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COMPETENCE AND JUDGMENT IN SERIOUS JUVENILE OFFENDERS

REPORT TO THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

EXECUTIVE SUMMARY

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The notion that adolescents are immature and therefore should be treated differently than adults has permeated the juvenile justice system since its inception. Several U.S. Supreme Court cases have specifically identified developmental limitations as a justification for the differential treatment found in the justice system (e.g., Bellotti v. Baird, 1979; Parham v. J.R., 1979).

Traditional differences between the juvenile and adult criminal justice systems have been based on a fundamental notion about adolescent development and the appropriate societal response. Because of their ongoing cognitive and social development, juveniles were considered less able to make competent decisions, and therefore were held less culpable and accountable for their actions. However, recent legislative changes that transfer juveniles to adult court and use more punitive sanctions in juvenile court are based in part on concerns for public safety, but they also represent changing views on how “adult-like” certain juvenile offenders are. Practically speaking, a segment of the adolescent population has been legally redefined as adults.

These changes are based on the assumption that juveniles possess adult-like capacities to participate meaningfully in the adjudicative process. In the criminal system, due process and fairness are protected in part by requiring defendants to be competent to stand trial. Bonnie (1993) reformulates this doctrine as “adjudicative competence,” which generally refers to the abilities to understand the proceedings, reason about them, and appreciate the consequences for one’s unique situation. In the criminal system, adults are presumed to be mature and to be finished developing their decisional capacities; as such, they are held accountable for their behavior unless severe mental illness or retardation renders them incompetent. However, the

juvenile justice system was based not only on ideas about adolescents' cognitive capacities, but also on ideas that their judgment and decision making is less mature. There may be developmental constructs that are not captured by traditional competence assessments that influence the nature of juveniles' understanding and participation. Scott, Reppucci, and Woolard (1995) suggest that the juvenile justice system is based in part on the notion that, for developmental reasons, adolescents' decisional capacities may differ from adults. Their judgment model is comprised of three components that may influence adolescent decision-making process and outcome differently from adults -- peer and parental influence, temporal perspective, and risk perception. Steinberg and Cauffman (1996) add responsibility, temperance, and perspective factors. The reviews of developmental research on these components indicate that each may change across adolescence and may affect decision-making process and outcome. However, these factors have not been tested in the specific legal context of participating in the court process as a defendant.

The present study expands existing research by conceptualizing juvenile defendant's decisions as a function of both judgment and competence with comparisons between adolescents and adults currently involved in the justice system. The study is guided by three primary goals:

Goal 1: Investigate how juveniles compare to adults on state-of-the-art assessments of competence-related abilities that are increasingly used with adult defendants.

Goal 2: Examine how the development of decisional capacity and judgment may differentially impact a juvenile's competence-related abilities compared to adults.

Goal 3: Determine the ways in which psychopathology affects juveniles' competence-related abilities

For Part I, data were collected from 102 males aged 15 and younger, 103 males ages 16 and 17, and 115 males ages 19 to 35. Participants were selected for inclusion based upon their gender, age and pretrial detention status. Males were recruited because research suggests that males predominantly commit crime (Elliott, 1994; Snyder & Sickmund, 1995). The age categories approximate those included in previous research on adolescent cognitive capacity and competence (e.g., Cowden & McKee, 1995; Grisso, 1981) and reflect general patterns in state transfer statutes (Snyder & Sickmund, 1995). Legal adults are included because they have been the primary group for which competence has traditionally been an issue in criminal justice system, and are presumed to have adequate competence-related abilities except under specific circumstances (e.g., mental illness or retardation). Finally, to maximize ecological validity, only those participants awaiting trial in a juvenile detention facility or jail were recruited. For Part II, 60 adolescent male psychiatric inpatients were recruited from a local state hospital. Subjects were between 10 and 17 years of age.

Measures of adjudicative competence, noncontextual judgment factors, and context-specific judgment factors were administered in interview format. *Legally relevant decisions* and constructs of influence, risk perception, perspective, and temperance were measured using the Judgment Assessment Tool - Adolescents (JAT-A; Woolard, Reppucci, & Scott, 1996). Developed specifically for the current study of adjudicative competence, the JAT-A is a three part interview which describes a juvenile who has committed a robbery and faces a series of decisions: (1) talking with police; (2) consulting with an attorney; and (3) considering a plea bargain in the context of transfer to criminal court. Participants are asked to report their decisions at each step in both open-ended and Likert-scale ratings. After each decision outcome,

participants are asked open- and close-ended questions, decision options and possible consequences. Responses are coded for content, time perspective, and risk perception.

Adjudicative competence was measured by the MacArthur Competence Assessment Tool - Criminal Adjudication (MacCAT-CA; Poythress, Hoge, Bonnie, & Monahan, 1996) consists of 22 questions administered in interview format. Responses are rated and summed to generate three subscale scores of Understanding, Reasoning, and Appreciation. General or “non-legal context” measures of judgment factors were also used, the Inventory of Parent and Peer Attachment for *the importance and potential influence of parents and peers* (IPPA; Armsden & Greenberg, 1987); the Arnett Inventory of Sensation Seeking (AISS; Arnett, 1994) for *risk proclivity*; subscales of the Weinberger Adjustment Inventory (WAI; Weinberger & Schwartz, 1990) for *temperance, responsibility, and social perspective*; and the Life Orientation Test (LOT; Scheier & Carver, 1985), for *temporal perspective*. Participants’ *intellectual functioning* was assessed with the Kaufman Brief Intelligence Test (K-BIT; Kaufman & Kaufman, 1990).

In Part I, the data supported hypotheses that scores on non-legal context and context-specific judgment factors would change across age and they would be related to decision-making process and outcomes in the legally-relevant vignettes. The two juvenile samples were significantly different from adults on several noncontextual and contextual measures of judgment, although the patterns varied depending on the specific factors considered. For example, juveniles demonstrated less consideration of others (perspective), less responsibility, and higher attachment to peers than adults, on the general measures, as hypothesized. We also found some policy-relevant age differences for specific decision outcomes and consequences. For example, although the majority of all age groups recommended remaining silent when questioned by police, a higher proportion of young juveniles (31%) said they would confess to

the police than older juveniles (16.7%) or adults (6.9%). A much greater proportion of young juveniles (72%) and older juveniles (68%) than adults (30%) reported that the character's peers would want him to remain silent and refuse the bargain. These perceived differences lend support to ideas about the particular salience and influence of peers on adolescent decision making. If adolescents are more likely than adults to perceive a peer "consensus" on a decision outcome, they may be more influenced by peer wishes than adults.

Some expected age differences were also found when reporting the possible consequences of decisions in the two vignettes. The categories of Freedom/Temporary Detainment, Assumption of Innocence/Guilt, and Friend Impact were mentioned more often and ranked higher by one or both juvenile samples than adults. These and related findings provide limited support for the hypotheses that juveniles, particularly older juveniles, may be considering consequences somewhat differently from adults, as indexed by the frequency with which they are mentioned.

Finally, demographics, adjudicative competence, and noncontextual and context-specific judgment factors all played some role in predicting respondents' decisions in the hypothetical vignettes. However, the salience and type of significant predictors varied across ages, and within ages across decision points. For example, non-legal context and legally-relevant measures of judgment factors significantly predicted the probability of taking a plea bargain for the juvenile samples, but were not significant for the adults. This lends some support to the hypothesis that judgment factors may be more important for juvenile decisions than adults, at least in this legal context.

The study of competence in psychiatric inpatients in Part II offers suggestions about psychopathology and competence. Results showed that subjects with learning disorders or

behavior disorders are likely to have lower IQ's than other adolescents with psychopathology. This is not a surprising result. Adult competence (Understanding and Reasoning) was influenced by intelligence and maturity, as with other samples. Furthermore, subjects with more serious pathology (Bipolar Disorder) were performed less competently on Understanding than subjects with less pathology (Unipolar Depression, Recurrent).

On noncontextual judgement factors, younger Caucasians were more optimistic about their future outcomes, compared to older subjects and subjects of other ethnic groups. Furthermore, those with Bipolar Disorder were inclined to novelty seeking. On the measure of adolescent competence, subjects higher on Understanding recommended against talking to police, and those higher on Reasoning were more likely to talk to their lawyers. The decision to cooperate with a plea bargain was predicted by Appreciation among those with previous juvenile justice history; however, using the entire sample, those with higher IQ's said they would not cooperate with a plea bargain.

The data in these studies are limited by the cross-sectional, self-report study design. However the central conclusion, even with the limitations noted, is that this study provides initial support for judgment theory (Scott et al., 1995; Steinberg & Cauffman, 1996) and the notion that age-based differences in judgment constructs relate to decision process and outcome in legally relevant contexts. Scores on some general or noncontextual measures of judgment did vary across age groups and were significant predictors of some decision outcomes. These results suggest clearly that further measurement development in this field is critical. The developmental literature often refers to judgment factors such as shortened time perspective, increased risk taking, and being influenced by peers, but there are few quality measures of these developmental phenomena.

Even beyond mean differences on noncontextual and context specific judgment factors, there are some age-based differences in the ways in which these factors combine to predict decision process and outcome. Demographic factors, traditional measures of adult competence, and judgment factors all appear to play a role in vignette-based decision processes, including the identification of decision options and consequences, and decision choices. Additionally, the role of each of these concepts may vary across legally relevant contexts. Therefore, it is likely that the salient factors for the decision to assert the right to remain silent may differ from those that come into play when considering whether to accept a plea bargain or take your chances at trial.

These data underscore the importance of using both competence and judgment in evaluations of decision making in legally relevant contexts. Further work is needed on the specific aspects of adjudicative competence before policy-relevant recommendations can be made. However, it is clear that the default extension of adult competence assessments to juveniles will not capture aspects of judgment that differentiate adolescent decision making from that of adults. Continued research with larger and more racially and ethnically diverse samples of both male and female adolescents and adults facing legal decisions will provide the foundation from which policy and practice recommendations can be made. The developmental aspects of competence and judgment will have implications for practitioners conducting competence evaluations of juveniles and the manner in which competence is structured for juveniles in criminal and juvenile court. Traditionally, within the adult framework, competence and decision making are an individual case-by-case matter, but maturity and judgment are not. With this research approach, we are broadening the scope of inquiry to examine a class of individuals, adolescents, for whom we believe there may be important developmental differences. As such, considerations of maturity of judgment may be important components of juvenile evaluations.

Continued research on issues of competence and judgment will provide a foundation for designing interventions to improve both adolescents' abilities to negotiate the legal system and the system's response to the particular needs of adolescent offenders. Recent legislative initiatives that have redefined adolescent offenders as adults may satisfy the public's desire for punishment, but it may be reasonable to expect that the justice system process, as well as the punishment, fits both the crime and the maturity level of the individual. These results suggest that the differences between adults and adolescents are indeed real and a more encompassing consideration of competence that includes developmental factors is necessary to understand adolescents' capacities as criminal defendants.

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