

CITIZENS FOR JUVENILE JUSTICE

On-line Update

March 2004

Juvenile Mental Competency to Stand Trial

Recent high profile cases involving violent youth crime have made competency of juvenile suspects a major concern and present two related issues: culpability and competency to stand trial. At what age are youth able to understand the nature of their criminal conduct such that they can be found criminally guilty? At what age are they able to understand the legal process and the charges against them?

This update will focus on the second of these issues. Because of the significant psychological and maturity differences between adolescents and adults, juvenile offenders are generally tried in a different justice system than adults. Massachusetts created a separate juvenile system almost 100 years ago, following the philosophy of “*parens patriae*” or “the state is the father.” This system differs from the adult system in several important respects, including the fact that it focuses on rehabilitation, proceedings are closed, and the records are sealed. Recent national data shows, however, that a growing proportion of juveniles are being prosecuted as adults in our country. A large number of these cases are for non-violent offenses. **How competent to stand trial are these young defendants?**

Competency to stand trial in adult court requires three factors:

- The ability to understand the nature and possible consequence of charges, the trial process, the participants’ roles, and the accused’s rights in this process;
- The ability to participate with and meaningfully assist counsel in developing and presenting a defense; and
- The ability to make decisions to exercise or waive important rights.

(See Grisso, <http://www.abanet.org/crimjust/juvjus/12-3griss.html>.)

On March 3, 2003, the MacArthur Foundation’s Research Network on Adolescent Development and Juvenile Justice published a report titled “*MacArthur Juvenile Adjudicative Competence Study*.” MacArthur found that **“a significant proportion of children age 15 and younger who are charged with a crime don’t possess the intellectual and emotional maturity to understand the judicial process.”** As a result, these youth cannot “contribute effectively to their own defense.” The juvenile court presumes that offenders are immature: “their development is incomplete, their judgment is less than mature, and their character is still

developing.” On the other hand, the adult court assumes mature defendants. (For a summary of the study, see <http://www.mac-adoldev-juvjustice.org/competence%20study%20summary.pdf>.)

MacArthur’s tests of youth revealed that one in three 11-13 year olds and one in five 14-15 year olds could not understand the trial proceedings or aid in their defenses.

Laurence Steinberg, director of the MacArthur Network responsible for the study, comments “in view of our findings, states should re-examine the age at which it is permissible to try juveniles as adults or, at the very least require a competency evaluation be performed before transferring the young adolescent.”

(http://www.temple.edu/news_media/bb0312_458.html)

Redlich and Goodman have provided additional evidence with their study on juvenile crime confessions. The report, titled “*Taking Responsibility for an Act not Committed: The Influence of Age and Suggestibility*” finds that young juveniles are more likely to sign a false confession than young adults. In the study, researchers had participants type data into a computer, warning them that touching the ALT key would cause the computer to crash. Subsequently, the researchers accused the participants of hitting the key and told them they would be penalized. 78% of the 12-13 year olds, 72% of the 15-16 year olds, and 59% of young adults falsely admitted to the accusation, and signed a confession. While two thirds of the younger age groups signed the statement with no comment, only one third of the young

adults did so. (For a copy of the report, published in the April 2003 issue of Law and Human Behavior, see <http://www.uark.edu/misc/lampinen/read/f03/redlich03.htm>.)

Steven Drizin, Clinical Associate Professor at Northwestern University School of Law, explains that while the study got high results with “mild” techniques, “more aggressive psychological techniques ... are even more likely to produce false confessions.”

Juveniles must be carefully assessed before standing trial, in order to achieve fairness and legality. The juvenile court should consider the following standards for assessment:

- The examiner appointed by the court must be qualified to evaluate children and to perform competency to stand trial evaluations;
- The examination must include not only an assessment of mental disorder, but also an assessment of developmental disabilities and cognitive and social developmental status; and
- The assessment must include the full range of abilities relevant for competency to stand trial: (1) understanding of the charges, consequences, and trial process; (2) cognitive, attentional, communication, and interpersonal abilities relevant for assisting counsel meaningfully; and (3) capacities for decision making about rights that are essential for due process.

(See Grisso, <http://www.abanet.org/crimjust/juvjus/12-3gris.html>.)

Recent Legal Developments

§ **Lionel Tate** became the youngest person (age 14) ever to be tried as an adult, convicted of first degree murder for killing a 6 year old playmate at age 12, and sentenced to life without parole. In December 2003, the Florida Appeals Court reviewed and overturned this decision. “At a minimum...the [trial] court had an obligation to ensure that the juvenile defendant, who was less than the age of fourteen, with known disabilities raised in his defense and who faced mandatory life imprisonment, was competent to understand the plea offer...and understood the defense being raised and the state’s evidence to refute the defense position, so as to ensure that Tate could effectively assist in his defense.” Tate subsequently signed a second-degree murder plea agreement and was released from prison in late January 2004.

§ In the infamous “**Central Park Jogger**” case, five juveniles were wrongfully convicted of a brutal rape and assault of a young woman in 1989. This case demonstrates the vulnerability of youth to police interrogation tactics. It is not clear what occurred in the interrogation rooms for the 28 hours before the false confessions. Two of the suspects—all between the ages of 14 and 16—had IQs below 90. They believed they would be able to go home if they confessed and provided details that did not match the crime. Regardless, they were tried and convicted as juveniles. In early 2002, another man confessed to the

assault; DNA evidence corroborated his confession. On December 19, 2002, on the recommendation of the Manhattan District Attorney, the sentences of the original five juveniles were overturned.

§ In 2003, **Illinois enacted legislation requiring electronic recording of all (adult and juvenile) interrogations and confessions.**

The legislation is the first of its kind and will take effect in 2005. Statements made by suspects during custodial interrogation are presumed inadmissible unless electronically recorded. Two other states, Minnesota and Alaska, have recorded interrogations since 1984 and 1985, respectively, though this recording is not required by their legislature. These practices add another layer of protection for juveniles being interrogated in police custody.

Interesting Websites

Laurence Steinberg. “Juvenile Competence to Stand Trial.” Northwestern University/University of Chicago Joint Center for Poverty Research Policy brief. http://www.jcpr.org/policybriefs/vol5_num1.html

Includes summary of Steinberg’s paper and link to full paper.

Thomas Grisso. “Juvenile Competency to Stand Trial: Questions in an Era of Punitive Reform.” <http://www.abanet.org/crimjust/juvjus/12-3gris.html>

A comprehensive article offering a description of the current problems and suggestions for improvement.

National District Attorneys Association.
http://www.ndaa.org/pdf/jj_state_statutes.pdf

Table of states addressing competence of juveniles to stand trial and states providing for the insanity defense in juvenile proceedings.

Juvenile Law Center Amicus Brief for Lionel Tate.
http://www.jlc.org/Resources/pdfs/amicus_stateA.pdf

Florida District Court of Appeals decision in Lionel Tate v. State of Florida.
<http://news.findlaw.com/cnn/docs/juvjustice/tatefl121003opn.pdf>

The Court reversed Tate's sentence and found that a competency evaluation was required to determine whether Tate had sufficient ability to consult with his attorney and understand the legal proceedings.

The Innocence Project.
<http://www.innocenceproject.org/case/index.php>

Information about the "Central Park Jogger" case and false confessions.

Center for Policy Alternatives.
<http://www.stateaction.org/2004agenda/12.pdf>

2004 policy brief on electronically recording interrogations.

CfJJ News

Rebeca's baby. CfJJ's former Administrator, **Rebeca Fernández**, who left CfJJ in October, 2003, to move to Florida, delivered a healthy baby girl, **Leah**, on January 20, 2004. Congratulations to Rebecca!

Welcome, Gale. **Gale Munson** joined the staff of CfJJ in January as our new Program Coordinator. With a J.D. from Harvard Law School, Gale clerked for Justice Paul Reardon on the Massachusetts Supreme Judicial Court and then practiced law with Palmer & Dodge where she specialized in commercial real estate. In 1985 she resigned as partner from the firm and devoted the next ten years to family and volunteer projects. From 1996 through April, 2003, she worked for the Henry P. Kendall Foundation in Boston as grants administrator and program associate.

Welcome, Interns. CfJJ is delighted to have two interns working part-time in its office this spring. **Jennifer Freeberg** is a first year student at Harvard Law School and **Megha Parekh** is a first year student at Harvard College. Their energy, interest, and stunning competence are great gifts to CfJJ.

New Board Officers. CfJJ has elected its officers for 2004 and 2005: **John Larivee**, CEO of Community Resources for Justice, is our new President. **Ronn Johnson**, Vice-President of the Center for Human Development, is Vice-President. **Jeanne Schuster**, Senior Manager with Ernst & Young, is Treasurer, and **Susan Dillard**, Co-Director of the Children and Family Law Program at the Committee for Public Counsel Services, is our Clerk. Thanks to all of them for their willingness to take on these important responsibilities!

Girlhood screening and panel. In February, the **Museum of Fine Arts** screened *Girlhood*, an important documentary by director Liz Garbus which follows two young girls in the Maryland juvenile justice system. CfJJ

partnered with the MFA and the **Hyams Foundation** to publicize the film and to organize a panel discussion of the film and the issues it raises. The film was very successful and the panel discussion (featuring **Marilyn Anderson Chase** from the United Way, Juvenile Court Justice **Leslie E. Harris**, **Laurie Jo Wallace**, Director of the Medical Foundation's new Youth Development Division, and **Barbara Morton**, Director of Region 2 for DYS) generated so much interest that many people had to be turned away! Their interest was well-warranted: the panelists were passionate and thoughtful and engaged the standing-room only crowd in a substantive discussion of the challenges the juvenile justice system faces as it tries to meet the needs of girls.

Upcoming Events

Conference: Disproportionate Minority Contact: A Focus on Juvenile Justice in Massachusetts. March 30. 8am-5pm. Northeastern University, Curry Student Center, Ballroom. Hosted by the National Legal Department of the ACLU and the ACLU of Massachusetts; CfJJ is pleased to co-present. Speakers will include **James Bell**, Director of the W. Haywood Burns Institute; **Bart Lubow**, Senior Program Associate, Annie E. Casey Foundation; **Judge Martha Grace**, Chief Justice of the Massachusetts Juvenile Court; **Joseph Carter**, Chief of the MBTA Police Department; **Robert Gittens**, Chairperson, Massachusetts Juvenile Justice Action Committee; **Jane Wiseman**, Director, Programs Division, Executive Office of Public Safety; **Robin Dahlberg**, Senior Staff Attorney, ACLU; and **Lael Chester**, Executive Director, Citizens for Juvenile Justice.

They will discuss DMC, its impact on Massachusetts, and possible reform. **SPACE IS LIMITED!** Please RSVP to **Lisa Bailey**, Institute for Race and Justice, Northeastern University, at 617-373-4678. For directions, see <http://www.counselingcenter.neu.edu/dates.html>

Conference: The State of the State's Prisons. March 25-26. Organized by the Department of Sociology and Criminal Justice at Bridgewater State College. Speakers will include **Kathleen Dennehy**, Acting Commissioner of the Massachusetts Department of Corrections; **Leslie Walker** of Massachusetts Correctional Legal Services; **Elyse Clawson** of the Massachusetts Crime and Justice Institute; and **Marc Mauer** of the Sentencing Project in Washington D.C. The conference will run from 6:30-8:30 p.m. on March 25 and from 8:00 a.m. – 4:45 p.m. on March 26. For details, see <http://www.bridgew.edu/PublicAffairs/pressrelease/2004/March/prisonconference.cfm>

Save the date: April 7 CfJJ membership meeting. On Wednesday, April 7, from 3:00 p.m. - 4:30 p.m., CfJJ will have its spring membership meeting at the Boston Bar Association, 16 Beacon Street, Boston. Please plan on joining us!

