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Community-Based Remediation of Juvenile Competence to Stand Trial: A National Survey

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ABSTRACT

Youth found incompetent to stand trial in U.S. juvenile courts may be ordered to attend Juvenile Competence Remediation Services to assist them in becoming competent to proceed with their case. Representatives from 19 community-based JCRS programs were surveyed about current norms and practices. The results suggest that programs routinely meet some emerging best practices (e.g., dyadic service delivery; developmentally sensitive services), but not others (e.g., providing case management services; services guided by outcome data). The results also reveal a lack of consistency across programs in a variety of areas (e.g., training and experience of providers; educational curricula used by providers).

KEYWORDS



Competency to stand trial; juveniles; remediation; forensic services

Both the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (United Nations, 1986) and the United Nations Convention on the Rights of the Child (CRC; United Nations, 1989) hold that a fair trial against a juvenile requires the youth's abilities to understand what is happening and to effectively participate in the proceedings (Leifaard et al., 2011). Consistent with these standards, some nations require youth to possess "competence" or "fitness" to stand trial (e.g., Australia, Canada, New Zealand, United Kingdom, United States; Bullough et al., *in press*). Competence to Stand Trial (CST), which can be traced back to 17th Century English Common Law (Wall et al., 2018), is a narrow legal concept requiring accused individuals are "mentally capable of fairly standing trial" (*R v Podola*, 1960). Legal definitions vary across international jurisdictions, requiring capacities like instructing a lawyer, understanding the charges, and understanding evidence (Adjorlolo & Chan, 2017).

In the United States, CST requires a factual and rational understanding of the legal proceedings and an ability to consult with counsel (*Dusky v. United States*, 1960). Although competency originally was not required in the rehabilitative U.S. juvenile courts, the introduction of due process protections in the 1960s

(*In re Gault*, 1967; *Kent v. United States*, 1966) and retributive goals in the 1980s (National Research Council, 2013) has led appellate courts and legislatures to increasingly require juvenile court competence (Panza et al., 2020). As shown in Table 1, 10 states have extended criminal court CST statutes to their juvenile courts, while 37 states (and the District of Columbia) have developed specialized juvenile court statutes¹ to guide consideration of the issue (Panza et al., 2020).

As is typical of criminal court defendants (Zapf & Roesch, 2009), some juveniles lack competence due to major mental illness, like psychosis, or major cognitive impairment, such as intellectual disability (Kruh et al., 2006; Viljoen & Roesch, 2005). However, youth with less severe cognitive deficits (e.g., Borderline Intellectual Functioning), narrower cognitive deficits (e.g., communication disorders; memory impairment), or less severe mental illness (e.g., depression; ADHD) also may be significantly impaired in abilities relevant to competence (Grisso, 1997, 2005; Viljoen & Roesch, 2005). This is true because normal developmental immaturity further limits how youth think and behave (Kruh & Grisso, 2009). Indeed, some youth may lack JCST abilities due to the functional limitations associated with their young age alone (Grisso et al., 2003), a

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¹These statutes, while consistent with the functional requirements of the *Dusky* standard required in criminal courts in the United States, are often broader in the allowable causes of incompetence in that they indirectly or directly allow developmental immaturity to be considered.

Table 1. Legal basis of juvenile competence to stand trial in U.S. States.

Specialized JCST statutes or court rules	36 states + DC AL; AZ; AR; CA; CO; CT; DC; DE; FL; GA; ID; KS; KY; LA; ME; MD; MI; MN; MO; NC; NE; NH; NJ; NM; NV; NY; SD; OH; OK; OR; TN; TX; UT; VT; VA; WI; WY
Criminal competency statutes extended to juvenile court	10 states HI; IL; IN; IA; MA; ND; PA; SC; WA; WV
No formal statutory basis for JCST	4 states AK; ND; MT; RI

reality increasingly recognized around the world (e.g., *New Zealand v. U.P.*, 2011). Immaturity-based incompetence may be particularly relevant in the United States where the minimum age for criminal responsibility is often set lower than in many other international jurisdictions (Katner, 2015). In short, the threats to competence among juveniles include various types of mental illness, cognitive limitations and/or normal development.

When a juvenile defendant in the U.S. lacks the necessary capacities, that youth will be found *incompetent to stand trial* (IST) by the court and the legal case will be suspended. The youth may be required to participate in training and/or treatment services aimed at addressing the relevant incapacities to resolve the incompetence so the youth can proceed to adjudication. These services go by many names (e.g., Attainment; Restoration), but are commonly referred to as Juvenile Competence Remediation Services (JCRS). Informed by criminal court case law (*Jackson v. Indiana*, 1972), if JCST cannot be established through JCRS within a time period legally designated to be reasonable, the charges must be dismissed and the court proceedings terminated.

Because the underlying causes of juvenile incompetence can be broader than the major mental illnesses and severe cognitive impairments typical of incompetent adults, models for adult restoration are not broad enough to consistently meet the needs of juveniles (Warren et al., 2019). A diversity of services may be needed to adequately address the unique functional deficits (such as concrete thinking, poor memory, poor problem solving, etc.) and the underlying causes of those deficits (such as young age, sub-average intellectual functioning, learning problems, mental health symptoms, etc.) with each youth found incompetent.

The U.S. seems to be unique in its focused use of JCRS with incompetent youth. In most of the United Kingdom, Australia, and New Zealand, for example, youth deemed “unfit” are subjected to a specialized hearing to determine if they committed the alleged act (e.g., the attorney has more leeway to reject the youth’s preferences) followed with rehabilitative dispositions (Bullough et al., in press). However, in certain

places (e.g., Queensland), an accused found temporarily unfit may be provided “treatment” and the question of fitness revisited later (Bullough et al., in press), in a manner closer to the U.S. model.

Community-based juvenile competence remediation services (JCRS)

The delivery of JCRS has varied across the U.S. Some jurisdictions (e.g., Massachusetts) lack coordinated JCRS programming (Stepanyan et al., 2016). Some follow a traditional criminal court model and base JCRS in inpatient psychiatric hospitals (e.g., Washington State; McClellan, 2015). However, unlike criminal courts that have recently begun to explore the use of community-based programs (Gowensmith et al., 2016), community-based services have been more common in juvenile competency systems for some time. The reasons for this are many.

In many jurisdictions, child and adolescent inpatient psychiatric beds are extremely scarce (Cummings et al., 2016). Further, because many incompetent youth present with milder or even no mental health concerns, many incompetent youth lack medical need for hospitalization (Warren et al., 2016). Critically, trends in juvenile justice, fueled by philosophical, empirical and practical factors, have increasingly emphasized the reduction of confining justice-involved youth (National Collaboration for Youth, 2017). Institutional placement is associated with disruption of family and community relationships, iatrogenic effects on youth mental health, education and employment, higher recidivism rates, and greater financial expense than community-based services (Heneggeler, 2016). Community-based JCRS better preserve civil liberties and may also help youth link with community services that will support longer-term stability (Warren et al., 2016).

Based on these factors, juvenile competence statutes and policies increasingly mandate a “least restrictive environment” (LRE) for remediation with emphasis on community-based JCRS. Indeed, experts agree that providing JCRS in the community should be the norm (Rapisarda & Kaplan, 2016; Stepanyan et al.;

2016; Wall et al., 2018; Warren et al., 2019). Although institution-based services may be needed for the few youth identified as dangerous, severely mentally ill, or non-compliant with community-based services, most youth can receive effective services in the community (Chien et al., 2016; Warren et al., 2019). For example, only 4% to 6% of youth within Virginia's JCRS (in operation for more than twenty years) needed residential placement at some point during their remediation (Warren et al., 2019).

Community-based JCRS face a host of challenges, however. It can be challenging to maintain regular, ongoing contact between remediation providers and youth across geographic diversity. Diverse interventions may be challenging to provide or access. Participants may require monitoring or case-management services (Heilbrun et al., 2019). Community-based JCRS also must often consider "responsivity factors," which are not directly related to competence remediation but can still reduce the efficacy of remediation if left unaddressed. For example, inadequate supervision and structure in the home, parental health problems, or homelessness can compromise successful community-based remediation.

Practice standards in community-based JCRS

Currently, there are no evidence-based JCRS programs (Bath & Gerring, 2014) and there is no consensus on best practices. Based upon observations within Virginia's JCRS offered by Warren et al. (2019), the following areas might be considered emerging best practices for these specialized services:

1. Services should be delivered by providers with adequate experience and training. For example, remediation providers should have experience educating youth of different ages, from different cultural backgrounds, and with different clinical and developmental challenges (Larson & Grisso, 2011). Remediation providers should be trained to gain familiarity with key elements of the legal construct of competency, appropriate role clarity, and skill in utilizing local training materials and strategies (Warren et al., 2016).
2. Instructional services should be individualized to target the knowledge and skill deficits identified for each youth using clear strategies and innovative approaches.
3. Instructional services should be provided within an ongoing dyadic training relationship, enhancing provider investment and sensitivity to the

youth's individual needs. The ongoing relationship allows the provider to gain clarity on how to develop individualized interventions with focus on the youth's particular legal case (Warren et al., 2019), which may enhance youth satisfaction (Jackson et al., 2014).

4. Clinical services should be individualized to target any relevant mental health symptoms contributing to deficits in competency-related abilities.
5. Case management services should be available to address other relevant needs of each youth and to support successful maintainance in the community while completing remediation.
6. Services should be provided with developmental sensitivity to promote benefit from youth of various ages and at various stages of cognitive and psychosocial development.
7. Services should be guided by outcome data helping to clarify which youth benefit from which services and to what extent.
8. The dosing of services should be based upon the realities of statutory timelines and capacities of young participants to make adequate gains.
9. Services should be integrated into the larger juvenile competency process so that remediation services appropriately inform court determinations.

Community-based JCRS programs

Programs in different U.S. jurisdictions inevitably will implement different approaches toward meeting the challenges of community-based JCRS delivery, impacted by unique legal, historical, cultural, and geographical parameters. However, little has been published about the functioning of community-based JCRS programs beyond a few jurisdictions (Jackson, 2018 (Santa Clara, CA); Levett & Trollinger, 2002 (Arizona); McGaha et al., 2001 (Florida), and Warren et al., 2019 (Virginia)). The extent to which different programs meet the nine potential best practices discussed above is unclear. A first step toward establishing best practices is more thoroughly understanding the functioning and efficacy of existing community-based JCRS programs. We begin, for illustrative purposes, with descriptions of how two jurisdictions are providing community-based JCRS. Note that the terminology used was standardized to be consistent with the rest of this article. For example, remediation is called "attainment" in Utah and "restoration" in Maricopa County, but we refer to both as "remediation" here to support clarity.

Utah's Juvenile Competence Attainment Services

Utah's juvenile competency law became effective in 2012 and mandated the state's Department of Human Services (DHS), using state funding, to provide court-ordered JCRS. The program averages about 35 hours with each youth at \$58 per hour based on time spent by employees, for a total of \$2,031 per youth. Remediation services are provided in the Least Restrictive Environment (LRE) in a variety of community-based settings, for example library, client home, counseling center, or school. Since 2017, fewer than 5% of youth receiving remediation have done so in an institution due to acute mental illness, other behavioral health needs or community safety concerns.

Utah's statutory timeline for completing remediation is six months or, for "good cause," up to one year. Remediation providers are statutorily required to submit a remediation plan to the court within 30 days of the court's remediation order, as well as a remediation progress report every 90 days. Post-remediation JCST evaluations are completed by evaluators who are independent of the remediation program at six months or after remediation services are completed.

Between 2017 and 2019, Utah's Juvenile Court ordered 293 JCST evaluations, with 69 then referred for remediation services. A majority of JCRS participants were White non-Hispanic males, with an average age of 15 (ranging from 11 to 20). A majority of JCRS participants had both an intellectual disability or related condition and a mental illness, but for 54% an intellectual disability or related condition was primary and for 46% a mental illness was primary. Remediation success was less likely when an intellectual disability or related condition was primary.

Remediation services are delivered by social workers, counselors, intellectual disability specialists, and bachelor's-level trainers with degrees in a related field and/or relevant experience. Providers use a formal remediation training curriculum, the Attainment Curriculum for Trial Competence² (ACTC), initially developed in 2012 by special education experts at the Center for Persons with Disabilities at Utah State University. ACTC supports individualized training to meet a youth's behavioral health needs, level of adaptive functioning, and learning style. ACTC consists of 10 modules addressing courtroom procedure, participants, decision making and reasoning skills to meaningfully participate with counsel and the judicial

process. The delivery of ACTC ideally occurs two to three times per week for 60-minute sessions, but dosage is flexible. Remediation providers also connect youth to any needed community-based psychotherapy, pharmacological services, or skills training to address competency-related deficits. They refer youth and families to agencies providing intensive care coordination of supports to address any responsivity factors so youth are able to remain in the community and maximally benefit from remediation services.

In 2018, DHS secured state funding to support a strategic plan to improve the quality of the remediation program. A Remediation Program Administrator was hired, a remediation provider training program was developed, and a system of coaching remediation providers on individualizing ACTC was initiated. An evaluation of the ACTC was conducted through University of Utah's Education Policy Center, remediation providers were better supported to offer remediation at the ideal dose and frequency for each youth, and a System of Care approach was implemented for enhanced access to additional services to address competency-related needs, responsivity concerns, and post-remediation needs.

The 2018 strategic plan also set outcome goals around remediation success, duration of remediation, and remediation report timeliness that were achieved by 2019. The percentage of JCRS participants found competent by the court post-remediation increased from 28% to 85%. The average number of days in remediation decreased from 222 days (SD = 73) to 130 days (SD = 61). The percentage of remediation plans submitted within 30 days of the court's remediation order increased from 56% to 92%. Improved outcomes were attributed to enhanced instructional methods, amplified skills of remediation providers, and supervisory oversight.

The Superior Court of Arizona in Maricopa County's Juvenile Restoration Program

Arizona legislation enacted in 1980 provides for a competency evaluation and remediation process for juveniles. Prior to 2009, Maricopa County remediation providers were funded through the county budget and contracted through the State's Administrative Office of the Court. This model proved to be expensive and ineffective. In 2009, the Superior Court in Maricopa County Juvenile Department directly hired six remediation providers and a program supervisor into the JCRS. The yearly operating cost of the program dropped from \$864,969.00 to \$425,982.00. The remediation provider positions were subsequently incorporated into the Court Administration to improve accountability, oversight, and fiscal

²ACTC is publicly available for consideration and/or use by other jurisdictions. Several jurisdictions have now modified and adopted ACTC. Utah now offers a train-the-trainer model to assist with implementation. Contact: aalkema@utah.gov for more information.

responsibility. Remediation providers are hired with backgrounds in education or teaching, as well as juvenile justice and case work experience. Internal training is provided, which includes shadowing senior staff.

Each youth ordered to the JCRS is assigned a remediation provider and a post-remediation evaluator (who did not conduct an initial competency evaluation). Within five business days, evaluators assess the youth's remediation needs and develop a remediation plan for the remediation provider. Remediation providers then have five days to meet with the youth and set up regular JCRS appointments. Providers typically offer one weekly remediation session of 30–50 minutes; however, the court may order two weekly sessions in some cases. Using the evaluator's remediation plan, remediation providers develop individualized learning plans based on the unique learning style of each youth. Remediation providers collaborate with a team of stakeholders, parents, probation, and school personnel, as well as other remediation providers, to develop and refine planning. The remediation plans can be modified throughout remediation to support meeting the youth's needs.

Remediation sessions are structured using an internally-developed guided workbook with five chapters covering youth rights, court hearings, court personnel, making a plea, general juvenile court processes, and types of juvenile offenses. The workbook was originally developed by an outside agency contracted to provide remediation services in the past and has been internally modified progressively over time. Remediation providers verbally teach information, but also use diagrams, worksheets, and videos. If a JCRS participant misses JCRS sessions for two consecutive weeks, stakeholders are notified of the non-compliance and the team promotes re-engagement. Remediation sessions are most often conducted in the youth's home (51% of sessions), but may be held in community-placements such as group homes (18%), in detention facilities (17%), in other community locations, like libraries (11%) or in schools (3%)³.

The remediation provider offers the evaluator a weekly summary of the youth's progress in remediation, addressing the youth's behaviors, attitudes, and response to education. The evaluator also periodically meets with the youth to directly assess progress. The evaluator submits a written report and competency opinion to the court seven days prior to the court's

progress hearings which are held every 60 days. The remediation process can continue for up to six months from the initial order, but may sometimes be extended (e.g., the youth absconds and remediation pauses).

An average of 98 (SD = 12.9) youth are enrolled in remediation each year. A total of 85% have been male. About half of the youth have been between ages 11 and 13 and about half have been between ages 14 and 16. A total of 39% of participants were Hispanic, 33% are Anglo, 22% are African American, and 5% are Native American. Finally, 77% of youth ordered into JCRS have been successfully returned to the court post-remediation as competent to proceed and the average length of stay in services was 138 days (standard deviation unavailable).

These program descriptions demonstrate how each of these programs overlap and diverge in terms of the emerging best practices suggested by Warren et al. (2019). For instance, both programs deliver services within dyadic relationships and develop remediation plans to individualize services to each youth's needs. However, Utah has emphasized connecting youth to services that support maintenance in the community, while Arizona has not. Contrasting these two programs highlights the need to examine how JCRS programs function across the U.S.

The current survey

As a step toward establishing best practices in JCRS, we set out to describe current practices across community-based programs in the U.S. within nine emerging best practices through a survey of existing programs. Two unpublished surveys of JCRS programs have been conducted. Fitch (2014) surveyed 13 states, 4 with institution-based JCRS and 9 with community-based JCRS. Langley et al. (2014) surveyed 12 jurisdictions with 9 institution-based JCRS and 11 community-based JCRS programs. These surveys generally collapsed community-based and institution-based JCRS, making conclusions about community-based programs less clear. Also, these surveys do not reflect recent changes to the JCRS landscape. Eleven states have passed juvenile-specific competency statutes since 2010 (Panza et al., 2020) often requiring the development or refinement of JCRS programming. As such, we conducted a survey of known community-based JCRS programs.

³These data are from prior to the COVID-19 pandemic. Certainly, there have been more in-home sessions conducted via video-conferencing technology since the pandemic began.

Method

This study was exploratory, non-experimental and descriptive. Human subject approval came from University of Denver's IRB (1066299-1). A survey was disseminated and responses analyzed. Data collection occurred March 2018 through March 2019.

Participants

The authors used convenience sampling to develop a list of community-based JCERS and identified names of program administrators. Courts, attorneys, justice departments, forensic mental health services, state hospitals, and advocacy groups in all 50 states were contacted to determine (a) if a community-based JCERS existed in the jurisdiction and, if so, (b) to access contact information for relevant administrators. This yielded a list of 38 potential survey respondents, across 25 states. The initial survey was emailed to all 38 potential respondents and resulted in 11 completed surveys. Six respondents had started but not completed the survey; they, along with 21 individuals who did not respond to the initial request, were contacted by phone or email. Those conversations resulted in the completing of two additional surveys. Through subsequent emails and phone calls, the authors located six additional respondents who all completed the survey. All but one of the respondents identified as a program administrator; the remaining respondent played a university-based consultation role to a program. In total, the survey was completed by representatives from 19 community-based JCERS across 14 states (Arizona, Arkansas, California, Colorado, Georgia, Louisiana, Maryland, Ohio, Oregon, Rhode Island, Utah, Vermont, Virginia, and Wisconsin).

JCERS programs

Most of the surveyed programs were relatively new. Programs had been in operation for a median of five years. 11 programs were in operation for fewer than 10 years and seven were in operation for fewer than five years. Only three programs were in operation for more than 15 years.

A slight majority of programs (53%) were state-funded; 21% were county funded; and 26% had other funding arrangements, including hybrid funding models (state/county or region/county) and state- or court-funded fee-for-service models.

The programs ranged greatly by both size and budget. Using categories developed by Fitch (2014), 22% were small (serving fewer than 20 youth

annually), 55% were medium (serving 20 to 100 youth annually), and 22% were large (serving more than 100 youth annually). The number of Full Time Equivalent units (FTE) allocated to the programs also varied widely, ranging from <1 to 8. Across programs, 63% of FTEs were allocated to direct remediation services, 31% to administrative responsibilities, and 6% to data management. This did not include one outlier program that reported 56 FTE. Also, data from four programs were lacking because the information wasn't reported (two programs) or could not be reported in the form of FTEs (two programs).

As detailed in [Figure 1](#), programs most commonly deliver remediation services in the youth's home (51% of sessions), but sometimes in community-placements such as group homes (18%), in detention facilities (17%), in other community locations, like libraries (11%) or in schools (3%)⁴.

Survey schedule

The survey was developed by the authors. It included 72 questions and was administered electronically using Qualtrics. Because a Qualtrics logic model was used to route questions, not all questions were displayed to all respondents. Survey questions addressed program demographics (e.g., size); the delivery of remediation services (e.g., where provided); content of remediation education (e.g., how educational curricula were developed); post-remediation determinations (e.g., communication between evaluators and providers); and outcomes (e.g., percentage of youth completing the program). Responses were collected using dropdowns, multiple choice, fill in the blank, and open-ended text boxes. Excluding items presented to a subset of respondents due to the logic model, responses to individual items ranged from 17 to 19 of the 19 programs except where otherwise specified. Total time between accessing the survey and submitting the survey ranged between 11 minutes and 22 hours, 5 minutes⁵. The median time to complete the survey was 30 minutes.

Results

Survey results are presented in relation to the nine proposed best practices described above.

⁴These data are from prior to the COVID-19 pandemic. Certainly, there have been more in-home sessions conducted via video-conferencing technology since the pandemic began.

⁵Survey participants were able to leave the survey and return to it later.

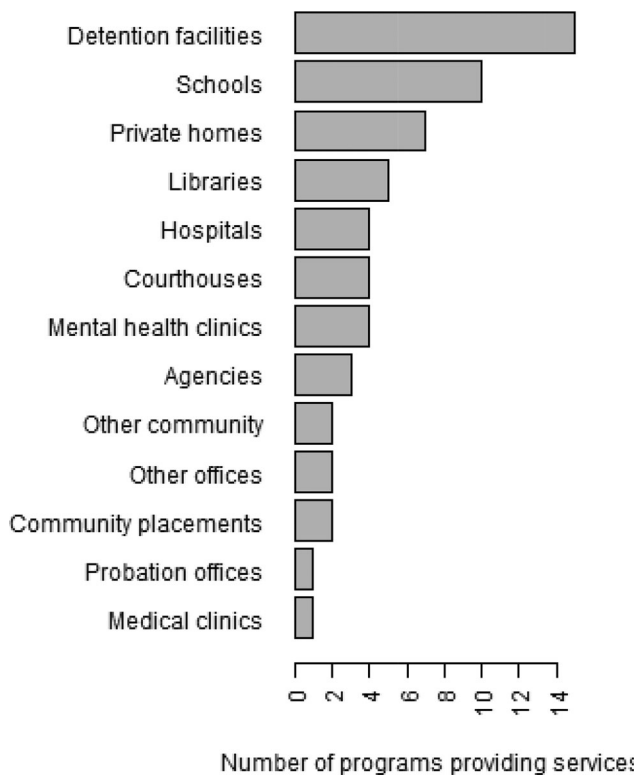


Figure 1. Locations at which community-based JCRS programs provide services.

1. Experienced and trained service providers

Across programs, remediation services were delivered by a wide variety of professionals, including educators, social workers, psychologists, psychology trainees, intellectual disability specialists, bachelor's-level skills trainers, and others with degrees in related fields. Half (50%) of programs used providers from multiple professional background. 59% of programs required training (e.g., about juvenile courts and/or competence standards) and experience (e.g., working with justice-involved youth) beyond professional degree.

2. Individualized instructional services using clear strategies and innovative approaches

Most programs (78%) reported using a formal competency training curriculum and most (72%) reported offering written guidelines for the individualized application of various interventions. Many programs (61%) used both a curriculum and guidelines, while 11% offered providers neither.

Of 14 programs that reported use of a formal training curriculum, 79% relied upon a single curriculum. Half (50%) reported using curricula specifically developed by and/or for their program, while 29% reported adapting a curriculum developed by another program, and 21% reported fully adopting curricula developed

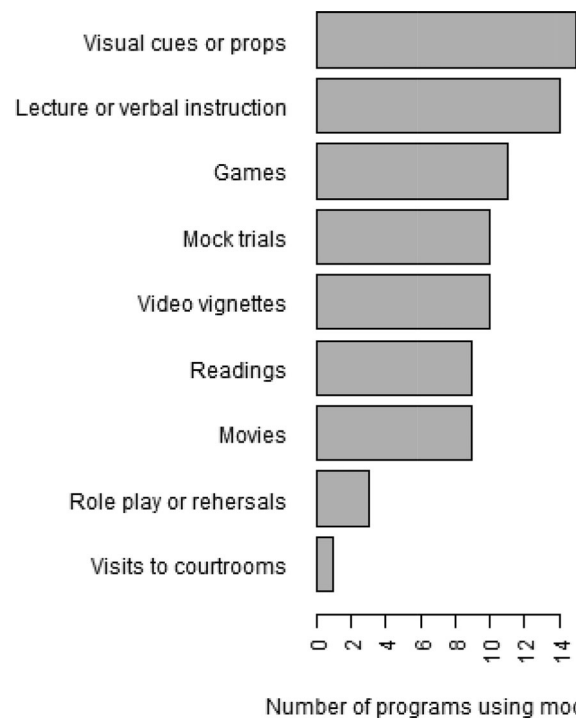


Figure 2. Modalities used by community-based JCRS programs.

elsewhere. There was little overlap among the curricula named by the respondents, indicating that no particular curriculum has been widely adopted.

All programs reported using multiple teaching modalities to deliver remediation training. The frequency of programs reporting use of each modality is shown in Figure 2. Respondents were also asked how they train youth on competence-related skills, such as assisting counsel and legal decision-making. They generally identified the same modalities used for teaching, though there was greater emphasis on role-plays and hypothetical scenarios.

3. An ongoing dyadic training relationship

All programs reported using one-to-one meetings as the main training context. In some programs, dyadic learning was supplemented with group learning (39%) and/or self-study (17%).

4. Individualized, competency-relevant clinical services

The frequency of programs offering clinical services are shown in Table 2. Only 28% of programs reported "sometimes" or "always" providing medication management, and 22% reported the same for psychotherapy. These numbers are generally lower than the findings of Langley et al. (2014), which found that 55% of community-based JCRS offered medication management and 55% offered psychotherapy. Some

Table 2. Frequency at which JCRS provide clinical & case management services.

Service	Almost always	Sometimes	Rarely	Never
Medication management	3 (17%)	2 (11%)	1 (5%)	12 (67%)
Psychotherapy	2 (11%)	2 (11%)	2 (11%)	12 (67%)
Case management	5 (28%)	5 (28%)	2 (11%)	6 (33%)

Note. Percentages provided in the table are calculated within each row.

individual programs also provided substance abuse treatment, family support, mediation, and referrals to other services (e.g., to support behavioral stability).

5. Case management services available as relevant and necessary

The frequency of programs offering case management services are also shown in Table 2. A small majority (55%) reported providing case management services during remediation for some youth. Langley et al. (2014) found that 64% of community-based programs offered case management services.

6. Developmentally-sensitive services

Most respondents endorsed making service delivery adaptations based on the juvenile's age (83%) and/or developmental maturity (89%). Common adaptations for younger and/or immature youth included using simplified vocabulary, more concrete stimuli, more concrete instructions, repetition of material, slower pace, more and simpler visual cues and games, shorter sessions, more frequent sessions, more breaks, and teaching simpler concepts before more complex concepts.

7. Data-driven services

Only about half (53%) of the programs reported tracking rates of participants successfully remediated to competency. These success rates ranged from 60% to 95%, with an average cross-program success rate of 80%. Data for success by sub-groups (e.g., youth with mental illness vs. youth with intellectual disability) was collected by 21% of programs, but categories and definitions were inconsistent preventing aggregate analysis.

8. Services dosed based on statutory timelines and capacities of participants

Thirteen programs (68%) offered data about duration of services. Participant days enrolled in the program ranged from 5 to 360, with an average of 127 days.

This finding is broadly consistent with research on specific JCRS programs finding most youth who will be successfully remediated will achieve this within 120 to 180 days of services (McGaha et al., 2001; Warren et al., 2019). However, these results must be considered in light of external service delivery limitations as most programs (72%) operate with statute-based duration limitations ranging from 120 to 1095 days.

Frequency of remediation services was measured as the number of weekly hours that remediation providers typically worked with a youth (see Table 3). The median⁶ number of weekly hours remediation providers typically spent with a given youth was two.

9. Services integrated into the larger juvenile competency process

One way JCRS programs can inform the larger juvenile competency process is with assessment data. A small majority of programs (55%) administered session or module post-tests, and half (50%) used both pretests and post-tests to track changes in ability. However, many programs (45%) did not conduct ongoing assessments.

In a few jurisdictions (18%), courts typically relied directly upon the remediation provider's opinion about the success of services. In another subset of jurisdictions (18%), the courts varied in whether they took opinions directly from the remediation providers or relied on an independent post-remediation evaluation. However, most (65%) programs reported that court determinations of post-remediation competence were based upon the opinion(s) of independent evaluator(s).

Nearly all of these programs (88%) reported mechanisms for communication of relevant information between remediation providers and post-remediation evaluators, including session notes, assessments, summary reports, and/or verbal communication. However, 12% of the programs reported that the post-remediation evaluation process is fully independent of remediation and no information is provided to post-remediation evaluators by remediation providers.

Strengths and needs

Survey respondents also were asked to identify the greatest strengths and needs of their JCRS in a free response format; responses were grouped based on rationally analyzed themes. Reported strengths

⁶Because the distribution for responses to this item was skewed, median is reported rather than mean.

Table 3. Frequency of weekly remediation services.

Number of hours per week	Number of programs	Percent of programs
One hour	5	33%
Two hours	6	40%
Three hours	3	20%
More than three hours	1	7%

included skilled remediation providers ($n=7$), strong training materials ($n=5$), flexibility to address the needs of each youth ($n=4$), access to case management services ($n=2$), a well-developed data tracking system ($n=2$), effective communication between post-remediation evaluators and remediation providers ($n=1$), and strong funding ($n=1$). The identified strengths of training materials included that they are varied, engaging, and address skill-development and application of concepts in addition to concrete knowledge-gain.

Respondents identified their greatest needs which included better funding/better staffing ($n=4$), better training materials ($n=2$), better data tracking ($n=2$), Spanish-language training materials ($n=2$), better pre- and post-remediation assessment methods ($n=1$), better ability to serve youth from geographically diverse locations ($n=1$), better communication between the state agency and the contracted service vendor about the practical demands of service delivery ($n=1$), and better cross-jurisdiction coordination between JCERS programs ($n=1$). The identified weaknesses of training materials included a lack of a manualized approach and need for more multi-media, tactile, art-based and other alternative teaching approaches.

Discussion

Community-based juvenile competency remediation services (JCERS) are increasingly prevalent across the United States. However, effective structures, methods and practices are not well-established, creating challenges for those tasked with the development and/or enhancement of remediation service delivery. In the current survey, we collected information about the extent to which established U.S. community-based JCERS programs are practicing in ways consistent with emerging best practices (e.g., Warren et al., 2019).

Emerging best practices

The results of this survey suggest that some emerging best practices are consistently met by community-based JCERS. All programs deliver services within a one-on-one provider/client relationship. Most support

service adaptations to manage differences in youth age, developmental maturity, cognitive abilities, learning styles, mental health symptoms, and competency-related deficits. Most programs have mechanisms to inform independent competency evaluators who conduct post-remediation evaluations for the courts.

In certain areas of emerging practice, however, there is notable inconsistency across programs. Despite the specialized context and nature of remediation services, for example, only about half of programs require providers gain relevant experience or focused training beyond their professional degree. This is compared to programs like Virginia which provides formal front-end and continuing training of remediation providers and ongoing clinical supervision (Warren et al., 2019). As state-systems increasingly adopt certification processes to assure the quality of JCST evaluation services, the value of similar systems for remediation providers should be considered.

A few jurisdictions reported problematic integration between the JCERS and the larger competency process. For example, in some cases remediation providers offer post-remediation competency opinions directly to the courts in lieu of full evaluations. We do not support this practice and recommend that service delivery systems are set up for referring these forensic questions to independent, neutral evaluators whenever possible. First, ethical guidelines for forensic psychologists generally prohibit treatment providers from providing forensic mental health opinions due to problems arising from conflating those multiple roles (American Psychological Association, 2013). Further, most remediation providers do not meet the training and experience requirements of evaluators. In other programs, post-remediation evaluators are not provided access to information from remediation providers. We suggest that information about the youth's progress in JCERS is essential to the post-remediation evaluator's informed opinion.

About half of programs offer case-management services and a minority of programs offer clinical services to target mental health symptoms that may underlie competency-related deficits. Indeed, when the current results are compared to findings among community-based JCERS by Langley et al. (2014), ancillary services may now be offered less commonly than recently. It is not clear if newer programs are still establishing their ability to provide these adjunctive services or if programs are seeking to reduce costs by avoiding these approaches. It seems possible, as future research might explore, that excluding these services reduces program efficacy.

Most programs employ a semi-structured training curriculum or intervention guidelines, with only a little more than half offering both. Survey respondents described the flexible use of training tools such as visual cues, props, games, videos and role-plays to augment verbal instruction. A little more than half of programs provide both a structured training curriculum and guidance for individualized intervention.

Of course, there are good reasons for imperfect uniformity across JCRS programs. Jurisdictions have different statutory frameworks, clarity of mandates of responsibility, funding sources, forensic and mental health service delivery histories, population densities, geographies, and other important distinctions. Indeed, there may be no one “right” national model for JCRS. More research will be needed to assess the costs and benefits of various service delivery components.

This leads us to consider the quality of data collection and management within programs. Historically, a program’s remediation rate and length of time to remediation are the primary measures of success (see, for example, Pirelli & Zapf, 2020, in reference to adult restoration programs). About two-thirds of JCRS tracked the number of days each participant spent in their program, only about half tracked remediation success rates, and only a few reported monitoring how different subgroups respond to their services. Additionally, only about half of programs tracked youth progress using some form of structured assessment. These data seem essential for program administration and important for assuring program efficacy.

Further, additional outcome measures should be considered (Gowensmith et al., 2016). Longer-term outcomes of participants, including recidivism rates, residential placement rates, and duration of maintenance in the community, would be helpful for considering the value of JCRS programs in the larger juvenile justice system. Likewise, given the unique focus on JCRS in the U.S. compared to the rest of the international community, data regarding the short-term and longer-term outcomes of youth found incompetent in U.S. JCRS could be compared to outcomes for “unfit” youth in other nations to assess what legal mechanisms are best for supporting the functioning of the juvenile courts, upholding the rights of youth during their adjudication, and meeting the ultimate rehabilitative goals of the juvenile justice system.

Remediation outcomes

As noted, a substantial proportion of the community-based JCRS programs did not track remediation

outcome data. Those programs with administrative data reported remediation rates and lengths of time to successful remediation that are generally consistent with or better than past findings with juvenile and criminal programs. Rates ranging from 60% to 95%, with an average of 80%, are similar to or higher than past reports from specific JCRS programs (about 70% to 75%; Chien et al., 2016; McGaha et al., 2001; Warren et al., 2019), as well as broadly defined adult restoration programming (about 75%–80%; Pirelli & Zapf, 2020; Zapf & Roesch, 2011), and community-based adult restoration programs (about 70%; Gowensmith et al., 2016). However, clear conclusions about the efficacy of community-based JCRS cannot be drawn as the programs without data may perform differently than programs with data.

The average length of services reported by a subset of survey respondents (124 days) is consistent with a past survey of both community-based and institution-based JCRS programs (mean = 122 days; Fitch, 2014), while somewhat shorter than broadly defined adult restoration programs (median = 147 days; Pirelli & Zapf, 2020) and adult community-based restoration programs (mean = 149 days; Gowensmith et al., 2016). Again, however, the current findings cannot be assumed to generalize across all community-based JCRS programs given the number of programs lacking data.

Limitations

The survey methodology used in this study limited the nuance and depth of information collected from the sites as might have been available, for instance, with interviews. Also, there was variability in the quality of data tracked within programs so that the quality of information about the functioning of programs likely varied across sites. Additionally, the sample of community-based JCRS programs is small, limiting the statistical sophistication with which analyses could be conducted.

Future directions

With no singular model, approach, curriculum, or set of remediation materials accepted across jurisdictions, JCRS need access to a wide variety of training materials. Court-based games that are engaging to an 11-year-old with low verbal intelligence, for instance, are unlikely to be engaging to a 15-year-old with average intelligence and severe depression. Materials and strategies that address differences in culture, age, maturity,

cognitive functioning, learning styles, mental health symptoms, and gender are needed. Developing this kind of library of resources is a significant undertaking. The development of a cross-jurisdictional library of intervention resources might enhance the quality of services across programs.

Ideally, JCRS interventions would be empirically supported. In 2007, Viljoen and Grisso (2007) proposed research to establish evidence-based interventions in juvenile competency remediation, highlighting innovative practices like *systematic and explicit instruction* and *cognitive acceleration programming*. However, little if any empirical work in this area has been reported (Cunningham, 2020).

Further, individualized JCRS services would be ideally guided by an empirically-based intervention matching paradigm informing what works with which youth. Experimental research, such as administering a given curriculum module, a set of tools, or a particular strategy designed to target specific competence-related deficits (e.g., legal decision-making) to youth of various ages and abilities to see which youth benefit and how much, could enhance the efficacy of JCRS. Comparisons between remediation “treatment as usual” and innovative interventions might also help further the field’s understanding of what works best with whom (Heilbrun et al., 2019).

More naturalistically, JCRS programs could collect data about the demographics, specific cognitive abilities (e.g., memory; problem solving), elements of psychosocial maturity (e.g., autonomy; time perspective), mental health symptoms and diagnoses, and the specific types of competency deficits (rational appreciation; decision-making), as well as data about the specific types of services each youth received (including which modules from which training curricula and using which supporting materials) and the impact on focused measures of competency-related abilities (e.g., factual understanding; assisting counsel) to help clarify what works with whom.

Also importantly, given the potential over-representation of minority youth in JCRS services (Jackson, 2018; Warren et al., 2019), programs must explore differences in how participants of various races, ethnicities, and cultures respond to their interventions. Just as cultural sensitivity is essential for effective education in schools (Plata, 2011) and enhances psychotherapeutic outcomes (Griner & Smith, 2006), culturally-sensitive remediation interventions will likely enhance engagement and efficacy. We are unaware of any research in this area.

As community-based JCRS programs continue to be created and evolve in the United States, practices

should be increasingly based on both cross-jurisdictional collective clinical wisdom like that collected in this survey and on empirical research. In these ways, community-based JCRS programs can more effectively serve the needs of the community, the court, and the young participants. As community-based JCRS programs in the U.S. improve in quality and efficacy, they may support the development of more focused remediation services in international jurisdictions that currently allow for general treatment of incompetent youth. More effective U.S. programs also may suggest international jurisdictions that allow modified hearings to proceed against incompetent youth consider which policy best upholds the goal of fair trials for juveniles with significant limitations.

Conflict of interest

We have no known conflict of interest to disclose.

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