

Adjudicative Competence in Juvenile Court

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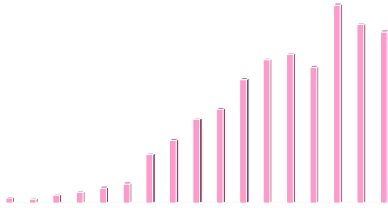
Adjudicative Competence

- AKA, Competence to stand trial, or Fitness to Proceed in Texas juvenile proceedings
- Capacities to
 - Assist counsel
 - Comprehend nature of the proceedings
 - Make decisions about waiver of rights

Evolution of Juvenile Competency Laws

- Rules unnecessary until it began to be raised in juvenile court in mid-1990s
- Appellate cases began appearing about 12 years ago
- About 18 states have new statutes outlining laws and procedures for competency applied in juvenile court

Increase in Juvenile Court
Competency Evaluation Referrals
in One State Forensic Service



Juvenile Competency Information

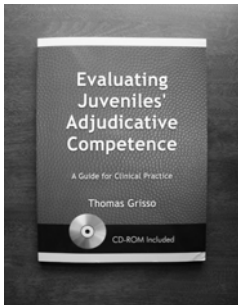
“Youth on Trial”

Grisso & Schwartz
Univ of Chicago Press
2000

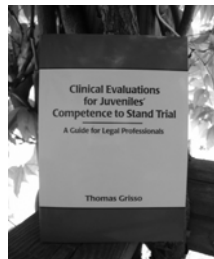


Guide for juvenile competence (2005)

Clinicians

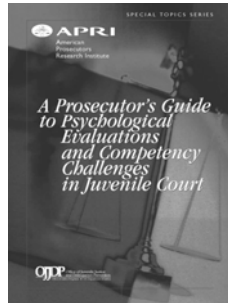


Lawyers



Prosecutors' Guide (2006)

Describes how to challenge defense counsel and experts when raising the question in juvenile court



Outline



- New application of competency to delinquency proceedings
- Youths' capacities related to fitness to proceed
- Practice issues in juvenile fitness to proceed cases

Basics of Adjudicative Competence

The Legal Standard for Competence to Stand Trial



A defendant must have:

- ...sufficient present ability to **consult with his lawyer** with a reasonable degree of rational understanding..
- ...and a **rational** as well as **factual understanding** of the proceedings against him

(Texas Code Crim, 46B.003)
(*Dusky v. U.S.*, 1960)

The standard (cont'd)

- Definition for "fitness to proceed" in Family Code (55.31) is similar
- Difference between "factual" and "rational" understanding
 - Factual is "awareness", rational is "belief"
- Competence includes decision making ability associated with waiver of constitutional rights and deciding on pleading (*Godinez v. Moran*, 1993)

Standard cont'd....

- Incompetence is not merely the presence of a serious mental disorder or developmental disability
 - Depends on actual abilitieswhat the person actually can or cannot do that is relevant for participating in one's defense

Competence abilities usually considered important for being able to “perform the tasks of a defendant”

Capacity for factual and rational understanding of...

- Nature of the trial process
- Accused of a crime
- Court will decide guilt
- Could be punished
- What possible sentences are
- Meaning of possible pleas
- Roles and functions of trial participants
- What trial process involves (“trial process” is pretrial preparation and events through trial)

Competence abilities (cont’d)

Ability to assist counsel...

- Capable of comprehending counsel’s inquiries
- Capable of responding to counsel inquiry and providing relevant information
- Can handle the demands of trial process (won’t decompensate under stress, demeanor won’t jeopardize fairness, can testify relevantly)

Competency abilities (cont’d)

Decisional ability...

- Able to make decisions based on rational beliefs and perceptions
- Able to process/weigh information
- Not judged by the quality of the decision
 - One can choose what others would consider foolish...as long as choice is not a product of impairment

Procedure in Juvenile Court

- "Fitness to Proceed" (Fam. Code 55.31)
- Evaluation may be requested if motion is raised and there is probable cause
- Hearing on preponderance of evidence (Fam. Code 55.36)
- Finding of incompetence leads to treatment (Fam. Code 55.33)
 - If mentally ill, focus is on medication to reduce symptoms and restore abilities
 - Charges may be dismissed if misdemeanor.
- Provisions for restoration hearings (55.43)

Special questions for application in juvenile court

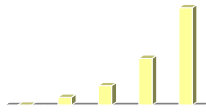
- Does juvenile court require same degree of ability for competence as in adult court?
 - E.g., *In re Carey*, 615 N.W.2d 742 (Michigan, 2000)
- Can a youth be incompetent due to developmental immaturity, without serious mental illness or developmental disability?
 - *In re Hyrum H.* (Ariz. 2006) [10-year-old]
 - *Tate v. State of Florida* (Fla. 2003) [12 year-old]
 - *In re W.A.F.* (D.C. 1990)
 - *Timothy J. v. Sacramento County* (CA. 2007) [13 year-old]

Can adolescents do these things as well as adults?



Substantial research on the issue since 2000

- Research on youths...
 - understanding about trials
 - reasoning about plea bargains
 - comprehension of Miranda rights
- Largest study: MacArthur Foundation “Juvenile Adjudicative Competence Study” (2000-2003)
 - Four sites nationwide
 - 927 youth, 466 adults--in detention/jail and in community
 - Measures of understanding and decision making specifically for trial participation



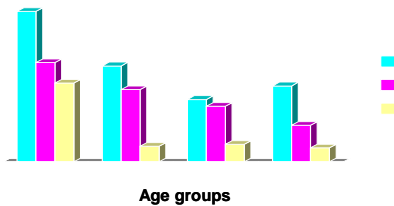
Inadequate Factual Understanding on Measure of CST-relevant Knowledge

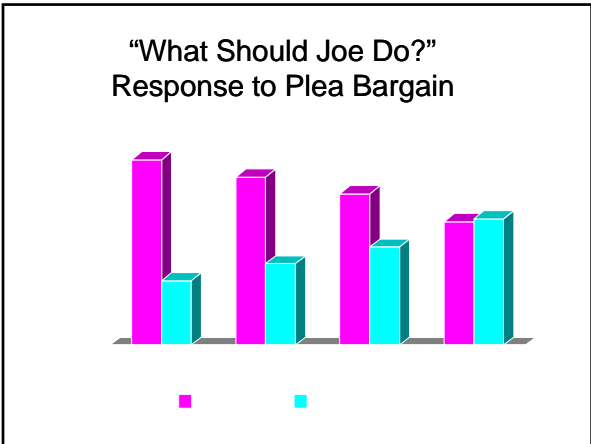
Sample Items	Ages			
	11-13	14-15	16-17	18-24
■ Role of Prosecutor	58	32	20	13
■ Role of Defense Atty	22	10	8	10
■ Role of Judge	55	52	46	50
■ Rights given up when plead guilty	85	72	63	54

Percent with 0 scores

Percent Within IQ/Age Groups Seriously Impaired on Understanding or Reasoning

Percent of age groups





(Plea Bargain cont'd)

Reasoning they gave:

- **Youths** tended to focus on length of time (e.g., “2 years is less than 6 years”)
- **Adults** tended to wrestle with odds of winning or losing (e.g., “If this is Joe’s first offense...” or “Depends on how he feels about the lawyer he got...”)

Conclusions: Research on “Developmental Incompetence” suggests...

- Little or no difference (on average) in CST abilities between 16-17 year olds and adults
- Greater risk of incompetence due to immaturity, when...
 - 14 or younger
 - 15-17 with low intelligence (compared to adults with low intelligence)
 - Youths have mental disorders that create developmental delays
- Important differences are more in “rational understanding” and “decision making” than in “factual understanding”

Examples of how youth sometimes have difficulties for developmental reasons

- “Just don’t know things” (poor factual understanding)
 - Simple lack of exposure to legal matters
 - Often can be taught, if this is the only problem
- Difficulty grasping concepts
 - A “right”
 - “Right to silence,” “pleading not guilty,” and “telling the truth”

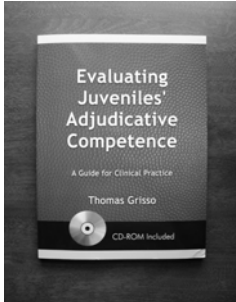
Cont’d

- Difficulty grasping attorney relationship
 - Difficulties understanding attorney privilege,
 - Capacity to disagree with one’s attorney, and dependent acquiescence to authority
 - The capacity to listen to counsel, and oppositionality
- Time perspective
 - Imagining the future (time perspective)
 - Delay vs. immediate relief (impulsiveness)

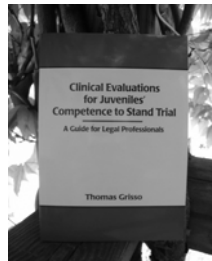
Practice Issues in Juvenile Fitness to Proceed Cases

Guide for juvenile competence (2005)

Clinicians



Lawyers



Raising the Question

- **Think** about raising it when youth has...
 - History of, or current evidence of, serious mental illness or developmental disability
 - Under age 14
 - Evidence of learning problems, grade delays
- **Costs** of raising the question
- **Practical dilemmas** in application
 - For defense counsel
 - For juvenile court judge

What examiners try to achieve in juvenile competence evaluations

- A good **clinical** evaluation
 - Focuses on current mental health and cognitive conditions relevant for the competence question
 - Requires mental health and educational records, as well as examiner's interview of child and parents
 - Might not be as clinically comprehensive as non-forensic clinical evaluations (purpose is different)
- **Practice implications**
 - Need time and records
 - Need to refer for examination under 55.31 only when fitness is really the question you want answered

Examiners try to achieve... (cont'd)

- A good developmental examination
 - Youth may lack capacities not only due to mental illness, but also due to stage of development
 - Requires records on educational history, and sometimes psychological testing
- Practice implications
 - Qualifications of juvenile fitness examiners
 - How to handle cases in which youth are unfit because they have not yet developed necessary abilities

Examiners try to achieve... (cont'd)

- A good forensic evaluation
 - Assessment of specific competency abilities related to the legal standard
 - Connecting deficits in those abilities with the developmental and clinical information
 - Avoiding self-incriminating information
- Practice implications
 - Presence of legal counsel at evaluations?
 - Considering "rational," not just "factual," understanding

Questions about Restoration

- Examiner's report should show how treatment will restore competence
 - If mental illness, not just "disorder + poor competence abilities," but how symptoms cause poor abilities
 - What can be done to reduce symptoms (so that abilities are restored)
- Practice implications
 - What if unfitness is due to *immature* capacities?
 - The concept of "remediation"
 - Accommodation as remediation

Adolescent Legal Competence in Court

Adolescent Development and Juvenile Justice

One of the pillars of the American justice system is the assurance that those who stand accused of crimes be mentally competent to understand and participate in their trials. The conventional standard for competence has typically focused on the effects of mental illness or mental retardation on individuals' capacities to grasp the nature of their trials or their abilities to decide how to plead. Yet as the courts, both juvenile and adult, see increasingly younger defendants—some as young as age 11—some argue that the law should also take into account adolescents' lesser capacities owing to emotional and psychological immaturity.

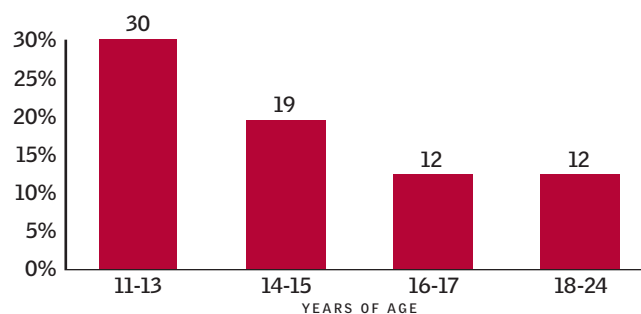
This brief details findings from the first comprehensive assessment of juvenile capacities to participate in criminal proceedings using measures of both trial-related abilities and developmental maturity. The MacArthur Research Network on Adolescent Development and Juvenile Justice compared the responses of youth and adults in a series of hypothetical legal situations, such as plea bargains, police interrogations, and attorney-client interactions. Responses revealed the degree to which participants understood the long-term consequences of their decisions, their ability to weigh risks, and other factors related to developmental and cognitive maturity. Findings show that a significant portion of youth, especially under age 15, are likely unable to participate competently in their own trials, either in an adult or juvenile court, owing to developmental immaturity.

Young Adolescents Less Competent to Stand Trial

Network researchers interviewed 1,400 individuals aged 11–24 both in juvenile detention centers and in the community at large to determine whether teens differed from young adults (aged 18–24) in their competence to stand trial. Youth were interviewed in Philadelphia, Los Angeles, northern Florida, and Virginia.

Using a standard assessment tool, the study first gauged the functional abilities defined in the existing legal concept of *competence to proceed*—the ability to understand the purpose and nature of the trial process; the capacity to provide relevant information to counsel and to process that information; and the ability to apply information to one's own situation in a manner that is neither distorted nor irrational.¹ This standard is regularly applied in adult courts with mentally impaired individuals.

Figure 1. Young Teens are nearly Three Times More Likely Than Older Teens or Young Adults to be Significantly Impaired in Reasoning or Understanding of the Adjudication Process

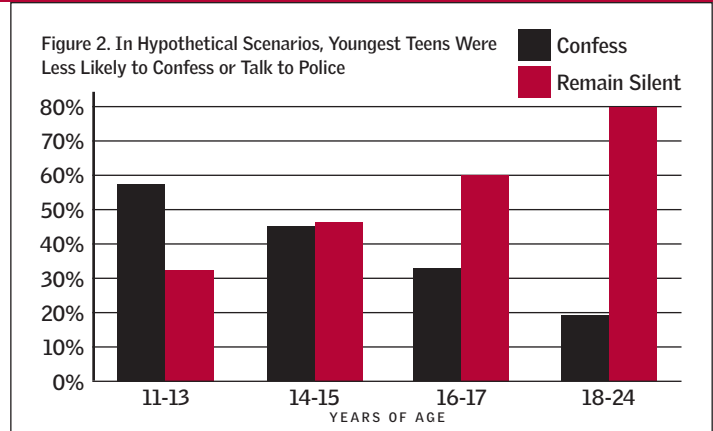


¹ The tool is called the MacArthur Competence Assessment Tool—Criminal Adjudication (MacCAT-CA). For more information, see T. Grisso et al., "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," *Law and Human Behavior*, vol. 27 (2003), pp. 333-363.

² These are likely conservative estimates given that those youth with more serious mental health issues were screened out of the study.

Findings from the assessment showed that age matters. Those aged 11–13 performed significantly worse than 14–15 year olds, who performed significantly worse than 16–17 year olds and 18–24 year olds (adults).² Interestingly, the performance of 16–17 year olds did not differ from that of the young adults (aged 18–24) (see Figure 1).

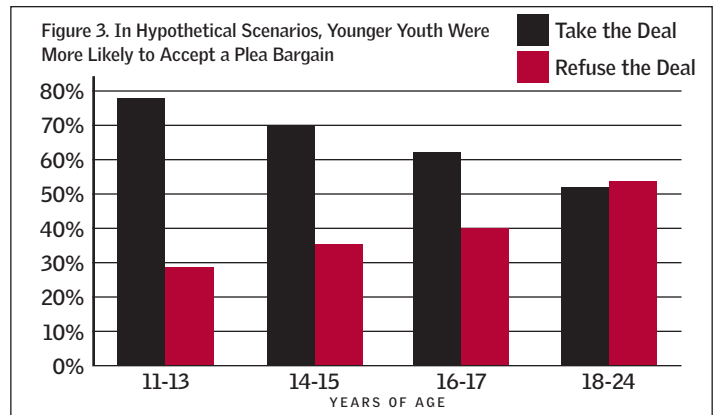
The youngest group was nearly three times more likely than youth older than 15 to be significantly impaired in reasoning and understanding, two important components of legal competence. In other words, nearly one-third of 11–13 year olds and one-fifth of 14–15 year olds had deficits that courts might see as serious enough to question their ability to proceed in a trial. These patterns varied little by race-ethnicity, gender, socioeconomic status, or region of the country.



Level of Maturity Influences Important Choices

The Network next assessed youths’ emotional maturity in a legal decision-making context. The most relevant aspects of maturity in this context are the ability to take into consideration long-term consequences (future orientation), perceive and comprehend risks, deflect peer influence, and weigh whether to comply with authority figures.

Using the *MacArthur Judgment Evaluation*, a tool designed specifically for this study, researchers asked respondents to recommend the best and worst choices in three hypothetical situations: responding to police interrogation when one is guilty of a crime; disclosing information during consultation with a defense attorney; and responding to a plea agreement in exchange for a guilty plea and testimony against other defendants. Choices for police interrogation included confessing, denying the offense, or refusing to speak. Choices for the attorney consultation included full or partial disclosure, denial, or refusing to cooperate. Plea agreement options included accepting or rejecting the offer. Researchers also asked participants to identify the positive and negative consequences (or risks) of each of their recommendations, and their responses were scored according to predetermined criteria for risk appraisal. From their responses, researchers also measured youths’ future orientation. Finally, to assess the influence of peer pressure, youth were told that their friends had chosen a different response and were given the option of changing their answer.



In general, the youngest teens (aged 11–13) proved less mature in their decision making than older youth. Younger individuals, for example, were more likely to make decisions that comply with what an authority seemed to want as measured by their willingness to confess and plea bargain (see Figures 2 and 3). The proportion of youth who chose to confess decreased with age, from about one-half of the 11–13 year olds to only one-fifth of the 18–24 year olds (see Figure 2). (Few individuals in any age group chose to actively deny the offense.) The proportion accepting a plea agreement declined from nearly three-fourths of 11–13 year olds to one-half of young adults (see Figure 3). Once again, the study revealed few statistically significant differences among those older than age 15.

In addition, younger teens were significantly less likely to recognize the inherent risks in various decisions, and they were less likely to comprehend the long-term consequences of their decisions. The study found no differences by age in the effects of peer pressure on decision making. Those with lower IQs, however, performed more poorly on all items. Although perhaps not surprising, this finding is notable given that two-thirds of those under age 15 in juvenile detention facilities had an IQ lower than 89 compared with one-third in the community sample. Therefore, because a greater proportion of youth in the juvenile justice system are of below-average intelligence, the risk for incompetence to stand trial is even greater among adolescents who are in the juvenile justice system than it is among adolescents in the community. For example, among 11–13 year olds with very low IQ scores, more than one-half scored as poorly as adults who are typically found incompetent to stand trial. Once again, none of the findings varied by race-ethnicity, socioeconomic status, or locale.

These findings suggest that younger adolescents' developmental immaturity may affect their behavior as defendants in ways that extend beyond their competence to stand trial. Their responses indicate that they are often more willing than adults to confess to authority figures such as police, rather than remaining silent, especially if they believe it will result in an immediate reward, such as going home. For similar reasons, they appear more likely to accept a prosecutor's plea agreement.

Expanded Definition of Competence Needed

Clearly, many of the youngest adolescents are less able to understand the trial process and are less mature in their ability to take into consideration the long-term ramifications of their decisions. Yet, the relation between immaturity and competence to stand trial has not yet been defined legally. The findings reported here point to the need for a broader legal construct of competency, one that recognizes that developmental factors—namely, cognitive and psychosocial immaturity—may compromise the critical decision-making ability of young criminal defendants in either adult or juvenile courts. The findings also suggest the need to consider various protections against trying youth who may not be competent; for example, making competency evaluations mandatory for adolescents below a certain age, and requiring competence evaluations for any youth sent to criminal court to be tried as an adult.

The findings raise a dilemma, however. If a sizable proportion of younger adolescents are unfit to stand trial owing to immaturity, how does society redress the crimes they committed? One option is to develop a dual system of competence, one for the adult courts and one for the juvenile courts, with more relaxed standards of competence in the latter. Youth deemed incompetent to stand trial in an adult court could be tried in a juvenile court under more lenient standards of competence. For those very few who would be deemed incompetent to stand trial in either court, adequate supervision with useful remedial services could be employed, as is already done in many states.

New Guides to Help Assess Juvenile Competence

Legal and clinical practitioners have had few, if any, resources to help them understand how immaturity manifests itself in legal contexts with juveniles. The Network therefore sought to develop a set of flexible tools and practice guides that present the issues and identify the needed information to assess youth capacity and maturity in the context of legal competence. The guides are designed to be adaptable to the many different state juvenile justice laws and to the different audiences who might use the manuals, from judges to mental health practitioners. The assessment can be as extensive or as brief as time and resources permit.

Evaluating Juveniles' Adjudicative Competence: A Guide for Clinical Practice, and Clinical Evaluations for Juveniles' Competence to Stand Trial: A Guide for Legal Professionals draw from a national survey of existing practices for competence evaluations of juveniles, a nationwide review of juvenile competency laws, and a national set of consensus panels that included judges, prosecutors, defense attorneys, and mental health clinicians. The Network has begun introducing these guides through a series of workshops with mental health and legal professionals in 87 of the 100 largest U.S. jurisdictions.³

The findings of this latest research affirm the developmental reality of adolescence and underscore the need to expand the notion of competence to include cognitive and psychosocial maturity. The competency 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 (the current standard for adults) or immaturity.

For more information

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice
Temple University, Department of Psychology
Philadelphia, PA 19122
www.adjj.org

The Research Network on Adolescent Development and Juvenile Justice is an interdisciplinary, multi-institutional program focused on building a foundation of sound science and legal scholarship to support reform of the juvenile justice system. The network conducts research, disseminates the resulting knowledge to professionals and the public, and works to improve decision-making and to prepare the way for the next generation of juvenile justice reform.

³ The guides are available from Professional Resource Press, at www.pypress.com