

## Juveniles in Court

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Nineteenth-century American reformers were concerned about the influence of immaturity and development in juvenile offenses. They responded to their delinquent youths through the creation of juvenile courts. This early American juvenile justice system sought to treat children as different from adults and to rehabilitate wayward youths through the state's assumption of a parental role. Although these rehabilitative goals were never fully realized, the field of American child psychiatry was spawned from these efforts on behalf of delinquent youths. Early child psychiatrists began by caring for juvenile offenders. The function of a child psychiatrist with juvenile delinquents expanded beyond strictly rehabilitation, however, as juvenile courts evolved to resemble criminal adult courts—due to landmark Supreme Court decisions and also juvenile legislation between 1966 and 1975. In response to dramatically increased juvenile violence and delinquency rates in the 1980s, juvenile justice became more retributive, and society was forced to confront issues such as capital punishment for juveniles, their transfer to adult courts, and their competency to stand trial. In the modern juvenile court, child psychiatrists are often asked to participate in the consideration of such issues because of their expertise in development. In that context we review the role of psychiatrists in assisting juvenile courts. (HARV REV PSYCHIATRY 2010;18:317–325.)

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### HISTORY OF JUVENILE LAW

Adults have always made the laws that define order and justice in societies, but such laws have historically varied in their assignment of criminal culpability to juveniles and adults. For example, in the eighteenth century under English common law, children younger than 7 years were con-

sidered lacking the cognitive capacity to know and understand the consequences of their actions. Without the criminal intent, or *mens rea*, such immature children were not capable of committing a crime. Children between 7 and 14 were similarly presumed to lack this capacity unless the prosecutor could prove that the child defendants knew and understood the consequences of their acts. Persons older than 14 were considered adults, subject to the full weight of the law and punishment, including death if so determined.<sup>1</sup> This “rule of sevens” was based on developmental considerations and a moral distinction between children and adults.

Courts, scholars, religions, and philosophers have long contemplated the difference between children and adults, along with the role of immaturity when assigning moral culpability. Such moral divisions stem from our developmental sensibility that observes children change physically, emotionally, and cognitively into adults. As children mature in these domains, they also morally evolve. Numerous researchers have increased our understanding of moral development. Piaget found that moral thinking shifted between two stages when children become age 10 or 11 years. He observed that younger children made moral judgments based on rules and the consequences of breaking them. Children

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entering formal operations began to consider the intentions underlying the act of breaking these rules in a more relativistic perspective. Kohlberg built upon Piaget's stages and postulated that moral development moved through six stages as moral dilemmas were confronted. According to Kohlberg, challenges and debates with others over moral problems broaden a child's initial focus on authority to later consider the good of society.<sup>2</sup> The stages of moral development outlined by Piaget and Kohlberg articulate a basis for a difference between juvenile and adult moral culpability. As part of development, children will become adults with a different sense of, and perspective on, wrong and right. Societies have struggled with these moral distinctions as they considered their legal procedures and management of juvenile offenders.

Though nineteenth-century America did not have the moral understanding elucidated by Piaget and Kohlberg, society was influenced by an emerging appreciation of development and a view of adolescence as a distinct period of life that required nurturing. Juvenile law in the United States took as the source of its authority the English common law doctrine of *parens patriae*, Latin for "parent of the nation." Under this doctrine, the state is empowered and authorized to act as the "parent" and to protect persons who are legally unable to act on their own behalf. With this authority, the creation of houses of refuge, or reformatories, was one of the earliest institutional interventions in the United States on behalf of wayward youths. The first house of refuge was established in New York in 1825 by the Society for Prevention of Juvenile Delinquency.<sup>3</sup> The purpose of this reformatory was to house juveniles away from adults, rehabilitate these youthful offenders, and prevent recidivism through education, character development, and vocational skills.<sup>2</sup> The early reformatories were intended to minimize court proceedings and avoid punishments unless other alternatives proved futile.

By removing children from adverse home environments "for their own good," early juvenile reforms operated principally out of benevolence, but these good intentions also created their own problems. The facilities were poorly regulated, and some youths were abused and victimized; the theory and practice of juvenile incarceration were not always congruent. Pisciotta<sup>4</sup> examined the records and annual reports of some of these facilities and discovered that the disciplinary style was less humane than the parental environment. Additionally, he found that these settings were often corrupting, discriminatory towards minorities and lower socioeconomic youths, and unable to provide the level of training and education originally promised under the *parens patriae* doctrine.

Beyond the concerns for safety and efficacy, the constitutionality of involuntarily detaining youths in institutions was being challenged as the Progressive Era dawned in the

late nineteenth century. In that era, like-minded individuals began addressing issues such as women's suffrage, child labor laws, and mandatory education.<sup>5</sup> The Child Savers movement emerged as an educated group invested in child welfare reform. Through advocacy efforts and evolving standards of understanding child development in regard to the punishment and culpability of youths, the first juvenile court was founded in Illinois in 1899.

The Illinois Juvenile Court Act of 1899 created the first juvenile court system with authority and jurisdiction over abused, neglected, delinquent, and dependent children younger than 16 years. Under the *parens patriae* model, the court's purpose remained rehabilitative, rather than punitive, toward these vulnerable and deviant youths. The act accordingly required the separation of youths from adults, disallowed the detention of children under the age of 12 years in jails, and kept records confidential to minimize stigma later in life. The courts remained civil in design, and criminal protections afforded to adults were not originally applied to juvenile proceedings. Judges would engage youths in a parental way, and matters were handled in a nonadversarial manner.<sup>3</sup> The development of juvenile courts in other states rapidly followed over the next 50 years.

Under the creation of a juvenile court system, the state was assumed to be acting in the best interests of the child. Judges were given broad discretion to handle the cases and wide latitude to rehabilitate juveniles. The court extended its authority beyond children with criminal offenses to include a broader variety of misbehaving children and status offenders. An example of a status offense is truancy, an act that may be prohibited by the law, but it would not be a crime if committed by an adult. These offenses are often referred to as PINS (Persons in Need of Services) or CHINS (Children in Need of Services). Issues concerning these children's civil liberties, such as habeas corpus rights, were disregarded. If a juvenile was determined to need confinement, such confinement was considered rehabilitative rather than punitive.

This rehabilitation of delinquent youths that began with juvenile courts ultimately evolved into the field of child and adolescent psychiatry in the United States. Following the establishment in Chicago of the nation's first juvenile court, the problems associated with juvenile delinquency were given further attention by women on the board of directors of Jane Addam's Hull House. In 1909, they created (also in Chicago) the Juvenile Psychopathic Institute and employed a neurologist, William Healy, who wanted to study the brains of juvenile delinquents. Dr. Healy formed teams comprising neuropsychiatrists, psychologists, and social workers to assess and treat these youths.<sup>6</sup> This model was replicated by child guidance clinics that emerged in other major U.S. cities. The clinics began as adjuncts to juvenile courts trying to rehabilitate wayward youths, but

grew into America's first community treatment program for mentally disturbed youths. Many of these child guidance clinics that were formed in the early twentieth century continue to provide child and adolescent psychiatry services today.

## THE CRIMINALIZATION OF THE JUVENILE COURT

By 1925, only two states lacked a juvenile court,<sup>7</sup> and these courts operated without significant objection until midcentury. During the 1950s and 1960s, civil libertarians questioned the ability of the juvenile justice system to rehabilitate delinquent youths. They doubted that juvenile institutions were sufficiently different from adult prisons, and challenged the broad discretion given juvenile court judges.<sup>3</sup> Because juvenile courts were modeled to be rehabilitative, the due process protections afforded juveniles were minimal. The legal rights of children in juvenile courts were ultimately addressed through a series of U.S. Supreme Court decisions from 1966 to 1975, along with federal legislation enacted in 1974. By the end of this period, the constitutional protections afforded children in juvenile court began to more closely resemble those in adult criminal court.

The first U.S. Supreme Court case regarding the juvenile court system was *Kent v. United States* (1966),<sup>8</sup> which concerned the question whether it was constitutional for a juvenile court, without proper procedure and protections of the juvenile's legal interests, to waive jurisdiction over that juvenile, thus effectively transferring the case to the standard, adult criminal court. The primary purpose of transferring a juvenile's case to an adult criminal court for adjudication is that more severe punishments are available within the adult system. Morris Kent was a 16-year-old boy charged with robbery, housebreaking, and rape. He was interrogated and detained without a lawyer present, and he was not informed of his right to remain silent. A waiver hearing was never held despite a motion by Mr. Kent's attorney. Mr. Kent's defense attorney submitted an affidavit from a psychiatrist stating Mr. Kent required psychiatric hospitalization, and juvenile court staff and probation noted that Mr. Kent's mental status was deteriorating. The judge refused to consider this information and waived jurisdiction over Kent, thereby transferring him to adult court for his trial. Mr. Kent was found guilty there and sentenced to 30 to 90 years in prison. On appeal, the Supreme Court held in *Kent v. United States* that a juvenile is entitled to a waiver hearing with representation by counsel, to access by counsel to all records, and to a written statement by the judge outlining the reasons for the waiver. The Court expressed more specific concern regarding the constitutional protections afforded juveniles, noting that "the child receives the worst

of both worlds: . . . he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children."

The *Kent* decision signified a shift in society's approach toward the purpose of juvenile court and highlighted the growing unease over sacrificing constitutional rights to satisfy the intended goal of rehabilitation. In 1967, President Lyndon Johnson's Commission on Law and Enforcement and Administration of Justice published a report entitled *Juvenile Delinquency and Youth Crime* about the juvenile court system and the prevention of delinquency. This report formally questioned many of the juvenile court's rehabilitative practices that had been weighted above constitutional requirements.<sup>9</sup>

The U.S. Supreme Court further considered many of the issues raised by *Kent* and the Johnson commission's report in *In re Gault* (1967).<sup>10</sup> Gerald Gault was a 15-year-old boy who was on probation in Arizona when he and a friend made a lewd crank call to a female neighbor, asking if she had "big bombers." The neighbor identified Mr. Gault, and he was detained by police. His parents were not notified until the following day. During the court proceeding, Mr. Gault was not represented by counsel, evidence was not presented, and the victim did not appear in court. Convicted of the same crime, an adult could have received the maximum sentence of two months in jail or a \$50 fine. Mr. Gault was adjudicated a delinquent and committed to a correctional facility for an indeterminate period, up to the age of 21. Mr. Gault's attorney filed a writ of habeas corpus, challenging his commitment, and the case was heard by the U.S. Supreme Court. In *Gault* the Supreme Court held that under the Fourteenth Amendment, juveniles have the following rights: notification of charges; representation by legal counsel; protection against self-incrimination; and confrontation and cross-examination of witnesses. In a decision supporting Gault, Justice Fortas wrote, "Under our Constitution, the condition of being a boy does not justify a kangaroo court."

The U.S. Supreme Court further augmented the due process protections for juveniles in *In re Winship* (1970).<sup>11</sup> Samuel Winship was 12 years old when charged with stealing \$112 from a woman's purse in a store. He was adjudicated delinquent and committed to a training school based not on evidence beyond a reasonable doubt (the standard in adult criminal cases), but on the preponderance of the evidence—the standard of evidence used by the juvenile court and by the adult court system only in civil cases. The Supreme Court held that juvenile courts needed to employ the same standard of proof (no reasonable doubt) as that in the adult criminal justice system.<sup>12</sup>

The last in the line of U.S. Supreme Court cases discussed here—ones that moved the juvenile court toward the protections afforded an adult criminal defendant—was *Breed*

*v. Jones* (1975).<sup>13</sup> Gary Jones was 17 years old when he was adjudicated a delinquent for armed robbery. At the juvenile equivalent of a sentencing hearing, the judge waived jurisdiction and transferred the case to the adult criminal court for trial. Mr. Jones's attorney argued that this waiver and the resulting transfer to another court violated the Fifth Amendment's Double Jeopardy Clause, which prohibits trying a person twice for the same crime. The attorney argued that he had been tried in juvenile court (even though the proceeding there was an adjudication, not a trial), and that the transfer to adult court essentially resulted in being tried for a second time for the same crime. The Supreme Court held that a court waiver must take place before or in place of a juvenile adjudication hearing because the potential consequences of adjudication are just as severe as in adult criminal proceedings. Thus, the Double Jeopardy Clause protects a juvenile from being criminally prosecuted for an offense after a juvenile court has already adjudicated it.

In addition to the doctrinal developments in the court system, Congress came to play an important role with the enactment of the Juvenile Justice and Delinquency Prevention Act (JJJPA) in 1974. This legislation created the Office of Juvenile Justice and Delinquency Prevention and offered federal funds to states that upheld two "core protections": the deinstitutionalization of status offenders, which requires youths who commit offenses such as truancy not to be detained in detention facilities; and the separation of juvenile and adult offenders even if juveniles are placed in adult jails. In 1980, an additional provision was added to the JJJPA: the removal of youths from adult jails except under limited circumstances. In 1992, the JJJPA was again revised, this time to include a requirement for states to address the overrepresentation of minority youths in the juvenile justice system. With the exception of Wyoming, all states participate in this program today. Congress is currently considering legislation to reauthorize the standards set by the JJJPA because the authority for the act expired in 2007.<sup>14</sup>

## JUVENILE COURTS ARE STILL NOT ADULT CRIMINAL COURTS

With these heightened protections, juveniles are better safeguarded in the legal process, but their rights in the juvenile court system still differ from adult criminal courts. After a youthful offender is arrested, he can be detained, and a detention hearing is usually required within 24 hours. At this hearing, however, a court can decide to hold the youth in detention, without bail, prior to trial or a fact-finding hearing if the court determines that the youth is a threat to himself or the community, or there is not a parent who is able and willing to care for him. Approximately 20% of the

delinquency cases processed result in such detention.<sup>15</sup> Juveniles view these detentions as punishment, but in *Schall v. Martin* (1984)<sup>16</sup> the U.S. Supreme Court upheld the constitutionality of preventive detention prior to trial for youths who might run away or commit another offense, in order to "protect the juvenile and society from the hazards of pretrial crime." Gregory Martin, a 14-year-old arrested and charged with robbery, assault, and possession of a weapon, had been held in detention for 15 days because the court found there was a "serious risk" that he would commit another crime if released.

A further limitation to a juvenile's legal protections in court concerns the right to a jury trial. In the case of *McKeiver v. Pennsylvania* (1976),<sup>17</sup> Joseph McKeiver was a 16-year-old boy charged with robbery, larceny, and receiving stolen goods after he and 20 to 30 associates chased three youths and stole 25 cents from them. Adult criminal defendants can request a jury trial, but when Mr. McKeiver's attorney requested one for his client, the juvenile court denied the request. On appeal, the U.S. Supreme Court ruled that a jury trial was not required for children in juvenile court. Turning back to the original mission of the juvenile court, the Court argued that jury trials were too adversarial in nature and were contrary to the rehabilitative purpose of the juvenile court system. Currently, in some states for certain offenses, minors are entitled to juries, but the general rule remains that juveniles are not entitled to jury trials unless the juvenile court waives jurisdiction and transfers a case to the adult court for a trial.

Despite judicial progress on some fronts, the experience of a juvenile offender in the juvenile justice system remains significantly different from that of an adult in criminal court (who is basically tried and then convicted [and then sentenced] or not). If adjudicated delinquent, juveniles can be detained in juvenile correctional facilities until age 21, put on probation, or diverted to programs such as those for residential drug treatment. As we have also seen, juveniles can, via judicial waiver, be transferred from juvenile courts to adult courts. The age at which such transfer can occur varies from state to state; in Vermont, a 10-year-old can be judicially waived to adult court.<sup>18</sup> Who bears the burden of proof (i.e., state vs. defense) in determining the appropriateness of waiver also varies by state, though in most jurisdictions, the state must prove a youth's non-amenability to treatment. A judicial waiver is also usually contingent on a juvenile's risk for future dangerousness in combination with other factors delineated by the controlling state statute.

Though juveniles' procedural rights may increase in adult courts, the transfer to adult courts has multiple drawbacks for a youth. Once in criminal court, the juvenile can be sentenced to longer punishments, lose future rights such

as voting, and find himself with a criminal record that can be used against the juvenile at a later date, especially in a “three strikes you’re out” sentencing structure. Criminal courts also open the juvenile to more victimizing experiences in adult penal settings, and waivers have actually been shown to increase future criminal recidivism in youths. Waived youths are more likely to reoffend, and to reoffend more quickly and more often, than those retained in the juvenile system.<sup>19</sup> A significant majority of the youths waived to adult court are minorities, and up to 40% of youths are waived for nonviolent offenses.<sup>20</sup> Further, youths waived to adult courts and then incarcerated end up in adult facilities that lack developmentally appropriate treatment, training, or education. One of the strengths of a juvenile facility is its developmental underpinning and its ability to assess and treat juveniles on a more individual basis. Juvenile facilities remain rehabilitative, whereas adult facilities are more punitive. Once transferred to the adult court, a youth’s potential to rehabilitate significantly diminishes because the settings, if found guilty and incarcerated, lack developmentally appropriate resources and even the understanding that chronological age does not necessarily match maturational age.

The majority of states define a juvenile as an individual less than 18 years of age. However, some states (e.g., Connecticut, New York, and North Carolina) have set the upper age of juvenile jurisdiction at 15, and all youths age 16 or older are considered adults.<sup>21</sup> Juvenile court authority over youths may also extend beyond the upper age of original jurisdiction. At the end of 2004, statutes in 34 states extended juvenile court jurisdiction in delinquency cases until the twenty-first birthday.<sup>21</sup> This extended jurisdiction enables juvenile courts to influence choices and opportunities beyond high school years, with the potential to negatively affect college admission and enlistment in the military.

Juveniles remain subject to legal proceedings for status offenses. The U.S. Supreme Court has yet to clarify the due process rights of status offenders. Many courts require only the preponderance of the evidence to hold a youth accountable for a status offense.<sup>22</sup> Jurisdictions vary widely on how they handle such offenses—despite the JJDP of 1974, which affirmed the deinstitutionalization of status offenders and recommended the removal of court authority over them.

Confidentiality for youthful offenders—once a primary concern of juvenile court—has eroded severely. Delinquency hearings are open to the public in 14 states, and 47 states have modified or removed confidentiality provisions of juvenile court. With the court’s permission, a juvenile’s record may be examined by the prosecutor, law enforcement, social agencies, school, victim, and the public.<sup>21</sup>

## MORE RECENT TRENDS IN JUVENILE LAW

During the late 1980s and early 1990s, juvenile crime rates increased, and juvenile courts took a more punitive stance as they were confronted with intensified violence and homicide. More youthful offenders were transferred, via waiver, to adult court, and society began demanding more punishment and less tolerance for juveniles who committed crimes. Though juvenile homicide rates began to decline after 1992, states passed legislation to transfer juveniles who committed certain crimes to adult court. In this rush to punish juveniles, society also reconsidered the constitutionality of executing defendants who committed crimes as juveniles. The United States was the only developed country that continued to allow capital punishment for offenders who committed crimes as minors. From 1973 to 2004, 228 death sentences were imposed on such offenders; 22 resulted in execution, and 134 were reversed or commuted. The United States and Somalia are the only United Nations members that have not ratified the UN Convention on the Rights of the Child, which prohibits the execution or life imprisonment without parole for offenses committed as a minor.<sup>7</sup> This prohibition is founded on the belief that a child under 18 years lacks the cognitive maturity to be held as morally culpable as an adult who has committed a similar offense.

The first significant legal challenge to the execution of offenders who committed crimes as minors was *Thompson v. Oklahoma* (1988).<sup>23</sup> In that decision the U.S. Supreme Court held Oklahoma’s statute, which did not specify any age limit for the execution of a juvenile, violated the Eighth Amendment prohibition against cruel and unusual punishment. This issue was reexamined in 2005 by the Supreme Court in *Roper v. Simmons*.<sup>24</sup> In 1993, Christopher Simmons was 17 years old when he planned to murder Shirley Cook with friends. Mr. Simmons had said that he wanted to kill someone before his eighteenth birthday because he believed he would not receive the death penalty due to his age. Ms. Cook was thrown off a bridge while alive by Mr. Simmons and a friend. Mr. Simmons confessed to the murder, and a jury recommended the death penalty. Mr. Simmons’s attorney challenged the constitutionality of the death penalty, citing the Eighth Amendment prohibition against cruel and unusual punishment. His attorney also cited *Atkins v. Virginia*,<sup>25</sup> a 2002 case in which the Supreme Court held that under evolving standards of decency, the execution of the mentally retarded was cruel and unusual punishment.

Though the crime committed by Mr. Simmons was cruel and heinous, the American Psychiatric Association and the American Academy of Child and Adolescent Psychiatry submitted amicus briefs to the Supreme Court in support of abolishing the death penalty for youths. These psychiatric groups presented neuroscientific evidence that suggested

youths were immature due to limited brain and cognitive development. In a 5-4 ruling, the Court held that it was cruel and unusual punishment to execute a person who committed a crime under age 18 years. In its decision the Court cited the sociological and scientific evidence that it had been presented regarding developmental immaturity. The Court additionally noted that states already had laws that prevented those under 18 years from voting or serving on juries due to concern about the immaturity of juveniles. Further, "evolving standards of decency" had led to only three states (Oklahoma, Texas, and Virginia) carrying out a juvenile death sentence in the past ten years.<sup>12</sup>

Due to *Roper v. Simmons*, juveniles are no longer given the death penalty, but there remained, as of the time of that decision, instances in which juveniles had been sentenced to life without parole for non-homicide offenses. Moreover, in Washington State, offenders as young as age 8 could be sentenced to life without the possibility of parole for such offenses.<sup>26</sup> The U.S. Supreme Court reviewed this situation in the 2010 case of *Graham v. Florida*, which concerned a 17-year-old youth sentenced to life imprisonment after a probation violation following a felony robbery when he was age 16.<sup>27</sup> Arguments heard in *Roper* regarding evolving standards of decency were once again presented to the Court. In a 5-4 decision the Court ruled that sentencing juveniles to life without parole for non-homicide offenses is cruel and unusual punishment in violation of the Eighth Amendment. In so doing, the Court definitively found juvenile offenders less culpable than adult offenders. *Graham* will likely lead to new sentences for other teenagers, such as Joe Sullivan, who was sentenced to life without parole in Florida following a conviction for sexual battery at age 13. Although the Supreme Court dismissed Mr. Sullivan's case<sup>28</sup> on the same day that it decided *Graham*, Mr. Sullivan, currently age 33, will be allowed to challenge his sentence under that decision.

## THE PSYCHIATRIST'S ROLE IN THE JUVENILE COURT SYSTEM

During the early years of juvenile courts and children guidance clinics in the United States, psychiatrists played a central role in assessing and treating juvenile delinquents. A century ago, juvenile courts intended to rehabilitate a delinquent youth, and the field of American child psychiatry grew out of psychiatrists' participation in this process. As described above, these child guidance clinics blossomed into important community resources for disturbed youths and their families. Today, psychiatrists continue to work in such clinics, and also in treatment facilities and detention centers, such as juvenile halls, where they engage in the ongoing treatment and rehabilitation of delinquent youths. While

this treatment is essential, the role of child psychiatrists expanded beyond care and rehabilitation as juvenile courts became increasingly criminalized in response to legislation and Supreme Court decisions that, by mandating greater rights for juveniles, also had the effect of making modern juvenile court proceedings much more adversarial.<sup>29</sup> Child psychiatrists are frequently asked to assess juveniles and, more generally, to participate in the process of implementing legal safeguards and rights for juveniles that had not even been imagined at the dawn of juvenile courts. Child psychiatrists participate beyond the delineated treatment of delinquent youths through forensic evaluations, writing reports, and testifying in court regarding specific legal questions such as adjudicative competency and criminal responsibility.

A child and adolescent psychiatrist may have various roles, depending on the context of the evaluation in the juvenile court system. Given the differences between settings such as the juvenile court, probation reviews, and detention facilities, it is essential for psychiatrists to clarify in advance the setting, their specific role, and for whom the evaluation is being conducted. When possible, psychiatrists should avoid the dual role of treater and forensic evaluator.<sup>30</sup> A treater is principally concerned for the welfare of the child. If asked to testify in a legal matter with consent from the patient, a treating psychiatrist can state facts about the treatment but does not offer opinions about legal questions. Forensic evaluators can be called as experts to offer opinions on legal matters and are not to serve as advocates. Forensic evaluators should rather strive to impartially and objectively educate a court about posed legal questions. If a dual role is unavoidable, the juvenile should be made aware of this conflict.

After the scope of the evaluation has been clarified, issues of nonconfidentiality need to be carefully reviewed in a developmentally appropriate fashion with the juvenile and collateral contacts. While the presumed mission of juvenile justice may remain rehabilitative, a psychiatrist conducts evaluations that may or may not be helpful to the juvenile. These distinctions need to be clear to the juvenile, especially when the stakes are high, such as consideration for a judicial waiver to adult court. The psychiatrist's role can vary from assessment, recommendations regarding disposition, treatment, dangerousness, and amenability to rehabilitation. These assessments, such as future dangerousness, should hinge on a firm understanding of development and available science, especially given that the majority of juvenile offenders do not go on to offend as adults.<sup>31</sup>

In any assessment of delinquent juveniles, a wide range of diagnoses should be considered. As many as 75% of juvenile offenders have one or more diagnosable psychiatric disorders,<sup>32</sup> and from 50% to 75% have a serious substance abuse disorder.<sup>33</sup> Safety also needs to be carefully

considered since the adjusted risk of suicide for young people in juvenile justice facilities is nearly three times greater than the rate for the general population of adolescents.<sup>34</sup> Suicide is the most common cause of death for youths in custody.<sup>21</sup>

As the juvenile courts have become increasingly criminalized over the last decades, more attention has been paid to safeguarding the legal rights of youthful offenders. We expect the courts' inquiries into juveniles' states of mind only to increase as our scientific understanding of juveniles becomes more sophisticated and as juvenile courts continue to extend to juveniles the same legal protections as adults. Additional rights can lead to heightened scrutiny and adversarial confrontation in the court. Both defense lawyers and prosecutors are progressively challenging the judicial limits and safeguards for these youths. For example, courts are increasingly attuned to juvenile competency to stand trial and asking child psychiatrists to probe and opine regarding a juvenile's mental status as it relates to adjudication. Though reduced moral culpability may enter into this mix of considerations and influence the outcome of court proceedings, the ongoing consequences for juvenile offenders can nevertheless be life altering and is not necessarily rehabilitative.

Competency to stand trial is a legal determination based on a defined legal standard; it is not a psychiatric issue per se. If a juvenile is transferred to *adult* court, the standard and procedure for competency to stand trial is the same as for an adult—a long-standing, well-established rule from the U.S. Supreme Court decision in *Dusky v. United States* (1960).<sup>35</sup> According to that decision, competency to stand trial is defined by defendants' rational and factual understanding of the court proceedings and their ability to rationally consult with their lawyers. Adult competency to stand trial can be compromised only by the presence of mental illness or mental retardation.

By contrast, there is no single, recognized standard for juvenile competency to participate in delinquency proceedings. Juveniles are presumed competent to stand trial unless the issue is raised in court. If juvenile competence is questioned, approximately 30 states now require some explicit finding of competence for a juvenile to be tried in juvenile court.<sup>36</sup> Oklahoma case law is unusual in that it holds that juveniles do not have the right to contest competency.<sup>37</sup> One important difference between juvenile and adult competency is that juveniles can be found incompetent if they are unable to understand the nature of the proceedings or assist counsel in their defense due to "developmental immaturity." That is, juvenile courts have recognized that some youths will be incompetent to stand trial for reasons other than mental illness or mental retardation, as required by adult criminal courts. The concept of "developmental immaturity" applies to youths who are developmentally incomplete in regard to perceived autonomy, risk

perception, time perspective, or abstract thinking.<sup>38</sup> If the youth's developmental immaturity compromises his or her capacity to understand the proceedings or assist counsel, a court can, in some jurisdictions, find the youth incompetent to stand trial (see the 2007 California case *Timothy J v. Superior Court*).<sup>39</sup> As experts on development, child psychiatrists can be extremely useful educators to courts. In particular, psychiatrists can assess a juvenile's development in relation to a similarly aged youth or future adult, and how it relates on an individual level to the juvenile's competence.

Grisso and colleagues<sup>40</sup> recommend that the question of juveniles' trial competence should be asked in cases involving any one of the following conditions: age 12 or younger; prior diagnosis of, or treatment for, a mental illness or mental retardation; "borderline" level of intellectual functioning, or record of "learning disability"; or observed deficits in memory, attention, or interpretation of reality.

In another article Grisso and colleagues<sup>41</sup> compared abilities associated with adjudicative competence among 927 adolescents in juvenile detention facilities and community settings with 466 young adults in jails and in the community. Youths who were 15 years old or less performed more poorly than young adults. Adolescents also tended more often than young adults to make choices (such as with plea agreements) that reflected compliance with authority and that garnered short-term benefits at the cost of longer-term negative consequences. States vary on how they deal with juveniles considered to be incompetent to participate in juvenile proceedings. Most states lack statutory guidance regarding incompetent youths, with the consequence that charges are often dismissed. Other states may continue charges against a juvenile for a defined period (usually one year), hoping to restore competence with that time.

While ensuring competence to stand trial—within either juvenile or adult courts—is a legal safeguard for a juvenile, a judicial waiver of jurisdiction and the consequent transfer of the juvenile to an adult court represent an erosion of the initial rehabilitative intent of juvenile courts. These waivers to adult courts accelerated in the 1980s in response to increasing juvenile violence rates. State legislation made judicial waivers mandatory in certain circumstances or left the question of transfer in the hands of the prosecutor. *Kent v. United States* addressed the protections that should be afforded to youths who are being judicially transferred, via waiver, to adult courts.<sup>8</sup> In many states, child psychiatrists are asked to assess juveniles for whom the waiver is discretionary. These evaluations usually concern a juvenile's risk for future violence and amenability to treatment or rehabilitation. Answering these questions can be extremely difficult, but an evaluation at least allows an individualized approach to a juvenile's offense. Mandatory transfers minimize consideration of individual development and

future potential of violence as determined by systematic, scientifically guided risk assessment.

Over the last 100 years, the juvenile justice system has attempted to respond to the social, mental, and emotional issues of delinquent youths. Psychiatrists have been involved from the very outset, and the field of American child psychiatry itself emerged from efforts to treat this patient population. As juvenile courts began resembling criminal adult courts, the role of child psychiatrists evolved to assess these children for courts and to help ensure that legal safeguards were properly implemented. Evaluations regarding the competence of juveniles and their potential transfer to adult courts are recent developments that reflect the still-evolving standards and safeguards of the juvenile justice system. Child psychiatrists who conduct these evaluations should be experts in development and be capable of explaining these processes to the court in relation to the demands of juvenile justice. Additionally, psychiatrists involved in this type of work should remain current on relevant research trends, serve as legislative advocates when appropriate, and, more generally, maintain an active voice on behalf of this vulnerable population.

It is appropriate to ask whether the juvenile justice system has met its goals of rehabilitating youths and preventing recidivism. The answers are mixed, but despite the shortcomings of the system, society needs to continue its mandate. Psychiatrists have had, and will continue to have, an important role to play here, and their work and insights will, it is to be hoped, continue to shape the juvenile justice system and to help the children who move through it.

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