Commentary: Risk Markers for Incompetence in Juvenile Defendants

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The juvenile court was founded on a rehabilitation model in which competence of the juvenile defendant to undergo criminal process was not an issue. A few juveniles charged with serious crimes such as murder were waived to adult court, but maturity was generally taken into consideration in the waiver decision, and so severely mentally ill, mentally retarded, or very young defendants tended to remain in juvenile court, and those who might be found incompetent in adult court were rarely transferred. The U.S. Supreme Court, in a series of cases beginning with *In re Gault*,[1] brought many adult criminal due process protections to juvenile proceedings, but has never required competence to stand trial in juvenile court. By 1987, only about a third of states required competency to stand trial in juvenile court, and rehabilitation remained a central mission of juvenile courts.

The rapid increase in juvenile violent crime in the 1980s and early 1990s led to a shift from rehabilitation to a more punitive approach. Many state legislatures passed new mandatory waiver statutes, which typically required transfer to adult court of all youth over a specified minimum age (often 13 or 14) who were charged with one of a list of offenses (often including noncapital offenses). Mandatory waiver statutes did not exempt mentally ill or intellectually impaired defendants. One effect of this combination of an increased juvenile crime rate and expanded grounds for transfer was that questions of the competence of juvenile defendants to stand trial became considerably more frequent in adult courts.

Simultaneously, juvenile proceedings became more punitive, partly out of the public's concern about safety and partly out of stretched resources available for rehabilitation in the face of increasing juvenile arrest rates. More states began addressing the question of competence in juvenile court. Now, over two-thirds of states have either statutes or appellate decisions addressing competency to stand trial in juvenile court,[2] and as far as I know, only one state (Oklahoma) has explicitly decided that competency is not needed in juvenile court.[3] Even in states where there is not clear legal authority requiring competency to stand trial in juvenile court, some juvenile court judges have begun asking for competency assessments. Most jurisdictions use a variant of the *Dusky* test,[4] but some states require that the incompetency be due to mental illness or mental retardation, not merely to immaturity, and some embody the concept that trial proceedings may be modified to accommodate a juvenile defendant's limitations. Requiring competency in juvenile court raises complicated legal theory questions, such as the possibility of different levels of competency for different types of cases, modifying court procedures to aid impaired defendants, use of surrogate decision-makers (what should be the role of parents?), and restoration of competency for immature defendants (what is the court to do if a youth is incompetent because of immaturity, detain or commit the youth and wait until he matures?) Bonnie and Grisso[5] have argued that the competence required of a juvenile defendant should vary depending on the possible severity of the penalty.

As forensic evaluators gained experience assessing the competence of juvenile defendants, it rapidly became clear that adolescents are not just smaller and younger adults. Developmental immaturity alone may give rise to incompetence. Younger adolescents may have views seldom heard from adult defendants: consider an 11-year-old who refuses any consideration of a plea bargain because he believes, "The

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judge always finds the truth, so I don't have anything to worry about." Compared with adults, psychosis is less common both in the delinquent population and in the group found incompetent.[6] Factors that may affect a youth's competence to stand trial include: (1) age; (2) intelligence; (3) cognitive factors in decision making; (4) maturity of judgment; (5) psychopathology; (6) previous experience with the legal system; (7) the standard for competency pertinent to a particular case.

Effects of Factors that Affect Juvenile Competence

The two most robust findings of previous research have been that younger age, especially younger than 14 years, and low IQ in youth younger than 16 are strong risk markers for incompetence.[7–11] The research suggests a large percentage of delinquents under age 14 (up to about half, depending on definition of impairment) are either clinically incompetent or have impairments in functioning that are likely to have a serious effect on competence. A somewhat lesser number of middle adolescents are impaired, and 16- to 17-year-olds tend to perform comparably to adults. Lowered intelligence amplifies the effect of young age, which is particularly significant, given that delinquents on average score lower on IQ tests than their nondelinquent peers.

There is more to decision-making than cognitive capacities, however. Intriguing research on maturity of adolescent judgment suggests that developmental factors such as risk-taking, impulsiveness, time perspective, and attitude toward authority can adversely affect judgment in young adolescents, even when cognitive decision-making is intact.[11–13] Consider a 13-year-old who has internalized his parents' dictum that he should always admit when he has done wrong, having to face a decision about whether to plead guilty. Raw scores on IQ tests, cognitive factors affecting decision-making, and maturity of judgment are all correlated with age, and teasing apart the relative contribution of each of these dimensions is a complex task. Previous studies have reported mixed results with regard to the impact of psychopathology and previous experience with the legal system.[10,11]

In the accompanying article, Warren *et al.*[14] approach these complex questions by studying the competence capacities of psychiatrically disturbed adolescents. For measuring the dependent variable, they use the MacArthur Competence Assessment Tool—Criminal Adjudication (MacCAT-CA), a recently developed instrument that has good psychometric data[15] and norms[16] for adults and is rapidly being adopted as the best existent structured measure for assessing capacity for adjudicative competence. It is based on the reformulation of adjudicative competence proposed by Richard Bonnie that competence consists of two separate constructs: "a foundational concept of competence to assist counsel and a contextualized concept of decisional competence" (Ref. 17, p 294) "Adjudicative competence" is distinguished from "competency to stand trial" because the former does not include competency to participate in pretrial proceedings. The MacCAT-CA is a structured interview that uses questions about hypothetical situations to assesses capacities in three areas: (1) understanding, which focuses on knowledge of procedures and courtroom personnel; (2) reasoning, which involves recognizing information relevant to a defense and processing information for legal decision making, such as plea bargaining; and (3) appreciation, which assesses whether thinking is affected by delusional ideas.

Warren *et al.*[14] used a sample of psychiatrically hospitalized youth, which has an increased rate of severe psychiatric disorder compared with a delinquent population. The effects of psychopathology are important to study, especially since we know that detained delinquents have very high rates of mental disorder, with over two-thirds having at least one diagnosis.[18,19]

It is useful to compare the results of Warren *et al.*[14] with those of another new study by Grisso *et al.*[11] which also used the MacCAT-CA in juveniles. The authors compared detained delinquents with community peers and young jailed adults. Warren *et al.*,[14] using logistic regression for statistical prediction of impairment (Ref. 14, Table 5), found that young age was the strongest statistical predictor of impairment. However, they also found that while the mean MacCAT-CA subscale scores of youth below age 14 were lower than the scores of older youth, the differences were not statistically significant. Grisso *et al.*,[11] in larger samples, found significant age group differences, even though their young (under age14) group scored better on the understanding subscale (10.45 versus 9.70) and about as well on the other two subscales. They found that, overall, about a third of the under-14 group had scores in the mildly impaired or severely impaired range. Warren *et al.*[14]

report that slightly less than half in this age group were in the impaired range. Both studies appear consistent on the finding that one-third to one-half of young adolescents have impaired competency capacities and add strong support to previous research findings.

Warren *et al.*[14] found that IQ factors accounted for the largest share of the variance in a linear multiple regression analysis (Ref. 14, Table 3), but were not impressive predictors (odds ratios close to 1) in the multivariate logistic regression (Ref. 14, Table 5). Logistic regression showed age to be the strongest predictor. How are we to understand this seeming discrepancy? It appears there is a complex age-by-IQ interaction, so that changing the nature of the statistical model (from using a linear combination of factors to predict a continuous variable to using an exponential function of factors to predict a binary outcome [impaired/not impaired]) changes the ranking of the predictors. Grisso *et al.*[11] also found that IQ was a potent predictor and that the age-IQ combination had complex effects. Warren *et al.*[14] rightly point out that incompetency in adolescence derives from a complex interplay of factors, and elucidation of the age-IQ interaction awaits further studies.

Warren and her colleagues,[14] similar to Grisso *et al.*,[11] found that overall scores on the Massachusetts Youth Screening Instrument (MAYSI) were not a significant contributor. However, Warren *et al.*[14] reported more detail regarding the effects of mental disorder. They found that the suicide scale on the MAYSI was a significant contributor to difficulties in understanding and reasoning in almost all analyses, although the depression subscale on the Brief Psychiatric Rating Scale (BPRS) was not. This raises the possibility that the effects of suicidal thinking on competency capacities do not simply reflect the severity of depression, but rather other factors, such as a direct interference with judgment (if a youth is planning to kill himself, he may not care if he is sentenced to 2 years or 10).

Both studies found relatively weaker impairments in the Appreciation category. The Appreciation subscale of the MacCAT-CA primarily assesses the degree of interference by delusional thinking, a common source of incompetency in adults. Although Warren *et al.*[14] used an inpatient sample, they reported that many of the responses that were scored as psychoticism on the BPRS were actually "I don't know," which gives their population a relatively low rate of psychotic thinking. In groups with a low incidence of psychotic thinking, one would not expect significant findings on the Appreciation subscale.

Implications for Evaluators

The findings of Warren *et al.*[14] in the context of other research have important implications for the clinical evaluation of competence to stand trial in a juvenile:

1. Although it is obvious, it bears repeating that group data do not dictate the findings for an individual. While a depressed 13-year-old with limited intelligence is considerably more likely than an adult to be incompetent, a sizable minority of such youth are nevertheless competent to stand trial. There is considerable variation in group data, and assessment remains an individualized endeavor.

2. For attorneys and judges, the high rates of impaired capacity in younger adolescents and adolescents with low IQ or suicidal thinking, should lower the threshold for obtaining a competency evaluation of defendants with these characteristics. While I am not aware of definitive data, my impression is that only a few such youth are referred for evaluation of competency.

3. The MacCAT-CA appears to be a very useful clinical instrument in the assessment of adolescent defendants, but as Warren *et al.*[14] caution, there are so far very few studies using this measure in a juvenile population. Perhaps more important, the MacCAT-CA measures dimensions of competency capacity, not competency itself. The capacities and judgments relevant to one case may not be relevant to another. Thus, scores on the MacCAT-CA should be interpreted in light of the specific characteristics of the case.

4. While some youth may be incompetent to stand trial for reasons similar to those in adults (most commonly mental retardation or psychosis), there are risk markers specific to adolescents. Age below 14 and low intelligence each appears to be a potent predictive factor for incompetence. Suicidality may also be a significant factor, and other dimensions of psychopathology may play a role. Other studies suggest that further factors, such as immature judgment, may also be involved. These factors interact in complex ways, probably potentiating each other, but the precise nature of these interactions remains unclear.

By focusing our attention on factors that commonly limit adolescent competence, Warren *et al.*[14]

also add data to the debate on a number of policy issues: the wisdom of mandatory transfers to adult court of groups of youth, a large percentage of whom are probably incompetent to stand trial; using modified procedures for defendants in juvenile court to reduce the effect of their competency deficits; moving away from processes that focus on the severity of the charge rather than the nature of the defendant; and the question of just disposition of those adolescents who are found incompetent to stand trial and thus legally need their competence to be "restored," or, more commonly, created.

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