.* § 3-8A-17.1.

186. *See id.* §§ 3-8A-17 to -17.12.

187. *Id.* § 3-8A-17.2.

188. *Id.* § 3-8A-17.3.

189. *Id.* § 3-8A-17.4.

190. *Id.*

191. *Id.* § 3-8A-17.6.

192. *Id.* § 3-8A-17.9.

193. *See id.* §§ 3-8A-17.2 to -17.4, -17.6, -17.9.

194. *See generally supra* Section IV.A.

195. CTS. & JUD. PROC. § 3-8A-01.

note that these terms are not within the juvenile adjudicative competency statutory scheme.¹⁹⁶ Rather, these terms are placed within the definitional section for all Maryland statutes concerning the juvenile justice system.¹⁹⁷ There are only six terms defined in this statute that concern competency: “competency hearing”; “developmental disability”; “incompetent to proceed”; “mental disorder”; “mental retardation”; and “mentally handicapped child.”¹⁹⁸ Maryland defines incompetent to proceed as “a child [who] is not able to (1) [u]nderstand the nature or object of the proceeding; or (2) [a]ssist in the child’s defense.”¹⁹⁹ A competency hearing is a hearing “to determine whether a child alleged to be delinquent is mentally competent to participate in [judicial proceedings] like a waiver hearing . . . , an adjudicatory hearing . . . , a disposition hearing . . . , or a violation of probation hearing.”²⁰⁰ The remaining definitions offer some guidance on conditions that can demonstrate adjudicative incompetence in a child, including a developmental disability, mental disorder, mental retardation, and mentally handicapped child.²⁰¹ These definitions, even in conjunction with the adjudicative competency statutory scheme, neither provide clarification as to when a child lacks adjudicative competence nor provide guidance on evaluating competency.²⁰²

There is not only a lack of statutory guidance for juvenile adjudicative competency in Maryland but also a lack of substantive case law pertaining to juvenile competency and what it means to be an adjudicative-incompetent child.²⁰³ Only two cases discuss juvenile adjudicative competency: (1) *In re Lakeisha M.*²⁰⁴ and (2) *In re T.B.*²⁰⁵ *In re Lakeisha M.* examined “whether the trial court erred when it refused to stay the [proceedings]” and failed to “order a competency evaluation [when] defense counsel asserted . . . concerns about the [juvenile’s] competency.”²⁰⁶ In *In re T.B.*, the trial court denied the juvenile’s motion to dismiss after the juvenile was found

196. *See id.* §§ 3-8A-01, 3-8A-17 to -17.12.

197. *See id.* § 3-8A-01.

198. *Id.* § 3-8A-01(i), (o), (q), (s)–(u).

199. *Id.* § 3-8A-01(q).

200. *Id.* § 3-8A-01(i).

201. *Id.* § 3-8A-01(o), (s)–(u).

202. *See id.* §§ 3-8A-01, 3-8A-17 to -17.12.

203. *Id.*; Joseph B. Sanborn, Jr., *Juveniles’ Competency to Stand Trial: Wading Through the Rhetoric and the Evidence*, 99 J. CRIM. L. & CRIMINOLOGY 135, 141 tbl.1 (2008) (showing no relevant case law for Maryland).

204. *In re Lakeshia M.*, 921 A.2d 258, 261 (Md. 2007).

205. *In re T.B.*, No. 1070, 2017 WL 1013210, at *1 (Md. Ct. Spec. App. Mar. 15, 2017).

206. *Lakeshia M.*, 921 A.2d at 261.

incompetent to stand trial and could not attain competency within eighteen months.²⁰⁷ These cases do not involve the determination of competency for a child.²⁰⁸ Rather, they relate to the procedures regarding raising and obtaining competency.²⁰⁹ Maryland courts have failed to determine what constitutes adjudicative competency and have not provided an interpretation of the juvenile competency statutory scheme.²¹⁰

It is critical that Maryland's legislature takes necessary action to remedy the inadequacies of the Juvenile Causes Subtitle and its adjudicative competency statutory scheme.²¹¹ California has a comprehensive scheme and can serve as a model state for statutory change.²¹² In California, children lack adjudicative incompetence if they "lack[] sufficient present ability to consult with counsel and assist in preparing [their] defense with a reasonable degree of rational understanding, or lack[] a rational as well as factual understanding of the nature of the charges and proceedings against them."²¹³ California's definition provides more guidance than Maryland as to what adjudicative incompetence looks like, and this statute encompasses the *Dusky* and *Drope* Supreme Court holdings.²¹⁴ Furthermore, this section of California's statute states that "[i]ncompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity."²¹⁵ While Maryland not only fails to recognize particular conditions that may result in adjudicative incompetence,²¹⁶ California does not impose limitations on the conditions and includes developmental immaturity.²¹⁷ Foregoing limitations and including developmental immaturity aligns with current research on child development and its relation to children in the juvenile justice system,²¹⁸ another area where Maryland is lacking. Maryland should, at minimum, enact a

207. *T.B.*, 2017 WL 1013210, at *1.

208. *See id.*; *see also Lakeshia M.*, 921 A.2d at 261.

209. *See T.B.*, 2017 WL 1013210, at *1; *see also Lakeshia M.*, 921 A.2d at 261.

210. *See T.B.*, 2017 WL 1013210, at *1; *see also Lakeshia M.*, 921 A.2d at 261.

211. Panza et al., *supra* note 124, at 281 tbl.6 (showing Maryland's ranking in study detailing degree to which statutes cover juvenile competency).

212. *Id.* at 282.

213. CAL. WELF. & INST. CODE § 709(a)(2) (West 2022).

214. *Id.*

215. *Id.*

216. MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-17.3 (West 2022).

217. CAL. WELF. & INST. § 709(a)(2).

218. Grisso et al., *supra* note 71, at 334, 360.

comprehensive definition of incompetency to afford children their due process rights. As mentioned, California's statutory scheme provides Maryland with an exemplary model.²¹⁹

B. Call For Procedural Change

Maryland's legislature must enact a procedural safeguard for children in the juvenile justice system by eliminating the competency presumption for children facing adjudication.²²⁰ All children under the age of fourteen should be presumed incompetent to stand trial, and the state should bear the burden of proving otherwise.²²¹ Thus, every child under fourteen who enters the juvenile justice must undergo a competency evaluation prior to any form of adjudication. Fourteen is the proper age cut-off for the presumption of competency because research suggests a presence of developmental gaps in fourteen-year-old children in comparison to children between the ages of sixteen and eighteen.²²² Eliminating the presumption of competency is also necessary because of the high rates of mental illness and developmental immaturity within the juvenile justice system.²²³ Providing mandatory evaluations to children will allow the juvenile justice system to consider external factors impacting competency that are usually not immediately apparent.²²⁴ This is a necessary procedural step to ensure children are afforded their due process right to be competent to stand trial and that adjudicative-incompetent children do not enter the juvenile justice system.²²⁵ Hence, every child facing adjudication must undergo a complete competency evaluation before adjudication can proceed. If the child is deemed incompetent per enacted statutory requirements, adjudication must pause.²²⁶ Then there must be a determination of whether the child can attain competency in the near future pursuant to the already-enacted statutory scheme for assessing adjudicative competency.²²⁷

219. *See supra* Section IV.A.

220. Katner, *supra* note 17, at 431.

221. *Id.* at 427.

222. *Id.* at 420.

223. *Id.* at 431.

224. *Id.*

225. *See id.* at 433–34.

226. *Id.*

227. *See id.* at 434–35.

VI. CONCLUSION

Maryland's children are deprived of their fundamental due process right of competency.²²⁸ Adult defendants enjoy this right per Supreme Court precedent in *Dusky*;²²⁹ however, the Court was silent on this right for children in *In re Gault*.²³⁰ The juvenile justice system subjects children to punishment rather than rehabilitation, so the right to be competent to stand trial is necessary.²³¹ Children are fragile, especially children who enter the juvenile justice system at fourteen years old or younger.²³² They are not developmentally mature enough to enter the system.²³³ Due to their lack of development, there are concerns with children's ability to understand, reason, and appreciate, which is vital for competency.²³⁴ Research also shows that children involved in the juvenile justice system suffer from below-average intelligence, mental health issues, and symptoms relating to their exposure to childhood trauma.²³⁵

Since Maryland's current statutory scheme for juvenile adjudicative competency does not recognize the above, it is insufficient in protecting children's due process right to be competent to stand trial.²³⁶ Maryland's legislature can remedy this by passing crucial legislation.²³⁷ The Maryland General Assembly must revise the current statutory scheme for competency by adding comprehensive definitions of competency and conditions that relate to competency.²³⁸ Specifically, Maryland should adopt California's juvenile adjudicative competency statute because California is progressive in juvenile justice reform.²³⁹ Maryland can also amend other parts of the statutory scheme to further protect this fundamental right, but defining incompetence is a priority.²⁴⁰ Lastly, the legislature must ensure every child is afforded their due process rights by enacting legislation that eliminates the presumption of

228. *See supra* Section V.A.

229. *See supra* notes 31–41 and accompanying text.

230. *See supra* notes 8–11, 63–70 and accompanying text.

231. *See supra* Section III.B.

232. *See supra* Section III.B.

233. *See supra* notes 97–102 and accompanying text.

234. *See supra* Section III.B.1.

235. *See supra* Section III.B.2.

236. *See supra* notes 168–75 and accompanying text.

237. *See supra* notes 176–81 and accompanying text.

238. *See supra* Section V.A.

239. *See supra* Section V.A.

240. *See supra* Section V.A.

competency for children under the age of fourteen.²⁴¹ This will guarantee that younger children, who are more likely to lack adjudicative competency, based on their age and developmental status alone, will receive competency evaluations prior to adjudication.²⁴² Maryland's legislature must answer this critical call to competently adjudicate children in the juvenile justice system.

241. *See supra* Section V.B.

242. *See supra* Section V.B.