

Juvenile Mental Competency

Different Standards May Help Juveniles Facing Criminal Prosecution

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Different Standards

The definition of an incompetent child is significantly broader than the definition of an incompetent adult. It can be argued that the broader, juvenile definition of incompetence should apply to juveniles facing criminal prosecution.

Due Process

Juveniles are entitled to due process of law pursuant to the Sixth Amendment to the United States Constitution and Article 2, §§ 4 and 24 of the Arizona Constitution. *See, e.g., In re Timothy M.*, 197 Ariz. 394, 398, ¶ 16, 4 P.3d 449, 453 (App. 2000). Thus, the juvenile court's "jurisdiction must be exercised in accordance with due process standards." *In re Richard M.*, 196 Ariz. 84, 86-87, ¶ 11, 993 P.2d 1048, 1050-51 (App. 1999). It violates due process for an incompetent person to participate in proceedings designed to determine whether such person engaged in unlawful conduct. *Bishop v. Superior Court*, 150 Ariz. 404, 406, 724 P.2d 23, 25 (1986). Therefore, "[a] juvenile shall not participate in a delinquency, incorrigibility or *criminal* proceeding if the court determines that the juvenile is incompetent to proceed." A.R.S. § 8-291.01(A) (emphasis added).



Separate Provisions

Juvenile delinquency proceedings differ fundamentally from criminal proceedings. *In re Themika M.*, 206 Ariz. 553, 555, ¶ 13, 81 P.3d 344, 346 (App. 2003) (citing *Maricopa County Juv. Action No. JV-508488*, 185 Ariz. 295, 299, 915 P.2d 1250, 1254 (App. 1996)). Generally, then, the Rules of Criminal Procedure do not apply to juvenile delinquency proceedings. *Maricopa County Juv. Action No. JV-508488*, 185 Ariz. at 299, 915 P.2d at 1254. Exceptions to this general rule are made to protect constitutional rights, such as the right to due process of juveniles. *Id.* at 299-300. 915 P.2d at 1255. For example, in *State ex rel. Dandoy v. Superior Court*, Rule 11 of the Rules of Criminal Procedure was applied to juvenile delinquency proceedings in order to protect the due process rights of juveniles. 127 Ariz. 184, 187, 619 P.2d 12, 14 (1980). At the time that *Dandoy* was decided, there existed no provision applicable in juvenile delinquency proceedings for determination of mental competency. *Id.* Therefore, Rule 11 of the Rules of Criminal Procedure was applied to juvenile delinquency proceedings in order to protect the due process right of juveniles to mental competency determinations. *Id.* However, after *Dandoy* was decided, the Arizona legislature enacted A.R.S. § 8-291 et seq. This statutory scheme governs mental competency determinations in juvenile delinquency proceedings. Hence, it no longer is necessary or appropriate to apply Rule 11 to juvenile delinquency proceedings.

Broader Definition of Incompetence

An adult is incompetent if, "as a result of a mental illness, defect, or disability, the person is unable to understand the proceedings against him or her or to assist in his or her own defense." Rule

11.1, Rules of Criminal Procedure. However, a juvenile is incompetent if he or she “does not have sufficient present ability to consult with the juvenile’s lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the juvenile.” A.R.S. § 8-291(2). Thus, a juvenile can be incompetent even if he or she does not suffer from a mental illness, defect, or disability. *In re Hyrum H.*, 212 Ariz. 328, 332, ¶ 23, 131 P.3d 1058, 1062 (App. 2006).

A juvenile cannot be found incompetent solely because he or she is very young. “Age alone does not render a person incompetent.” A.R.S. § 8-291(2). However, mental and emotional maturity is different from age and thus can contribute to a juvenile’s incompetence.

Argument for Application of Juvenile Definition to Juveniles in Criminal Proceedings

The idea that a person can be incompetent due to an impairment other than a mental illness, defect, or disability is not unique to Arizona and has been applied to adults in criminal proceedings. *See, e.g., Dusky v. United States*, 362 U.S. 402 (1960) (An incompetent criminal defendant is one who lacks “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and [lacks] a rational as well as a factual understanding of the proceedings[.]”).

Brain development seldom is complete at age eighteen. Instead, brain development continues into adulthood and sometimes is not complete until age twenty-five. Beyer, *Recognizing the Child in the Delinquent*, Kentucky Children’s Rights Journal, Vol. VII, No. 1, Spring 1999, 45, 55. “As a result, although today’s teens mature physically at younger ages than their parents, and although they take on many of the behavioral trappings of adulthood, ‘that does not mean that they understand the full implications of their behavior.’” Begley, *Mind Expansion: Inside the Teenage Brain*, Newsweek, May 8, 2000, 68 (quoting psychologist Deborah Yurgelun-Todd). “Both the pattern of brain use and the structure of brain regions change through the teen years.” *Id.* Thus “the brain regions that teens use for several tasks differ from the regions adults use.” *Id.* This explains why younger people often have trouble managing emotions, understanding others, and using good judgment. *Id.* Moreover, “[p]rogress toward completion of cognitive and moral development stages can be detoured or delayed by cultural, intellectual, and social disadvantages.” Grisso, *Society’s Retributive Response to Juvenile Violence: A Developmental Perspective*, Law and Human Behavior, Vol. 20, No. 3, 1996, 229, 233.



Incomplete brain development impairs the ability to assist counsel. A study funded by the MacArthur Foundation contains findings that a significant portion of juveniles aged fifteen years and younger who are not mentally ill and not mentally retarded lack the capacity to understand criminal court process and to meaningfully consult with an attorney. Grisso, et al, *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants* (2003). The study was the first-ever, large-scale study inquiry into whether youths can be incompetent due merely to intellectual and emotional immaturity. More than 1,400 youths between 11 and 24 years old participated in the study. Very few had serious mental disorders. The authors of the report of the findings that resulted from the study concluded that

[q]uestions about how minors function as criminal defendants compared to adults go beyond those that are captured by the narrow focus of the ordinary competency inquiry. ... [T]hose who deal with young persons charged with crimes – particularly their attorney – should be alert to

the impact of psychosocial factors on youths' attitudes and decisions, even when their understanding and reasoning appear to be adequate. Deficiencies in risk perception and future orientation, as well as immature attitudes toward authority figures, may undermine competent decision making in ways that standard assessments of competence to stand trial do not capture.

Id. at 37-38.

Clearly, competency requires more than parroting information. However, many youths cannot think hypothetically. Beyer at 53. Moreover, "as decision-making skills emerge in adolescence, they are manifested earlier or later in different task domains." Grisso, *Society's Retributive Response*, at 234.

The United States Supreme Court has recognized that teenagers do not have fully developed brains. *Graham v. Florida*, ____ U.S. ____, 120 S.Ct. 2011 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005). In *Roper*, the court held that capital punishment of a person younger than eighteen at time of the offense is unconstitutional. 543 U.S. at 568. The court in *Roper* reasoned that youths are less mature and not fully developed, and thus are less culpable. *Id.* at 569-70. In *Graham*, the court held that it is unconstitutional to imprison for life without the possibility parole a person younger than eighteen at time of an offense other than a homicide. ____ U.S. at ____, 120 S.Ct. at 2030. The court in *Graham* noted that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Id.* at ____, 120 S.Ct. at 2026.

Due to the fact that the juvenile mind is still developing, mental illnesses cannot be diagnosed until age eighteen. Hence, a teenager who shows multiple symptoms of a serious mental illness such as schizophrenia, and is unable to understand the proceedings and assist counsel because of those symptoms, cannot be diagnosed with schizophrenia. In other words, such a teenager clearly is incompetent, but cannot be diagnosed with a mental illness. It would be an obvious due process violation to criminally prosecute this youth in juvenile or criminal court. A youth's ability to comprehend the proceedings and assist counsel does not change simply because he has crossed from juvenile to criminal court.

Insanity Defense

Finally, in addition to the right to not participate in proceedings if incompetent, a juvenile accused of a delinquent act has the right to assert an insanity defense and to be found delinquent except insane. *In re Natalie Z.*, 214 Ariz. 452, 153 P.3d 1081 (App. 2007). The standard is the criminal one: A person is guilty except insane if the defense proves by clear and convincing evidence that, due to a mental disease or defect, the person did not know that the unlawful act was wrong. *Id.* at 455-56, ¶¶ 7, 11, 153 P.3d at 1084-85; A.R.S. § 13-502(A),(C). What is not clear in juvenile court is the fate of a child found delinquent except insane. The court did not decide the issue in *Natalie Z.* because the child in that case was not legally insane.

What is clear is that a child found guilty except insane would not be sentenced to the presumptive term and ordered hospitalized, as would an adult pursuant to A.R.S. § 13-502(D). Juveniles are not sentenced, but rather receive dispositions pursuant to A.R.S. § 8-341(A). The juvenile statute contains neither presumptive terms nor any set terms of incarceration. Instead, a child committed to the Arizona Department of Juvenile Corrections ("ADJC") remains incarcerated until reaching age eighteen or until ADJC determines that he or she has been sufficiently rehabilitated. Hence, while the court may order a minimum amount of incarceration pursuant to A.R.S. § 8-341(L), the maximum amount of incarceration is determined not by the court, but by ADJC. Furthermore, in juvenile court, probation is a separate disposition rather than a suspended prison sentence. A.R.S. § 8-341(A)(1); see also *Maricopa County Juv. Action No. JV-500210*, 177 Ariz. 3, 5, 864 P.2d 560, 562 (App. 1993) (Juveniles do not have the right to reject probation). Therefore, it is unclear what mental health treatment could be ordered for a child found guilty except insane.