

conditions often reflects their idiosyncratic views. When mental health care professionals working in correctional facilities conduct their clinical rounds and remain silent about the foreseeable or actual harm to the inmate by the use of solitary confinement, they may legitimize and be complicit in possible human rights violations.

Legal cases addressing the use of solitary confinement of inmates with severe mental disorders have developed a foundation for the consideration of the violation of their Eighth Amendment rights. With continued use of solitary confinement in correctional facilities, we are likely to see further litigation on this controversial matter.

Court Authority Regarding Competency Remediation

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Juvenile Court Lacks Authority to Establish Competency Remediation Programs

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In *Makis M. v. Commonwealth*, 232 N.E.3d 671 (Mass. 2024), the Massachusetts Supreme Judicial Court addressed the case of a juvenile who was found not competent to proceed with respect to delinquency and youthful offender charges based on cognitive deficits. The court noted the absence of a remediation program in the state that might aid the juvenile in restoration. Nevertheless, it noted that the authority to establish such a program lies with the state legislature, not the courts. In the absence of an appropriate remediation service, the court determined that the decision to dismiss charges against the incompetent juvenile should be based on present risk to public safety.

Facts of the Case

In April 2021, a juvenile was arrested after breaking into an apartment building while in possession of a gun with a defaced serial number and a large supply of ammunition. The juvenile was charged with delinquency and later as a youthful offender for multiple offenses stemming from the incident. The judge determined that he posed an ongoing safety risk to the public, and he was detained pretrial.

The juvenile was released from custody in August 2021 with conditions. He was again detained in November 2021 for a technical violation and remained in custody for the next four months.

The juvenile's competency to proceed was questioned, and evaluators noted his historical diagnoses, including a language-based learning disability as well as a history of receiving an individualized education program to address borderline cognitive functioning.

In March 2022, the juvenile was adjudicated not competent to stand trial (NCST) based on impaired cognition and deficits in factual understanding. The judge, however, agreed with the expert evaluators that the juvenile could "likely" attain competency in a "reasonable period of time." He was again released from detention with conditions.

The juvenile sought and failed to have his charges dismissed in September 2022 and again in November 2022.

In June 2023, the juvenile was found NCST a second time, with the evaluators providing diagnoses of borderline intellectual impairment and executive dysfunction. Although the evaluators raised doubts about the juvenile's ability to attain competency, the judge declined to find the juvenile unrestorable, as he had never received remediation services. The judge conceded that there existed no such remediation programs in the state but noted that the matter of restorability should only be determined once the juvenile received such remediation. The judge further opined that the juvenile continued to pose a risk to public safety based on the nature of his charges. For these reasons, the judge once again declined to dismiss the charges.

In July 2023, the juvenile petitioned a judge of the Massachusetts Supreme Court, contesting the ruling that he could still be remediated and seeking dismissal of his charges. The judge referred the matter to the full Massachusetts Supreme Court.

Ruling and Reasoning

The Massachusetts Supreme Judicial Court confronted three main concerns in this case: whether an existing statute provided for remediation of an incompetent juvenile, whether the juvenile court held inherent authority to create a new remediation pathway, and the basis by which pending charges for the incompetent juvenile could and should be dismissed per statute.

The court first considered whether the mental health code, Mass. Gen. Laws ch.123 (2001), provided for remediation of incompetent juveniles. They noted that, by its plain language, the law provided procedures to determine an individual's competency, but not to remediate to competency.

The court then examined whether Mass. Gen. Laws ch. 123, § 16(b) (2015) allowed the juvenile court to civilly commit the juvenile for the purpose of remediation. It noted that the statute allows for an incompetent individual to be civilly committed, but only if serious harm would likely otherwise occur because of the individual's mental illness. The court indicated that the juvenile's incompetency had been based on a language-based learning disability and other information-processing disorders that were statutorily excluded from the definition of "mental illness." Thus, the court concluded that state law allowed for neither remediation nor civil commitment of the juvenile.

Having determined that no statute provided a directive or process for remediation in the present case, the court considered whether the juvenile court had the inherent authority to create and mandate remediation programming. The court first clarified its role in interpreting statutes and indicated that, in the absence of a compelling reason, anything beyond the inherent powers of the courts should be left to the legislature. The court defined the "inherent authority" of Massachusetts courts as limited to completing "essential" court functions, maintaining judicial authority, and providing legal decisions. It concluded that the establishment of a remediation program for incompetent juveniles fell outside this inherent authority.

Finally, the court considered whether the pending charges against the juvenile should be dismissed under Mass. Gen. Laws ch.123, § 16(f) (2015). The court noted that the law offered two circumstances under which charges against an incompetent defendant could be dismissed. First, pending charges are eligible for dismissal after a period commensurate with expected parole eligibility had the defendant been convicted and received the maximum sentence. The

court noted that the juvenile's delinquency charges involved neither criminal sentencing nor parole and were ineligible for dismissal under this criterion.

Regarding the youthful offender charges, the court noted that such charges could result in commitment to the Department of Youth Services, which again would not involve parole. The charges could alternatively result in adult sentencing or a combination of the two. In this instance, the court did not know how the juvenile court judge would have ultimately sentenced the juvenile and therefore could not determine whether the parole-based criteria for charge dismissal would apply.

Alternatively, charges against a person adjudicated NCST could be dismissed "in the interest of justice." The court identified that statute served to both protect incompetent persons from indefinitely pending criminal charges and simultaneously protect the public from potentially dangerous persons.

The court noted three circumstances that rendered the charges against the juvenile indefinite in the matter at hand. First, although the juvenile court judge declined to find the juvenile to be unrestorable, the court noted that the lack of remediation programs rendered the juvenile's competency attainment unlikely. Second, the juvenile's ongoing incompetence meant that he could not age out of the proceedings, and the juvenile court retained jurisdiction over him "pending final adjudication." Third, as noted above, the pending charges against the juvenile could not be dismissed on the basis of incompetence, as they did not involve parole.

Although the juvenile was not civilly committed and was living in the community, the court indicated that his liberty was nevertheless curbed because of the indefinite nature of his pending charges and the conditions of his release. The court referenced the U.S. Supreme Court's determination in *Klopfer v. North Carolina*, 386 U.S. 213 (1967), that the mere presence of pending criminal charges could be considered a restriction of liberty, even in the absence of commitment or detention.

Regarding the state interest of protecting the public from dangerous persons, the court noted that the determination of dangerousness should be based on the present threat posed by the defendant. The court pointed out that the juvenile court's finding of dangerousness was based on the nature of the juvenile's charges, which occurred roughly two years prior to the ruling. The court noted that the juvenile had been living under extensive conditions of release and

had not accrued further charges in that time. Thus, the court remanded the case back to the juvenile court to assess the juvenile’s present dangerousness.

Discussion

This legal opinion calls attention to two important matters. First, individuals may be adjudicated NCST for a variety of reasons. Accordingly, as in the present case, state laws may not always provide clear directives with respect to competency remediation, attainment, or even dismissal of charges. The Massachusetts Supreme Court highlighted that, in such cases, courts do not have the authority to resolve these gaps in the criminal justice process. Rather, the state legislative body must address process shortcomings through legislation.

Forensic clinicians are uniquely qualified to advocate for such legislation. They are frequently embedded in the criminal justice system by way of expert evaluation and provision of mental health care. Meanwhile, their training and expertise often place them in influential roles as advocates and policy consultants. Accordingly, forensic mental health professionals may be ideally suited to address shortcomings in the criminal justice system as they arise in the judiciary and advocate for legislative measures that can effectively improve the system.

Second, the opinion reasserts previous decisions that physical detention is not necessary to demonstrate impingement on an individual’s liberty interest. The court held that liberty can be constrained simply by the presence of indefinitely pending charges. Therefore, state legislatures should be concerned with the process of competency attainment, ensuring that reasonable pathways exist to address the myriad circumstances for which a defendant may be found NCST. But also, they should be attentive to the process of and criteria for dismissal of criminal charges to ensure an appropriate balance of governmental interests and personal liberties.

Permission to Testify Remotely

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Failure to Preserve Error Prevents Certain Arguments Made Upon Appeal in Case of Contested Remote Testimony

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In *State v. Gomez Medina*, 7 N.W.3d 350 (Iowa 2024), the Iowa Supreme Court held that the district court did not err in allowing a minor who turned 18 on the second day of closed-circuit testimony to continue with her remote testimony.

Facts of the Case

In 2019, Gomez Medina’s 15-year-old stepdaughter Dorothy (a pseudonym) reported to her school and a forensic interviewer that she had been sexually abused by Mr. Medina since she was 11 years old. This account was corroborated by Mr. Medina’s 11-year-old son Frank (a pseudonym).

In May 2020, prior to the trial, the state of Iowa sought to allow closed-circuit testimony for Dorothy and Frank under Iowa Code § 915.38 (2019), arguing that “closed-circuit testimony is necessary to protect the minor witnesses [Dorothy] and [Frank] from trauma caused by in person testimony” (*Medina*, p 352). Mr. Medina objected. In a subsequent pretrial hearing, Dorothy’s guardian *ad litem* and therapist testified that in-person testimony would cause Dorothy further trauma, with the latter also testifying that Dorothy had depression, anxiety, and posttraumatic stress disorder (PTSD). In August 2021, the district court permitted Dorothy to testify *via* closed-circuit testimony to prevent further trauma and because testifying in Mr. Medina’s presence would impair her ability to communicate; the request for Frank was denied because the court did not find a compelling reason.

In October 2021, the six-day trial began, with Dorothy testifying *via* closed-circuit testimony on the third day. Her testimony did not finish on this day. The following day, Dorothy turned 18 years old and returned to complete her testimony remotely. Prior to Dorothy starting her second day of testimony, Mr. Medina objected to Dorothy testifying *via* closed-circuit television on the grounds that she was no longer a minor. The district court disagreed noting that “§ 915.38(1)(c) permits closed-circuit testimony for a victim or witness with a mental illness, regardless of that person’s age” (*Medina*, p 353). The court concluded that Dorothy would experience