Juveniles’ Competence to Stand Trial as Adults
Laurence Steinberg, Thomas Grisso, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci, and Robert Schwartz

Summary

During the 1990s, nationwide legal reforms lowered the age at which youths could be tried in adult criminal court and expanded the range of young offenders subject to adult adjudication and punishment. The present study asked whether, to what extent, and at what ages juveniles may be more at risk than adults for incompetence as legal defendants in criminal trials. Participants in the study, half of whom were in juvenile detention facilities or adult jails, and half of whom were drawn from the community, included nearly 1,000 juveniles aged 11 to 17 and nearly 500 young adults aged 18 to 24. Participants were administered a structured interview that has been used in research on competence to stand trial among mentally ill adults as well as a new interview designed to assess legal decision-making. The results of this study indicate that, based on criteria established in studies of mentally ill adult offenders, approximately one-third of 11- to 13-year-olds and approximately one-fifth of 14- to 15-year-olds are as impaired in capacities that affect their competence to stand trial as are seriously mentally ill adults who would likely be considered incompetent. In addition, immaturity may affect the performance of youths as defendants in ways that extend beyond the elements of understanding and reasoning that are explicitly relevant under the law to competence to stand trial. Compared to young adults, adolescents are more likely to comply with authority figures and less likely to recognize the risks inherent in the various choices they face or to consider the long-term consequences of their legal decisions. This study confronts policymakers and courts with an uncomfortable reality: Under well-accepted constitutional restrictions on the state’s authority to adjudicate those charged with crimes, many young offenders—particularly among those under the age of 14—may not be appropriate subjects for criminal adjudication.
This issue presents a second paper from the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. The XV, number 4 issue of SPR by Steinberg and Cauffman reviewed research literature addressing adolescents’ immature developmental status and the implications for the treatment of juveniles by the justice system.

In this article the Network presents research evidence on juveniles’ risk for incompetence when compared to adults as legal defendants in criminal trials. The study reported in this issue provides evidence that a substantial proportion of 11-15 year old teens are no more qualified to be tried in court than are mentally ill persons. This is convincing evidence that adolescents should not be subject to the adult criminal system based only on the nature of the crime they commit. The ideology that promotes treating juveniles as adults is powerful when the crime is heinous as in murder. Nonetheless if we wish to function as an enlightened society we must resist the temptation toward revenge and instead treat children as children if they show child rather than adult competencies. It should be the individual’s competency to stand trial that determines in what court they are tried, not the nature of the crime or other such factors.

It is unusual for the Social Policy Report to present original evidence as in a journal article. However, Jeanne Brooks-Gunn and I believed that this data had such powerful implications for policy that it had to be presented in a vehicle such as the Report that reaches a larger audience than just researchers.

In this study, the Network used a research tool developed by an earlier network to evaluate teens’ competency. They are currently developing an interview protocol that might be used by courts or other arms of the justice system to assess teens’ competency to stand trial.

The juvenile justice system originated more than one hundred years ago because it was then recognized that children and teens have different competencies than adults to stand trial and that they may be more effectively rehabilitated. This was before there was a field of child development research or an SRCD. We now have a considerable body of research to support the original idea of juvenile justice. This article presents the latest and most direct evidence, but the field has much more to offer. We cannot undo more than 100 years of history and close to 100 years of research just because children have access to weapons that allow them to execute adult crimes. We may need to address their access to such weapons as well but certainly we should NOT ignore everything research and history has taught us about the nature of children.

Lonnie R. Sherrod, Editor
Juveniles’ Competence to Stand Trial as Adults

Laurence Steinberg, Thomas Grisso, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci, and Robert Schwartz

During the 1990s, nationwide legal reforms lowered the age at which youths could be tried in adult criminal court and expanded the range of young offenders subject to adult adjudication and punishment (Snyder & Sickmund, 1999). These legal developments raise an important issue that has received surprisingly little attention from experts in child development: whether youths charged with crimes have the developmental capacities needed to participate effectively in criminal trials. Although precise data on the numbers of juveniles at different ages who are tried in adult court each year are not available (in part because criminal courts do not systematically record the ages of defendants), the U.S. Department of Justice estimates that about 200,000 individuals under 18 are tried as adults each year and that this number has increased over the past decade. The vast majority of juveniles who are tried as adults are 16 or older, but many are as young as 11.

It is well established that a criminal proceeding meets the constitutional requirements of due process only when the defendant is competent to stand trial, which includes capacities to assist counsel and to understand the nature of the proceeding sufficiently to participate in it and make decisions about rights afforded all defendants (Dusky v. U.S., 1960; Godinez v. Moran, 1993). Although courts and legislatures in some states have determined that youths adjudicated in criminal court must be competent to stand trial, the conventional standard that has been applied focuses on mental illness and disability. In general, there has been little recognition that youths in criminal court may be incompetent due to developmental immaturity (Bonnie & Grisso, 2000; Redding & Frost, 2002). We do not know whether, and to what extent, juveniles’ competence is evaluated by courts, how these evaluations are conducted, or how information derived from them is being used, but our own preliminary investigation into this issue (a telephone survey of juvenile court clinics in the nation’s 100 largest jurisdictions) indicates that requests for competence evaluations of young defendants are on the rise. According to our survey, some jurisdictions perform as many as 200 juvenile competence assessments annually.

Information about youths’ competence to stand trial is needed for several reasons. First, states need guidance for the development of meaningful laws in this area. The doctrine regulating competence in court has focused on adult criminal defendants impaired by mental illness and mental retardation. Yet basic research on cognitive and psychosocial development suggests that some youths will manifest deficits in legally-relevant abilities similar to deficits seen in adults with mental disabilities, but for reasons of immaturity rather than mental disorder (see generally, Grisso & Schwartz, 2000). If there were empirical evidence for this, it would suggest that the criminal law should take immaturity into consideration when evaluating the adjudicative competence of youths in criminal court.

Second, practitioners need information about youths’ capacities as trial defendants. Prosecutors and defense attorneys must make case-by-case decisions about whether to raise this issue. Mental health professionals who are asked to perform evaluations of youths’ competence need guidance regarding the potential implications of youths’ developmental status for assessing deficits in the legally relevant abilities. This may require attention to different constructs (immaturity, not only disorder) and a different logic (e.g., the “achievement” rather than “restoration” of competence among those found incompetent) than in adult competence evaluations prompted by putative mental illnesses. Finally, judges need guidance in interpreting the law in order to protect young defendants who may be incompetent, especially in their abilities to make decisions to waive important rights in the context of their potentially immature perspectives regarding the implications of their choices.

Past analyses of the legal concept of competence to stand trial have outlined the specific functional abilities about which the law is concerned (Grisso, 2002). These abilities focus on the fundamental aspects of what is called “competence to proceed”: a basic comprehension of the purpose and nature of the trial process (Understanding), the capacity to provide relevant information to counsel and to process information (Reasoning), and the ability to apply information to one’s own situation in a manner that is neither distorted nor irrational (Appreciation) (Bonnie, 1992, 1993).

In addition to defendants’ basic understanding and reasoning abilities their competence as decision-makers may be significant in cases in which defendants must make important choices about the waiver of constitutional rights, such as the right to a jury trial or to protect oneself against self-incrimination (Bonnie, 1992, 1993). A potentially important difference between adolescents and adults in this regard involves aspects of psychosocial maturation that include progress toward greater future orientation, better risk perception, and less susceptibility to peer influence. Several authors have hypothesized that these developmental factors could result in differences between adolescents’ and adults’...
In general, there has been little recognition that youths in criminal court may be incompetent due to developmental immaturity.

Current law does not include these developmental factors as relevant when considering a defendant’s competence to stand trial. For example, when making a decision about waiver of important rights, defendants are free to place a primary value on their immediate gratification at the expense of their future welfare, or to opt to please their friends rather than act in their best interests, as long as they adequately understand and grasp the consequences of their choices. But if adolescents place a relatively higher value on immediate gratification than adults as a consequence of their developmental immaturity, they may make different legal decisions than adults. Although psychosocial immaturity is not addressed in the formal legal construct of competence to stand trial, it needs to be investigated in this context to provide a comprehensive account of adolescents’ capacities to participate in the trial process.

In the present study, we examined age differences in the two types of capacities outlined above—competence to proceed and “decisional competence”—in order to ascertain whether, to what extent, and at what ages juveniles may be more at risk than adults for incompetence as legal defendants in criminal trials. Individuals were administered a structured interview in which they were asked to respond to a series of hypothetical vignettes that concerned a range of situations and decisions that ordinarily arise during criminal proceedings.

Participants in the study, half of whom were in juvenile detention facilities or adult jails, and half of whom were drawn from the community, included nearly 1,000 juveniles aged 11 to 17 and nearly 500 young adults aged 18 to 24. In order to draw more fine-grained distinctions among juveniles of different ages, for purposes of data analyses we grouped adolescents into 11- to 13-year-olds, 14- to 15-year-olds, and 16- to 17-year-olds. Because the law does not draw age distinctions among individuals 18 and older, our young adult sample was treated as one group.

Method
A brief description of the study’s methodology follows. Greater detail regarding the study’s sample, instruments, and procedures is available in a full report of the study’s findings (Grisso, et al., 2003) and in an archival report of the study’s method, available at www.mac-adoldev-juvjustice.org.

Participants
Tables 1 and 2 show the demographic composition of the study groups. Males composed 66.3% of the Detained sample and 56.8% of the Community sample. The ethnic composition of the sample was about 40% African-American, 23% Hispanic, 35% non-Hispanic white, 1% Asian, and 1% from other ethnic identities; these proportions were similar across age and Detained/Community groups. Most participants in both the Detained samples (75% and 77%) and Community samples (62% and 73%) were classified in the two lowest socioeconomic classes using the Hollingshead (1975) system.

To enhance ethnic diversity and minimize bias due to geographic location, the study employed four data collection sites: Los Angeles (29% of total sample), Philadelphia (28%), northern Florida (16%) and northern, central, and western Virginia (27%). The age proportions in our Detained youth samples were representative of juvenile detention centers generally, and the proportions of different ethnic groups in the Detained youth sample were nearly identical to those reported in a national survey of juvenile detention centers (Snyder and Sickmund, 1999).

Independent Variables
Demographic and Justice System Experience Variables. We obtained data regarding age, gender, ethnicity, mental health problems, and socioeconomic status by self-report. For the Detained samples, we also obtained information about their present charge and the extent of their prior experience in the justice system.

Dependent Variables
Functional Abilities Related to Competence to Stand Trial. The primary dependent variable was the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA), designed to assess criminal defendants’ abilities to participate in their defense (“competence to stand trial”) (Otto, et al., 1998; Poythress et al., 1999). Individuals respond to a series of questions based on a hypothetical vignette concerning a crime and the subsequent court proceeding. The instrument’s scoring criteria, as well as norms based on large, national samples of pretrial adult defendants, are provided in the MacCAT-CA manual. The standard administration and content of the MacCAT-CA were unaltered for the present study.

In addition to defendants’ basic understanding and reasoning abilities, their competence as decision-makers may be significant in cases in which defendants must make important choices about the waiver of constitutional rights, such as the right to a jury trial or to protect oneself against self-incrimination.
Table 1: Sample Demographics

<table>
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<tr>
<th></th>
<th>Detained</th>
<th>Community</th>
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<tr>
<td></td>
<td>Youth Age Groups</td>
<td>Youth</td>
</tr>
<tr>
<td></td>
<td>11-13</td>
<td>14-15</td>
</tr>
<tr>
<td>Participants (n)</td>
<td>74</td>
<td>186</td>
</tr>
<tr>
<td>Male (% of age group)</td>
<td>74</td>
<td>62</td>
</tr>
<tr>
<td>Ethnicity (% of age group)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>African-American</td>
<td>56</td>
<td>32</td>
</tr>
<tr>
<td>Hispanic</td>
<td>21</td>
<td>28</td>
</tr>
<tr>
<td>Non-Hispanic White</td>
<td>21</td>
<td>35</td>
</tr>
<tr>
<td>Asian and Other</td>
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<td>5</td>
</tr>
<tr>
<td>Socioeconomic Status (% of age group)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I-II</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>III</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td>IV-V</td>
<td>80</td>
<td>77</td>
</tr>
</tbody>
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The 22 MacCAT-CA items are grouped into three subscales: Understanding, Reasoning, and Appreciation. Understanding assesses comprehension of courtroom procedures, the roles of different court personnel, and the defendant’s rights at trial. Reasoning assesses the recognition of information relevant to a legal defense and the ability to process that information for legal decision-making. The Appreciation subscale, referring to a person’s ability to appreciate the relevance of information for one’s own situation, assesses whether a defendant’s legal decision-making is influenced by symptoms of mental illness, such as delusional thinking.1

We used mean scores on the MacCAT-CA subscales, as well as a system of classifying subscale scores into three hierarchical categories using pre-established cut-off scores provided in the MacCAT-CA manual indicating “minimal or no impairment,” “mild impairment,” or “clinically significant impairment.” The cut-off score for “clinically significant impairment” is set at the score equaling 1.5 standard deviations below the mean of the “presumed competent” samples in the original MacCAT-CA norming study (Poythress et al., 1999). Performance above 1.0 standard deviation below the mean for those samples is considered to represent “minimal or no impairment.” Scores between those two cut-offs were labeled “mild impairment.”

Decisions and Judgment in the Adjudicative Process. The MacArthur Judgment Evaluation (MacJEN), developed for this study and based on an earlier instrument (Woolard, 1998), was designed to provide data regarding age-related differences in choices and the psychosocial factors that might influence those choices. The MacJEN uses vignettes to pose three legal decisions common in the delinquency/criminal process: (a) responding to police interrogation when one has committed a crime, (b) disclosing information during consultation with a defense attorney; and (c) responding to a plea agreement for reduced consequences in exchange for a guilty plea and

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1 Our inspection of juveniles’ answers to the items measuring Appreciation led us to believe that many of the younger individuals were receiving low scores on this subscale not because of impaired thinking, but because they simply lacked sufficient knowledge of courtroom procedures (which would be more properly reflected in low scores on the Understanding subscale). As a consequence, we decided to focus our analyses of the MacCAT-CA on the Understanding or Reasoning subscales. This decision likely resulted in our underestimating the proportions of juveniles whose competence might be impaired, but gave us greater confidence in the validity of our findings.
Table 2: Number of Participants in Gender/Ethnicity by Age Groups (Percent of Age Group in Parentheses)

<table>
<thead>
<tr>
<th></th>
<th>Detained</th>
<th>Community</th>
</tr>
</thead>
<tbody>
<tr>
<td>Males</td>
<td></td>
<td></td>
</tr>
<tr>
<td>African-American</td>
<td>27 (37) 40 (22) 47 (24) 70 (30)</td>
<td>24 (21) 49 (31) 32 (16) 47 (20)</td>
</tr>
<tr>
<td>Hispanic</td>
<td>12 (16) 30 (16) 25 (13) 47 (20)</td>
<td>15 (13) 16 (10) 22 (11) 32 (14)</td>
</tr>
<tr>
<td>Non-Hispanic White</td>
<td>13 (18) 41 (22) 46 (24) 48 (21)</td>
<td>20 (17) 30 (19) 55 (28) 50 (21)</td>
</tr>
<tr>
<td>Asian and Other</td>
<td>2 (3) 4 (2) 2 (1) 0</td>
<td>1 (1) 1 (1) 4 (2) 3 (1)</td>
</tr>
<tr>
<td>Females</td>
<td></td>
<td></td>
</tr>
<tr>
<td>African-American</td>
<td>14 (19) 20 (11) 27 (14) 29 (12)</td>
<td>23 (20) 33 (21) 33 (17) 39 (17)</td>
</tr>
<tr>
<td>Hispanic</td>
<td>3 (4) 23 (12) 23 (12) 12 (5)</td>
<td>8 (7) 15 (9) 19 (10) 24 (10)</td>
</tr>
<tr>
<td>Non-Hispanic White</td>
<td>2 (3) 24 (13) 21 (11) 27 (12)</td>
<td>22 (19) 15 (9) 33 (17) 37 (16)</td>
</tr>
<tr>
<td>Asian and Other</td>
<td>0 4 (2) 1 (1) 0</td>
<td>3 (2) 0 0 1 (1)</td>
</tr>
</tbody>
</table>

testimony against other defendants. Respondents are given several response choices and asked to recommend a “best choice” and “worst choice” for the vignette character.

MacJEN responses were also scored according to predetermined criteria designed to identify three variables representing aspects of psychosocial maturity believed to affect decision-making: risk appraisal (represented by three indexes), future orientation, and resistance to peer influence. Participants’ “best choice” recommendations were also used to create a variable indicating their readiness to comply with authority figures.

**Procedure**

Our research assistants visited the participating juvenile detention centers and adult jails once or twice a week for about 11 months. They were assisted by staff to identify new detainees who had arrived since the previous visit, and to determine whether any detainees had been “screened out” by staff or participant advocates regarding potential research participation due to mental illness or significant adjustment problems. Any detainees who had not been screened out were approached by research assistants with an explanation of the study, the procedure, and a request for assent to participate. Females and very young adolescents were over-sampled in proportion to their actual representation in detention and jail facilities.

Community youths and young adults were solicited in neighborhoods served by the relevant youth detention or adult jail facilities. Community youths were solicited in schools, youth programs, and Girls’ and Boys’ Clubs, while community adults were solicited in community clubs, agencies and shelters, and at community colleges, using posters, leaflets, and/or direct contact by research assistants. As data collection proceeded, the age by gender by ethnic proportions that were accruing in the Detained samples were examined periodically to guide a more selective approach to the recruitment of potential Community participants, aiming at final Community samples that were demographically similar to their respective Detained samples.

All participation was voluntary. Detained youths and adults received $10 for their participation (or snacks in some facilities that did not allow monetary awards); community youths and adults received $25. When a participant had consented/assented, the research assistant administered the study protocol, which typically required between 90 and 180 minutes.
Results

Age Differences in Understanding and Reasoning

We found significant age differences in individuals’ performance on the Understanding, and Reasoning subscales of the MacCAT-CA, our chief measure of capacities relevant to individuals’ competence to stand trial. In general, the 11-13 year-olds performed significantly worse than the 14-15 year-olds, who performed significantly worse than the two older groups. Importantly, however, the performance of the 16-17 year-olds did not differ from that of the young adults.

These same patterns of age differences were also seen when analyses were used to compare age groups with respect to the proportions of individuals showing various levels of impairment—“no impairment,” “mild impairment,” or “significant impairment.” For example, whereas 20% of 11-13 year-olds, and 13% of 14-15 year-olds, showed significantly impaired Understanding, only 7% of the 16-17 year olds and this same proportion of adults scored in this range. Similarly, proportions of individuals showing significantly impaired Reasoning declined from 16% among 11-13 year-olds to 9% among 14-15 year-olds, to less than 7% among 16-17 year-olds and young adults.

It is important to examine the proportions of each age group who show significantly impaired Understanding or Reasoning (or both), because significant impairment in either could raise doubts about competence. These results are presented in Figure 1, illustrating that 30% of 11-13 year-olds and 19% of 14-15-year-olds were significantly impaired on one or both of these subscales; the figures for 16-17 year-olds and for young adults were both 12%. In general, this pattern of age differences did not vary as a function of gender, ethnicity, SES, or geographic region. And, although levels of impairment were consistently lower among Detained than Community individuals (largely because of the lower intelligence of the individuals in detention facilities and jails relative to the general population, and the significant relation between IQ and MacCAT-CA performance), the overarching pattern of age differences was observed in both settings. Nor did performance on this assessment vary within the Detained sample as a function of prior experience in the justice system, or within the entire sample as a function of mental health symptoms (but recall that individuals with severe mental health problems were likely screened out of the study).

Overall, age and intelligence were the only consistent predictors of individuals’ understanding and reasoning, and these predictors each contributed independently to MacCAT-CA performance. As a consequence, younger individuals of lower intelligence were especially likely to be deficient in the necessary capacities associated with trial competence. Indeed, among 11-13 year olds, more than one-half with an IQ between 60 and 74, and more than one-third with an IQ between 75 and 89, were significantly impaired. Among 14-15 year olds, approximately 40% of those with an IQ between 60 and 74, and more than one in four with an IQ between 75 and 89, were comparably impaired. These figures are important because between one-fifth and one-quarter of juveniles aged 15 and younger in the Detained sample had IQ scores between 60 and 74, and approximately 40% of Detained juveniles aged 15 and younger had IQ scores between 75 and 89. In other words, approximately two-thirds of the Detained juveniles aged 15 and younger had an IQ that was associated with a significant risk of being incompetent to stand trial due to impaired Understanding or Reasoning or both.

Age Differences in Legal Decision-Making

The pattern of age differences found in individuals’ courtroom understanding and reasoning was largely replicated in our examination of their decision-making in situations involving a police interrogation, consultation with one’s attorney, and consideration of a proffered plea agreement. Generally speaking, 11-13 year-olds showed different choices and less mature decision-making than 14-15 year-olds, who lagged behind the 16-17 year-olds and young adults. Once again, we saw few differences between the young adults and the adolescents who were 16 and older.

Basic research on cognitive and psychosocial development suggests that some youths will manifest deficits in legally-relevant abilities similar to deficits seen in adults with mental disabilities, but for reasons of immaturity rather than mental disorder.

Overall, we found that younger individuals are more likely to make decisions that comply with authority. Thus, compared with older adolescents and young adults, adolescents aged 15 and younger are more likely to recommend confessing to the police rather than remaining silent and accepting a plea bargain offered by a prosecutor rather than going to trial (see Figures 2 and 3). For example, the proportion of participants who chose confession as the best choice decreased with age, from about one-half of the 11-13 year-olds to only one-fifth of young adults, and the proportion accepting the plea agreement decreased from 74% among 11-13 year olds to 50% of young adults.

In addition to examining the content of individuals’ decisions, we also coded their responses to the vignettes for the degree to which their recommendations appeared to include some assessment of the risks involved, some consideration of the long- as well as short-term consequences of their recommendations, and some resistance to the influence of peer pressure. Each of these factors have been discussed as potential influences on decision-making that might distinguish juveniles from adults (e.g., Scott, et al., 1995; Steinberg & Cauffman, 1996). That is, it has been suggested that juveniles legal decision-making may be compromised relative to that of adults because adolescents are not as likely to accurately appraise risks, to think about the future as well as immediate consequences of their decisions, and to resist the influence of others to change their mind.

Continued on pg. 10
Research on Juvenile Competency: A Defender’s Perspective

Steven A. Drizin, Northwestern University

In October 1996, eleven year old Laclesha Murray was interrogated by detectives from the Austin Police Department in connection with the death of Jayla Belton, a two year old girl who had been left in the care of Laclesha’s grandparents. Throughout the interview, she repeatedly denied any involvement in the toddler’s death. Finally, a detective suggested to Laclesha that the baby may have been hurt in an accident, saying that perhaps the baby slipped out of her arms while she was carrying her. After repeated prompting, Laclesha finally told the detectives what they wanted to hear—when she had picked up the baby to take her to her grandpa, the baby fell and hit her head on the floor. Detectives typed up the “confession” and gave it to Laclesha. “Can you read pretty good,” a detective asked Laclesha. “No, but I try hard,” she said. As she struggled to read the statement, Laclesha came across a word she didn’t understand and could not pronounce. “What is a home-a-seed?” she asked. The detectives corrected her pronunciation but never answered the question (Herbert, 1998). Laclesha’s statements led two separate juries to convict her for causing the death of Jayla, and she eventually received a twenty five year sentence. Her conviction and sentence were later reversed on appeal (In re L.M., 1999).

In November 1999, a Michigan jury convicted thirteen year old Nathaniel Abraham of second degree murder in the shooting death of Ronnie Greene, a crime committed when Abraham was only eleven years old. Under Michigan law, Judge Eugene Moore could have sentenced Nathaniel as a juvenile, as an adult, or given him a blended sentence that treated Nathaniel initially as a juvenile and then later as an adult if he failed to rehabilitate himself with services provided in the juvenile system. Judge Moore gave the boy the break of his life, sentencing Abraham as a juvenile and sparing him a sentence of between 8 and 25 years in prison. But the boy, who fidgeted and doodled during the judge’s twenty-minute speech, didn’t appreciate the judge’s generosity. Reportedly, he turned to his attorney after the judge had concluded, and asked, “What happened?” (Goodman, 2000).

On July 28, 1999, six year old Tiffany Eunick died from injuries sustained while playing with twelve-year-old Lionel Tate, a 166-pound boy in Tate’s Pembroke, Florida home. Lionel claimed he had picked up Tiffany in a bear hug while they were roughhousing and accidentally hit her head on a coffee table. His story, however, did not square with the evidence of her extensive injuries, including head trauma, lacerations to her liver, and several broken ribs. Broward County prosecutors brought Lionel’s case before a grand jury, which returned an indictment against the boy for first degree murder. Several times before trial, Broward County prosecutors reportedly offered to let Lionel plead guilty to second-degree murder in exchange for a sentence of three years in a juvenile center, one year of house arrest, ten years of psychological testing and counseling, and 1000 hours of community service. Each time, Lionel and his mother rejected the offer. He was convicted of first degree murder and sentenced to life without the possibility of parole (Bennett, 2001).

The cases of Laclesha Murray, Nathaniel Abraham, and Lionel Tate call into question the competency of these young people to stand trial in adult court. Using the generally accepted definition of competency as the ability to understand the nature of the proceedings, including the roles of the parties to the proceedings, and the ability to participate meaningfully in one’s own defense (Dusky v. U.S., 1960), some, if not all, of the following questions must be asked: Could Laclesha have understood her Miranda rights? Was she a competent enough decision maker to entrust her with the choice to give them up? Was she overly compliant with authority, and did police interrogation tactics take advantage of this compliance to produce a coerced, or even a false, confession? How much did Nathaniel and Lionel understand about their court proceedings? Could they meaningfully participate in their defense? Was Lionel competent to decide to reject a reasonable plea offer? Did he discount the risk of future harm of a conviction in favor of the short term benefit of an acquittal? These and other competency-related questions, however, were of no concern to lawmakers who in the 1990s enacted new laws to make it easier to prosecute children as adults at younger and younger ages. But they were of great concern to lawyers, who like me, were charged with representing these youngsters.

Although many juvenile defenders suspected that our clients were not fully capable of participating in their own defense or assisting us in defending them, the legal standard of competence offered us no relief. In a televised interview, in Frontline’s “A Crime of Insanity,” Albany County, New York prosecutor Cheryl Coleman aptly described the standard of competency as “the ability to tell the difference between a judge and a grapefruit” (Frontline, 2002). Under this unforgiving standard, only the severely mentally ill and the most profoundly mentally retarded defendants are found incompetent in criminal court. Many of our juvenile clients have low or below average I.Q. scores, were learning disabled, or were below grade level in reading, writing, and math, but few fail the “grapefruit” test. Their incompetence is primarily due to their youth and immaturity. In short,
we have recognized the problem but were powerless to do anything about it. We needed social science support for the relationship between age and immaturity and incompetency and a legal framework in which to raise such claims.

In “Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants,” Steinberg et al. have given defenders what we need, making a powerful case that age and immaturity are directly related to questions about competency. Their findings, particularly that youths under age 16 have a lesser understanding of courtroom procedures and their trial rights and are less capable of using information relevant to a legal defense to assist them in legal decision making, should be enormously helpful to those of us who represent juvenile defendants in adult court. Now, for the first time, we have the ammunition to argue that trial courts must take special care in assessing whether juvenile defendants are competent to stand trial as adults.

Even more important, however, are their findings with respect to the way that immature thinking effects adolescent decision making in the context of criminal proceedings. These findings enable us to argue for a broader legal construct of competency, one which recognizes that developmental factors may compromise the decision making ability of teenage criminal defendants. Characteristics such as compliance with authority figures, deficiencies in risk recognition and discounting of long-term consequences in favor of short term gains, are staples of adolescent thinking which render youths less competent to make such critical decisions as deciding whether to confess to a crime or to accept a plea bargain. If courts accept a definition of competency which accounts for these characteristics, future teenagers who are like Lacresha, Nathaniel, and Lionel may no longer be forced to make life-altering decisions in the context of criminal court proceedings which they are either incapable of making or less capable of making than adults.

Competency is an important framework for defenders in adult court because it focuses the court on the fact that teenagers are not simply “miniature adults,” a fact that can get lost in a system which values retribution and punishment over rehabilitation and which often punishes juveniles convicted of serious crimes more harshly than adults (Tanenhaus & Drizin, 2002). Instead of a defendant’s youth being seen as a liability, the frame of competency can turn it into an asset. Extensive pre-trial concentration on competency may influence a judge’s later legal decisions in motions to suppress confessions, in assessing a juvenile’s culpability in the guilt-innocence phase of the trial, and in assessing mitigation at sentencing.

For defenders routinely to seek competency evaluations, however, additional legal changes need to be made to further distance age and immaturity-related incompetency from incompetency due to disability or mental illness. Defendants who are now found to be incompetent are often shipped to bleak state or county mental health facilities to be “restored” to competency. To their credit, Steinberg et al., recognize this problem, acknowledging that “restoration” is not an appropriate goal for youths who are incompetent based upon immature reasoning and offer other options like prosecuting the incompetent juvenile in juvenile court. Until such “other dispositions are offered” the authors write, “courts and legislators are unlikely to deal seriously with developmental competence.” The same can be said of defenders who may also be reluctant to seek competency evaluations until they know that doing so will not do more harm than good for their clients.

References

In re L.M, .993 S.W.2d276 (Tex App.-Austin, 1999)
Figure 1. Proportion of individuals at different ages who are significantly impaired with respect to either or both MacCAT-CA Understanding and Reasoning.

Figure 2. Decision choices for Police Interrogation and Plea Agreement vignettes as a function of age.
Generally speaking, our findings are consistent with the notion that there is an increase in maturity of judgment in legal decision-making over the course of adolescence. Compared to older adolescents and young adults, for example, younger adolescents significantly less often recognized the risks inherent in various decision options, less often thought that the risks they identified were likely to happen, and less often thought that these risks would be serious if they were to occur. In addition, we found that youths under 14 were significantly less likely than other age groups to note long-range, future consequences in explaining their recommendations. We did not find systematic age differences in the extent to which individuals changed their choices in the face of peer pressure; resistance to peer influence varied in complicated ways that depended on which vignette was examined and the particular choice the individual had initially recommended. Age differences in adolescents’ choices and reasoning were consistent across gender, ethnicity, socioeconomic status, and geographic region.

Discussion

Taken together, our results indicate that juveniles aged 15 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. Based on criteria established in studies of mentally ill adult offenders (Otto et al, 1998; Poythress et al., 1999), approximately one-third of 11- to 13-year-olds and approximately one-fifth of 14- to 15-year-olds are as impaired in capacities relevant to adjudicative competence as are seriously mentally ill adults who would likely be considered incompetent to stand trial by clinicians who perform evaluations for courts.

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Three cautions must be kept in mind when interpreting these findings. First, no set of standardized observations regarding abilities associated with competence to stand trial can identify all of the abilities that courts might consider when making decisions about defendants’ competence. One must also be careful not to interpret our proportions of youths with “serious impairments” on the MacCAT-CA as the percentage of juveniles who are actually incompetent to stand trial; the instrument assesses capacities that are relevant for the competence question, but not legal competence itself. The MacCAT-CA is a research instrument, not a diagnostic tool. More importantly, neither the law nor the social sciences recognizes any psychometric definition of legal incompetence.

Second, our method for obtaining the detained juveniles may have reduced the number of youths in our samples with serious (e.g., psychotic) mental disorders. Such youths are often diverted from detention to psychiatric services, or they may have been screened out of study participation, in either case making them unavailable to the study interviewers; this might not have been the case for the jailed adults. If this is so, the present results should be seen as conservative age-related estimates of proportions of youths with serious impairments, since inclusion of youths with serious mental disorders would likely have increased those proportions.

Finally, we caution against the application of these results to legal issues other than competence to stand trial. Society is engaged in active debate concerning whether adolescents should be held responsible for their offenses to the same degree, and punished to the same extent, as adults (Scott & Steinberg, 2003; Steinberg &
Developmental Research and the Formulation and Evaluation of Legal Policy
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The legislative ‘epidemic’ of the 1990s, in which state after state expanded the set of juvenile offenses subject to adjudication as an adult and lowered the age at which juveniles could be tried in adult criminal court, was especially surprising in light of its disconnection from any genuine epidemic in youth criminal activity. Tossing around terms like ‘juvenile super-predators,’ legislators seemed to engage in a race to create the most punitive set of waiver and transfer provisions in an attempt to prove their toughness on juvenile crime. These efforts have been successful, if the indicator of success is the number of juveniles being tried as adults: the Department of Justice reports a substantial increase in these numbers over the decade of the 1990s. It is unclear, however, if these actions have had any impact on public safety.

As this legislative tsunami was washing over the United States, the MacArthur Research Network on Adolescent Development and Juvenile Justice began a careful examination of the psychological and legal underpinnings of these policies. This issue of the Social Policy Report highlights some of the most important findings from the Network’s empirical work on age, psychosocial maturity, and adjudicative competence. This study is an excellent example of policy-driven research. The specific research questions were developed with the intent of addressing questions of central importance in the legislative and legal arenas. Questions of theory are important, but clearly secondary to the psycho-legal issues surrounding the adjudicative competence of juveniles.

Legal policy is often constructed to guide and regulate human behavior, and as such, makes assumptions—usually implicit—about the factors that direct behavior. Developmental researchers, as this study indicates, can inform such policy making in a variety of ways, in the present case by ferreting out some of those assumptions and putting them to an empirical test. I will briefly describe three ways that developmental research can inform legal policy (there are others), but the developmental researcher interested in working in the legal policy arena must either acquire legal/policy expertise or partner with professionals possessing such expertise in order to effectively conduct such research. Without a detailed understanding of the legal issues in question, researchers are likely to find themselves pursuing questions that might be interesting in the sense that they grapple with important theoretical relationships, but irrelevant to legal policy because the questions have been incorrectly framed. The early history of psycholegal research was littered with such interesting but legally irrelevant studies. The present study, in contrast, addresses the relevant legal issues in a sophisticated fashion, thereby dramatically increasing the potential utility of the findings.

The present study represents one of the key ways in which developmental research can assist in the formulation of legal policy. The expansion of offense-based transfer policies challenges some of the underpinnings of the juvenile court system, among them the assumption that juveniles are on the whole less competent with respect to their understanding of courtroom procedures and their legal rights. Developmental researchers are well situated to empirically examine these types of assumptions in a relatively fine-grained fashion, thus providing legal policy makers with an assessment of the accuracy of their assumptions. Legal assumptions about juvenile culpability and amenability to treatment are also legitimate topics for developmental analysis, and some researchers have begun tackling these topics.

Developmental research can also prove useful in assessing the consequences of legal policy. What will the consequences of these changes in transfer policy be for the development and psycho-social well-being of youth caught up by them? Criminologists are likely to focus on outcomes such as recidivism or perceptions of procedural justice, but policy makers are also likely to be interested in broader developmental effects of such policies.

Policy-driven research is not something to be undertaken by the faint-of-heart, and research on transfer policy provides an excellent example of why this is the case. Zimring and Fagan (2000) argue that debate around the transfer issue has generally been “unprincipled.” By this, they mean that opponents and proponents of these policies are often less interested in the principles underlying the debate (How should juvenile and criminal courts differ from one another? Why? What factors should be used to determine the most appropriate jurisdiction? Etc.) than in the results of the debate. Consequently, researchers tackling these principles may be surprised that their findings are often vigorously attacked, not uncommonly from those on both sides of the debate. Even researchers who assiduously avoid taking an advocacy stance in response to their findings are not immune to such attacks, since the findings sometimes simply align more naturally with one side of the debate. In this instance, the best defense, as usual, is high quality research that can stand up to the scrutiny of our more methodologically-inclined peers and also address the policy issues in a sophisticated and nonpartisan fashion. Steinberg and colleagues have taken this path, which will likely lessen the attacks and also make policy audiences more receptive to these important findings.

Continued from pg. 11

Scott, in press). Given the results of the present study, policymakers and practitioners may wish to consider whether the proportion of very young adolescents with deficits in abilities to participate in their trials is sufficiently great to warrant special protections against unfair adjudication as adults. However, our results say nothing about whether youths’ developmental capacities render them more or less culpable than adults in terms of their behavior at the time of the alleged offense.

The present study compared juveniles and adults in their capacities to function in the trial process under established doctrinal requirements that focus on reasoning and understanding. But questions about how minors function as criminal defendants compared to adults go beyond those that are captured by the narrow focus of the ordinary competence inquiry. The study indicates that psychosocial immaturity may affect a young person’s decisions, attitudes and behavior in the role of defendant in ways that do not directly implicate competence to stand trial, but that may be quite important to how they make choices, interact with police, relate to their attorneys, and respond to the trial context.

Policymakers and practitioners should be concerned about these matters, and special procedures and strategies may be warranted when youths face criminal jeopardy. For example, if young persons are more likely to talk to the police than are adults because of different attitudes toward adult authority figures, they may be more vulnerable to police coercion. If so, youths may need special protection of their Fifth Amendment rights in the custodial context, such as a per se rule that requires the presence of an attorney as a predicate to interrogation (Grillo, 1980). In the plea agreement context, judicial inquiry that goes beyond the standard colloquy may be needed when courts are presented with a guilty plea by a young defendant. In general, those who deal with young persons charged with crimes—and particularly their attorneys—should be alert to the impact of psychosocial factors on youths’ attitudes and decisions, even when their understanding and reasoning appear to be adequate. Deficiencies in risk perception and future orientation, as well as immature attitudes toward authority figures, may undermine competent decision-making in ways that standard assessments of competence to stand trial do not capture.

The findings of this study raise several important issues. Most obvious, perhaps, are the policy and practice implications for the adjudication of youths in adult criminal court. If one in three 11-13 year-old defendants potentially may not be competent to stand trial, this should be a concern whenever a youth in this age group is subject to adjudication as an adult. When youths are considered for transfer to criminal court on the basis of judicial discretion, the simplest response would be to make a determination of competence a condition of criminal adjudication for younger defendants. A few states, such as Virginia, already require a finding of competence to stand trial as a predicate condition before a court may consider the transfer of youths from juvenile to adult court (Va. Code Ann. Sect. 16.1-269.1 (A)(3)(2001)).

When youths are charged directly in criminal court, the proper mechanism might be a requirement that an evaluation and determination of competence to stand trial would automatically precede the adjudication. The optimal age boundary for an automatic inquiry into competence is not obvious; clearly jurisdictions and courts will vary, as will the procedures and instruments employed in the evaluations of juveniles’ competence. (Our team is currently developing a developmentally-informed protocol for the assessment of competence among juvenile defendants.) It does seem clear, however, that at some minimal age, the risk of incompetence is so great that a determination should always be a predicate to adjudication in adult court.

The findings of the study may also be relevant to the legislative determination of the minimum age for adjudication of youths in adult court. Many jurisdictions have set the age bar very low for adult prosecution of youths for serious crimes, usually without consideration of the likelihood that many youths of the specified minimum age may be incompetent (Bonnie & Grisso, 2000). Because the evaluation and judicial determination of competence are likely to be costly in both time and money (and because the risk of incompetence is substantial below age 14), a legislature might well conclude that an efficient and just approach is to set the minimum age of adult adjudication at an age at which competence to stand trial is not potentially an issue in every case.

Careful attention must be directed toward devising dispositions for youths who are found to be incompetent as a result of developmental immaturity, in part to allay fears that might arise about the possibility that some dangerous youths would be immune from prosecution due to immaturity—a specter that will alarm many people. Whereas the disposition of mentally ill defendants is directed toward restoration to competence, this goal is not appropriate for immature youths who have never achieved competence. A disposition that simply waits for a youth to mature until he or she is competent to stand trial is both politically inconceivable and constitutionally problematic. Unless other
dispositions are offered, courts and legislatures are unlikely to deal seriously with developmental incompetence.

This challenge may be less daunting than it at first appears. Most youths who are not competent to stand trial as adults due to immaturity could likely be adjudicated in juvenile court. Moreover, some defendants whose incompetence is based solely on deficient understanding (rather than immature reasoning) could likely be tried as adults after a period of instruction about the matters they do not comprehend. Thus, the great majority of youths would be subject to adjudication on their criminal charges with little delay even when an assessment of their abilities indicates they do not meet adult competence standards.

The issue that our study addresses—the relationship between immaturity and competence to stand trial—has been largely unnoticed (at least in policy circles) during the last decade or so, as legislatures around the country have moved to facilitate the adjudication of younger and younger offenders in adult criminal court (Bonnie & Grisso, 2000). On reflection, however, it is obvious that the same due process constraints that prohibit the adjudication of mentally ill and mentally retarded defendants who do not understand the process they face or cannot assist their attorneys also apply to juveniles who are incompetent due to immaturity alone. The standard announced by the Supreme Court in Dusky v. United States (1960) is a functional test, and functionally it should make no difference whether the source of the defendant’s incompetence is mental illness or immaturity.

This study confronts policymakers and courts with an uncomfortable reality. Under well-accepted constitutional restrictions on the state’s authority to adjudicate those charged with crimes, many young offenders—particularly among those under the age of 14—may not be appropriate subjects for criminal adjudication trial.

Defense attorneys, prosecutors and judges should be concerned about a defendant’s competence to stand trial whenever adult adjudication is proposed for a juvenile.
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