

## Legal Questions Arising from Inclusion of Young Children in Delinquency Jurisdiction

Children in North Carolina can be tried as respondents in delinquency proceedings for their actions beginning at age 6. The inclusion of young children in delinquency jurisdiction, some of whom may be young enough to remain staunch believers in Santa and to eagerly await a visit from the tooth fairy or the Easter bunny, raises significant legal questions in light of their developmental maturity. Those questions include:

- whether the infancy defense should play a role in delinquency proceedings?
- whether the capacity standard used in delinquency proceedings should explicitly account for developmental immaturity?
- at what point do children develop the skills necessary to function as a competent respondent?

A new Juvenile Law Bulletin, [\*Including Young Children in Delinquency Jurisdiction: Issues of Infancy and Capacity\*](#), is now available and discusses these issues in-depth. This blog provides some highlights of the bulletin.

Imagine that there are three children who each engage in the same behavior—they begin to curse out loud while taking a test in their classroom at school. Each child needs to be escorted from the classroom by the teacher and continues to argue loudly and curse at the teacher as they are walked to the principal's office. Each child is charged with disorderly conduct by disrupting students. The first child is a 17-year-old senior in high school, the second is a 12-year-old seventh grader, and the third is a 6-year-old first grader. Is each child equally culpable for their offense? Should the age of the child play a role in determining that child's capacity to function as a competent respondent in a delinquency proceeding for disorderly conduct?

### Issues of Infancy

Before the juvenile court was established, the only option for trying children who committed offenses under the age of 18 was prosecution in the criminal system. During that time, English common law governed the age at which children could be criminally prosecuted. Children under the age of seven were deemed incapable of proceeding, there was a rebuttable presumption that children between the ages of 7 and 14 were incapable of proceeding, and there was a rebuttable presumption that children age 15 and older were capable of proceeding. This capacity standard was not based on our present-day understanding of capacity, but on the concept of *doli incapax*—that children must understand the illegality of their act and be able to discern good versus evil in order to be prosecuted.

As the bulletin outlines, the infancy defense became irrelevant with the establishment of North

Carolina's first juvenile court in 1919. At its inception, the juvenile court's focus and function was very different from the modern juvenile court. Whether or not the child actually committed an act of delinquency was not a question for the court to answer. Instead, the court simply asked if the child was in need of the care, protection, or discipline of the state. The juvenile court had jurisdiction over a broad range of children that went far beyond those who engaged in delinquency, including children who were merely *in danger of becoming* delinquent or undisciplined or who were neglected, homeless, or destitute.

The modern juvenile court is structured very differently. The bulletin details the evolution of North Carolina's Juvenile Code as it changed over time to increasingly adopt criminal procedures in delinquency proceedings. These changes reflected the evolving jurisprudence of the United States Supreme Court, which acknowledged a range of due process rights for juveniles in delinquency proceedings beginning with the landmark decision in [In re Gault, 387 U.S. 1 \(1967\)](#). Under current law, the threshold question that must be answered prior to court intervention is whether or not the juvenile is responsible, beyond a reasonable doubt, for an act of delinquency. [G.S. 7B-2409](#). As described in the bulletin, juveniles in modern delinquency proceedings have nearly the same set of constitutionally protected rights as defendants in criminal proceedings.

## **Does the infancy defense have a place in this modern juvenile court?**

This is a question that North Carolina's courts have not answered. The question has been litigated in other states and, as detailed in the bulletin, some courts have ruled that the infancy defense should not play a role in delinquency proceedings because the juvenile court remains different enough in its purposes from criminal court. See [In re Tyvonne, 211 Conn. 151, 161 \(1989\)](#). Other courts have found that there is a role for the infancy defense in delinquency proceedings, sometimes as a result of a state statute (see [In re Gladys R., 1 Cal. 3d 855, 863-64 \(1970\)](#)) and other times in the absence of a state statute (see [In re William A., 13 Md. 690 \(1988\)](#)). North Carolina's statutes do not currently acknowledge a role for the infancy defense in delinquency proceedings.

## **The Modern Capacity Standard and Competence of Young Children**

The Juvenile Code does require that all children have capacity in order to be subject to adjudication. [G.S. 7B-2401](#) provides that the capacity standard for criminal defendants, contained in [G.S. 15A-1001](#), applies in delinquency cases. Often referred to in the literature as competency, that standard requires that:

No 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.

## **Capacity to Do What in a Delinquency Proceeding?**

The bulletin first addresses what this standard means in the context of functioning as a respondent in a delinquency proceeding. What is actually required of a juvenile who is a respondent in a delinquency proceeding? Juveniles must make a range of critical decisions in this role, including:

- 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?

While each juvenile is entitled to representation by counsel ([G.S. 7B-2000](#)), that attorney is bound to represent the expressed interests of the juvenile. N.C. Commission on Indigent Defense Services, [Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level, Guideline 2.1](#). The juvenile, whether age 6 or age 17, must ultimately make critical decisions like whether to testify and whether to make an admission.

## **At What Age Does a Child Gain the Abilities Necessary to Function as a Competent Respondent?**

As with any good legal question, there is no magic bullet answer to this one. The bulletin provides a summary of research on competency in young children. Most research on juvenile competence focuses on teenagers, as they make up the vast majority of justice-involved youth. The research that does exist on young children does not draw a bright line rule regarding an age at which adjudicative competence is generally attained. However, studies consistently find that competence improves dramatically as children age and the youngest justice-involved children are most frequently found to lack capacity. The body of research finds a consistent correlation between developmental maturity and competency.

## **Capacity, Developmental Immaturity, and Constitutional Considerations**

North Carolina appellate courts have never ruled on the question of whether the existing capacity standard includes developmental immaturity as a "defect" that can be the root cause of a lack of capacity, as required by G.S. 15A-1001. The research discussed above may make a compelling case for its inclusion. United States Supreme Court jurisprudence on the critical role that the realities of childhood play in the constitutional rights of youth may also provide a basis for inclusion of developmental immaturity in the capacity standard used for children.

The bulletin provides a short summary of Supreme Court decisions on the unique role that the fact

of childhood plays in the constitutional rights of children who are subject to both criminal and delinquency proceedings. These decisions make clear that the developmental immaturity of children is relevant to the exercise and application of their constitutional rights in criminal and delinquency proceedings—children are not simply miniature adults. [J.D.B. v. North Carolina, 564 U.S. 261 \(2011\)](#). This law, along with the research on the development of adjudicative competence in children, raises questions about applying the existing North Carolina capacity standard for criminal defendants to young children.

## **What Does all of this Mean for North Carolina’s Minimum Age of Delinquency Jurisdiction?**

The bulletin offers a range of potential statutory solutions to these issues, as listed by Kathryn A. Cunningham in *Advances in Juvenile Adjudicative Competence: A 10-year Update* (38 Behavioral Sciences & the Law 406, 406–20 (2020)). They include:

- Implement a multi-tiered adjudication system, as suggested by Larson and Grisso in 2011 (Kimberly A. Larson & Thomas Grisso, National Youth Screening & Assessment Project, Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers). 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.

It is also possible that North Carolina’s appellate courts could find that developmental immaturity does constitute a defect as required by the existing capacity statute.

In wrestling with these issues, it may be helpful to take a step out of the legal weeds and return to the hypothetical. Is there something about child development that makes the application of the same legal criteria to the 6-year-old, the 12-year-old, and the 17-year-old seem strange? If so, perhaps the realities of developmental immaturity should play a role in determining the age at which children can be prosecuted as delinquent for their actions and in the legal criteria for determining juvenile capacity to proceed.