

PAPER

PSYCHIATRY & BEHAVIORAL SCIENCES

Philip C. O'Donnell,¹ M.J., Ph.D. and Bruce Gross,² J.D., Ph.D.

Developmental Incompetence to Stand Trial in Juvenile Courts*

ABSTRACT: Juveniles' competency to participate in delinquency proceedings has received increased attention in recent years. Developmental incompetence, whereby juveniles' incompetency is based upon their immaturity, as opposed to a mental disorder or developmental disability, is an evolving and important aspect of this area of law. The following paper reviews theories used to support the notion of developmental incompetence, as well as the extant empirical research on juveniles' competency-related abilities. Using a LexisNexis search, statutory and case laws pertaining to juvenile competency were identified across the 50 states and the District of Columbia. Only six states clearly allow developmental incompetence, whereas 17 have laws that do not include developmental immaturity as an acceptable basis of incompetence in juvenile courts. Developmental incompetence is likely to affect a relatively small proportion of juvenile cases, but has important implications for juvenile forensic practice. Recommendations are offered for forensic practitioners conducting this type of evaluation.

KEYWORDS: forensic science, competency to stand trial, juveniles, development, psychiatry and behavioral sciences, forensic assessment

Common law and American jurisprudence have long histories of placing certain limitations upon the prosecution of juvenile offenders. Historically, the infancy doctrine excluded children under age 7 from prosecution and applied a rebuttable presumption that 7–14-year-olds were incapable of criminal responsibility. Adolescents over age 14, however, were subjected to the same criminal prosecution and penalties as adults. At the turn of the 20th century, juvenile courts were founded in the United States based upon the notion that delinquent minors required specialized care, distinct from adults. Within this context, juveniles' competency to participate in delinquency proceedings was irrelevant, as legal intervention was directed toward rehabilitation and premised upon the best interests of the minor. Proceedings were informal by design and lacked the procedural due process afforded to criminal defendants.

Beginning in the 1960s, a series of U.S. Supreme Court cases mandated certain due process rights in juvenile court proceedings. These included the rights to notice of charges, an adversarial hearing with representation by counsel, the ability to cross-examine witnesses, a trial transcript (1), a hearing prior to transfer to adult court (2), and a standard of proof of beyond a reasonable doubt to sustain a delinquency petition (3). Absent from this list is the right to be competent to stand trial in delinquency proceedings. In the landmark 1960 case, *Dusky v. United States*, the Supreme Court established a national minimum standard for competency in criminal proceedings. To be fairly tried, a defendant must possess "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" (4 [*Dusky v. United States*, 362 U.S. 402 at 402 (1960)]). Currently, there is no national legal requirement that juveniles be competent to participate in delinquency proceedings; however, a majority of states have adopted competency standards for their juvenile courts. Many competency laws have been enacted or revised in recent decades, paralleling changes in national juvenile justice policy and advances in developmental-legal research.

Empirical research into the specific legal capacities of children and adolescents has grown exponentially in the past 30 years and has added to the knowledge of developmental influences on culpability (5), understanding of legal concepts, and legal decision making (6). Simultaneously, national policies have shifted toward a decidedly more punitive response to juvenile crime. Nearly every state has expanded mandatory and discretionary transfer laws allowing juvenile offenders to be tried in criminal court, with more than half of the states allowing for the criminal prosecution of children under age 12 in certain circumstances (7). Youths remaining in the juvenile justice system face reduced confidentiality protections and increasingly serious legal consequences, such as long-term detention, sex offender registration or felony "strikes." Moreover, informal resolutions to juvenile delinquency once provided by parents, schools, or law enforcement, appear to be on the decline. In 2008, three-quarters of all juvenile arrests resulted in referrals to either juvenile or criminal courts (8).

Two recent U.S. Supreme Court decisions gave considerable attention to juveniles' cognitive and social development as they pertain to criminal responsibility in certain cases. In *Roper v. Simmons* (9), the majority cited developmental differences, including juveniles' immature and often impulsive decision making, their increased susceptibility to peer pressure, and the transitory nature of their character, as bases (among other factors) for excluding youth under 18 from the death penalty. Five years later, the Court cited its decision in *Roper* and noted an ever-growing scientific consensus regarding the fundamental differences between the juvenile and adult brain, in its ruling that a sentence of life without

¹LAC+USC Medical Center, Division of Child and Adolescent Psychiatry Keck School of Medicine, USC Institute of Psychiatry, Law and Behavioral Sciences, PO Box 86125, Los Angeles, CA 90086-0125.

²Keck School of Medicine, USC Institute of Psychiatry, Law and Behavioral Sciences, University of Southern California, Los Angeles, CA 90086-0125.

*Presented in part at the 62nd Annual Meeting of the American Academy of Forensic Sciences, February 22–27, 2010, in Seattle, WA.

Received 4 Feb. 2011; and in revised form 25 May 2011; accepted 12 June 2011.

parole for a juvenile nonhomicide offender constituted cruel and unusual punishment (10). In both cases, the American Psychological Association submitted amicus briefs arguing that juveniles were less culpable than adults because of important developmental differences; however, the organization was criticized in light of its earlier position in *Hodgson v. Minnesota* (11) that by middle adolescence, juveniles possessed cognitive abilities roughly equivalent with adults and thus were capable of making decisions regarding abortions (12).

Given the increasingly high stakes of juvenile court proceedings and the identification of specific developmental limitations relevant in legal contexts, competency in delinquency proceedings has received increased scrutiny from courts, youth advocates, and forensic mental health professionals. An emerging issue is whether juveniles can be found incompetent to stand trial on the basis of "developmental immaturity" alone. Broadly speaking, developmental immaturity refers to incomplete development in one or more domains (e.g., neurological, intellectual, social, and emotional) which manifests in functional limitations relative to a specified comparison group (13). Such immaturity is a normal part of the developmental process and is distinguished from functional limitations or impairments that arise from a mental illness or developmental disorder. Thus, the phrase "developmental incompetence" can be used to refer to incompetence that is based upon a juvenile's immaturity, in the absence of a clinically significant mental illness, intellectual disability, or developmental disorder. Several state appellate courts have examined the issue of developmental incompetence often on the basis of expert testimony regarding the competency-related impairments of young, but otherwise normally functioning defendants. In many cases, courts have looked to empirical research and developmental theory for guidance.

Theory and Research

As a group, incompetent juveniles, as determined by a forensic evaluation and/or judicial finding, have been shown to have lower intelligence, and greater special education, mental health treatment, and abuse histories than competent juveniles (14–16). They also tend to be younger, with preadolescent defendants disproportionately represented among the former group. In competency determinations, the mere presence of a condition, such as mental illness, intellectual disability, or even young age, does not in itself establish incompetence to stand trial. Rather, the condition must relate to specific functional deficits that render a defendant incapable of understanding or rationally participating in the legal proceedings, given the specific circumstances of the case. Researchers have pointed to several ways in which age or immaturity might functionally impair a young defendant at trial.

On a basic level, juvenile defendants have fewer life experiences to draw upon and may be less familiar with the court system, courtroom personnel, and procedures. More problematic is that juveniles' cognitive development might limit their understanding and application of newly learned information. For instance, younger defendants are more likely to have difficulty understanding and applying abstract legal principles, such as the universality of certain rights (e.g., the right to remain silent during an interrogation), the advocacy role of an attorney, or the confidentiality of attorney–client communications (17). Competent juveniles must also be able to make rational decisions in consultation with their attorneys. Research has shown that cognitive, social, and emotional development are often asynchronous, such that adolescents' psychosocial immaturity may result in impulsive or risky decision making even

when their cognitive abilities are roughly equivalent with adults (12). Specifically, younger defendants are at greater risk of basing their decisions on short-term gains (i.e., escape from an aversive situation) than long-term consequences; their decisions may be unduly influenced by peers, parents, or authority figures, and they may make impulsive decisions without fully considering the ramifications. Moreover, adolescents may not fully understand the risks associated with certain legal decisions, particularly when consequences involve more abstract (e.g., the loss of rights) or contingent outcomes (e.g., the imposition of a more serious punishment for re-offending).

A growing number of empirical studies have examined age differences in juveniles' and adults' performance on competency to stand trial instruments. Most large-scale studies use standardized competency screening tools designed for and validated on adults in criminal proceedings, the most common being the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA). The MacCAT-CA presents a vignette involving a hypothetical crime and asks respondents a series of questions to assess their basic knowledge of court personnel and proceedings (Understanding), their ability to recognize relevant information and evaluate legal options (Reasoning), and their understanding of their own legal situation (Appreciation). Summary scores, based on the defendant's responses, can be used to quantify the degree of impairment and possible incompetence; however, the test is not intended to be a sole determinant of competency to stand trial (18). Based on survey data, forensic psychologists routinely use this and other adult competency tools in the evaluation of juveniles' competency to stand trial (19).

Several studies have found significant age differences in juveniles' performance on at least one of the three MacCAT-CA subscales (20,21), whereas others have found no association between age and MacCAT-CA scores (22,23). In the largest study of juvenile competency, Grisso et al. administered the MacCAT-CA to 927 juveniles and 466 young adults in both community and detention settings. They found that juveniles through age 15 consistently performed worse than older respondents on the MacCAT-CA subscales and concluded that this group is significantly more likely to exhibit impairments that may compromise their ability to act as competent defendants in *criminal* proceedings (24).

The MacCAT-CA subscales focus primarily on cognitive factors (i.e., understanding, reasoning) and do not necessarily capture aspects of psychosocial development and judgment that could influence juveniles' competent participation in legal proceedings. Investigating these factors empirically is a challenge, because it is difficult to replicate the circumstances that could induce faulty decision making among adolescents, such as stress during a court hearing or attorney–client consultation. Grisso et al. used vignettes to examine respondents' abilities to identify risks, their consideration of short- versus long-term consequences, and the degree of peer influence in response to three legal vignettes (e.g., cooperation during a police interrogation, disclosing information to an attorney and responding to a plea deal). Eleven- to 13-year-olds were less able to recognize the risks and long-term consequences associated with their decisions and were more likely than adults to endorse accepting plea agreements. Youths up to age 15 also demonstrated greater compliance with authority figures in their decision making (24). Schmidt et al. also found that juveniles focused more on short-term consequences than adults. Detained male juveniles in their sample were more likely to suggest that a hypothetical defendant refuses to talk to his attorney and there was a nonsignificant trend for juveniles to recommend denying involvement in an offense to their attorney. The authors concluded that, because of their

developmental status, young juveniles are at greater risk of making poor decisions within the attorney–client relationship (25).

The above research raises the question of whether age differences in the performance on competency screening tools translate to a higher prevalence of legal incompetence among young juveniles, compared to older adolescents and adults. Several researchers have used MacCAT-CA cut-off scores to provide an index of the practical significance of group differences. Grisso et al. (24) concluded that 30% of 11–13-year-olds and 19% of 14–15-year-olds could be incompetent based on their scores on the Understanding and Reasoning scales. In a sample that included even younger detained youth, between 50% and 60% of 9–12-year-olds showed clinically significant impairment in these two scales, whereas this was true for fewer than 25% of juveniles age 13 and older (21). Based on the notion that juvenile competency determinations should be made with peer norms, a study using the Fitness Interview Test-Revised (FIT-R) compared juveniles' competency based on adolescent mean scores (i.e., juvenile normative standard) and adult mean scores (i.e., adult normative standard). Over 70% of juveniles through age 15 were classified as incompetent using an adult normative standard, whereas only 20% of 11–13-year-olds and 6% of 14–15-year-olds were classified as incompetent under juvenile norms (26).

One must be cautious in extrapolating these findings to actual competency determinations made by forensic examiners or triers of fact, who consider important contextual variables (e.g., the stress of a pending legal case; available resources to offset impairments) and a much broader range of data (e.g., collateral information, behavioral observations, consultation with the juveniles' attorney). Overall, the available empirical data support the general conclusions that, as a group, juveniles are less competent than adults and this is due, in large part, to their immaturity (27). Juveniles age 13 and younger are at particular risk of being unable to adequately understand legal proceedings and act as competent defendants, although limitations may persist into middle adolescence (i.e., age 15). The notion that most juveniles are incompetent to stand trial in juvenile courts under prevailing legal standards, as suggested by some authors (28,29), does not seem well supported by research.

It is reasonable to conclude that developmental incompetence is likely to affect only a small proportion of juvenile cases for several reasons. First, as noted above, a relatively low proportion of juveniles score in the impaired range on criminal competency instruments. Second, arrest statistics indicate that a majority of juvenile defendants are over age 15 and thus fall outside of the age range where developmental immaturity is likely to be a concern. Finally, juvenile offenders have disproportionately high rates of cognitive, emotional, and behavioral disorders compared to community samples (30,31). Therefore, many incompetent juveniles will present with some diagnosable psychiatric condition that is more widely accepted as a source of incompetency under prevailing legal standards (e.g., Attention-Deficit/Hyperactivity Disorder, Mental Retardation). Although situations where juveniles' incompetence is purely because of developmental immaturity may be rare, developmental factors should routinely be considered in juvenile competency determinations. Developmental incompetence raises a number of complex questions for policy makers and forensic evaluators, particularly in jurisdictions where this issue has not been clearly addressed.

Legal Standards and Developmental Incompetence

Incorporating developmental immaturity into traditional legal standards for competency to stand trial presents several unique

challenges. The *Dusky* decision established the minimum abilities required for a defendant to be fairly tried in a criminal proceeding. Although the Supreme Court did not address the acceptable sources of incompetence to stand trial, state statutes generally specify that incompetence be due to a mental disorder, disease, or defect. Thus, the presence of a serious psychiatric disturbance or disability is an important threshold requirement for incompetency in criminal proceedings. As will be discussed, many states apply their criminal competency statutes to juvenile court proceedings without modification. As a result, incompetence that arises from young age or immaturity would not, in itself, satisfy the threshold requirement of a psychiatric disorder.

Proponents of developmental incompetence argue that the *Dusky* test is functional, defining the abilities necessary for trial participation, as opposed to the mental conditions upon which incompetency must be based. Therefore, if defendants in juvenile court are unable to fully understand or participate in their own defense, it should make no difference whether this is because of their developmental status or a psychopathological condition, especially when juvenile court intervention can result in significant consequences. On the other hand, opponents of developmental incompetence argue that, despite recent reforms, juvenile proceedings remain civil in nature and retain a rehabilitative purpose, predicated upon the best interest of the minor. Legitimizing developmental incompetence would potentially exclude young defendants from necessary state intervention or delay legal proceedings indefinitely.

Developmental incompetence also creates potential procedural problems for juvenile courts. Some authors have argued that juveniles under a certain age (usually age 13 and younger) should be presumed incompetent to proceed unless determined otherwise (32). This is contrary to traditional criminal and juvenile court standards that presume competence and would require competency proceedings for an entire cohort of juveniles. Even if states do not expressly presume incompetence under a certain age, a de facto presumption is created when age is a sufficient basis for declaring a doubt as to a minor's competency. Second, the nature of developmental incompetence suggests that certain limitations can only improve with the passage of time and the unfolding of normal maturation. Traditionally, there has been an emphasis on disposing of competency matters within a reasonable time frame to ensure defendant's right to a speedy trial. Developmental incompetence could create an undue burden on juvenile defendants, victims, and their families, as court proceedings are postponed indefinitely while the minor is "restored."

Developmental Incompetence and Existing Juvenile Competency Standards

Given the evolving nature of juvenile competency laws and developmental incompetence in particular, forensic examiners should familiarize themselves with the current legal standards in their jurisdiction. The following review is intended to give the reader a general overview of juvenile competency standards, modifications in the application of competency laws to juvenile proceedings, and the legal viability of developmental incompetence across the United States. This is a recently evolving area of law, with most statutory changes and case law occurring within the last decade. Table 1 provides a summary of state laws, indicating those states that currently allow developmental incompetence, those that do not, and those with no clearly identified position. As discussed below, there is considerable variability in juvenile competency laws across jurisdictions.

TABLE 1—Summary of state laws regarding developmental incompetence (DI).

State/Jurisdiction	Allows DI	Does not Allow DI*	No Identified Position [†]	State/Jurisdiction	Allows DI	Does not Allow DI*	No Identified Position [†]
Alabama			•	Montana			•
Alaska			•	Nebraska			•
Arizona	•			Nevada			•
Arkansas		•		New Hampshire			•
California	•			New Jersey			•
Colorado		•		New Mexico		•	
Connecticut			•	New York		•	
Delaware			•	North Carolina			•
District of Columbia			•	North Dakota			•
Florida	•			Ohio		•	
Georgia	•			Oklahoma		•	
Hawaii			•	Oregon			•
Idaho			•	Pennsylvania			•
Illinois			•	Rhode Island			•
Indiana			•	South Carolina			•
Iowa	•			South Dakota			•
Kansas		•		Tennessee			•
Kentucky			•	Texas		•	
Louisiana		•		Utah			•
Maine		•		Vermont		•	
Maryland	•			Virginia	•		
Massachusetts			•	Washington		•	
Michigan		•		West Virginia			•
Minnesota		•		Wisconsin			•
Mississippi			•	Wyoming		•	
Missouri			•				

*Includes states that have either expressly rejected developmental incompetence or have juvenile competency statutes that define mental illness, intellectual impairment, and/or developmental disability as the acceptable bases of incompetence.

[†]Includes states that have no juvenile competency statute or court rule, do not specify the acceptable bases of incompetence, and/or apply the criminal competency statute to juvenile proceedings by case law.

Thirty-one states and the District of Columbia have formalized some standard for the evaluation of juveniles believed to be incompetent to participate in delinquency proceedings. These laws range from very basic provisions for the mental health evaluation of juveniles to determine their “competency to participate in the proceedings,” without reference to specific competency requirements, to more detailed laws that discuss the competency standard, acceptable sources of incompetence, and the procedures for mental health evaluations, reports, competency hearings, and restoration services (33). In many instances, states’ juvenile competency standards use the same or similar wording to the *Dusky* decision requiring both an understanding of the proceedings and the ability to cooperate with counsel. Of those states that have explicitly examined the issue of juvenile competency rights, only Oklahoma has ruled that competency is not required in juvenile court, as juveniles are subject to delinquency proceedings “regardless of the mental state in an effort to provide rehabilitation and necessary treatment” (34 [G.J.I. v. State, 778 P.2d 485 at 486 (1989)]).

Ten states have codified juvenile competency standards that expressly identify the acceptable sources of incompetence as some combination of mental illness, disease, or defect, including a developmental or intellectual disability. These include Colorado (35), Kansas (36), Louisiana (37), Maine (38), Minnesota (39), New Mexico (40), New York (41), North Carolina (42), Texas (43), and Wyoming (44). They are separated from other states that have explicitly rejected developmental incompetence in juvenile courts because there is no evidence of a legal challenge to this issue in these states. Several other states, including Connecticut (45), Delaware (46), Illinois (47), Indiana (48), Nevada (49), and West Virginia (50), have applied their criminal competency statutes to juvenile proceedings via case law without addressing modifications related to developmental immaturity. Other jurisdictions, including the District of

Columbia (51), Nebraska (52), South Carolina (53), and Wisconsin (54), have statutes or court rules that do not clearly specify acceptable sources of incompetence. Some of these states simply provide for the mental examination of juveniles whose competency is in doubt and refer only to a general lack of mental capacity.

Thus far, only 12 states have explicitly dealt with the issue of developmental incompetence, as evidenced by clear statutory language that addresses the use of developmental factors, including age, as a basis for incompetence, or case law pertaining to the admissibility of developmental incompetence in juvenile proceedings. Several state statutes place limits upon the consideration of developmental factors. For example, Virginia’s juvenile competency statute states that a finding of incompetence shall not be made based solely on the “juvenile’s age or developmental factors” if the juvenile is otherwise able to “understand the charges against him and assist in his defense” (55 [Va. Code Ann. §16.1-356(F) (2010)]). Arkansas’ juvenile competency statute generally applies the same adult competency standard to juvenile proceedings, thereby excluding developmental incompetence in most cases; however, forensic evaluators and the courts are directed to consider several specific developmental abilities when determining the competency of juveniles under age 13 who are charged with capital murder (56).

Courts in several other states have interpreted juvenile competency standards to exclude findings of developmental incompetence. In an unpublished case, a Washington appellate court declined to reverse a trial court’s finding of the competence of an 8-year-old juvenile who, according to a court-appointed psychologist, lacked the capacity to understand the proceedings and assist in his defense, because of limitations arising from his age. The court concluded that existing statutory law required incompetence to be based on a mental disease or defect, not developmental immaturity alone (57). Appellate courts in Michigan (58), Ohio (59), and Vermont (60)

have all recognized that developmental factors influence juveniles' competency-related abilities; however, these states have held that juveniles should be evaluated by juvenile rather than adult norms. Thus, if an otherwise normal juvenile has abilities that are commensurate with his age and developmental level, he presumably cannot be found incompetent because he might not meet the competency threshold required in criminal court.

Several states have adopted statutory language that clearly allows findings of developmental incompetence. Georgia's code states that juveniles' "age or immaturity may be used as the basis for determining [their] competency" (61 [Ga. Code Ann. §15-11-151(5) (2009)]). Similarly, Maryland (62) and Florida's (63) statutes identify developmental immaturity as a potential cause of a juveniles' incompetence to proceed. These states use nearly identical language to describe six abilities that should be considered in a competency evaluation. They include the child's capacity to: (i) appreciate the allegations [or charges]; (ii) appreciate the range and nature of possible penalties that may be imposed in the proceedings; (iii) understand the adversarial nature of the legal process; (iv) disclose to counsel facts pertinent to the proceedings at issue; (v) display appropriate courtroom behavior; and (vi) testify relevantly. Florida law also outlines specific provisions for the handling of juveniles deemed incompetent to proceed because of age or immaturity. For example, these juveniles cannot be committed to the same types of treatment facilities as youths whose incompetence is based on a mental illness or developmental disability.

Appellate courts in Arizona, Iowa, and California have held that trial incompetence based on developmental immaturity is no less valid than incompetence based on mental illness or developmental disability. Their decisions emphasized the functional nature of the *Dusky* standard. Although the relevant Arizona statute states that "age alone does not render a person incompetent" to participate in juvenile proceedings (64 [Ariz. Rev. Stat. §8-291(2) (2011)]), appellate courts have upheld trial court findings of incompetence based primarily on maturity and developmental factors without the presence of a mental disease, defect, or disability required by the state's adult competency statute (65,66). An Iowa court concluded in an unpublished opinion that "limiting determinations of incompetency in juvenile cases to those in which the inability to appreciate, understand, and assist is based on a mental disorder would offend rights to due process" (67 [In the interest of A.B. 2006 Iowa App. LEXIS 189 at 8]). In California, an appellate court interpreted the juvenile competency rule to be functionally equivalent to the *Dusky* standard and held that the rule does not require that a minor have a mental disorder or developmental disability before a hearing may be held or a finding made of incompetency. In its dicta, the court noted that for the purposes of competency, "we see no difference between a mentally retarded adult, functioning at the level of an 11-year-old and a normal 11-year-old who does not function at an adult level" (68 [Timothy J. v. Superior Court 150 Cal.App.4th 847 at 861 (2007)]). Effective January 1, 2011, the California legislature amended its relevant statute to provide additional direction for the evaluation of minors whose competency to participate in a juvenile proceeding is in doubt. The new law includes developmental immaturity as an acceptable basis for incompetency to stand trial and requires that forensic evaluators of juvenile competency have expertise in child and adolescent development (69).

Based on a review of current law, only a handful of states allow developmental incompetence in juvenile court proceedings, although a slightly larger number recognize that developmental factors will likely affect juveniles' competency abilities. No jurisdiction applies a clear presumption of incompetence to juveniles under a certain age. Most juvenile competency laws are based on an

essentially unaltered *Dusky* standard and do not suggest that anything less or different is required of juveniles to be competent in delinquency proceedings compared to criminal trials. Moreover, factors associated with psychosocial development (e.g., risk taking, short-term orientation, peer influence) have not been explicitly incorporated into most legal standards for juvenile competency, which remains essentially a cognitive construct. Arkansas is the only state that has established a far broader and detailed set of developmental considerations; however, these apply only in evaluations of particularly young juveniles tried in criminal court for a capital offense.

Forensic Practice

As juvenile competency standards continue to evolve across jurisdictions, forensic psychologists and psychiatrists will undoubtedly see changes in the frequency and nature of these referrals. In jurisdictions where developmental immaturity is accepted as a source of incompetence, forensic examiners may find themselves receiving an increased number of referrals where the primary concern is a juvenile's young age or immaturity. Thus, forensic examiners may be referred juvenile competency cases where minors have no substantial history of behavioral or emotional disturbances, or intellectual impairment. As a result, the evaluation and opinion will focus primarily on the developmental capacities of the juveniles as they relate to their competency to stand trial. In jurisdictions where the issue of developmental incompetence remains unsettled or open to interpretation, forensic evaluations are likely to receive increased scrutiny from attorneys and courts. Evaluators might find themselves in contentious territory, with a single competency determination involving multiple evaluations with opposing opinions. Finally, in jurisdictions where developmental incompetence is excluded, evaluators might find that their opinion—that a juvenile is developmentally incapable of understanding the proceedings—is ultimately at odds with existing legal standards.

Forensic evaluators play an important role in educating courts about the nexus between cognitive and psychosocial development and competency to stand trial. Forensic opinions are central to competency determinations in individual cases and can be an impetus for new case law and public policy changes. Therefore, examiners must be familiar with existing theory and research, the relevant laws in their jurisdiction, and the evolving standards of practice for this type of evaluation. When developmental incompetence might be an issue, forensic examiners must implement a comprehensive and developmentally sensitive approach to their assessment. This will likely include modifications to the interview, assessment procedures, and forensic report writing and may result in a more extensive evaluation process than in other competency to stand trial evaluations.

In juvenile competency assessments, forensic examiners must be particularly sensitive to how developmental factors affect the interview and evaluation process, particularly with pre- and early-adolescents (i.e., age 13 and younger). A developmentally sensitive assessment approach involves several important modifications to the structure, pace, and content of the interview. Examiners may need to dedicate more time to establishing rapport with juveniles. Opening the interviews with relatively neutral (noncourt-related) questions might help reduce their anxiety and increase their engagement in the interview process. Examiners must also be cautious to minimize their use of abstract words or concepts that are common among clinical and legal professionals, but unfamiliar to young listeners. Similarly, younger juveniles might have difficulty formulating responses to complex, broad, or open-ended questions (70).

Certain response styles are more common among children and young adolescents, such as frequent “I don’t know” responses, acquiescence, or denial (71). In many instances, these responses are indicative of confusion or a lack of understanding, as opposed to a deliberate lack of cooperation or attempts to evade or mislead. Therefore, examiners should be vigilant for these patterns and use frequent follow-up questions to clarify juveniles’ responses.

The pace or extent of a juvenile competency assessment might be significantly different from adult competency assessments. Interviews with younger clients might involve frequent breaks or a slower pace of questioning to accommodate for normal limitations in attention span and behavioral regulation. Second interviews are strongly recommended, particularly in situations where the examiner is uncertain about a juvenile’s competency after a single interview. Follow-up meetings can help establish the consistency of a juvenile’s presentation across time and provide an opportunity to assess long-term retention and understanding of previously discussed material. If possible, the time of day should be varied to determine whether this has any effect on a juvenile’s presentation.

Forensic examiners working with juvenile defendants should also obtain a broader range of information outside of the clinical interview. Collateral data, including interviews with parents, caregivers, attorneys, and teachers, as well as reviews of pertinent medical, mental health, and education records, are particularly important in the forensic evaluation of children and adolescents. These sources can provide important historical and developmental information that children or adolescents are often unable to report. They can also help determine whether certain symptoms are reflective of an underlying disorder, as evidenced by continuity across situations and circumstances, or are more situationally bound. In the context of a competency to stand trial interview, school records and teacher reports are particularly meaningful. Juveniles’ presentation in a structured classroom setting is the most analogous situation to the courtroom setting. Both require sustained attention, the processing of verbal information, and the abilities to sit still, regulate behavior, and follow instructions. Modifications that are necessary for juveniles to function in the classroom setting could translate directly to the courtroom setting.

Forensic psychologists may consider the use of cognitive or intellectual assessment tools in completing a juvenile competency evaluation. A survey of practicing forensic psychologists found that intelligence tests (e.g., Wechsler Intelligence Scale for Children, Wechsler Adult Intelligence Scales) were the most commonly administered psychological tests in juvenile competency evaluations and were considered by many to be essential or recommended (19). Although these instruments can provide valuable information, they are time-consuming and low IQ scores can be over-interpreted as sufficient indicators of incompetence. Legal competency is a functional test and requires more information than an IQ score alone. When assessing for developmental incompetence, examiners may consider using measures of adaptive functioning (e.g., Vineland Adaptive Behavior Scales, Adaptive Behavior Assessment System). These tools can provide useful information about youths’ communication skills, daily functioning, and socialization and can be obtained from multiple informants (e.g., teachers, parents). Examiners can assess juveniles’ functional skills and identify strengths and weaknesses relative to a normative sample. Such information would help answer whether particular juveniles are developmentally immature relative to their peers.

The assessment of juveniles’ court-related knowledge and abilities should also be adapted in light of developmental considerations and the unique juvenile court context. Many forensic examiners report using standardized criminal competency tools (i.e.,

MacCAT-CA, FIT-R, Competence Assessment for Standing Trial for Defendants with Mental Retardation [CAST-MR]) in the evaluation of juveniles’ competency in delinquency proceedings (19). Examiners may find these tools useful in gauging juveniles’ basic legal understanding and reasoning, ensuring coverage of important legal areas, and providing for intra- and inter-individual comparisons; however, these tools are not designed for or normed on juvenile court populations. Therefore, summary scores to classify a juvenile as either “impaired” or “unimpaired” with regard to competency should be avoided or explained in light of the comparison group (i.e., adults or criminal defendants). Some of the content of these instruments will also require modification to reflect the differences between juvenile and criminal proceedings. Ultimately, if a forensic examiner uses these instruments to evaluate juveniles’ competency, any modifications to the administration or interpretation should be explained in their report.

Semistructured interview formats, like the Juvenile Adjudicative Competence Interview (JACI) (13), provide a framework for assessing juveniles’ court-related knowledge, reasoning, and decision-making skills. The JACI outlines specific questions in several content areas (e.g., nature and seriousness of the offense; nature and purpose of the trial; possible pleas; and role of the defense attorney, prosecutor, judge, probation officer, etc.); it includes instructions for teaching unfamiliar concepts (with subsequent checks for comprehension, recall, and retention), and it prompts interviewers to use follow-up questions to explore responses in greater depth. This tool can provide a useful framework for conducting juvenile competency assessments; however, unlike standardized competency instruments, the JACI does not have a system for scoring juveniles’ responses or obtaining a summary score for degree of impairment. Examiners must consider the interview data in conjunction with other material to determine whether juveniles can act as competent defendants in delinquency proceedings.

In general, examiners should actively explore key aspects of juveniles’ legal knowledge and decision making, including the sources of their knowledge, the reasoning behind their beliefs and decisions, and their understanding of important abstract concepts. Juveniles’ beliefs about courtroom and legal concepts could come from a variety of sources, such as peers, parents, or the media. In many cases, these sources might provide biased or inaccurate information that could perpetuate misperceptions. Therefore, it can be helpful for the examiner to assess where juveniles learned certain information and whether misperceptions can be easily clarified. Similarly, it is important to probe the reasoning behind juveniles’ legal knowledge or decisions, as they may be based on misinformation, a lack of understanding, or faulty reasoning. As noted previously, juveniles can be particularly influenced by peers or authority figures, short-term over long-term gains, and inaccurate perceptions of risk. Examiners should evaluate whether these influences are present and the degree to which they may have a practical effect on juveniles’ abilities to make important legal decisions.

Whether forensic examiners use a structured interview format, or a repertoire of questions based on their training and experience, implementing a fairly consistent and standard interview technique will allow examiners to compare the relative performance of juveniles over time. Developmental differences, as well as emotional, behavioral, and cognitive impairments, will contribute to the variability in juveniles’ competency-related abilities. An experienced interviewer will make necessary adjustments during the course of the interview—by changing the style and content of questions, asking appropriate follow-up questions, adjusting the pace of the interview and allowing for breaks or second interviews—and note how the juvenile responds. The process of making modifications and determining

whether they have any effect on juveniles' understanding and cooperation is, in itself, an informative part of the juvenile competency interview. The examiner must consider whether certain modifications can compensate for developmental limitations and whether those modifications can be realistically implemented within the court proceedings.

As with any mental condition that can result in adjudicative incompetence, an opinion of developmental incompetence will involve establishing that the condition is present (i.e., immaturity), identifying the cognitive, emotional, or behavioral manifestations of the condition (e.g., lack of knowledge, concrete thinking, flawed decision making, poor impulse control), and describing how those characteristics will adversely affect the juvenile's understanding and effective participation in their trial. Young age is generally not, in itself, a sufficient basis for finding a juvenile incompetent to stand trial and many jurisdictions allow for the adjudication of relatively young children (i.e., under age 10) under certain circumstances. Thus, when formulating an opinion of developmental incompetence, forensic examiners must move beyond age and focus primarily on the developmental limitations exhibited by a particular juvenile facing a particular set of legal circumstances. In addition, maturity and immaturity are relative concepts that are only meaningful when one establishes a point of comparison (13). Thus, it should be noted whether a juvenile is immature in relation to same-age peers, older adolescents, or adults. It is important to note that children and adolescents in the same age group or developmental stage can exhibit significant heterogeneity in their skills and abilities while still falling within the normal range of ability.

The jurisdictional differences in juvenile competency standards described above will clearly influence forensic opinions and reports. For example, forensic examiners may have to opine that, under existing legal standards, immature juveniles with competency-related impairments are still competent to stand trial because they do not have a mental disorder or intellectual impairment. In states that use relative competency standards (i.e., basing juvenile competency determinations on juvenile norms), examiners will have to distinguish whether developmentally immature juveniles are impaired compared to their same-age peers, older adolescents, or adults, and how this relates to competency under existing standards. In jurisdictions where the issue of developmental incompetence remains untested or open to interpretation, forensic examiners may have greater latitude in formulating their opinion, but may also find their opinions more vulnerable to challenge.

A final consideration in the forensic evaluation of developmental incompetence is how to formulate "restoration" of competency. This is a critical component of competency reports, as courts are interested in whether incompetent defendants can be restored, through what means, and within what time frame. As noted previously, these are challenging questions when the primary source of incompetence is immaturity, which by its nature will only resolve itself through the normal unfolding of development and acquisition of skills over time. In this respect, most interventions will be rehabilitative (i.e., building new skills) rather than "restorative" (i.e., restoring previously possessed skills) in nature.

There is a lack of research into the efficacy of competency skill-building programs for immature juveniles; however, some approaches could be extrapolated from the research on incompetent adults with intellectual impairments. For example, modifications to the presentation of material (e.g., simple language, short amounts of information) and situational modifications (e.g., minimization of distracting and stressful stimuli) have been cited as useful strategies to attenuate learning and memory deficits in intellectually impaired adults (72,73), which could also benefit cognitively immature juveniles. Educational interventions that involve repeated presentation

of material over time, frequent comprehension checks, and *in vivo* practice of knowledge and skills (e.g., mock trial and attorney-client consultations), could correct young juveniles' knowledge deficits or misperceptions over time and better prepare them to handle the stress of a court proceeding. Examiners might also recommend modifications to how attorneys and other courtroom personnel interact with juveniles (e.g., slowing the pace of proceedings, allowing for frequent breaks or consultations).

The forensic examiner should consider whether recommended interventions are possible, practical, and likely to be effective within a certain time frame. Interventions will be limited by the availability of resources in the jurisdiction. Therefore, examiners should become familiar with available programs or providers who could implement their recommendations. The examiner should also consider whether any recommended modifications to the courtroom process or the attorney-client interaction are possible or practical in light of the specific proceedings (i.e., the jurisdiction, courtroom, parties involved, seriousness of the instant matter, and so on). Finally, examiners must be mindful of any jurisdictional requirements regarding the timely disposition of a juvenile delinquency matter and whether an incompetent juvenile can become competent within the available time frame.

Conclusion

Developmental incompetence in juvenile court proceedings has gained increased attention in recent decades due, in part, to a growing recognition that young, but otherwise unimpaired youth, can present with significant competency-related impairments. There is a growing need for forensic psychologists and psychiatrists who are trained in developmentally sensitive approaches to competency assessments and can formulate clinically and legally sound opinions as to the competency of immature juveniles. Forensic opinions are critical to competency determinations in individual cases and have been influential in legal developments in this area. Developmental incompetence raises several unique challenges in balancing the due process rights of juvenile defendants, with the need for effective legal and psychosocial interventions for delinquent youths. Legal standards for juvenile competency will continue to develop across the United States and, in the absence of alternative dispositions, juvenile courts will have to determine how to manage and "restore" young juveniles who are unable to fully participate in their proceedings because of their developmental status. Forensic examiners are instrumental in educating the courts about developmental issues that affect juveniles' competency to stand trial and interventions that can be used to mitigate impairments and/or build competency skills over time.

References

1. *In re Gault*, 387 U.S. 1 (1967).
2. *Kent v. United States*, 383 U.S. 541 (1966).
3. *In re Winship*, 397 U.S. 358 (1970).
4. *Dusky v. United States*, 362 U.S. 402 (1960).
5. Cauffman E, Steinberg L. (Im)maturity of judgment in adolescence: why adolescents may be less culpable than adults. *Behav Sci Law* 2000;18:741-60.
6. Grisso T. The competence of adolescents as trial defendants. *Psychology Pub Policy Law* 1997;3:3-32.
7. Deitch M, Barstow A, Lukens L, Reyna R. From time out to hard time: young children in the adult criminal justice system. Austin, TX: The University of Texas at Austin, LBJ School of Public Affairs, 2009.
8. Puzzanhera C. Juvenile arrests 2008. *Juv Just Bull Dec* 2009.
9. *Roper v. Simmons*, 543 U.S. 551 (2005).
10. *Graham v. Florida*, 2010 U.S. LEXIS 3881.
11. *Hodgson v. Minnesota*, 497 U.S. 417 (1990).
12. Steinberg L, Cauffman E, Woolard J, Graham S, Banich M. Are adolescents less mature than adults? Minors' access to abortion, the juvenile

- death penalty, and the alleged APA "flip-flop." *Am Psychol* 2009;64:583-94.
13. Grisso T. Evaluating juveniles' adjudicative competence: a guide for clinical practice. Sarasota, FL: Professional Resource Press, 2005.
 14. McKee GR, Shea SJ. Competency to stand trial in family court: characteristics of competent and incompetent juveniles. *J Am Acad Psychiatry Law* 1999;27:65-73.
 15. Cowden V, McKee G. Competency to stand trial in juvenile delinquency proceedings: cognitive maturity and the attorney-client relationship. *J Fam Law* 1995;33:629-60.
 16. Royce Baerger D, Griffin EF, Lyons JS, Simmons R. Competency to stand trial in preadjudicated and petitioned juvenile defendants. *J Am Acad Psychiatry Law* 2003;31:314-20.
 17. McKee GR. Competency to stand trial in preadjudicatory juveniles and adults. *J Am Acad Psychiatry Law* 1998;26:89-99.
 18. Poythress N, Nicholson R, Otto R, Edens JF, Bonnie RJ, Monahan J, et al. The MacArthur competence assessment tool—criminal adjudication: professional manual. Odessa, FL: Psychological Assessment Resources, 1999.
 19. Ryba NL, Cooper VG, Zapf PA. Juvenile competence to stand trial evaluations: a survey of current practices and test usage among psychologists. *Prof Psychology Res Prac* 2003;34:499-507.
 20. Burnett DMR, Noblin CD, Prosser V. Adjudicative competency in a juvenile population. *Crim Just Beh* 2004;31:438-62.
 21. LaVelle Ficke S, Hart KJ, Deardorff PA. The performance of incarcerated juveniles on the MacArthur Competence Assessment Tool—Criminal Adjudication (MacCAT-CA). *J Am Acad Psychiatry Law* 2006;34:360-73.
 22. Redlich AD, Silverman M, Steiner H. Pre-adjudicative and adjudicative competence in juveniles and young adults. *Behav Sci Law* 2003;21:393-410.
 23. Warren JI, Aaron J, Ryan E, Chauhan P, DuVal J. Correlates of adjudicative competence among psychiatrically impaired juveniles. *J Am Acad Psychiatry Law* 2003;31:299-309.
 24. Grisso T, Steinberg L, Woolard J, Cauffman E, Scott E, Graham S, et al. Juveniles' competence to stand trial: a comparison of adolescents' and adults' capacities as trial defendants. *Law Hum Behav* 2003;27:333-62.
 25. Schmidt MG, Reppucci ND, Woolard JL. Effectiveness of participation as a defendant: the attorney-juvenile client relationship. *Behav Sci Law* 2003;21:175-98.
 26. Viljoen JL, Zapf PA, Roesch R. Adjudicative competence and comprehension of Miranda rights in adolescent defendants: a comparison of legal standards. *Beh Sci Law* 2007;25:1-19.
 27. Wingrove TA. Is immaturity a legitimate source of incompetence to avoid standing trial in juvenile court? *Neb Law Rev* 2007;86:488-514.
 28. Wong T. Adolescent minds, adult crimes: assessing a juvenile's mental health and capacity to stand trial. *UC Davis J Juv Law Policy* 2002;6:163-88.
 29. Cooper D. Juveniles' understanding of trial-related information: are they competent defendants? *Behav Sci Law* 1997;15:167-80.
 30. Teplin L, Abram KM, McClelland GM, Dulcan MK, Mericle AA. Psychiatric disorders in youth in juvenile detention. *Arch Gen Psychiatry* 2002;59:1133-43.
 31. Cauffman E. A statewide screening of mental health symptoms among juvenile offenders in detention. *J Am Acad Child Adolesc Psychiatry* 2004;43:430-9.
 32. Johnson K. Juvenile competency statutes: a model for state legislation. *Ind Law J* 2006;81:1067-95.
 33. Vt. R. Fam. Proc. R.1(i) (2010).
 34. G.J.I. v. State, 778 P.2d 485 (1989).
 35. Colo. Rev. Stat. § 19-2-1301 (2010).
 36. Kan. Stat. Ann. § 38-2348 (2007).
 37. La. Child. Code. Ann. Art. §832-838 (2009).
 38. Me. Rev. Stat. Ann. Tit. 15 § 3318 (2009).
 39. Minn. R. Juv. Del. P. 20.01 (2010).
 40. N.M. Stat. Ann. § 32A-2-21 (2010).
 41. NY CLS Fam. Ct Act § 301.2 (2010).
 42. N.C. Gen. Stat. § 7B-2401 (1979).
 43. Tex. Fam. Code §55.31(a) (2010).
 44. Wyo. Stat. § 14-6-219 (2010).
 45. State v. Juan L. 291 Conn. 556 (2009).
 46. Smith v. State; 918 A.2d 1144 (Del 2007).
 47. In re T.D.W., 441 N.E.2d 155 (Ill 1982).
 48. In the matter of K.G., 808 N.E.2d 631 (2004).
 49. In the matter of Two Minor Children, 95 Nev. 225 (1979).
 50. State ex rel. Williams v. Narick, 164 W. Va. 632 (1980).
 51. D.C. Code Ann. § 16-2315 (2010).
 52. R.R.S. Neb. §43-258 (2010).
 53. S.C. Code Ann. § 44-23-410 (2009).
 54. Wis. Stat. § 938.295 (2010).
 55. Va. Code Ann. §16.1-356 (2010).
 56. Ark. Code Ann. § 9-27-502 (2009).
 57. State v. Swenson-Tucker, 2006 Wash. App. LEXIS 242.
 58. People v. Carey, 615 N.W.2d 742 (Mich. 2000).
 59. In re: Williams, 687 N.E.2d 507 (Ohio 1997).
 60. In re: J.M., 769 A.2d 656 (Vt 2001).
 61. Ga. Code Ann. § 15-11-151 (2009).
 62. Md. Code Ann. Cts. & Jud. Proc. §3-84-17.1 &17.3 (2009).
 63. Fla. Stat. Ann. §985.19 (2009).
 64. Ariz. Rev. Stat. §8-291(2011).
 65. In re Charles B. 194 Ariz. 174 (1998).
 66. In re Hyrum H. 212 Ariz. 328 (2006).
 67. In the interest of A.B. 2006 Iowa App. LEXIS 189.
 68. Timothy J. v. Superior Court 150 Cal.App.4th 847 (2007).
 69. Cal. Wel. Inst. Code § 709 (2011).
 70. Oberlander LB, Goldstein NE, Ho CN. Preadolescent adjudicative competence: methodological considerations and recommendations for practice standards. *Behav Sci Law* 2001;19:545-63.
 71. Sattler JM. Assessment of children: behavioral and clinical applications, 4th edn. San Diego, CA: JM Sattler, Publisher Inc., 2002.
 72. Anderson SD, Hewitt J. The effect of competency restoration training on defendants with mental retardation found not competent to proceed. *Law Hum Behav* 2002;26:343-51.
 73. Wall BW, Krupp BH, Guilmette T. Restoration of competency to stand trial: a training program for persons with mental retardation. *J Am Acad Psychiatry Law* 2003;31:189-201.

Additional information and reprint requests:
Philip C. O'Donnell, M.J., Ph.D.
LAC+USC Medical Center
Division of Child and Adolescent Psychiatry
Keck School of Medicine
USC Institute of Psychiatry
Law and Behavioral Sciences
PO Box 86125
Los Angeles, CA 90086-0125
E-mail: philip.odonnell@hotmail.com