

Post-Katrina Juvenile Competency Determinations: A Tale of Two Systems

Cheryl D. Wills, MD

Natural disasters such as Hurricane Katrina have resulted in the displacement of families to locations throughout the nation. Juvenile courts have been affected by this mass migration of youths. Postdisaster recovery has been slow. Consequently, a cohort of youths has aged out of the juvenile justice system before their juvenile competency hearings could be held. Some of these young adults now face charges as adults in criminal courts. The author explores what happens when youths awaiting juvenile competency determinations age out of the system and face charges as adults. The evolution of the problem, the current situation, case examples, and possible solutions are reviewed.

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Natural disasters affect many systems, including those responsible for justice and community safety. After Hurricane Katrina devastated the Mississippi Gulf Coast region on August 29, 2005, law enforcement officials examined storm-related problems and undesirable outcomes so that solutions could be incorporated into future emergency planning. One concern of interest to forensic psychiatrists involves the juveniles who were awaiting determinations of their competence to proceed with trial in juvenile court while simultaneously facing charges as adults in criminal court. The evolution of this problem is reviewed, with three case examples that illustrate salient concerns.

Evolution of the Problem

Soon after Hurricane Katrina, the New Orleans juvenile justice system temporarily moved its court to Baton Rouge, Louisiana.¹ There, juvenile court judges, staff, and others convened to address the legal needs of detained youths who had been displaced by the storm. Despite limited resources, they, along with volunteers, worked tirelessly to alleviate the suffering of the juveniles and their families. A critical

measure taken was the expedient processing of court cases to diminish crowding in jails and prisons.

Despite the chaos, judges were obligated to proceed within the confines of the law. In juvenile court, many matters are decided according to the standard of best interests of the child.^{2,3} Therefore, as rulings were made on what was in a youth's best interests, the judges took into consideration the strength of each detainee's support network, the potential impact of the youth's release on community safety, and the severity of the natural disaster.

The judges were able to dismiss some cases, but many active cases remained open for review and adjudication. When juvenile court judges determined that detained youths were of little danger to themselves and to society, the detainees were reunited with their caretakers, although their cases were continued.¹ In such instances, the caretakers had to agree to provide the court with updated addresses so that communications regarding court matters could continue. Youths from New Orleans who were awaiting adjudication for more violent offenses remained in juvenile detention and corrections facilities throughout the state. A fourth category of juveniles, those being adjudicated as adults, remained under the supervision of the criminal courts at adult jails and corrections facilities throughout Louisiana.

Dr. Wills is Assistant Professor of Psychiatry, Department of Psychiatry, University Hospitals of Cleveland, Cleveland, OH. Address correspondence to: Cheryl D. Wills, MD, Department of Psychiatry, University Hospitals of Cleveland, 11100 Euclid Avenue, Cleveland, OH 44106. E-mail: cwforensic@earthlink.net

Legal decisions involving the detained juveniles were made thoughtfully, despite the unprecedented circumstances. However, with time, as is true in many emergent situations, unanticipated problems were identified. One year after the disaster of Hurricane Katrina, practically all juvenile courts in the Gulf Coast region, including the one in New Orleans, had resumed operations.

Two years after Hurricane Katrina, thousands of Gulf Coast residents, including youths with active juvenile court records, remained displaced.⁴ This unfortunate circumstance hampered efforts of juvenile court officials to maintain accurate residential data on youths with active cases. Furthermore, the backlog in processing cases delayed determinations in many court matters. Consequently, a subgroup of youths aged out of the system while waiting to be processed in juvenile court. Some of these young people then faced additional charges in criminal court, based on acts that they had allegedly engaged in after they became legal adults, an age that is determined according to statute and offense.^{5,6}

The cohort of young adults facing charges in both jurisdictions included youths suspected of having emotional and/or cognitive problems that impeded their efforts to understand and follow court proceedings and/or to consult with their attorneys as they developed a strategy for trial. While some states use adult competency requirements for juveniles, others have separate, legislated guidelines. In both cases, the criteria for competency to proceed with trial are based on those defined by the U.S. Supreme Court in *Dusky v. U.S.*⁷ That is, a person is deemed to be competent to stand trial if she or he has "sufficient present ability to consult with his [or her] attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him [or her]" (Ref. 7, p 403). When a juvenile's adjudication capacity is questioned, a juvenile court judge orders competency or capacity evaluations during which forensic psychiatrists and/or other court-appointed mental health evaluators examine the youth and formulate opinions regarding the youth's ability to proceed with adjudication.^{8,9}

The court uses the opinion(s) rendered as a resource. Thus, when a competency evaluation is ordered, the adjudication process does not continue until after the juvenile court judge reviews the conclusions and recommendations proffered by the fo-

rensic child psychiatrist. The judge ultimately renders a ruling about the youth's competence to proceed with adjudication.

A youth found competent to proceed with adjudication is subject to a delinquency hearing. On the other hand, a youth adjudged incompetent is likely to be remanded to an in- or outpatient setting for competency restoration that may include mental health care and/or legal education. However, if the juvenile court judge rules that the youth is incapable of learning and understanding the fundamentals of court proceedings and/or of assisting an attorney with trial strategy, the youth may be adjudged irreversibly incompetent. In this case, the best-interests standard will be used by the court to determine the youth's next placement.^{2,3} A juvenile court judge renders a decision after considering the youth's physical and mental health care needs, as well as educational and housing needs, and the level of supervision that meets community safety concerns.¹ Residential placement options include, but are not limited to, the youth's home, the residence of a family member or foster parent, and a residential institution. Youths who are unable to proceed with trial are not remanded to juvenile detention or corrections facilities, because they have not been found delinquent or guilty of the alleged offense(s).

The process for juvenile competency determinations is complex. When a youth's capacity to proceed with adjudication is questioned in juvenile court, delinquency hearings may not take place until after a youth has been adjudicated competent. However, since Hurricane Katrina, the backlog in adjudicating alleged juvenile offenders resulted in an increasing number of youths aging out of the juvenile justice system before their competency to proceed with adjudication had been decided. Of these young adults, some were arrested and charged with criminal offenses. Consequently, they were detained in adult jails for new alleged offenses while they were still awaiting competency evaluations and adjudication in juvenile court. The adult or criminal courts may not have had knowledge of, or access to, a defendant's juvenile court record. Thus, criminal court judges and attorneys often did not know that youths were awaiting juvenile competency adjudication. The situation put such youths at risk of being tried as adults without consideration of their ability to proceed with trial.

Certification of Juveniles

Juveniles facing adjudication for violent offenses may have their cases tried in criminal court before they legally are able to vote, enlist in the U.S. armed forces, consume alcohol, purchase nicotine, get married, or drive. The tendency to certify juveniles as adults so that their alleged offenses may be waived, bound over, or transferred to criminal court for processing remains controversial. However, with the increase in violence perpetrated by youths, the practice of certifying juveniles as adults for criminal prosecution (of violent offenses) has become a familiar tool for crime reduction.^{5,6}

When violent crimes have occurred, juveniles have had their cases waived from juvenile to criminal court due to legislative requirements, prosecutorial discretion, and/or judicial rulings.^{5,6,10} There is also a reverse waiver option that allows a youth deemed unfit to proceed with adjudication in criminal court to return to juvenile court for processing. While infrequently used, the reverse waiver provides an option when a youth defendant clearly lacks the maturity (due to intellectual or other cognitive concerns) to proceed with a criminal trial.

Jurisdictional Concerns

The solution to the problem is not simple. Juvenile court proceedings have certain legal protections that are not afforded to alleged offenders in criminal court. Since juvenile court records may be sealed, expunged, or otherwise withheld, criminal courts do not automatically gain access to salient data contained in juvenile court records.¹¹ It is difficult, therefore, for criminal courts to learn about pending juvenile court proceedings, including competency determinations, unless the youth's legal representative becomes aware of the situation. The task of accessing records increases in complexity if a youth relocates to a state or region that lacks an established relationship with the juvenile court that ordered the competency evaluation. Since criminal court proceedings are a matter of public record, it is usually much easier to access criminal court data.

The hierarchy of jurisdictional control for youths who are facing adjudication in both juvenile and criminal courts requires the respondent first to complete the adjudication process in criminal court. The juvenile court assumes jurisdiction only after all criminal court proceedings and related outcomes

have been addressed. That is, the juvenile court resumes processing cases of an alleged offender only after all his or her cases in criminal court have been closed. The following three cases involve individuals who aged out of the juvenile courts while awaiting competency adjudications but were subsequently charged in criminal courts. Names have been changed to preserve confidentiality.

Case Examples

Case 1

Jared, an 18-year-old boy, awaited adjudication in juvenile court for more than 18 months for a charge of battery of a police officer. He was referred by the juvenile court for a competency evaluation because he had difficulty communicating with his attorney.

The severity of the police officer's injuries resulted in Jared's detention in a secure facility for violent juvenile offenders. He remained there until three or four days after Hurricane Katrina. He described conditions as "awful," but he insisted he "got over it" after he was reunited with his caretaker in late September 2005.

During Jared's formative years, he witnessed several homicides, including those of a parent and a stepparent over a span of three years. He attended several counseling sessions after his parent died, but he was never evaluated by a psychiatrist. He also experienced familial rejection, homelessness, emotional abuse, physical abuse, and neglect. Efforts to refer Jared to a psychiatrist after Hurricane Katrina failed because the mental health centers did not have enough clinicians to meet community needs.

When performing at his highest in school, Jared functioned on a third-grade level in reading and math. He was retained in three grades and he was not able to identify the word "school" during the psychiatric interview. Jared did not appear to be malingering. In addition, he met the diagnostic criteria for major depressive disorder and post-traumatic stress disorder. The onset of these disorders preceded Hurricane Katrina by several years.

Several months after Hurricane Katrina, Jared was charged in criminal court as an adult with armed robbery and possession of a controlled substance. The charges eventually were dropped, and Jared re-

turned home. The dismissal of the criminal charges shifted jurisdiction back to juvenile court, thereby allowing a juvenile competency evaluation to occur.

Case 2

Marcus, a 17-year-old boy, was remanded to a juvenile facility for stealing a motor vehicle. He was released to his family before Hurricane Katrina, and the family left town in anticipation of the storm. Marcus lost relatives, friends, and his home to the storm and flooding. Before he returned to his home town, Marcus was adjudged delinquent, in juvenile court, for stealing electronic equipment. Court officials were not aware of his previous legal encounters, because his records were not accessible due to the storm.

Marcus returned to his home town and avoided serving his sentence. Soon afterward and before his 17th birthday, he was detained as a juvenile for armed robbery and attempted first-degree murder. State law permitted the juvenile court to consider transferring his case to criminal court for adjudication. During the juvenile court waiver hearing, his attorney questioned the youth's capacity to proceed with adjudication.

The youth had a history of *in utero* exposure to drugs, severe physical abuse (including serial cigarette burns, broken bones, and being forced to swallow his emesis), neglect, and several psychiatric hospitalizations. Previous caretakers said that Marcus functioned best when he was enrolled in counseling and mentoring programs and was taking prescribed medication for attention deficit/hyperactivity disorder. Although he said he was enrolled in regular classes, he was not able to read simple sentences during the interview. Psychoeducational testing and adaptive functioning evaluations supported a diagnosis of mild mental retardation.

The youth disappeared before the date of his juvenile competency hearing. While on the run, he was arrested for several serious offenses and was placed in an adult jail while awaiting trial. After resolution of the matters in criminal court, he must return to juvenile court to continue proceedings.

Case 3

Luke, a 17-year-old youth, was referred for a juvenile competency evaluation after he was arrested for several drug-related offenses. He had a history of ma-

nor depressive disorder and had contemplated suicide a few years before he was arrested. The side effects of antidepressant medication caused the therapy to be discontinued before Luke had received adequate treatment.

Luke and his family were separated in New Orleans after Hurricane Katrina; he was at home and his caretakers were stranded at work. The family was eventually reunited in another state. While there, he attempted to kill himself and was hospitalized.

Luke is familiar with death. He had witnessed two homicides several years before. Also, he told his caretaker that he saw several dead bodies after the hurricane when he was playing in contaminated water. He repeatedly returned to the water after he was ordered by family members to stay on dry land.

After Luke and his family returned home, he was arrested several times. He was charged as a juvenile with drug-related offenses. Although Luke disappeared before he could participate in a juvenile competency evaluation, one of his caretakers provided the following background data. Luke had been impulsive, hyperactive, angry, and paranoid for years. He talked to himself, made several suicide attempts, and frequently expressed hopelessness and helplessness. (His caretaker also professed to hearing voices and attempted suicide several weeks after Luke's post-Katrina suicide attempt.)

Several weeks after the scheduled interview, Luke was located in an adult jail in another state. There, he faced several charges that had to be processed completely by the criminal court system before he could return to his home town juvenile court for adjudication.

Discussion

Each case describes a juvenile who has concurrent open cases in juvenile and criminal courts. The case examples do not fit into the waiver/reverse-waiver category because each youth aged out of the juvenile court system and was arrested as an adult before his juvenile competency ruling occurred. In such cases, criminal courts have immediate jurisdiction. Remanding these alleged offenders to juvenile court is not a realistic option, because they are adults. Yet, each detainee must return to juvenile court for a competency ruling after his criminal court files have been closed. Historically speaking, such cases are not common. However, with the residential displace-

ment of alleged youth offenders and judicial backlogs caused by Hurricane Katrina, the number of youths with open cases in both jurisdictions has increased.

Dual court involvement raises interesting questions, especially when a youth's competency to proceed with trial has been questioned in juvenile court. What happens when criminal court officials do not raise a defendant's competency to proceed with trial when it already has been questioned during juvenile court proceedings? After all, a defendant is presumed to be competent to proceed with criminal proceedings unless he, she, or a court official raises concerns to the contrary. At that point, the burden is on the defendant and defense counsel to show evidence of the defendant's incapacity.

Matters related to having simultaneous charges in the juvenile and criminal courts become more convoluted when a juvenile court judge finds the youth incompetent to proceed with trial after he or she has been convicted and sentenced in a criminal court and has served time. Will this scenario lead to an increase in judicial appeals in criminal court due to ineffective assistance of counsel? Will the frequency of wrongful incarceration litigation increase? Only time will tell. Yet, the question of adjudicatory competence for juveniles facing legal charges in both systems increased as a result of recent natural disasters. Legislative and judicial clarification is needed, especially in disaster-prone regions.

Possible solutions to the dual court competency situation have strengths and weaknesses. If criminal court judges and/or attorneys ask youths and their families whether the youths have been charged with an offense in juvenile court, courtroom personnel may demonstrate unfair bias to these youths. Also, a youth is under no obligation to engage in self-incrimination. In addition, the answer a youthful respondent provides, if any, may not be forthright or accurate, especially if he or she does not understand the question.

In criminal court proceedings, the peers of a defendant may be present. In the interest of self-preservation and to avoid potentially exposing him- or herself to ridicule or attack by other inmates, a defendant may pretend to understand what is being communicated so that others will not become aware of the defendant's cognitive limitations. Denying intellectual and/or physical deficits during a criminal

court proceeding may be detrimental to a defendant, especially if he or she meets legal criteria for adjudicatory incompetence.

Screening defendants with a simple literacy test could help ensure that incompetence would be known at the onset of criminal court proceedings. However, reliance on this technique would result in too high a yield for competency purposes, because people who cannot read may be capable of understanding legal proceedings and of assisting with their defenses. In addition, the test may increase malingering, which is already a problem in this population.

There are myriad procedural concerns when potentially incompetent youth must simultaneously respond to charges in juvenile and criminal court. The best possible option may be to re-examine disaster preparedness practices in the juvenile justice system. Policies and procedures that address the preservation of vital records will enhance the ability of courts in other jurisdictions to access information to which they are legally entitled. Optimization of employee safety, security, and contingency planning may enhance retention of experienced juvenile court personnel in the aftermath of a natural disaster. These interventions will increase the likelihood that criminal courts in other communities will interface with local juvenile court personnel who are familiar with judicial policy. Experienced juvenile court staff may expedite timely distribution of critical information to outlying law enforcement agencies, including courts. While not comprehensive, these suggestions may stimulate meaningful dialogue regarding ways to prevent potentially incompetent juveniles from being tried in criminal court without adequate legal interventions and protections.

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