

Commentary: Competence to Stand Trial in Juveniles and the Judgment Model

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In their study of 927 youths, Kivisto and colleagues found that future orientation, as well as age and intellectual ability, are associated with capacities indicating competence to stand trial. They conclude that the relationship between the capacity to make reasoned decisions and age is partially explained by variable development in future orientation. In particular, the findings of Kivisto and colleagues raise the possibility of applying a standard for competence for juveniles that is based on judgment or future orientation and is higher than the rationality standard for adult criminal defendants. These findings are placed in context by comparing adult and juvenile competencies and by illustrating the remarkable diversity among courts in their approaches to juvenile competence to stand trial. It is doubtful that the juvenile justice system would uniformly adopt a mechanism for finding incompetence based on developmental immaturity or underdeveloped capacity for future orientation.

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Competence to stand trial (CST) determinations serve four legal purposes: they ensure the accuracy,^{1,2} fairness, and dignity and integrity of the adjudication and that an accused who is eventually found guilty and punished knows why he is to be punished.³ Perhaps the most important purpose is fairness to the accused, raising lexical and constitutional questions about fairness. Fairness can be diminished by setting the threshold criteria for competence to stand trial too high, as was addressed by the U.S. Supreme Court in *Dusky v. United States*,⁴ or too low, thereby potentially fomenting abuses of excess, as described by Stone.⁵ Kivisto and colleagues⁶ report results of research that considers future orientation, in particular as it may relate to a juvenile's competence to stand trial. They also advance the applicability of the judgment model for CST in juvenile adjudication.

Legal Standards and Psychological Functions for Competence to Stand Trial

Before 1960, the common law standard for competence to stand trial required that the defendant be able to understand the proceedings against him and to assist in his defense.⁷ The *Dusky* standard of the U.S. Supreme Court explicitly included rationality. The defendant's understanding of the proceedings must be rational, and his ability to assist in his defense must be rational.⁴ For the purpose of CST, rational means free of psychotic distortion, not simply without faulty judgment.⁷ Despite the obvious relevance of rationality to CST, this quality is not explicit in most CST statutes⁷ and is not invariably assumed by trial and appellate courts (e.g., *United States v. Timmins*⁸). Redding and Frost² observe that the *Dusky/Drope* standard for CST does not include psychological factors that can result in incompetence. By following the trend of conflating the two standards, they neglect the important consideration of rationality that is explicit in the *Dusky* standard, but not in the *Drope* standard.⁹ If rationality, explicit in the *Dusky* standard, is not uniformly presumed as critical to CST, it is questionable how much importance courts will attach to other psychological functions, beyond the factual understanding of the proceedings and communicative capacity that were

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already required by the pre-*Dusky* common law standard.

Other authors have gone further in delineating the capacities needed for CST. Bonnie proposed that CST involves two constructs: “a foundational concept of competence to assist counsel and a contextualized concept of decisional competence” (Ref. 10, p 294). Both competence to assist and decisional competence require the capacities to reason, to understand, and to appreciate one’s legal situation. CST involves further the ability to articulate legal choices, to share these choices, to share relevant information, to make informed and rational decisions, and to plan and execute a defense strategy.¹⁰ From a legal standpoint, however, courts do not typically disaggregate the components of CST suggested by legal scholars,² and high executive functions are not usually addressed in any detail.

Since the U.S. Supreme Court’s *Dusky* decision, psychiatrists and psychologists have developed screening and assessment instruments for CST. One such instrument, the MacArthur Competence Assessment Tool-Criminal Adjudication (Mac-CAT-CA), was designed to assess functions relevant to CST determination.¹¹ The three general functional areas addressed by the Mac-CAT-CA instrument are understanding, reasoning, and appreciation. The AAPL Practice Guideline for CST¹² correctly observed that the Mac-CAT-CA instrument is intended as an aid for improving the thoroughness and quality of and evaluation of adjudicative competence.¹¹ Its administration does not constitute, *per se*, an assessment of CST.¹²

Criminal Minority and Psychological Immaturity of Juveniles

The development of the juvenile justice system in the United States was driven by a concept of fairness: It was not considered fair to hold children and adolescents to the same degree of responsibility for their criminal behavior and to subject them to commensurate criminal punishment as adults. A separate juvenile system, it was and is hoped, would serve to protect youthful offenders from victimization and criminal socialization by adult offenders. Of note, it was assumed that immaturity was a favorable, malleable condition, in that it offered hope for rehabilitation and positive psychosocial development, thereby obviating the need for retributive punishment.^{13,14} “At the heart of the juvenile justice sys-

tem” (Ref. 2, p 354) was the assumption of incompetence.^{2,15} In fact, the juvenile justice system is intended to provide treatment for the mental disorders of youthful offenders.¹⁵

To further reduce the association with adult criminal courts and criminality, juvenile proceedings are designated as civil, not criminal.¹⁶ From this standpoint, the state assumes a *parens patriae* role,¹⁷ not unlike its role in addressing the needs of the mentally ill through the mental health system. As noted by Redding and Frost,² juvenile incompetence may have seemed irrelevant because of the “traditional *parens patriae* mission of the juvenile court” (Ref. 2, p 372). Nonetheless, adjudications of juvenile delinquency are not always accurate and fair, and their consequences are not invariably helpful, even in achieving the aims of the juvenile justice system. As Kivisto and colleagues⁶ point out, the procedural safeguards for juvenile adjudications were increased in the 1960s to address such concerns (*In re Gault*¹⁸; *Kent v. United States*¹⁹; *In re Winship*²⁰; but see *McKeiver v. Pennsylvania*²¹).

Although the U.S. Supreme Court has required that juveniles be afforded many of the procedural protections of adult criminal defendants, the Court has not required CST or adjudicative competence for juveniles to be evaluated.^{2,12} CST of juveniles has been addressed by statute or appellate court decisions in more than two-thirds of the states.^{2,12} Case law in Oklahoma explicitly states that juvenile defendants need not be competent for adjudication.¹⁵ Even where state law does not require juvenile competence, some juvenile court judges require CST evaluations.¹² Most states that require CST for juveniles apply a competence standard that is the same as that for adults and that is based on mental retardation or mental illness, not immaturity alone.¹² Some juvenile courts have adopted an adversarial model,²² whereas others have followed a “best interest” model (Ref. 16, p 1401). Criminalization of juvenile adjudication procedures did not result in universal application of competence to stand trial determinations, as occurs in adult criminal courts.¹⁷ Because some criminal procedural protections, but not others, have been guaranteed for juveniles, the juvenile court system has been described as a “constitutional twilight zone” (Ref. 16, p 1406).

No state has a minimum age at which the juvenile’s CST must be assessed.² CST evaluations for juveniles are, in most states, restricted to the adjudi-

cation of delinquency proceedings, whereas other states apply CST determinations to status offenses as well.² In some jurisdictions, juveniles must be found to be competent before they are waived to adult criminal court (e.g., District of Columbia²³ and Virginia²⁴). Definitions of CST for juveniles also vary among the states, with Florida finding immaturity alone to constitute incompetence²⁵ and others applying a more restrictive standard in juveniles than in adults,²⁶ while still other states apply essentially the same *Dusky/Drope* (Ref. 2, p 369) standard that is used for adult offenders (e.g., South Carolina²⁷). As was explained earlier, the latter carries the same ambiguity for juveniles as it does for adult offenders: should competency require rationality, as is explicit in the *Dusky* standard,⁴ or not, as is not explicit in the *Drope* standard?^{8,5} Where the statute does not distinguish a separate standard for juveniles, courts apply the same standard as for adult defendants.² While applying the adult *Dusky/Drope* standard for juvenile defendants, some courts nonetheless operationalized the standard differently for juveniles under the assumption that “even a normal juvenile often will not have the same ‘rational’ understanding of the proceedings as an adult would nor be able to consult with his lawyer with the same understanding” (Ref. 28, p 1268). A Louisiana court found that “tender years” alone constitute juvenile incompetence (Ref. 29, p 476).

In the 1990s, laws were changed to allow an increasing number of juveniles to be waived from juvenile to adult criminal courts to face criminal trial and punishment.^{12,14,30–32} Subsequently, courts have increasingly required that juveniles, like their adult counterparts, be competent to stand trial before they face criminal prosecution with punishment, sometimes severe, a possibility.³³ In light of the purposes of competence to stand trial determinations and the purposes and penal results of the criminal justice system, juveniles tried in adult criminal courts must be competent.¹²

Although many attorneys believe that developmental immaturity should serve as a basis for incompetence determinations, attorneys who represent juveniles are often reluctant to request competency assessments.¹⁴ Their attempts to deal with suspected incompetence through involvement of parents and teaching their youthful clients about the legal proceedings¹⁴ suggests more of a traditional *parens pa-*

triae approach to juvenile justice, despite the current increase in CST determinations of juveniles.

As suggested in the American Academy of Psychiatry and the Law Guideline for Competence to Stand Trial,¹² recognition of CST based on immaturity alone raises other questions. Should such immaturity-based CST be differentially applied, depending on whether the offending behavior is serious or inconsequential? Should the trial of a juvenile who is incompetent to stand trial because of immaturity be delayed until he matures?

Because of their cognitive and emotional levels of psychological development, juveniles younger than 14,¹² and more categorically those younger than 12,³⁴ are unlikely to be CST according to the *Dusky* standard. Although Grisso³⁵ suggested a presumption of incompetence for juveniles younger than 14, no state has applied this presumption.² Many 14- and 15-year-olds would show similar delays, whereas 16- to 18-year-olds function similar to adults.¹¹ With regard to the competence of juveniles, much heterogeneity exists within age groups. Kivisto *et al.*⁶ had a large number of subjects ($n = 1,393$) representing a wide age range (11–24 years).

Traditionally, juveniles were spared harsh punishments, including life sentences and execution, by virtue of their minority alone, without further consideration of their underdeveloped psychological functions. Since the recent increase in juveniles waived to adult criminal court, for whom the traditional protection of the juvenile justice system is no longer in place, the U.S. Supreme Court has prohibited execution³⁶ and life sentences³⁷ of juveniles who are waived to adult court on the basis of their chronological age (i.e., legal minority) alone. Although the Supreme Court’s prohibition of the most severe punishments for juveniles pertained to minority categorically, the Court’s reasoning was in each of these landmark cases based substantially on evidence of the psychological underdevelopment of adolescents. Today, this same concern for the psychological and neurological underdevelopment of juveniles for waived juveniles is directed at those in the juvenile justice system as well, although as mentioned, not uniformly so. This year the United States Supreme Court held that a juvenile’s age is relevant as to whether a suspect who is questioned by police is in custody, thereby requiring a Miranda warning.³⁸ States must find an appropriate balance between the three goals of protecting the public, ensuring the best

treatment and rehabilitative interests of juvenile offenders, and protecting their due process rights.² With the exceptions noted, the U.S. Supreme Court has allowed states to strike this balance independently.²¹

The experience in the Commonwealth of Virginia illustrates the challenges in enacting CST legislation for juveniles that gives adequate consideration to both the legitimate *parens patriae* purposes of the juvenile system and the need for procedural protections. In 1994 and 1996, the Virginia General Assembly enacted a revision of the juvenile code that increased punitive options for juveniles charged with serious offenses.^{2,24} Because of the serious consequences of juvenile delinquency adjudications, an interagency work group concluded that “fundamental fairness and due process require that juveniles be competent before they can be subject to delinquency adjudication” (Ref. 2, pp 383–4) (also citing the Virginia Commission Youth, Study of Juvenile Competence Issues in Legal Proceedings³⁹). For status offense proceedings in contrast, wherein the court exercises its traditional *parens patriae* functions and liberty interests are less compelling, competence should not be required.² The work group decided against recommending different competence standards for different offenses on the basis of seriousness because of practical difficulties in adopting and implementing such refinements. The law incorporated the so-called *Dusky/Drope* standard for juvenile competence, which, because rationality was not explicitly mentioned, was more *Drope* than *Dusky*. To be competent the juvenile must have “substantial capacity to understand the proceedings against him or to assist his attorney in his own defense” (Ref. 2, p 384).⁴⁰

The Meaning of an Orientation Toward Future Consequences in CST Assessment of Juveniles

The ability to plan for the future in making decisions is self-evidently an element of judgment. Research demonstrates that adolescents focus more on short-term than long-term consequences,⁴¹ and they weigh more heavily the potential benefits than risks of a decision,⁴¹ supporting the notion that immaturity is associated with immature judgment.² Failure to plan and conduct one’s life accordingly is one of three types of impulsivity measured by the Barratt Impulsivity Scale.^{42,43} Adult offenders with impulsively aggressive behavior tend to have planning as

well as motor and cognitive impulsivity.⁴⁴ Poor planning impulsivity and lack of future orientation, although relevant, do not constitute incompetence. The finding by Kivisto and colleagues⁶ that future orientation at least partly mediates the relationship between age and reason and appreciation of the Mac-CAT-CA is not surprising and is particularly relevant to CST if an expanded-judgment model⁴⁵ is to be preferred over the rationality model. Neither would it be surprising if future research demonstrated that impaired future orientation or planning impulsivity was associated with diminished reason and appreciation in adult criminal defendants. Note, however, that even the lower CST threshold of the rationality model has not been uniformly applied by courts and forensic clinicians.⁷ Without examining cognitive abilities in detail, earlier authors concluded that young children lack CST because they are overly deferential to their parents or their adult caretakers. Given the developmental limitation in their capacity to plan for the future, such filial deference should serve adaptation, depending on the presence of psychologically mature and caring parents or custodians. The AAPL Guideline¹² raises the public policy question as to whether the availability of parents or other surrogate decision makers, who can assist the juvenile, should be taken into account when considering CST based on immaturity. A further consideration that follows from the findings of Kivisto and colleagues,⁶ not to be resolved here, is whether with regard to CST, allowance ought to be given to juveniles that is not afforded adult criminal defendants, such as a more vigorous application of the judgment model and whether the judgment model is more or less relevant to waived versus nonwaived juveniles. In any case, rationality is much more critical to CST than judgment.

Conclusions

The finding by Kivisto and colleagues⁶ that future orientation is lacking in juvenile defendants and at least partly mediates the relationship between age and reason and appreciation of the Mac-CAT-CA suggests the relevance of future orientation to CST in juvenile defendants, if not adult criminal defendants in general. They further suggest utility of the judgment model in assessing CST of juveniles, which raises the question of whether and to what extent CST standards and legal procedures should correspond to those for adults in criminal procedures.

The strongest argument for CST applies to juveniles who are facing waiver hearings, because at this juncture the *parens patriae* justification of juvenile adjudication is about to be discarded. Once waived, juveniles will be fully subject to the adult criminal proceedings, including competence to stand trial in any event. Full criminalization of juvenile adjudication proceedings would require CST for nonwaived juveniles as well. If a higher standard based on judgment or future orientation were to be applied to juveniles, supporting a specific minority incompetence based on either age or developmental incompetence, this could result in a lower threshold for a finding of incompetence in juveniles. As other authors have observed, however, existing law does not have a uniformly accepted mechanism for a finding of incompetence based on developmental immaturity.^{1,2,46} Nor on the judgment model, it should be added.

References

1. Bonnie RJ, Grisso T: Adjudicative competence in youthful offenders, in *Youth on Trial*. Edited by Grisso T, Schwartz R. Chicago: University of Chicago Press, 2000, pp 73–6
2. Redding RE, Frost LE: Adjudicative competence in the modern juvenile court. *Va J Soc Policy Law* 9:353–409, 2001–2002
3. Ennis BJ, Hansen C: Memorandum of law: competence to stand trial. *J Psychiatry Law* 4:491–512, 1976
4. Dusky v. United States, 362 U.S. 402 (1960)
5. Stone AA: *Mental Health and Law: A System in Transition*. New York: Jason Aronson, Inc., 1976
6. Kivisto AJ, Moore TM, Fite PA, et al: Future orientation and competence to stand trial: the fragility of competence. *J Am Acad Psychiatry Law* 39:316–26, 2011
7. Felthous AR: Competence to stand trial should require rational understanding. *J Am Acad Psychiatry Law* 39:19–30, 2011
8. *United States v. Timmins*, 301 F.3d 974 (9th Cir. 2002)
9. *Drope v. Missouri*, 420 U.S. 162, 171 (1975)
10. Bonnie RJ: The competence of criminal defendants: a theoretical reformulation. *Behav Sci Law* 10:291–316, 1992
11. Poythress NG: *Adjudicative Competence: The MacArthur studies*. New York: Kluwer Academic/Plenum Publishers, 2002
12. Mossman D, Noffsinger SG, Ash P, et al: AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial. *J Am Acad Psychiatry Law* 35(Suppl 4):S3–S72, 2007
13. Grisso T: *Evaluating Juveniles' Adjudicative Competence: A Guide for Clinical Practice*. Sarasota, FL: Professional Resource Press, 2005
14. Viljoen JL, McLachlan MA, Wingrove T, et al: Defense attorney's concerns about the competence of adolescent defendants. *Behav Sci L* 28:630–46, 2010
15. *G.J.I. v. State*, 778 P.2d 485 (Okla. Crim. App. 1989)
16. Kay R, Segal D: The role of the attorney in juvenile court proceedings: a non-polar approach. *Geo L J* 61:1401–24, 1972
17. Miller RD: Criminal competence, in *Principles and Practice of Forensic Psychiatry* (ed 2). Edited by Rosner R. London: Arnold, 2003, pp 186–212
18. *In re Gault*, 387 U.S. 1 (1967)
19. *Kent v. United States*, 383 U.S. 541 (1966)
20. *In re Winship*, 397 U.S. 358 (1970)
21. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971)
22. McMillian T, McMurtry D: The role of the defense lawyer in juvenile court: advocate or social worker? *St. Louis U L Rev* 14: 561–603, 1969
23. D.C. Code Ann. § 16-2315(c)(2) (2001)
24. Va. Code Ann. § 16.1-26.1(A) (Michie 1999 & Supp 2001)
25. Fla. Stat. § 985.223(1)(h)(2) (2001)
26. Ariz. Rev. Stat. § 8-291.01(B) (1999 & Supp. 2001)
27. S.C. Code Ann. § 44-23-410 (2002)
28. *In the Matter of W.A.F.*, 573 A.2d 1264, 1268 (D.C. 1990) (Farrell J, concurring)
29. *In re Causey*, 363 So.2d 472, 476 (La. 1978)
30. Benekos P, Merlo A: Juvenile justice: the legacy of punitive policy. *Youth Violence Juvenile Just* 6:28–46, 2008
31. Redding RE, Goldstein NES, Heilbrun K: Juvenile delinquency: past and present, in *Juvenile Delinquency: Prevention, Assessment, and Intervention*. Edited by Heilbrun K, Goldstein NES, Redding R. New York: Oxford University Press, 2005, pp 3–18
32. Scott E, Steinberg L: *Rethinking Juvenile Justice*. Cambridge, MA: Harvard University Press, 2008
33. Kruh L, Grisso T: *Evaluation of Juveniles' Competence to Stand Trial*. New York: Oxford University Press, 2005
34. Savitsky JC, Karras D: Competence to stand trial among adolescents. *Adolescence* 74:349–58, 1984
35. Grisso T: The competence of adolescents as trial defendants. *Psychol Public Pol Law* 3:3–32, 1997
36. *Roper v. Simmons*, 543 U.S. 551 (2005)
37. *Graham v. Florida*, 130 S. Ct. 2010 (2010)
38. *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)
39. Va Comm'n on Youth, *Study of Juvenile Competence Issues in Legal Proceedings*. It. Doc. No. 42, at 27-29, 1999
40. Va. Code Ann. § 16.1-356(A) (Michie 1999 & Supp. 2001)
41. Steinberg L, Cauffman E: Maturity of judgment in adolescence: psychological factors in adolescent decision making. *L Hum Behav* 20:249, 253–66, 1996
42. Barratt ES: The biological basis of impulsiveness: the significance of timing and rhythm disorders. *Pers Individ Differ* 4:387–91, 1983
43. Barratt ES: Impulsiveness substrains: arousal and information processing, in *Motivations, Emotions and Personality*. Edited by Spence JT, Izard CE. Amsterdam: Elsevier Science, 1985, pp 137–46
44. Barratt ES: Impulsiveness and aggression, in *Violence and Mental Disorders: Developments in Risk Assessment*. Edited by Monahan J, Steadman HJ. Chicago: University of Chicago Press, 1994, pp 61–79
45. Scott ES, Reppuci NO, Woodward JL: Evaluating adolescent decisionmaking in legal contexts. *Law Hum Behav* 19:221–44, 1995
46. Grisso T: *Forensic Evaluation of Juveniles*. Sarasota, FL: Professional Resource Press, 1998