

Capacity to Proceed in Juvenile Delinquency Hearings: A Developmental Perspective

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Topics

- Characteristics of Adolescents in the Justice System
- Approach to Assessing Adjudicative Competence
- Special Issues to Consider when Assessing Adolescents

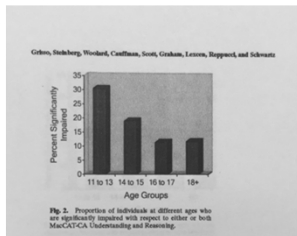
Characteristics of Adolescents in the Juvenile Justice System

Adolescents as Defendants

*MacArthur Foundation Research Network on Adolescent
Development and Juvenile Justice*

1. Do adolescents differ from young adults in abilities to participate in their trials?
2. If so, what types of youths manifest significant differences from young adults?
3. What kinds of deficits in abilities are salient for law, policy, and practice in this area?

MacArthur Study: Adjudicative Competence of Juveniles



- Adolescents aged 16-17 scored similarly to adults on measures of understanding and reasoning
- Adolescents below the age of 15 performed more poorly than young adults
- Significant impairments were noted among adolescents aged 11-13 years old, even when there was no mental illness or defect.

MacArthur Study: Adjudicative Competence of Juveniles



- Intellectual ability was strongly related to competence abilities at all ages, even in "mild" or "low average" ranges.
- Experience and exposure to the legal system was not a good predictor of competence-related abilities

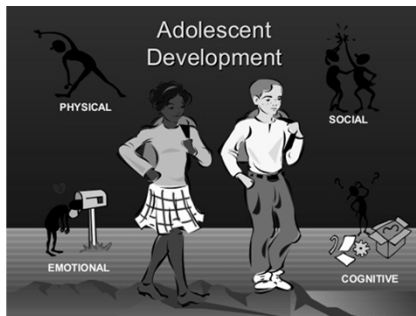
Adjudicative Competence of Juveniles



- Competence deficits in adolescence are less pronounced in relation to adults
- The mental disorders associated with findings of incompetence are more varied than among adults (e.g., ADHD, anxiety, adjustment)
- Adolescents' decision making tends to be more concrete and focused on more immediate consequences rather than long term consequences



Adolescent Development



Adolescent Judgment

Logical reasoning

- Ability to analyze situations
- Ability to consider options
- Planning
- Problem Solving

Abstract Thought

- Ability to think realistically about the future and set goals
- Ability to consider hypothetical situations

Impulse Control

- Temperance
- Ability to keep emotions in check
- Ability to benefit from past experience/learning

Autonomy

- Independent decision making (from peers/parents)
- Conformity & Compliance

- Abstract thought
- Logic/Planning
- Impulse control
- Experience

Autonomy

Perceptions of Risk

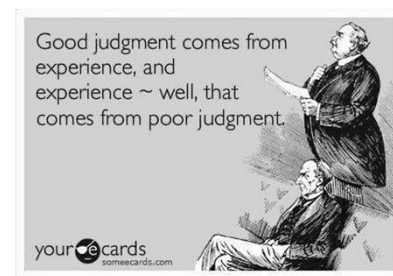
- Abstract thought
- Logical reasoning
- Impulse control
- Experience

Abstract Thinking

Time Perspective

- Logical reasoning
- Impulse control
- Experience

- Abstract thought
- Logical reasoning
- Experience



Overarching Concepts of Development

Perceived
Autonomy Perceptions
of Risk

Abstract
and
Concrete
Thinking Time
Perspective

The Influence of Development on Competency

- Autonomy
- Abstract thinking
- Time Perspective
- Perceptions of Risk



Ability to understand the nature and object of the proceedings against him,

Ability to comprehend his own situation in reference to the proceedings,

Ability to assist in his defense in a rational or reasonable manner.

Assessing Adjudicative Competence

No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

Warning Signs

- Intellectual/learning problems
- Potential complexity of the case
- Communication problems
- Testimony is likely
- Inattention/passivity/conformity
- Plea bargaining is likely
- Difficulty understanding attorney
- High Risk Situations (sex offender)
- Depression, extreme anxiety, unusual behavior

Order for Evaluation Location (LME, hospital, private)

Evaluator Qualifications

Time

Cost

Order for Evaluation

1. Detailed referral question(s) and expectations
2. Expected timeframe
3. Funding (if private)
4. Access to records

Forensic Evaluation Methods

1. The role of the evaluator
2. Determine scope of the evaluation
3. Translate legal criteria to psychological constructs
4. Psychological and forensic testing & Methods
5. Communication of findings



<http://www.mentalhealthandlaw.com/evaluationmethods.html>

Translate Legal Criteria to Psychological Constructs

No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

Translating Legal Criteria to Psychological Constructs

| | |
|---|--|
| By reason of mental illness or defect | <ul style="list-style-type: none"> • Mental health diagnosis • Intellectual disability |
| Understand nature and object of proceedings | <ul style="list-style-type: none"> • Factual understanding of system and charges • Appreciation of system and charges |
| Comprehend his situation | <ul style="list-style-type: none"> • Appreciation of legal situation and implications |
| Assist in rational or reasonable manner | <ul style="list-style-type: none"> • Understand and appreciate role of attorney • Decision making capacities • Attend and cooperate during hearings |

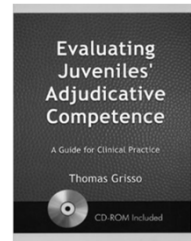
| Legal Criteria | Forensic- Psychological Construct | Possible Assessment Methods |
|---|---|---|
| Mental Illness | Mental Illness | Interview, mental status exam, psychological testing, mental health records, interview with caregivers & others |
| Mental Defect | Developmental disability, intellectual disability, neurological condition | IQ testing, records (school, mental health), interviews with caregivers & others |
| Ability to understand nature and object of proceedings | Factual understanding of purpose of adjudication and hearings, roles of participants, name/seriousness of charges, possible penalties, possible pleas, adversarial nature, potential consequences/risks | Forensic interview and testing (Juvenile Adjudicative Competence Interview) |
| Ability to comprehend his own situation in reference to the proceedings | Ability to appreciate role as juvenile ("defendant"), rights as (to plea, to testify, to remain silent), potential consequences and risks, and role as active participant in the context of working with a defense attorney | Forensic interview and testing |
| Ability to Assist in his defense in a rational or reasonable manner | Ability to attend, maintain self-control, ability to testify, ability to make decisions in a rational manner and without undue influence | Behavioral observation, interview with attorney, and forensic interview and testing |
| Capacity to Learn | What degree of remediation would be required if the person is not competent? | Forensic interview and testing (and re-testing for retention and ability to apply concepts) |

The Process

- Review records (legal, academic, mental health)
- Prepare for unique situations: language, culture, anxiety
- Prepare the youth and caretakers for the evaluation
- Clinical Interview
- Psychological Testing
- Forensic Interview

Measuring Capacity to Proceed to Trial

- Factual Understanding
- Rational Appreciation
- Ability to Assist Counsel
- Legal Decision Making



Factual Understanding

- Purpose of court hearings and general procedures
- Roles of courtroom personnel
- Terminology used by lawyers and Judge
- What punishments are possible
- Pleas available and what happens after plea is entered
- Basic rights during hearings
- Plea Bargain

Rational Appreciation

- Accurate belief about what is factually understood
- Ability to apply factual information to case
- Appreciation of adversarial nature of proceedings
- Appreciation of rights as applied to his/her case
- What choices are available and implications of each
- What is likely to occur, given certain circumstances
- Ability to understand significance and seriousness of offense, from a broader perspective

Ability to Assist Counsel

- Ability to understand and communicate during consultations
- Ability to provide a coherent account of facts of the alleged offense
- Ability to identify potential sources of evidence and witnesses
- Ability to manage stress and demands of the court process
- Ability to follow and comprehend testimony of other witnesses
- Ability to provide testimony with relevance and independence of judgment

Legal Decision Making

- Ability to understand and appreciate potential consequences of decisions
- Ability to weigh short-term gains against possible long-term consequences
- Ability to make rational and independent decisions throughout process (plea, trial, plea bargain, testifying)
- Ability to consider a range of options, to rationally deliberate about the potential implications and make a decision

Making a decision

Is this child competent?



Forming an Opinion

Nature/Purpose of Juvenile Hearing:

John did not know the role of the prosecutor or district attorney. He was then asked to identify which side or person(s) the prosecutor represents, to which he responded, "The court?"

When presented with a diagram of the court, he identified the individuals who sit at each tableHe correctly identified the location When pointing to the table for the prosecution, he stated, "I guess the people who keep tabs...who keep the records." He did not describe the role of the prosecutor/District Attorney.

John was provided education is to the role of the prosecutor. He was informed that the prosecutor is a lawyer who tries to show that he committed the act. He was also informed that the prosecutor presents evidence to show the juvenile committed the act. When asked if he this information, he did not provide an answer.

John reported that the judge is the person who "tries to put people away." When asked if the judge puts 'everyone away,' he stated, "No - the guilty people."

When asked who decides if a person is guilty or not guilty (using adult terminology), he stated, "The system." When asked to explain, he stated, "The other lawyer" (referring to the prosecutor).

John was able to identify the judge as the person who decides the case, including any punishment that might occur. When asked to identify the individuals in the courtroom who are supposed to represent or help him, he responded, "the defense lawyers and court counselors."

Plea Bargain:

John was educated about the meaning and implications of a plea bargain. Specifically, he was told that a plea bargain requires a defendant to plead guilty to a charge. He was informed that if a defendant agrees to plead guilty to a charge, then the prosecutor agrees to something good in return, such as offer a lighter punishment. He was told that there would be no hearing or trial in which evidence is presented. He was informed that a person who rejects a plea bargain and then goes to trial would likely face the original charge and sentence, which would most likely be more significant than that offered in a plea bargain. He was reminded that a person could also reject a plea bargain, go to trial and win the case, in which case there would be no punishment.

- Attempts were made to interview John about his comprehension of a plea bargain, including the potential risks/benefits. He immediately stopped responded and stated he was 'done' and did not want to proceed further with the evaluation.

OR....

John was able to repeat this information, both immediately and following a delay of 30 minutes. He was able to apply the information to a hypothetical case. A week later.....

Reasoning and Decision Making

- Deciding about a lawyer
- Deciding how to assist your lawyer
- Deciding how to plead
- Deciding about a plea bargain

Ability to Assist and Participate

- Ability to attend to hearings
- Ability to Maintain Self-Control
- Ability to Testify

Other Measures of Capacity

- MacArthur Competence Assessment Tool – Criminal Adjudication (MacCAT-CA)
- The Evaluation of Competency to Stand Trial (ECST-R)
- The Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)
- The Fitness Interview Test-Revised (FIT-R)

Other Measures of Capacity: Cautions

- Each tool assesses capacity differently
- The depth of each instrument is variable
- There are no normative data for juveniles on these instruments

Therefore, it might be advisable to use the instruments as structured interviews (no scores) or supplements to the overall evaluation

Identifying Causes of Deficits

- Lack of knowledge and exposure
- Intellectual disability
- Attention Deficit Hyperactivity Disorder
- Psychiatric condition
- Oppositional Defiant Disorder or Conduct Disorder
- Developmental immaturity



Special Issues in the Assessment of Adolescents

Special Issues

- What if the diagnosis cannot be determined?
- What if the person has no mental illness or defect?
- What if the person is just young?
- Influence of parents and peers on competence-related abilities

Special Issues

- Protection of confidentiality
- Protection of privacy, now and in the long-term
- Potentially incriminating statements are revealed during evaluation

Treatment and Remediation

Considerations

- What is the likelihood that the condition causing the deficits can be remedied?
- What intervention/treatment is needed to produce that change?
- How much time is likely to be required to bring about the necessary change?



Potential Causes of Deficits



- Lack of knowledge and exposure
- Intellectual disability
- Attention Deficit Hyperactivity Disorder
- Psychiatric condition
- Oppositional Defiant Disorder or Conduct Disorder
- Developmental immaturity

Remediation

- Type of Treatment
 - Psychiatric treatment (medication)
 - Education
 - Counseling
 - Time for growth?



- Location of treatment
- Length of treatment

Considerations

- Factual understanding deficits are generally more remediable than appreciation, assistance of counsel, and decision-making
- Time-frame: 4-6 months appear most ideal
- If attainment has not occurred in 6 months, the likelihood of attainment decreases markedly

About 70% become capable of proceeding to trial, but is highly dependent on source of deficit and age

- | | |
|------------------------------------|--------------------------------|
| • Source of deficit | • Age |
| • Mental Illness (85-90%) | • Younger adolescents (60-75%) |
| • Intellectual Disability (50-55%) | • Middle adolescents (75-80%) |
| • Both (50-65%) | • Older adolescents (65-70%) |

Recommended Resources



Questions or Comments

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