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Including Young Children in Delinquency Jurisdiction: Issues of Infancy and Capacity

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A child as young as 6 can be a respondent in a delinquency proceeding in North Carolina's juvenile justice system.[1] This is often referred to as the "minimum age" of juvenile jurisdiction. As potential respondents in a delinquency proceeding, these young children can be

- taken into custody;[2]
- interrogated by police;[3]
- remanded to nonsecure or secure custody;[4]
- subject to an adjudicatory hearing to determine whether they are responsible for the alleged act of delinquency;[5] and
- ordered to comply with a range of dispositional options that can include probation, community service, restitution, intermittent confinement in juvenile detention, and out-of-home placement.[6]

Involvement of young children in this range of legal proceedings raises several questions, including:

- Is there a place for an infancy defense in delinquency proceedings?
- What is the role of a respondent in a delinquency proceeding?
- What abilities are necessary to function competently in that role?
- At what age do children gain the abilities needed to have sufficient capacity to function as respondents in delinquency proceedings?

This bulletin addresses these four questions and discusses the potential legal and legislative remedies that may be available to address cases in which a child is incapable of proceeding due to developmental immaturity or a child raises an infancy defense.

The Infancy Defense and the Juvenile Court

The infancy defense provides that children are immune from criminal liability as a result of their inability to understand the wrongfulness of their actions due to their young age.[7] The creation of juvenile courts shifted children out of criminal courts into a structure where the infancy defense was initially irrelevant.[8] There is debate about whether the infancy defense might fit in the current juvenile court context, as the juvenile court has evolved over time to incorporate focus and procedures that are more akin to criminal matters.

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1. Chapter 7B, Section 1501(7)a. of the North Carolina General Statutes (hereinafter G.S.).
2. G.S. 7B-1900.
3. G.S. 7B-2101. A parent, guardian, custodian, or attorney must be present during the interrogation of a juvenile under the age of 16.
4. G.S. 7B-1903.
5. G.S. 7B-2405.
6. G.S. 7B-2506. Out-of-home placements can include placement in the custody of the Department of Social Services, a residential treatment program, a wilderness program, a group home, a multipurpose group home, or, for youth age 10 and over, commitment to a Youth Development Center.
7. Andrew Walkover, *The Infancy Defense in the New Juvenile Court*, 31 UCLA L. Rev. 509, 503–62 (1984).
8. *Id*. at 506.

The Infancy Defense under Common Law

The infancy defense started with English common law. Before the establishment of juvenile courts, prosecution of criminal offenses occurred in criminal court, regardless of the age at which the offense was committed.[9] However, the English common law provided age-based restrictions on prosecuting children for crimes. These restrictions were based on the concept of *doli incapax*—an infancy defense rooted in the child's capacity to understand the illegality of their act and discern good versus evil.[10] Depending on age, presumptions about a child's capacity under this standard applied. As shown in Table 1, children under 7 were presumed to be incapable. A rebuttable presumption of incapacity was in place for youth beginning at age 7 and ending at age 14. Once youth reached the age of 15, they were presumed to have attained this capacity to discern the wrongfulness of their acts.[11]

Table 1. Common Law Capacity Standards under the Infancy Defense

Age of Child	Standard
Under 7	Incapable
7–14	Rebuttable presumption of incapacity
15 and older	Rebuttable presumption of capacity

The common law defense of infancy was rooted in two fundamental functions of the criminal justice system—punishment and deterrence. There was an unwillingness to punish children who were too young to form a criminal intent. Deterrence was not considered possible for children who were not capable of discerning right from wrong.[12]

North Carolina embraced this common law principle as described by the Supreme Court of North Carolina in *State v. Hicks* in 1899.[13] The supreme court upheld the murder conviction of an 11-year-old girl following the death of a child burned by the girl while she was nursing the child. The supreme court held that the following jury instruction was sufficient:

> [A]n infant under 7 years of age could not be shown, even upon the clearest evidence, to entertain a criminal intention, but that, if the age of 7 had been reached, the state could prove that such a person was of sufficient capacity to entertain a criminal intention . . .[.]"This presumption of incapacity to commit crime may be rebutted by clear and strong evidence of a mischievous discretion,—a discretion to discern between good and evil,—or by proof that she (defendant) knew the act was wrong, and that she had knowledge of good and evil, and of the peril and danger of the offense, and the fact of guilty knowledge must

9. *Id*. at 509.

10. *Id*. at 510–11. *See also* Stanford J. Fox, *Responsibility in the Juvenile Court*, 11 Wm. & Mary L. Rev. 659, 664–74 (1970).

11. Walkover, *supra* note 7, at 510–12. Fox, *supra* note 10, at 660. *See also* Laura S. Abrams et al., *Is a Minimum Age of Juvenile Court Jurisdiction a Necessary Protection? A Case Study in the State of California*, 65 Crime & Delinq. 1976, 1978–79 (2019).

12. Walkover, *supra* note 7, at 512.

13. 125 N.C. 636, 34 S.E. 247 (1899).

> be distinctly made out. If she understands the nature and consequences of her acts, and the act indicates intelligent design and malice, she may be convicted."[14]

This was the governing principle for the prosecution of children until North Carolina established its first juvenile court.

The Infancy Defense and the Original Juvenile Court

The creation of the juvenile court both nationally and in North Carolina resulted in a completely new judicial structure for children that focused only on treatment in a way that made the infancy defense irrelevant.[15] The first juvenile courts were not tribunals focused on a child's responsibility for a criminal offense. Instead, they were courts with broad jurisdiction over a wide range of children, including children who were merely at risk of needing the protective intervention of the state.[16] Founded on an ethic of saving children, the juvenile courts functioned in a prevention framework that emphasized early intervention.[17] Most children placed in newly created youth institutions were there as pre-delinquents, not because they had committed serious crimes.[18] Under the prevailing view at that time, there was no need for procedural protections or for capacity determinations in a court that was entirely focused on treatment.[19]

North Carolina's first juvenile court was modeled on this framework. Established in 1919, the first juvenile court had jurisdiction over any child under the age of 16

1. who was "delinquent or who violated any municipal or state law or ordinance or who was truant, unruly, wayward, or misdirected, or was disobedient to parents or beyond their control, *or was in danger of becoming so*;"
2. who was "neglected, or who engaged in any occupation, calling, or exhibition, or was found in any place where a child was forbidden by law to be and for permitting which an adult may have been punished by law, or was in such condition or surroundings or was under such improper or insufficient guardianship or control as to endanger the morals, health, or general welfare of such child;" or
3. who was "dependent upon public support or was destitute, homeless, or abandoned, or whose custody was subject to controversy."[20]

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14. *Id*. at ___, 34 S.E. at 248 (quoting superior court judge's jury instruction). *See also* State v. Yeargan, 117 N.C. 706 (1895) (holding that a misdemeanor offense committed at age 13 was not punishable under the criminal law where the youth did not know he was violating a law and had no intention of committing an offense).

15. Walkover, *supra* note 7, at 514–17.

16. Francis Barry McCarthy, *The Role of the Concept of Responsibility in Juvenile Delinquency Proceedings*, 10 U. Mich. J. L. Reform 181, 183–91 (1977).

17. Fox, *supra* note 10, at 661–62.

18. *Id*. at 664.

19. Walkover, *supra* note 7, at 515–17.

20. Consol. Stat. of N.C. § 5039, L.P. McGehee, ann., A.C. McIntosh, comp. (1920), prepared under N.C. Pub. Laws 1917, Ch. 252, and N.C. Pub. Laws 1919, Ch. 238 (hereinafter C.S.) (emphasis added) (statutory provisions related to the state's juvenile courts were codified in C.S. Chapter 90, Article 2; this bulletin references sections within Article 2).

The court's duty was to provide oversight and control over this wide range of children under its jurisdiction to "conduce to the welfare of such child and to the best interests of the state."[21] The original juvenile court statute was self-described as "remedial in character."[22] All proceedings were to "proceed upon the theory that a child under [the court's] jurisdiction is the ward of the state and is subject to the discipline and entitled to the protection which the court should give such child under the circumstances disclosed in the case."[23] Hearings were conducted in a summary manner, and counsel was not involved. The court had discretion to appoint a guardian ad litem of the child for any proceeding in the new juvenile court.[24]

A child could be adjudicated delinquent, neglected, or in need of more suitable guardianship by the juvenile court on a finding that the child was in need of the care, protection, or discipline of the state.[25] The court was not required to find that the child was responsible for any particular act of delinquency. The finding of the child's need for the care, protection, or discipline of the state was sufficient to trigger a range of potential orders that could include probation or commitment to (1) the custody of another person, (2) the state board of charities and public welfare, or (3) another state or private institution.[26] There was no distinction between cases triggered by an act of delinquency and cases triggered by any of the other range of reasons that brought the child under the jurisdiction of the juvenile court. This new juvenile court was a radical shift away from criminal prosecution of the criminal acts of minors. It was built on a framework of state intervention geared toward the treatment of children who needed that intervention for their own protection—whether they had engaged in an act of delinquency or not. The defense of infancy, a common law shield against criminal liability, was irrelevant under this new construct because all children, regardless of age, might require protection.

The Supreme Court of North Carolina acknowledged the jurisdiction of the new juvenile court quickly after its creation. In *State v. Burnett*,[27] the court laid out the new scope of juvenile jurisdiction and explained how the nature of the juvenile court differed from the penal nature of the criminal court. The court noted that the legislation creating the juvenile court purported to deal with "delinquent children not as criminals, but as wards, and [undertook] rather to give them the control and environment that may lead to their reformation, and enable them to become law-abiding and useful citizens, a support and not a hindrance to the commonwealth."[28] The court also highlighted the movement away from questions of whether or not children had committed a crime in the new juvenile court construct, noting that the new statute operated to extend the common law conclusive presumption that all children under age 7 were incapable of committing a crime to all children under age 14.[29] Given the jurisdiction of the new juvenile court, the court held in *Burnett* that criminal murder indictments against two children who were both under the age of 10 were rightly quashed.[30]

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21. *Id.*
22. *Id.* § 5042.
23. *Id.*
24. *Id.* § 5047.
25. *Id.*
26. *Id.* The court was also expressly allowed to retain jurisdiction over youth who reached the age of 14 and who were charged with a felony for which the punishment was fixed at no more than 10 years' imprisonment. The juvenile court had the discretion to refer these cases to the superior court if it appeared to the juvenile judge that the case should be brought to the attention of the superior court.
27. 179 N.C. 735, 102 S.E.2d 711 (1920).
28. *Id.* at ___, 102 S.E.2d at 714.
29. *Id.*
30. *Id.*

The Evolution of the Juvenile Court: Incorporating Criminal Court Concepts

The juvenile court functioned under its original framework for about fifty years. Significant change occurred in the late 1960s and the 1970s, as many criminal court protections were incorporated into juvenile court delinquency proceedings.[31] This transformation was triggered by the 1967 United States Supreme Court decision in *In re Gault*.[32] The Court took up the appeal of Gerald Gault, who had been committed to an Industrial School for up to 6 years (until he reached the age of 21) for engaging in a lewd phone call. His original adjudication and disposition reflected the processes of the early juvenile court. Gerald was arrested by the police and taken to detention without notice to his parents. He and his parents never received a petition that stated the charges against him. Gerald's confession, which was obtained without *Miranda* warnings, was used against him. The alleged victim was not a part of the proceeding, leaving no avenue for Gerald to confront his accuser. There was no transcript of the proceeding. The trial judge had to testify regarding the proceedings on appeal.[33]

The U.S. Supreme Court rejected this juvenile court model for an adjudication of delinquency. Characterizing the proceedings of the juvenile court as a "kangaroo court,"[34] the Supreme Court held that constitutional due process rights apply in delinquency proceedings. The holding of *Gault* expressly applied to delinquency adjudication proceedings the rights of a person (1) to receive notice of the charges against them, (2) to counsel, (3) to confront witnesses, and (4) against self-incrimination.[35]

North Carolina began enacting conforming changes to its juvenile court statute shortly after *Gault* was decided. The first change involved the creation of a limited right to counsel for juveniles who were alleged to be delinquent. Effective July 1, 1967, juveniles who were facing a hearing at which a finding of delinquency could trigger commitment to an institution became entitled to representation.[36]

More due process protections were added to delinquency proceedings effective January 1, 1970.[37] Titled "An Act To Revise And Clarify The Jurisdiction And Procedures Applicable To Children In the District Court," the revised statute incorporated into the juvenile court setting more features that mirrored the procedures provided to criminal defendants. Table 2 lists these changes.

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31. Barry C. Feld, *Criminalizing the American Juvenile Court*, 17 Crime & Just. 197 (1993). Walkover, *supra* note 7, at 520.

32. 387 U.S. 1 (1967).

33. *Id.* at 8–9.

34. *Id*. at 28.

35. For more detail on the constitutional rights recognized in *In re Gault*, see the following posts by LaToya Powell to the University of North Carolina School of Government's On the Civil Side blog: *Due Process Rights and Children: Fifty Years of In re Gault – Part One* (Aug. 10, 2016), https://civil.sog.unc.edu/due-process-rights-and-children-fifty-years-of-in-re-gault-part-one/; *Due Process Rights and Children: Fifty Years of In re Gault – Part Two, the Right to Counsel* (Sept. 14, 2016), https://civil.sog.unc.edu/due-process-rights-and-children-fifty-years-of-in-re-gault-part-two-the-right-to-counsel; *Due Process Rights and Children: Fifty Years of In re Gault – Part Three, the Right to Notice* (Oct. 26, 2016), https://civil.sog.unc.edu/due-process-rights-and-children-fifty-years-of-in-re-gault-part-three-the-right-to-notice/; *Due Process Rights and Children: Fifty Years of In re Gault – Part Four, the Right to Confrontation* (Nov. 2, 2016), https://civil.sog.unc.edu/due-process-rights-and-children-fifty-years-of-in-re-gault-part-four-the-right-to-confrontation/; and *Due Process Rights and Children: Fifty Years of In re Gault – Part Five, the Privilege Against Self-Incrimination* (May 17, 2017), https://civil.sog.unc.edu/due-process-rights-and-children-fifty-years-of-in-re-gault-part-five-the-privilege-against-self-incrimination/.

36. 1967 N.C. Sess. Laws ch. 870, § 3.

37. 1969 N.C. Sess. Laws ch. 911.

Table 2. Features Added to North Carolina's Juvenile Court Statute Effective January 1, 1970

- A probable cause hearing for any child age 14 or older who was charged with a felony. The hearing was required to "provide due process of law and fair treatment to the child, including the right to counsel."
- The right for the child's attorney to review any court or probation records considered by the court in its decision to transfer a case for prosecution in criminal court
- A requirement that a transfer order specify the reasons for transfer
- A requirement that the parties be served with both the summons and the petition at least five days before the hearing (previously the parties were served only with the summons)
- The right to written notice of the facts alleged in the petition, the right to counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination at adjudicatory hearings
- A requirement that all court orders be in writing and include appropriate findings of fact and conclusions of law

New language regarding the purpose of the proceedings was also added to the state juvenile code. That language continued to distinguish procedures related to children from adult criminal matters and focused on the remedial nature of juvenile proceedings, stating:

> The purpose of this article is to provide procedures and resources for children under the age of sixteen years which are different in purpose and philosophy from the procedures applicable to criminal cases involving adults. These procedures are intended to provide a simple judicial process for the exercise of juvenile jurisdiction by the district court in such manner as will assure the protection, treatment, rehabilitation or correction which is appropriate in relation to the needs of the child and the best interest of the State. Therefore, this article should be interpreted as remedial in its purposes to the end that any child subject to the procedures applicable to children in the district court will be benefitted through the exercise of the court's juvenile jurisdiction.[38]

After *Gault*, The U.S. Supreme Court continued to recognize the constitutional rights of juveniles who were the subject of delinquency proceedings.[39] In 1970, the Court required that the criminal standard of *proof beyond a reasonable doubt* be used in the adjudication of acts of delinquency.[40] Five years later, the Court held that jeopardy attaches to an adjudication of delinquency, noting that there was "no persuasive distinction in that regard [addressing the kinds of risks to which jeopardy refers] between the proceeding conducted in this case pursuant to [the California juvenile code] and a criminal prosecution, each of which is designed 'to vindicate (the) very vital interest in enforcement of criminal laws.' "[41]

38. 1969 N.C. Sess. Laws ch. 911, § 2.

39. One U.S. Supreme Court decision issued during this period of time declined to extend criminal procedure rights to juvenile proceedings. In *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), the Court held that trial by jury is not constitutionally required in a proceeding to adjudicate delinquency.

40. *In re* Winship, 397 U.S. 358, 365–68 (1970).

41. Breed v. Jones, 421 U.S. 519, 531 (1975).

North Carolina enacted a new juvenile code in 1979, in the wake of this line of U.S. Supreme Court decisions and following two years of study by the state Juvenile Code Revision Committee.[42] As described by the North Carolina Supreme Court in *In re Vinson*,[43] the new code brought many aspects of criminal procedure into delinquency proceedings. These sweeping changes required the assurance of due process in juvenile proceedings involving serious charges and potentially harsh consequences. The supreme court acknowledged the convergence of criminal and juvenile matters, stating:

> There is very little to distinguish a hearing such as that held in the case at bar [a juvenile adjudication] from a traditional criminal prosecution. Indeed, in view of the seriousness of the acts allegedly committed by this respondent and the possibility of long term institutionalization, society should demand a formal adversarial proceeding. In such a case, it becomes incumbent upon the court system to safeguard the rights of those alleged to be delinquent just as much as it would protect the rights of any adult person facing a possible prison sentence. Those who cry for harsher treatment of youthful offenders can surely not argue that accused children should have fewer rights than adult offenders when they risk much the same penalties.[44]

The new juvenile code contained a wide range of new procedures and replaced the use of the word "child" with the term "juvenile." It also added a capacity standard into delinquency proceedings.[45] That capacity standard was not, however, related to the common law concept of capacity known as *doli incapax*, the infancy defense. Instead, the juvenile code incorporated the capacity standard of the criminal law. The issue of *doli incapax*—an ability to understand the wrongfulness of one's actions—was not part of the new juvenile code. Finally, the new juvenile code also created a minimum age for juvenile court delinquency jurisdiction for the first time—establishing that children could begin to be tried as juveniles for offenses committed at age 6.[46] Table 3 provides an overview of the many additional procedures that were added to juvenile court proceedings as part of the new juvenile code. Many of these changes remain prominent parts of today's juvenile court landscape.

42. *See* Mason P. Thomas Jr., *Juvenile Justice in Transition—A New Juvenile Code for North Carolina*, 16 Wake Forest L. Rev. 1, 2 (1980).

43. 298 N.C. 640, 651–52 (1979).

44. *Id*. at 652.

45. *See* G.S. 7A-567 (1980) (recodified as G.S. 7B-2401) (incorporating G.S. 15A-1001 as the capacity standard in delinquency proceedings).

46. G.S. 7A-508 (1980) (recodified as G.S. 7B-1501(7)a.).

Table 3. 1979 North Carolina Juvenile Code Additions

- A juvenile intake process that includes a list of offenses that cannot be diverted at intake[47]
- A requirement that petitions must include every element of the offense charged and provide notice of what the juvenile is being accused of[48]
- Procedures for secure custody hearings[49]
- A requirement that a prosecutor must represent the State at a transfer hearing and in all contested delinquency hearings[50]
- A required colloquy between judge and juvenile prior to the acceptance of a juvenile's admission[51]
- Application of the rules of evidence to adjudication hearings and a requirement that the State must prove allegations beyond a reasonable doubt[52]
- New dispositional alternatives, including the requirement that the juvenile must be at least 10 years old to be sent to a training school[53]
- The right to be represented by counsel and a presumption of indigency for any juvenile alleged to be within juvenile jurisdiction[54]
- Law enforcement procedures, including enhanced rights during an interrogation and restrictions on the use of nontestimonial identification procedures without a court order[55]

The Current Juvenile Code

Various amendments have been made to the North Carolina juvenile code enacted in 1979.[56] The current juvenile code still contains the many criminal features added to the law by the 1979 amendments, and more criminal characteristics have been added over time, including the following:

- The provisions of the juvenile code addressing delinquent and undisciplined juveniles were separated from the child welfare provisions of the code in 1999, unwinding the juvenile court's original melding of jurisdiction over children who were in need of state protection.[57] State law covering delinquent and undisciplined juveniles now sits as its own Subchapter of G.S. Chapter 7B with purposes that are distinct from the child welfare purposes of the juvenile code. The first two purposes of this area of law are to protect the public from acts of delinquency and to deter delinquency and crime (through both swift, effective

47. *See* G.S. Ch. 7A, Art. 41 (1980) (recodified as G.S. Ch. 7B, Art. 17).
48. *See* G.S. 7A-530 (1980) (recodified as G.S. 7B-1802).
49. *See* G.S. 7A-542 (1980) (recodified as G.S. 7B-1906).
50. *See* G.S. 7A-569 (1980) (recodified as G.S. 7B-2404).
51. *See* G.S. 7A-572 (1980) (recodified as G.S. 7B-2407).
52. *See* G.S. 7A-573, -574 (1980) (recodified as G.S. 7B-2408, -2409).
53. *See* G.S. 7A-581, -582, -583, -586 (1980) (recodified as G.S. 7B-2506, -2513).
54. *See* G.S. 7A-544 (1980) (recodified as G.S. 7B-2000).
55. *See* G.S. Ch. 7A, Art. 48 (1980) (recodified as G.S. 7B, Art. 21).
56. Information in this bulletin reflects the juvenile code effective through February 1, 2021.
57. S.L. 1998-202.

dispositions that emphasize the juvenile's accountability and the provision of appropriate rehabilitative services).[58]

- The age at which a juvenile can be transferred to superior court for criminal trial as an adult was lowered from age 14 to age 13 in 1994.[59]
- The Juvenile Justice Reinvestment Act recently linked the criminal indictment process to juvenile court for the purposes of transfer of certain offenses committed at ages 16 and 17 to superior court for criminal trial.[60]

The delinquency provisions of the current juvenile code differ substantially from earlier provisions that created and controlled the original legal structure of the juvenile court. They incorporate many aspects of laws pertaining to criminal proceedings, and their purpose is at least as much about deterrence and crime prevention as it is about providing treatment and rehabilitation. The original prevention construct of the juvenile court is not part of the current legal construct, as court intervention is only authorized following a finding of responsibility for an act of delinquency beyond a reasonable doubt.

Is There a Renewed Role for the Infancy Defense in the Modern Juvenile Court?

Given this evolution of the juvenile court, there is a question as to whether there is an appropriate role for the infancy defense in today's delinquency proceedings. Should some threshold level of understanding of the criminality of conduct be required prior to an adjudication of delinquency? Courts around the country have answered this question differently.

Some courts have held that juvenile court remains fundamentally different from criminal court and that the infancy defense therefore has no role in juvenile court. For example, the Supreme Court of Connecticut held that because the juvenile justice system is different in design from the criminal system in that it is focused on guidance and rehabilitation and not on obtaining convictions, "[in] effect, the statutes regulating juvenile misconduct represent a system-wide displacement of the common law."[61]

Other courts have held that the infancy defense is a relevant consideration in delinquency proceedings. These holdings have sometimes been based on existing state laws. The Supreme Court of California was the first court to rule that the infancy defense applied in the context of delinquency cases.[62] That holding was based on the codification of a rebuttable presumption of criminal incapacity for all youth under the age of 14 in California state law.[63] Other state courts have held that the doctrine of *doli incapax* applies in delinquency proceedings even in the absence of statutory authority. The Court of Appeals of Maryland held in *In re William A.* that the defense applied in juvenile delinquency proceedings because it was firmly established

58. G.S. 7B-1500.

59. 1994 N.C. Sess. Laws ch. 22, § 25 (Ex. Sess.).

60. G.S. 7B-2200.5(a)(1).

61. *In re* Tyvonne, 211 Conn. 151, 161 (1989). *See also In re* D.A., 40 Kan. App. 2d 878 (2008); State v. Wood, 931 A.2d 1008 (Del. Fam. Ct. 2007); W.D.B. v. Commonwealth, 246 S.W.3d 448 (Ky. 2007); *In re* M.C.H., 637 N.W.2d 678 (S.D. 2001); *In re* Robert M., 110 Misc. 2d 113 (N.Y. Fam. Ct. 1981); and *In re* Interest of G.T., 409 Pa. Super. 15 (1991).

62. Fox, *supra* note 10, at 667.

63. *In re* Gladys R., 1 Cal. 3d 855, 863–64 (1970). *See also* State v. Q.D., 102 Wash. 2d 19 (1984) (holding that the state statutory criminal defense of infant incapacity is applicable to juvenile proceedings).

under common law and had not been repealed, modified, or declared inapplicable to juvenile proceedings by the state legislature.[64]

North Carolina's appellate courts have not directly addressed the question of whether the incapacity defense may be raised in delinquency cases. However, two North Carolina appellate decisions have touched on the issue in the context of the modern juvenile court. In 1987, the state court of appeals acknowledged that the juvenile court had jurisdiction over a 6-year-old child and, at the same time, noted that the court could not have found a child of that age guilty at common law due to the irrebuttable resumption that she was *doli incapax*.[65] The court went on to state that the juvenile court did not have authority to find the 6-year-old in the case delinquent because "she had been found to have committed breaking or entering and larceny of 'one baton . . . value of unknown.' "[66] It is not clear if the court's basis for that determination was the common law principle of *doli incapax*.

The North Carolina Court of Appeals also addressed the doctrine of *doli incapax* in *State v. Green*, a 1996 case that challenged the change in the juvenile code that allowed children to be transferred to superior court for criminal trial for offenses committed at age 13.[67] The court held that the General Assembly clearly intended to supersede the doctrine of *doli incapax*, which would have required a rebuttable presumption of incapacity for the 13-year-old, in the context of transfer of a juvenile matter to superior court for offenses committed at age 13.[68] The court did not hold that the doctrine of *doli incapax* is never applicable under North Carolina law, stating "[a]lthough the doctrine of doli incapax may still apply in other contexts . . . ."[69] The court of appeals left open the question of exactly how the doctrine might be applicable in other circumstances.

Children's Competence to Stand Trial

Competency

The juvenile code requires that a juvenile must have the capacity to face adjudication as a juvenile delinquent.[70] Capacity is defined under the juvenile code in the same way that the adult capacity standard is defined in the criminal law. It requires that

> [n]o 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.[71]

64. *In re* William A., 13 Md. 690 (1988). *See also In re* Andrew M., 91 Misc. 2d 813 (N.Y. Fam. Ct. 1977) (holding that the common law defense of lack of capacity owing to immaturity shall be available as a defense in a delinquency proceeding if proven factually). *But see also Robert M.*, 110 Misc. 2d 113 (holding that the presumption of infancy is inapplicable in delinquency cases).

65. *In re* Register, 84 N.C. App. 336, 349 (1987).

66. *Id*. at 349.

67. State v. Green, 124 N.C. App. 269 (1996).

68. *Id*. at 281.

69. *Id*.

70. G.S. 7B-2401.

71. G.S. 15A-1001.

Often described in the literature as "competency," this standard was first required in criminal proceedings under the 1960 U.S. Supreme Court decision in *Dusky v. United States*.[72] As articulated in *Dusky*, the defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and . . . a rational as well as factual understanding of the proceedings against him."[73]

The North Carolina statutory implementation of this standard allows for a finding of incapacity only when the person's lack of capacity is caused by mental illness or defect. North Carolina appellate courts have never directly addressed whether or not developmental immaturity constitutes a defect under this statute. To assess whether developmental immaturity ought to play a part in a capacity determination, it is important to understand the role that a child plays as the respondent in a delinquency proceeding.

What Is Required of a Respondent in a Delinquency Proceeding?

While respondents in delinquency proceedings can be as young as 6 and as old as 19, the role that the respondent plays in the proceeding is the same regardless of their age. The respondent is the ultimate decision maker in their case. While attorneys, parents, guardians, and custodians play a role in delinquency proceedings, it is ultimately the respondent who must make the critical decisions about their case.

The Role of the Juvenile's Attorney

Any juvenile who is alleged to be delinquent has a right to be represented by counsel in all proceedings and is presumed indigent.[74] The appointment of an attorney to represent the child creates a traditional attorney-client relationship between the child and the attorney that is governed by Rule 1.2 of the Rules of Professional Conduct of the N.C. State Bar.[75] Pursuant to that rule, the client is the decision maker and the attorney must abide by the client's decisions, including the decision to enter a plea and to testify.[76] As described in the *Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level*,

> (a) An attorney in a juvenile delinquency proceeding is the juvenile's voice to the court, representing the expressed interests of the juvenile at every stage of the proceedings. The attorney owes the same duties to the juvenile under the North Carolina Rules of Professional Conduct, including the duties of loyalty and confidentiality, as an attorney owes to a client who is an adult criminal defendant.
>
> (b) The attorney for a juvenile is bound to advocate the expressed interests of the juvenile. In addition, the attorney has a responsibility to counsel the juvenile, recommend to the juvenile actions consistent with the juvenile's interests, and advise the juvenile as to potential outcomes of various courses of action.[77]

Therefore, in North Carolina, children who are respondents in delinquency proceedings must have access to the advice and skills of counsel, and the attorney representing a child in such

72. 362 U.S. 402 (1960).
73. *Id*. at 402 (quoting assertions of U.S. Solicitor General in court record).
74. G.S. 7B-2000.
75. Title 27, Chapter 02, Rule 1.02 of the N.C. Administrative Code (hereinafter N.C.A.C.).
76. *Id*.
77. N.C. Comm'n on Indigent Def. Servs., Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level, Guideline 2.1, (2007), http://www.ncids.org/Rules%20&%20Procedures/Performance%20Guidelines/Juv_Del_perf_guides_1-08.pdf.

proceedings must represent the expressed interests of the child to the court. While the attorney is obligated to counsel their client, they are bound to represent what their client wants, not what they feel may be in the child's best interests.

The Role of the Juvenile's Parent, Guardian, or Custodian

The parent, guardian, or custodian of the respondent is a party in the delinquency proceeding. The juvenile code requires that the parent, guardian, or custodian be served with a summons.[78] The court obtains jurisdiction over the parent, guardian, or custodian when that person is served.[79] Once the court obtains personal jurisdiction, the parent, guardian, or custodian is required to attend all hearings for which they have notice and to bring the child to the hearings.[80] The court also has authority to order the parent, guardian, or custodian to engage in various activities, such as attending parental responsibility classes; engaging in and paying for evaluation and treatment for the parent, guardian, or custodian; or paying for and participating in evaluation and treatment for the child.[81]

The parent, guardian, or custodian does not necessarily have the same interests or perspective as the child, however. That person is not part of the attorney-client relationship between the child and their attorney. In fact, the child's attorney has an obligation of confidentiality to their client even if the child is very young.[82] At the same time, there is no parent-child privilege, so the child's communication with their parent is not cloaked in confidentiality.

While parents, guardians, and custodians are parties to delinquency proceedings, their involvement does not alter the ultimate responsibility that the respondent bears for participating with their lawyer in the preparation of a defense and for making critical decisions related to the proceeding.

The Role of the Child

The respondent in a delinquency proceeding has nearly all the same constitutional rights as the defendant in a criminal proceeding. It is up to the child to ultimately make decisions about the exercise of those rights. That includes deciding whether to testify as well as deciding whether to make an admission to an offense.

The court has a special obligation to ensure that the constitutional rights of children are protected as the children make these decisions. The juvenile code mandates that the court must "protect the following rights of the juvenile and the juvenile's parent, guardian, or custodian to assure due process of law:

(1) The right to written notice of the facts alleged in the petition;
(2) The right to counsel;
(3) The right to confront and cross-examine witnesses;
(4) The privilege against self-incrimination;
(5) The right of discovery; and
(6) All rights afforded adult offenders except the right to bail, the right of self-representation, and the right of trial by jury."[83]

78. G.S. 7B-1806.
79. G.S. 7B-1805(c).
80. G.S. 7B-1805(b)(4), -1805(b)(5), -2700.
81. G.S. 7B-2701, -2702.
82. 27 N.C.A.C. 02, Rule 1.06; N.C. State Bar, 1998 Formal Ethics Op. 18 (1999).
83. G.S. 7B-2405. Failure of the court to inform the respondent of their right against self-incrimination prior to the respondent testifying has been held to be reversible error. *See In re* J.B., 261 N.C. App. 371 (2018).

The court is also obligated under statute to engage in a six-part colloquy with the respondent before accepting an admission.[84] That colloquy includes informing the child of their right to remain silent and their right to confrontation.[85] The North Carolina Supreme Court has held that failure by the court to ask the child any one of the six questions set out in G.S. 7B-2407(a) before accepting an admission is grounds for reversing the adjudication. The court noted that this heightened protection is necessary "to ensure complete understanding by juveniles regarding the consequences of admitting their guilt."[86]

These constructs are a reflection of the fact that the respondent in a delinquency proceeding is the ultimate decision maker regarding the exercise of their rights. This is the case whether the respondent is 6 years old or 19 years old.

A respondent in a delinquency proceeding is also required to engage with their attorney in a manner that enables the attorney to represent them. This engagement requires the child to understand the role of their attorney, to have the capacity to recall and communicate clearly about the incident that led to the charge, and to process information provided by the attorney in a rational manner as it applies to that child's options. As in a criminal case, a juvenile respondent must have these basic skills to effectively work with their attorney.

A child respondent in a delinquency matter will have many decisions to make throughout the life of the case, including the following:

- Should I answer questions posed to me by the police officer?
- Should I trust and confide in my attorney?
- What are the short-term and long-term implications for my life if I make an admission?
- What are the short-term and long-term implications for my life if I don't make an admission?
- Should I exercise my right to remain silent?
- Does the prosecution have enough evidence to support an adjudication?

Any child who is a respondent in a delinquency proceeding must make these decisions regardless of their age. While parents and attorneys are participants in the child's case, it is ultimately the child who is the decision maker.

WHAT ABILITIES MUST THE CHILD POSSESS TO FULFILL THIS ROLE?

A person needs three types of capacities in order to be considered competent to stand trial. They are

- factual understanding of the proceeding,
- rational understanding of the proceeding, and
- ability to assist counsel.[87]

84. G.S. 7B-2407(a).

85. G.S. 7B-2407(a)(1), -2407(a)(4).

86. *In re* T.E.F., 359 N.C. 570, 576 (2005).

87. Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice,* 7 Victims & Offenders 428, 439 (2012).

There are many abilities that must be developed in order to obtain the necessary capacities. Grisso detailed a range of abilities necessary for children to have the capacity to be competent to stand trial.[88] These abilities are listed in Table 4.

Table 4. Abilities Children Need in Order to Obtain Capacity in Delinquency Proceedings (Grisso, 2003)

Capacity	Necessary Abilities
To understand the charges and their potential consequences	• Understand and appreciate the charges and their seriousness • Understand possible dispositional consequences of "responsible" and "not responsible" findings • Realistically appraise the likely outcomes
To understand the adjudication process	• Understand, without significant distortion, the roles of participants in the adjudication process • Understand the process and potential consequences of pleading and plea bargaining • Grasp the general sequence of pre-adjudication/ adjudication events
To participate with their attorney	• Adequately trust or work collaboratively with their attorney • Disclose a reasonably coherent description of facts pertaining to the charges, as perceived by the defendant, to the attorney • Reason about available options by weighing their consequences, without significant distortion • Realistically challenge prosecution witnesses and monitor trial events
To participate in the courtroom	• Testify coherently, if testimony is needed • Control one's own behavior during trial proceedings • Manage the stress of trial

Because these abilities are necessary for competency, and because competency is required in order to adjudicate a child delinquent, it is important to consider whether there is a certain age at which children generally attain the necessary abilities. The next section considers whether all children under a certain age are too developmentally immature to be competent as respondents in a delinquency matter.

88. Thomas Grisso, *What We Know about Youths' Capacities as Trial Defendants*, *in* Youth on Trial: A Developmental Perspective on Juvenile Justice 139–171, 142 (Thomas Grisso & Robert G. Schwartz eds., 2003).

AT WHAT AGE DO CHILDREN DEVELOP THE ABILITIES NECESSARY FOR COMPETENCY?

There is not a large body of research on the competence of children under the age of 11. Research on the attainment of adjudicative competence for youth of any age was relatively sparse before the 2000s.[89] Substantially more research on the topic was published between 2000 and 2020.[90] However, even this much larger body of research tends to focus on youth who have reached at least age 11, as older youth are more commonly involved in the juvenile justice system.

The research that does exist on the impact of age and adjudicative competence tends to support the common finding that age is a significant factor in the attainment of adjudicative competence.[91] For example, a study of 324 youth between the ages of 8 and 22 who participated in the Los Angeles County Juvenile Mental Health Court found that the youngest and most cognitively and developmentally impaired youth were the most likely to be found incompetent to stand trial by the court of origin (before referral to the Juvenile Mental Health Court).[92] According to the study, children were often deemed incompetent to stand trial due to the developmental immaturity associated with their exceptionally young age.[93] A 1995 study of 136 juveniles ages 9 to 16 who were referred for competency assessments in South Carolina found that none of the 9- and 10-year-olds were deemed competent.[94] That same study found that 18.2 percent of 11-year-olds were competent and 27.3 percent of 12-year-olds were competent, suggesting to the authors that the association between age and competency may be a function of cognitive maturity.[95] A study that focused on reasoning ability and legal variables among young children found that there was little explicit understanding of the connection between the strength of the evidence in a child's case and plea decision making for children under the age of 10.[96]

More recent research has focused on restoring competency in children through remediation. A 2019 study analyzed 1,913 juveniles ages 8–18 who participated in the Virginia Department of Behavioral Health and Developmental Services Juvenile Competency Program from 1999 through 2017.[97] The researchers found that juveniles between the ages of 8 and 10 were the most likely to have their charges dismissed, potentially reflecting the role of developmental immaturity at these ages.[98] They also found that age at offense, a diagnosis of only intellectual

89. Kathryn A. Cunningham, *Advances in Juvenile Adjudicative Competence: A 10-year Update*, 38 Behav. Scis. &the L. 406, 406–20 (2020).

90. *Id*.

91. Matthew Soulier, *Juvenile Offenders: Competence to Stand Trial*, 35 Psychiatric Clinics of N. Am.: Forensic Psychiatry, 837, 837–54 (2012); Sofia T. Stepanyan et al., *Juvenile Competency to Stand Trial*, 25 Child & Adolescent Psychiatric Clinics of N. Am.: Adjudicated Youth, 49, 49–59 (2016); Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 N.C. L. Rev., 793, 793–846 (2005).

92. Eraka Bath et al., *Correlates of Competency to Stand Trial Among Youths Admitted to a Juvenile Mental Health Court*, 43 J. Am. Academ. Psychiatry & the L., 331, 333, 329–39 (2015).

93. *Id*. at 331.

94. Vance L. Cowden & Geoffrey R. McKee, *Competency to Stand Trial in Juvenile Delinquency Proceedings: Cognitive Maturity and the Attorney-Client Relationship*, 33 Univ. Louisville J. Fam. L. 629, 651–57 (1995).

95. *Id*.

96. Michele Peterson-Badali et al., *Young Children's Legal Knowledge and Reasoning Ability*, 39 Canadian J. Criminology & Crim. Just. 145 (1997).

97. Janet I. Warren et al., *The Competency Attainment Outcomes of 1,913 Juveniles Found Incompetent to Stand Trial*, 6 J. Applied Juv. Just. Servs., 47, 47–74 (2019).

98. *Id.* at 58.

disability, and diagnosis of both a mental illness and developmental disability were all significant factors in whether competency was restored.[99]

Appendix A provides a summary of these studies and others regarding age and adjudicative competence. While researchers have not identified one age at which all children achieve the developmental maturity to be competent to stand trial, the research supports the conclusion that the abilities needed to function as a competent respondent are gained as children age. Studies that have included children under the age of 11 have consistently found significant gaps in competency among those young children. In addition, several studies that have included older youth have found that younger teenagers show deficits in competency at significantly higher rates than older teenagers.[100]

Is a Competency Standard That Does Not Account for Childhood Constitutional?

Incorporation of the criminal competency standard into the juvenile code without any recognition that competency determinations for children are in some ways different than competency determinations for adults may run afoul of recent U.S. Supreme Court jurisprudence on the uniqueness of childhood. Beginning with the 2005 decision in *Roper v. Simmons*,[101] the Supreme Court has held that developmental differences between minors and adults have implications for the constitutional rights of minors in the justice system. In *Roper*, the Court relied in part on the fact that juveniles under the age of 18 are more immature and irresponsible; more vulnerable to outside influences, including peer pressure; and have less well-formed character than adults when it held that executing youth under the age of 18 violates the Eighth and Fourteenth Amendments to the U.S. Constitution.[102] This reasoning was extended to prohibit (1) the imposition of life without parole sentences for non-homicide juvenile offenders[103] and (2) sentences of mandatory life imprisonment without parole for offenders under the age of 18[104] as violations of the Eighth Amendment.

While this line of cases clearly establishes that youth under 18 are different from adults in important ways, a U.S. Supreme Court decision regarding a juvenile delinquency case from North Carolina is perhaps most instructive on the use of adult standards in delinquency cases. The case, *J.D.B. v. North Carolina*,[105] focused on whether the analysis of when a child is in custody, triggering the need for *Miranda* warnings prior to interrogation, must be informed by the fact that the person is a child. The Court noted various areas of the law where differences for children, as a class, are acknowledged, including criminal sentencing, contracting, ability to get married, ability to alienate property, and tort law.[106] The Court then concluded that "[o]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature

99. *Id.* at 63.

100. Bath et al., *supra* note 92; Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants,* 27 L. & Hum. Behav. 333 (2003); Stepanyan et al., *supra* note 91; Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 Psych., Pub. Pol'y, & L. 3, 3–32 (1997); Grisso, *supra* note 88.

101. 543 U.S. 551 (2005).

102. *Id.*

103. Graham v. Florida, 560 U.S. 48 (2010).

104. Miller v. Alabama, 67 U.S. 460 (2012).

105. 564 U.S. 261 (2011).

106. *Id*. at 273–74.

adults."[107] Based on this reasoning, the Court held that a child's age must be part of the custody analysis for purposes of *Miranda* warnings as long as the child's age was known to the officer questioning the child or would have been objectively apparent to a reasonable officer.[108]

This line of jurisprudence calls into question the constitutionality of applying an adult competency standard to juveniles without any recognition that children are developmentally different from adults. While the U.S. Supreme Court and North Carolina appellate courts have not answered this question directly, the line of cases establishing that constitutional rights are impacted by the fact of childhood and the robust social science research on child development suggest that this question is likely ripe for litigation or for legislative remedy.

Conclusion

Including children as young as 6 in delinquency jurisdiction raises questions regarding the role of the infancy defense in delinquency proceedings and the capacity of young children to function as competent respondents. It is possible that these questions will be answered over time through evolving case law. It is also possible that the questions could be resolved through legislation. Cunningham offered a summary of suggestions developed to address such age considerations.[109] They include the following:

- Implement a multi-tiered adjudication system, as suggested by Larson and Grisso in 2011.[110] Under this structure, children ages 10 and under would be conclusively presumed incompetent. Children ages 11–13 would be assumed incompetent unless they were questioned, evaluated, and adjudicated competent. Children age 14 and older would be assumed competent unless they were questioned, assessed, and adjudicated incompetent.
- Eliminate the presumption of capacity and place the burden of proof on the prosecution to prove competence.
- Require a capacity evaluation for all youth under a specified age.
- Create a higher standard for adjudicative competence for youth that takes judgment and/or future orientation into account.
- Establish a federal minimum age.

Implementation of each of the first four of these solutions in North Carolina would require state legislative action. The last suggestion would require federal legislation followed by state-level enacting legislation.

Whether these issues are resolved by the courts or the by legislature, there is abundant law and social science in which to ground the answers. As Justice Sotomayor wrote in *J.D.B.*,

> A child's age is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and perception. Such conclusions

107. *Id.* at 274 (internal quotation marks, citations omitted).

108. *Id*. at 277.

109. Cunningham, *supra* note 89.

110. Kimberly A. Larson & Thomas Grisso, Nat'l Youth Screening & Assessment Project, Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers (2011).

> apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge.
>
> Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children generally are less mature and responsible than adults, that they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them, that they are more vulnerable or susceptible to . . . outside pressures than adults, and so on.[111]

The research highlighted in this bulletin shows that these considerations are exacerbated for younger children and that they are critical to determining whether or not 6 is the appropriate age for functioning as a respondent in a delinquency proceeding.

111. *J.D.B.*, 564 U.S. at 272 (internal quotation marks, citations omitted) (quoting various other Supreme Court decisions, including Roper v. Simmons, 543 U.S. 551 (2005)).

Appendix A. Research on Age and Adjudicative Competence

Gary B. Melton, *Children's Concepts of Their Rights*, 9 J. Clinical Child Psych. 186, 186–90 (1980).
Semi-structured interviews of first, third, fifth, and seventh graders regarding their understanding of what a right is, measured along a continuum from something authority figures allow children to do, to a concept based on fairness and competence to exercise self-determination, ending at an abstract ethical principle.
Findings: First graders were unable to give a correct definition or example of a right. By third grade, the average child had some understanding of what a right is. "It is clear, though, that children under third grade should not be permitted to waive rights because they do not know what the word means."

Vance L. Cowden & Geoffrey R. McKee, *Competency to Stand Trial in Juvenile Delinquency Proceedings: Cognitive Maturity and the Attorney-Client Relationship* (1995) (cited in full *supra* note 94).
Assessed the competency of 136 juveniles ages 9 to 16 who were referred for competency assessments in South Carolina between January 1987 and January 1994.
Findings: Age was significantly correlated with competency. None of the 9- and 10-year-olds were deemed competent. 18.2 percent of 11-year-olds were found to be competent. 27.3 percent of 12-year-olds were deemed competent.

Findings suggest that an association between age and competency may likely be a function of cognitive maturation. Severity of mental health diagnosis and prior placement in special education or history of disrupted school achievement were also significantly correlated with competence.

Michele Peterson-Badali et al., *Young Children's Legal Knowledge and Reasoning Ability* (1997) (cited in full *supra* note 96).
Assessed legal reasoning abilities in 67 youth ages 7–12.
Findings: The reasoning of children under 10 contained little explicit understanding of the relationship between important legal variables (such as the strength of evidence) and their plea decisions.

Almost none of the participants understood what a plea of not guilty meant. Many children, especially younger children, stated that their lawyer could breach confidentiality. Replicated similar findings from an earlier study.

Deborah Cooper, *Juveniles' Understanding of Trial-Related Information: Are They Competent Defendants?* 15 Behav. Scis. & the L., 167, 167–80 (1997).
Studied the competency of 112 youth ages 11–16 who were experiencing their first state-operated juvenile justice institutional placement. Included pre-test, educational component, and post-test. Only one youth was age 11, and two were age 12. Their results were combined with the 13-year-old group.

Findings: Understanding of court proceedings necessary for competency is related to age. Contrary to the researcher's initial hypothesis, far more children at all ages were found not to have a competency level of understanding. Showing the children an educational video did significantly improve performance, but not enough for the great majority of youth to score as "competent." Two youth scored as competent on a pre-test. Twelve children scored as competent on a post-test. Of those twelve, two were age 13, one was 14, three were 15, and six were 16.

Thomas Grisso et al., ***Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*****, 27 L. & Hum. Behav. 333, 336 (2003).**
Studied the competency of 1,393 participants ages 11–24 (some in detention and others in the community).
Findings: Found significantly impaired reasoning among 30 percent of youth ages 11–13, 19 percent of youth ages 14 and 15, and 12 percent of youth age 16 and older. Youth with juvenile justice system experience did not perform better than youth without such system experience. Younger youth of lower intelligence were especially likely to be deficient in the necessary capacities associated with trial competence. Among 11- to 13-year-olds, more than one-half with an IQ of between 60 and 74, and more than one-third with an IQ of between 75 and 89, were found to have significantly impaired reasoning. Approximately two-thirds of the detained juveniles age 15 and younger had an IQ that was associated with a significant risk of being incompetent to stand trial because of impaired understanding, impaired reasoning, or both. The proportion of participants who chose confession as the best option in their cases decreased with age, from about one-half of the 11- to 13-year-olds to only one-fifth of young adults.

Eraka Bath et al., ***Correlates of Competency to Stand Trial Among Youths Admitted to a Juvenile Mental Health Court.*** **(2015) (cited in full** ***supra*** **note 92)**
Studied 324 male and female participants in Los Angeles County Juvenile Mental Health Court between 2005 and 2009. Youth were ages 8–22 and included both youth found competent to stand trial and youth found incompetent to stand trial.
Findings: Younger age was highly associated with findings of incompetency. Youth found incompetent to stand trial were most likely to be the youngest and most cognitively and developmentally impaired in the juvenile justice system. Findings suggest that developmental immaturity should be regarded as a salient factor that may impact a finding of incompetency in a juvenile mental health court.

Joseph Chien et al., ***Predictors of Competency to Stand Trial in Connecticut's Inpatient Juvenile Competency Restoration Program*****, 44 J. Am. Acad. Psychiatry & the L., 451, 451–56 (2016).**
Studied all juveniles ordered to inpatient adjudicative competency restoration in Connecticut between 2005 and 2012. This included 58 juveniles ages 12–17, with a mean age of 15.
Findings: Juveniles for whom competency was restored had significantly higher IQs than for those for whom competency was not restored. IQ was the only significant predictor of restoration. Age was not significant. The study did not look at juveniles who were incompetent primarily on the basis of developmental immaturity.

Janet I. Warren et al., ***The Competency Attainment Outcomes of 1,913 Juveniles Found Incompetent to Stand Trial*****, 6 J. Applied Juv. Just. Servs., 47, 47–74 (2019).**
Studied 1,913 youth ordered by the court into the Virginia Department of Behavioral Health and Developmental Services Juvenile Competency Program between January 1, 1999, and December 30, 2017. Youth were between the ages of 8 and 18.
Findings: Age was found to be determinative of the outcome of the services provided. 44 percent of youth under age 14 were remediated, while 66 percent of those 14 and older were remediated. Youth ages 8–10 had charges dismissed most often. Age at offense, diagnosis of only intellectual disability, and both a mental illness and developmental disability were all found to be significant in whether youth were restored or were unlikely to attain competency. 66 percent of youth ages 8–10 were remediated, 80 percent of youth ages 11–13 were remediated, and 76 percent of youth ages 14–16 were remediated. The process of remediation unfolded rather quickly, with the majority of remediation happening within three months of service provision. Researchers described Virginia's program as a "clearly articulated strategy implemented by well trained staff and pursuant to articulate and informed statutory regulations."