2007

Is Immaturity a Legitimate Source of Incompetence to Avoid Standing Trial in Juvenile Court?

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I. INTRODUCTION

The right not to be incompetent while tried is a right that has been labeled "fundamental to an adversary system." It is a right afforded to all criminal defendants by the United States Constitution. It is also a right that most jurisdictions have extended to juveniles being processed in the juvenile justice system. While most states provide

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juveniles the right not to be incompetent while tried, the issue of what standard should apply to juveniles is a controversial one. Typically, jurisdictions have extended the adult legal standard for competency, known as the Dusky standard,\(^4\) to juveniles.\(^5\) However, many jurisdictions have modified the Dusky standard to better fit the needs of the system and the perceived required abilities of juveniles.

With regard to the competency standard, one issue of particular controversy is whether a juvenile's youth, either in terms of years or psychological development, should be allowed to influence the competency decision. Some jurisdictions have explicitly held that juveniles may not be found incompetent on the basis of immaturity,\(^6\) while others allow just the opposite.\(^7\) In addition, some jurisdictions have actually lowered the standard for competency in juvenile court, at least partially out of recognition that juveniles are less mature than adults.\(^8\)

The purpose of this Note is to explore whether a juvenile's immaturity should impact the legal decision of competency to stand trial. Part II serves as an introduction to the basis of the competency right and its extension to juveniles. Part III attempts to answer the question of what are juveniles' legal abilities? Part III includes an analysis of what abilities are required for a defendant to be competent to stand trial, a discussion of what impact immaturity may have on juveniles, and a review and analysis of relevant social science research that evaluates juveniles' legal abilities. Part IV brings the analysis back to the law, beginning with a description of the law's current treatment of immaturity in juvenile court, and ending with an analysis of whether immaturity should play a role. Part V concludes by reviewing the main arguments in favor of legitimizing immaturity as a source of incompetence and introduces the questions that legitimizing immaturity would raise.

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5. See Redding & Frost, supra note 3, at 369.
7. For example, the Florida competency statute allows juveniles to be found incompetent on the basis of age or immaturity. FLA. STAT. ANN. § 985.19(2) (West 2007).
8. Michigan is one such state. People v. Carey, 615 N.W.2d 742, 748 (Mich. Ct. App. 2000) ("A juvenile need not be found incompetent just because, under adult standards, the juvenile would be found incompetent to stand trial . . . .")
II. THE RIGHT TO COMPETENCY TO STAND TRIAL FOR JUVENILES

The United States Supreme Court first substantively addressed the issue of competency to stand trial in 1960. In *Dusky v. United States*, the Supreme Court reversed a conviction and remanded for a hearing on the defendant's competency to stand trial. The Court did not discuss the constitutional basis for this procedural protection. However, it did state that the appropriate test for determining competency to stand trial “must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” This test has become known as the *Dusky* standard and has been codified in many jurisdictions.

Several years later, the Supreme Court again considered the issue of competency to stand trial. In *Pate v. Robinson*, the Court held that where there is bona fide doubt of a defendant's competency, failure to hold a hearing on the issue constitutes a violation of the defendant's constitutional due process right to a fair trial. Nearly ten years after *Pate*, the Supreme Court reiterated its position that the right to not be incompetent while tried derives from the Due Process Clause of the Fourteenth Amendment.

In *Drope v. Missouri*, the Court took the opportunity to provide a slightly more detailed analysis of the link between competency to stand trial and the right to due process. The Court relied on tradition, noting that competency to stand trial “has long been accepted” as a condition of prosecution. Beyond tradition, the Court did not offer much argument in support of its conclusion that competency to stand trial is a due process requirement, stating only that “it suffices to note

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9. *Dusky*, 362 U.S. at 402. I say “substantively” because the Supreme Court did imply that a right to competency to stand trial existed several years prior when it vacated a judgment and remanded a case to the District Court for a separate hearing to consider the issue of competency at the time of the trial. *Bishop v. United States*, 350 U.S. 961 (1956) (per curiam). In *Bishop*, the Supreme Court did not provide genuine analysis of the right to competency in terms of its origins or its justifications. *Id.* Therefore, the case offers nothing in terms of understanding the issue.

11. *Id.* at 402.
12. *Id.*
15. *Id.* at 171–72.
16. *Id.* at 171 The Court also cited Commentaries by Blackstone and a case decided in 1899 to support its argument that the right to competency to stand trial has a longstanding history.
that the prohibition is fundamental to an adversary system."17 In short, the Drope Court implied two ideas. First, the right to competency to stand trial is a fairly uncontroversial one; in practice, our legal system has never doubted that such right exists. Second, beyond tradition, competency is an essential requirement of the criminal justice system. Without it, a defendant cannot properly engage in his own defense, and justice is undermined.

While competency to stand trial may be an uncontroversial right for adults, it is quite the opposite for juveniles. The Supreme Court has never considered whether the Constitution requires that juveniles be extended the competency right and has not explicitly extended it.18 However, the Court has extended juveniles other due process rights. In In re Gault, the Supreme Court considered the extent to which juveniles being adjudicated in juvenile court are embodied with procedural due process protections.19 Noting that the juvenile court had failed in many respects to live up to its goals of rehabilitation and that adjudication as a delinquent often results in a loss of liberty equally severe as that of criminal prosecution, the Supreme Court held that juveniles are entitled to certain procedural safeguards.20 To quote the Court, juvenile adjudications "must measure up to the essentials of due process and fair treatment."21 Specifically, the Court held that timely notice, the right to counsel, the privilege against self-incrimination, and the right to confront witnesses all apply to juveniles just as they apply to adults.22

Beyond ruling on these particular rights, the Supreme Court made no attempt to elucidate exactly which due process rights are included among the "essentials" that the In re Gault decision extended to juveniles.23 Subsequent rulings made it clear that the protections extended in In re Gault were not exhaustive. In the years following, the Court held that the burden of proof in juvenile proceedings must be

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17. Id. at 171-72.
19. 387 U.S. 1, 13-14 (1967) ("The problem is to ascertain the precise impact of the due process requirement upon such proceedings."). Id.
20. Id. at 30-31.
21. Id. at 30. Here, the Court was actually quoting itself in Kent v. United States, which concerned judicial waiver proceedings whereby juvenile courts waive jurisdiction so that juveniles can be tried in criminal court. 383 U.S. 541 (1966). In Kent, the Supreme Court held that juveniles are entitled to certain procedural due process protections during the judicial waiver proceedings. Id. at 562. In In re Gault, the Court "reiterated" its position that juveniles are sometimes entitled to due process protections, even during adjudication in juvenile court. 387 U.S. at 30-31.
23. Id. at 29-58.
“beyond a reasonable doubt”\textsuperscript{24} and that juveniles are protected from double jeopardy.\textsuperscript{25} In spite of this apparent trend to increase procedural rights for juveniles, the Court has never held that juveniles are entitled to \textit{all} the procedural protections of adults. Arguably, by considering each right individually, the Court has implied just the opposite: juveniles are only entitled to a subset of procedural due process rights, presumably those that are considered “essential.” Consistent with this reasoning, the Supreme Court has, on occasion, rejected the extension of certain adult rights to juveniles. For example, in \textit{McKeiver v. Pennsylvania}, the Court held that juveniles do not have a right to have a jury decide their cases.\textsuperscript{26}

Because the Supreme Court has not decided the issue, it is unclear whether juveniles have a constitutional right to be competent to stand trial. One might argue that competency to stand trial is an essential due process protection and, as such, should be extended to juveniles under the reasoning of \textit{In re Gault}. There is certainly support for this idea in the competency to stand trial caselaw.\textsuperscript{27} After all, the \textit{Drope} Court pronounced this right “fundamental to an adversary system.”\textsuperscript{28} It is not a far stretch to argue that any right that is considered “fundamental” must also be considered an “essential” right under \textit{In re Gault}.\textsuperscript{29}

However, one must not divorce the question of whether the right is essential from its context. The \textit{Drope} Court emphasized the importance of competency in an “adversary system,”\textsuperscript{30} and the juvenile justice system, at least in principle, is not adversarial.\textsuperscript{31} It is not clear that the Supreme Court would perceive the right as equally “fundamental” in this context. The \textit{In re Gault} Court specifically considered

\begin{footnotesize}
\begin{enumerate}
\item \textit{In re Winship}, 397 U.S. 358, 368 (1970) (declaring that the heightened burden of proof standard is equally important as the rights extended in \textit{In re Gault}).
\item Breed v. Jones, 421 U.S. 519, 541 (1975).
\item 403 U.S. 528, 545 (1971).
\item See infra note 38 and accompanying text.
\item See supra note 17 and accompanying text.
\item Indeed, some juvenile courts have reasoned that the right to an attorney, which juveniles were extended under \textit{In re Gault}, 387 U.S. 1, 41 (1967), is meaningless if the defendant is incompetent to stand trial. \textit{See, e.g.}, People v. Carey, 615 N.W.2d 742, 745 (Mich. Ct. App. 2000) (calling competency to stand trial “rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel.” (citing Riggins v. Nevada, 504 U.S. 127, 139 (1992))). In other words, these courts perceive the competency right as essential to the exercise of other constitutional rights. For a general discussion of which states have extended the competency right to juveniles, see infra notes 34–40 and accompanying text.
\item Drope v. Missouri, 420 U.S. 162, 172 (1975).
\item In fact, a primary purpose in creating the juvenile justice system was to remove adversariness from the proceedings altogether. \textit{See generally} Julian W. Mack, \textit{The Juvenile Court}, 23 Harv. L. Rev. 104 (1909) (describing the creation of the first juvenile court in Chicago, Illinois).
\end{enumerate}
\end{footnotesize}
whether granting due process rights would interfere with the special quality of juvenile proceedings and concluded that "essential" due process rights would not so interfere.\textsuperscript{32} However, the \textit{McKiever} Court refused to extend the right to a jury trial to juveniles because it would interfere with the quality of juvenile proceedings.\textsuperscript{33} Thus, the question of whether the due process right is "essential" cannot be separated from the procedural context at issue, and the competency right will not be blindly extended to juveniles without any consideration of the impact that might have on the special nature of juvenile proceedings.

Regardless of whether competency to stand trial is held to be a constitutional right for juveniles by the Supreme Court, many states have already created the right for juveniles adjudicated in their own courts.\textsuperscript{34} As of 2002, at least thirty-five states and the District of Columbia afforded juveniles the right to be found competent before being adjudicated.\textsuperscript{35} In twenty-six of these states, the right is authorized by statute.\textsuperscript{36} The other nine states have extended the doctrine through caselaw.\textsuperscript{37} Some of these courts have done so under due process reasoning, essentially extending the reasoning of \textit{In re Gault}.\textsuperscript{38} It appears that only one state has actually considered the issue and held

\begin{itemize}
\item \textsuperscript{32} 387 U.S. at 27 ("While due process requirements will . . . introduce some elements of the adversary system, nothing will require that the conception of the kindly juvenile judge be replaced by its opposite . . . . ").
\item \textsuperscript{33} \textit{McKiever v. Pennsylvania}, 403 U.S. 528 (1971).
\item \textsuperscript{34} See generally Redding & Frost, \textit{supra} note 3, for a thorough review of the state of juvenile competency law throughout the United States.
\item \textsuperscript{35} Redding & Frost, \textit{supra} note 3, at 368.
\item \textsuperscript{36} Redding & Frost, \textit{supra} note 3, at 368.
\item \textsuperscript{37} Redding & Frost, \textit{supra} note 3, at 368.
\item \textsuperscript{38} For example, the Minnesota Supreme Court has held that the right to competency to stand trial is a fundamental right for juveniles just as adults. \textit{In re Welfare of S.W.T.}, 277 N.W.2d 507, 511 (Minn. 1979). \textit{See also} Golden v. State, 21 S.W.3d 801, 803 (Ark. 2000) (interpreting \textit{In re Gault} to impose a competency right on juvenile proceedings); \textit{In re W.A.F.}, 573 A.2d 1264, 1267 (D.C. 1990) ("fundamental right"); \textit{In re S.H.}, 469 S.E.2d 810, 811 (Ga. Ct. App. 1996) (calling the competency right "the cornerstone of these [other] substantive [due process] rights."); \textit{In re Two Minor Children}, 595 P.2d 166, 169 (Nev. 1979) (interpreting \textit{In re Gault} to require an extension of the competency right to juveniles); \textit{In re Williams}, 687 N.E.2d 507, 510 (Ohio Ct. App. 1997) (quoting \textit{In re Johnson}, No. 7998, 1983 WL 2516, at *4 (Ohio Ct. App. Oct. 25, 1983)) ("[T]he right not to be tried while incompetent is as fundamental in juvenile proceedings as it is in criminal trials of adults.") (internal citation omitted).
\end{itemize}
against extending the right to juveniles. The remaining states have yet to consider the issue.40

Generally speaking, all states that have extended the competency right to juveniles have adopted the Dusky standard.41 However, states vary somewhat in the level of competency that is required.42 In other words, most states require the same kinds of legal abilities for both juveniles and adults, but some states vary in the level of ability required for a person to be considered competent. For example, Minnesota has explicitly held that due process requires that juveniles meet the same standard as adults, meaning that juveniles must have the same level of legal abilities as adults.43 On the other hand, courts in Michigan and Ohio have both held that juveniles may be held to a lower standard.44 These courts recognize, at least implicitly, that juveniles inherently have lesser abilities than adults, and they have concluded that a juvenile defendant may be considered competent to stand trial in juvenile court so long as that defendant meets "juvenile norms."45

To conclude, while the standards may vary, most states have extended the adjudicative competency right to juveniles. The next section will explore what is known about whether juveniles have impaired legal abilities compared to adults, with a specific eye toward evaluating the impact that developmental status, or immaturity, has on legal abilities.

39. See Redding & Frost, supra note 3, at 372–73. According to the authors, the only state to reject the extension of competency to stand trial rights to juveniles is Oklahoma. Id. An Oklahoma appeals court considered and rejected the argument to extend the state's adult competency statutes to juveniles, reasoning that the nature of juvenile proceedings and their goal towards rehabilitation indicated an intent on the part of the legislature to deal with all juveniles regardless of mental status. G.J.I. v. State, 778 P.2d 485 (Okla. Crim. App. 1989).

40. Redding & Frost, supra note 3, at 368.

41. Redding & Frost, supra note 3 at 373.

42. Redding & Frost, supra note 3 at 373–74.

43. In re D.D.N., 582 N.W.2d 278, 280–81 (Minn. Ct. App. 1998) ("[T]he level of competence required to permit a child's participation in juvenile court proceedings can be no less than the competency demanded for trial or sentencing of an adult."). Id. at 281.


45. See Carey, 615 N.W.2d at 748 ("[W]e . . . note that it is possible that a juvenile, merely because of youthfulness, would be unable to understand the proceedings with the same degree of comprehension an adult would." (citation omitted)). The policy of differing standards for juveniles and adults is also discussed below. See infra text accompanying notes 135–46.
III. ARE JUVENILES COMPETENT TO STAND TRIAL?

A. What Legal Abilities Are Required for Competency to Stand Trial?

Ultimately, competency to stand trial is a legal decision, so courts have the primary responsibility of interpreting and applying the standard.46 However, this area of the law is one that relies a great deal on mental health evaluations, and as a result, mental health experts have also done their fair share of interpreting the Dusky standard. In this brief review, both approaches will be combined.

The Dusky standard requires both a factual and rational understanding of the legal process, plus an ability to communicate with counsel.47 At a minimum, then, a competent defendant must have two skills: an adequate understanding of the legal proceeding and sufficient communication skills to consult with an attorney. Regarding the first component, the Supreme Court's language—"rational as well as factual understanding"48—seems to imply that a superficial level of knowledge would be insufficient. The word "rational" suggests that the defendant must not only understand the trial process, but also must have some minimum capacity to reason with regard to facts.49

Few courts have taken the opportunity to clarify what it means to satisfy this component. Courts in New York have explained that a competent defendant must understand the roles of the judge, the jury, the prosecutor, and the defense attorney, and also be able to appreciate the potential risks and benefits of different legal decisions.50 These factors are consistent with the conceptualizations of understanding, especially factual understanding, that are often offered by mental health experts.51 For example, in evaluating factual under-

46. Competency, in the final analysis, is a legal issue which must be determined by the court with the assistance of the medical expert. It is an abdication by the courts of their prerogatives to blindly follow psychiatric pronouncements which may be based on a partial or total lack of understanding of the issues involved in a determination of legal, not medical, competence for trial.


48. Id. (emphasis added).

49. As one commentator wrote, "[I]t appears that ... the defendant must ... have some capacity to reason from a simple premise to a simple conclusion." 40 Am. Jur. Proof of Facts 2d § 4 (2006) (citation omitted).


51. If interested in exploring different theoretical framings of the Dusky standard, see Richard J. Bonnie, The Competency of Criminal Defendants: A Theoretical Reformulation, 10 Behav. Sci. & L. 291 (1992); Thomas Grisso, What We Know About Youths' Capacities as Trial Defendants, in Youth On Trial: A Developmental Perspective on Juvenile Justice 139 (Thomas Grisso and Robert G. Schwartz eds., 2000) [hereinafter Grisso, What We Know]. See Laboratory of
standing, mental health experts often assess whether the defendant understands the roles of all the key players, in addition to understanding the meanings of important decision points, like pleas and a finding of guilt.\textsuperscript{52}

While most courts seem to treat factual and rational understanding as one component, mental health experts generally conceptualize them as distinct skills.\textsuperscript{53} Many theoretical definitions equate rational understanding with “appreciation”\textsuperscript{54} and reason that a competent defendant must appreciate the importance of such information as the quantity and quality of the evidence, the availability of plea options, and the likelihood of different outcomes.\textsuperscript{55} This conception of rational understanding is similar to the requirement in New York that a competent defendant be able to “appreciate . . . that one course of conduct may be more beneficial . . . than another.”\textsuperscript{56} This conception is also consistent with, but not identical to, the list of factors that Louisiana courts consider when determining competency, which includes whether a defendant can make simple decisions.\textsuperscript{57} In short, mental health experts and some courts have implied that some degree of reasoning or decision-making abilities is required for a defendant to have an adequate understanding of the legal process.

It is not entirely clear what to make of the fact that courts tend to combine factual and rational understanding, whereas mental health experts treat them separately. It could merely be that mental health experts have broken the standard into smaller parts to make better sense of it. On the other hand, it could be that courts are placing less emphasis on the kinds of abilities that mental health experts consider.


\textsuperscript{53} E.g., Bonnie, supra note 51.

\textsuperscript{54} For example, Bonnie differentiated between understanding the legal process and appreciating the significance of the legal circumstances, each paralleling the requirements of factual and rational understanding, respectively. Bonnie, supra note 51, at 297. Since then, other experts have adopted or modified Bonnie’s reformulation, including the distinction between “understanding” and “appreciation.” See, e.g., Grisso, \textit{Clinical Evaluations}, supra note 52, at 24 (explaining that “appreciation [is] related to ‘rational understanding’ in the legal standard”).

\textsuperscript{55} E.g., Grisso, \textit{Clinical Evaluations}, supra note 52, at 25. For a brief explanation of the distinction between factual understanding and rational understanding, including how each is measured, see \textit{id.} at 24–26.

\textsuperscript{56} People v. Morton, 570 N.Y.S.2d 846, 848 (N.Y. App. Div. 1991) (internal citation omitted).

\textsuperscript{57} State v. Hamilton, 373 So. 2d 179, 182 (La. 1979).
required for "rational understanding." If it is the latter, then mental health experts may have the tendency to evaluate defendants according to a higher standard than is legally required. This has clear implications for all defendants, including juveniles, especially if courts are unaware of the discrepancy or are relying heavily on expert opinion without much independent analysis.

The second component of the Dusky standard is ability to communicate with counsel. Generally speaking, courts tend to place greater emphasis on this aspect of competency. For example, Louisiana courts have said that a defendant must be capable of "effectively" participating in the criminal proceedings and have identified several factors to consider when deciding whether the defendant is so capable. These factors include whether the defendant can testify, and whether the defendant can relate facts to the attorney, help the attorney locate evidence and witnesses, and listen to and identify inaccuracies in the testimony of witnesses. Similarly, the Mississippi Supreme Court has explained that competent defendants must be "able to rationally communicate with [their] attorney," which means that "[d]efendants require a capacity to maintain the attorney-client relationship, embracing an ability to discuss the facts of a case with counsel 'without paranoid distrust,' [and] to advise and accept advice from counsel rationally about a pending case which is something more than a superficial capacity to converse with others." In their conceptions of the ability to communicate with counsel, mental health experts emphasize the same kinds of abilities. Specifically, mental health experts suggest that competent defendants must be capable of communicating with their attorney, identifying and conveying rele-

59. Hamilton, 373 So. 2d at 182.
60. Id. The Louisiana Supreme Court stated:
   Facts to consider in determining an accused's ability to assist in his defense include: whether he is able to recall and relate facts pertaining to his actions and whereabouts at certain times; whether he is able to assist counsel in locating and examining relevant witnesses; whether he is able to maintain a consistent defense; whether he is able to listen to the testimony of witnesses and inform his lawyer of any distortions or misstatements; whether he has the ability to make simple decisions in response to well-explained alternatives; whether, if necessary to defense strategy, he is capable of testifying in his own defense; and to what extent, if any, his mental condition is apt to deteriorate under the stress of trial.
62. Conner v. State, 632 So. 2d 1239, 1248 n.1 (Miss. 1993) (internal citation omitted).
63. LABORATORY OF COMMUNITY PSYCHIATRY, HARVARD MED. SCH., supra note 51; Bonnie, supra note 51, at 302-04.
vant facts, identifying inaccuracies in evidence or testimony, and making informed decisions with the help of their attorney.64

In sum, while the exact kinds of abilities required for competency to stand trial may not be crystallized into a precise legal standard, there is at least sufficient consistency among courts and mental health experts to identify a minimum, albeit vague, threshold. In terms of factual and rational understanding, competency seems to require something deeper than a mere identification of the legal roles. Competent defendants must be able to understand the responsibility of the key figures in the courtroom as well as the legal process. Beyond this, most courts require some minimum level of decision-making or reasoning abilities. These abilities seem to be required by some to qualify as a "rational understanding," and even if not required in that context, they are consistently required in the context of the ability to communicate with counsel. In terms of this component, courts and mental health experts tend to agree that a competent defendant must be able to identify and communicate relevant facts to the attorney, identify and explain inaccuracies in evidence or testimony, and make informed decisions with the attorney's assistance.

B. Sources of Incompetence: The Impact of Immaturity on Juveniles' Legal Abilities

The primary source of incompetence for adults is mental illness or retardation.65 In fact, some jurisdictions require a finding of "mental disease or defect" as a basis for a finding of incompetence for adults, which is usually interpreted to mean that an adult must meet the Dusky standard and have either a mental illness or be mentally retarded.66 While this may be a common source of adult incompetence, the same is not true for juveniles. While some incompetent juveniles may have a diagnosable mental illness or be mentally retarded, many incompetent juveniles do not fall into either of these categories.67 Instead, their legal impairments are due to their developmental immaturity.68 In other words, because many juvenile defendants have not fully developed their cognitive and psychological skills, they may have

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64. Bonnie, supra note 51, at 302–04.
65. Robert A. Nicholson & Karen E. Kugler, Competent and Incompetent Criminal Defendants: A Quantitative Review of Comparative Research, 109 PSYCHOL. BUL- LETIN 355 (1991). Conducting a meta-analysis of thirty studies that compared competent and incompetent adult defendants, Nicholson and Kugler found that incompetent defendants were more likely to have a psychotic diagnosis and symptoms associated with severe psychopathology. Id.
66. Redding & Frost, supra note 3, at 360 ([A] few states predicate a finding of incompetence upon the existence of mental illness or mental retardation . . . ).
67. GRISSO, CLINICAL EVALUATIONS, supra note 52, at 15.
68. As one scholar puts it, "These youths' deficits . . . [are] not related to mental disorder but to the fact that they [are] simply operating with cognitive and psy-
impaired legal abilities. This impairment is a direct result of their youth, rather than any identifiable mental illness or severely impaired intellectual functioning.

Before an argument can be made that immaturity itself might affect juveniles' legal abilities, one must have a clear understanding of what is meant by the term "immaturity." In the context of legal proceedings, it is important to differentiate between two aspects of development that may affect juveniles' competency: cognitive development and psychosocial (or judgment) factors. Cognitive development refers to the increased ability of individuals to understand and process information. An individual with fully-developed cognitive abilities is able to understand abstract ideas, can handle complex information, and can think more clearly about risks and benefits of different options. Generally, these abilities are identifiable as those necessary for reasoning and understanding and are a prerequisite for informed decision-making.

Cognitive abilities are the most directly implicated, and probably the least controversial, in terms of their importance to competency. Both factual and rational understanding require the ability to comprehend complex information and understand abstract concepts. Effective decision-making requires the ability to weigh different options and select a preference. To fully participate in one's defense, one has to be able to understand what kind of information the attorney needs to know. To some extent, this requires perspective-taking. All of


70. For a concise definition of cognitive maturation and how it relates to legal abilities, see Grisso, Clinical Evaluations, supra note 52, at 12.

71. Grisso, Clinical Evaluations, supra note 52, at 12.

72. For more thorough reviews of the relationship between cognitive abilities and competency, see Cauffman et al., supra note 69, at 406-11; Vance L. Cowden & Geoffrey R. McKee, Competency to Stand Trial in Juvenile Delinquency Proceedings—Cognitive Maturity and the Attorney-Client Relationship, 33 U. Louisville J. Fam. L. 629 (1995); Scott & Grisso, Evolution of Adolescence, supra note 69, at 157-60.

73. Grisso, What We Know, supra note 51, at 157.
these are fairly sophisticated cognitive abilities that do not typically develop until mid-adolescence.\[^{74}\]

Psychosocial development also affects decision-making, but in a different way. Psychosocial development has to do with one's impression or perspective of situations, and can affect one's reactions or decisions regarding those situations.\[^{75}\] Scholars have identified three aspects of psychosocial development that may impact juveniles' competence-related abilities: risk perception, time perspective, and conformity.\[^{76}\] Generally speaking, adolescents tend to take more risks than adults, at least partially because adolescents may both underestimate the probability that a risk will occur and also place lesser value on the risk.\[^{77}\] In addition, compared to adults, adolescents tend to weigh short-term consequences, both positive and negative, more heavily than long-term consequences.\[^{78}\] Finally, adolescents' behavior is more easily influenced by others, both peers and adults.\[^{79}\] In other words, they are more likely to perform an act to please others. Lack of psychosocial maturity has also been labeled "lack of judgment."\[^{80}\] In that sense, psychosocial immaturity might be what one considers when thinking of a "typical teenager."

Impaired judgment, or psychosocial immaturity, also has clear implications for legal abilities. To actively participate in one's defense, one must have the ability to make certain decisions, at least at the same level as a competent adult. Risk perception and time perspective will both affect most legal decisions. For example, a person focusing on short-term consequences might choose to take a plea just to be released from detention even if, in reality, the case is weak and adjudication might lead to a more positive outcome. Similarly, the ability to make independent decisions is central to an active participation in one's defense. Psychosocial immaturity might lead to an increased likelihood that juveniles will allow their parents or attorneys to make important decisions about case strategy.\[^{81}\]

While impaired judgment likely affects a youth's legal abilities and decisions, the issue of whether this effect should be characterized as incompetence is less clear. The relevance of psychosocial maturity to


\[^{80}\] See, Cauffman et al., supra note 69, at 411-13.

\[^{81}\] Grisso, *What We Know*, supra note 51, at 156-57.
the issue of competency is controversial. In recent years, some legal commentators and scholars have increasingly argued that psychosocial immaturity, or impaired judgment, directly impacts competence-related abilities and that the courts should take this into consideration when determining competency to stand trial. Specifically, these commentators argue that the differences between juveniles and adults with regard to time perspective, risk preference, and vulnerability to coercion might all interfere with juveniles' legal abilities to such an extent that they fall below the threshold for competency to stand trial.

One argument against this reasoning is that to the extent that these differences reflect differences in mere preference, immaturity may be irrelevant to competency. It is not debatable that the way one weighs risks and benefits strongly influences the decisions that one makes; this is true both inside and outside of the legal arena. What is less clear is whether the mere fact that adolescents, due to their youth, are likely to make riskier or less-informed decisions renders them incompetent. There is a fine line between incompetence and mere preference for risk-taking. Common sense dictates that even adults vary greatly in the amount of risk they are willing to take and how short-sighted they are, but are adults with a greater risk-preference incompetent to stand trial? Probably not. One important difference is that juveniles' greater risk preferences may reflect their youth more than their character. For adults, risk preference typically reflects individual choice or inclination. For juveniles, risk preferences may reflect innate individual differences, but they may just as easily reflect some sort of transient consequence of normative development.

It is debatable whether this difference is really relevant to the issue of competency. It may be argued that that the reason for differences in risk preference are just as irrelevant as the fact that there are differences at all. Perhaps a more persuasive argument centers around the notion that juveniles tend to be more vulnerable to coer-

82. Grisso, Clinical Evaluations, supra note 52, at 12–13; Scott & Grisso, Developmental Incompetence, supra note 18.
83. Grisso, Clinical Evaluations, supra note 52, at 12–13; Scott & Grisso, Developmental Incompetence, supra note 18.
84. Two psychologists made this same argument in the context of criminal culpability. See Laurence Steinberg and Elizabeth S. Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009 (2003). This argument, and their article in particular, was influential in the Supreme Court's decision that the death penalty was unconstitutional for juveniles. Roper v. Simmons, 543 U.S. 551, 569–70 (2005) (citing the article by Steinberg and Scott and listing the fact that juveniles' "character [are] not as well formed as that of . . . adult[s]" as a reason for abolition of the death penalty for juveniles). Id. at 570.
85. Roper, 543 U.S. at 569–70.
cion than adults. As described earlier, courts often emphasize that a competent defendant must be able to participate actively or effectively in the legal proceedings. The ability to make independent decisions is directly relevant to the ability to be an active participant in one's defense. Surely, courts do not expect a defendant to make all decisions without consulting an attorney. However, a competent defendant should be able to consider the attorney's advice without blindly adhering to it. To the extent that immaturity is related to acquiescence to authority figures, it should be relevant to competency to stand trial.

Of course, just as with the issue of risk preference discussed above, a distinction needs to be made between being incompetent to make independent decisions and being unwilling to make those decisions. Courts have consistently held that unwillingness to communicate with counsel does not render a defendant incompetent to stand trial. Few, if any, courts have decided whether this rule extends to juvenile competency, but it is reasonable to assume that it would. Even so, courts should be equipped to decide whether a particular juvenile defendant is incapable of independent decision-making or is merely unwilling to consult with their attorney.

Clearly, whether psychosocial immaturity should be an influence in competency hearings is a controversial question. At least on a theoretical level, some aspects of immaturity, like its influence on risk preference or time perspective, are arguably irrelevant to the issue of competency to stand trial. Other aspects, like vulnerability to coercion, more clearly implicate competence-related abilities. What is not clear is whether juveniles do, in fact, have impaired legal abilities compared to adults. The next section tackles this question.

C. What Are Juveniles' Legal Abilities?

There is a growing body of research investigating juveniles' competence-related abilities. Some studies examine particular abilities, while others examine juveniles' performance on instruments that clinical psychologists typically use to evaluate competency to stand trial. In addition, a few of these studies compare juveniles' performance directly to that of adults. The latter studies are most impor-

86. See supra notes 58–64 and accompanying text.
88. There are a number of excellent reviews of this research. See, e.g., Thomas Grisso, The Competence of Adolescents as Trial Defendants, 3 PSYCHOL. PUB. POL'Y. & L. 3 (1997); Thomas Grisso, What We Know, supra note 51, at 146–62.
89. Janet I. Warren et al., Correlates of Adjudicative Competence Among Psychiatrically Impaired Juveniles, 31 J. AM. ACAD. PSYCHIATRY & L. 299 (2003); Thomas Grisso et al., Juveniles' Competency to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants, 27 LAW & HUM. BEHAV. 333 (2003); Darla M. R. Burnett, Charles D. Noblin & Vicki Prosser, Adjudicative Compe-
tant in ascertaining whether immaturity alone impacts competency to stand trial. If youth in itself causes impairment in legal abilities, then one would expect these studies to reveal differences in performance between juveniles and adults.

Generally speaking, recent studies have consistently found that juveniles, especially those who are fifteen years old and younger, have impaired legal abilities as compared to adults. For example, Burnett and colleagues compared the performance of juveniles awaiting adjudication to jailed adults on an instrument commonly used to assess competency to stand trial.\textsuperscript{90} The instrument, called the MacArthur Competency Assessment Tool—Criminal Adjudication (MacCAT-CA), measures people's abilities in three domains: understanding of the legal proceedings, appreciation of the legal proceedings, and reasoning.\textsuperscript{91} These three areas are designed to map onto the core aspects of the \textit{Dusky} standard: factual understanding, rational understanding, and ability to communicate with counsel.\textsuperscript{92} The researchers found that juveniles between ages ten and sixteen performed significantly worse than the adults in both understanding and reasoning.\textsuperscript{93} In addition, juveniles below fifteen years old performed worse on reasoning.\textsuperscript{94} These findings suggest that younger people do indeed have impairments in competence-related abilities, at least in comparison to jailed adults.

Using the same instrument, Redlich and colleagues compared juveniles to young adults outside of the legal system.\textsuperscript{95} Again, juveniles performed worse than young adults in the understanding domain.\textsuperscript{96} Juveniles also had lower overall competency scores.\textsuperscript{97} Beyond looking at scores, these researchers also collected a rough measure of capacity to improve competency. Many competency instruments, including the MacCAT-CA, are given in interview format. If a respondent answers incorrectly, the interviewer explains the correct response and then asks the respondent to answer again. If the respondent still answers incorrectly, the interviewer explains it again. The purpose of this process is to gauge whether the respondent has the capacity to learn information about the legal system. Redlich and

\textsuperscript{90} Burnett et al., \textit{supra} note 89.

\textsuperscript{91} \textsc{norman poythress et al.}, \textit{The MacArthur Competency Assessment Tool-Criminal Adjudication: Professional Manual (MacCAT-CA)1999}.


\textsuperscript{93} Burnett et al., \textit{supra} note 89, at 454.

\textsuperscript{94} Burnett et al., \textit{supra} note 89, at 454.

\textsuperscript{95} Redlich et al., \textit{supra} note 89, at 397.

\textsuperscript{96} Redlich et al., \textit{supra} note 89, at 401.

\textsuperscript{97} Redlich et al., \textit{supra} note 89, at 401.
colleagues counted the number of follow-up questions the interviewer asked before the respondent answered correctly and found that the interviewer asked juveniles more follow-up questions. This suggests that juveniles have more difficulty picking up the information and regurgitating it quickly.

These two studies are important in that they provide evidence that juveniles, especially those under sixteen years old, consistently perform poorly on measures of competency when compared to adults, who are generally presumed competent. Nonetheless, these studies do not prove that juveniles are, in fact, incompetent to stand trial. Importantly, the study by Redlich and colleagues compared juveniles' performance to young adults from the local community. The study by Burnett and colleagues compared juveniles' performance to jailed inmates who were presumed competent to stand trial, meaning they never had a formal competency hearing. Since none of the adults in these studies were subjected to a hearing on competency, we have no way of knowing exactly how competent they were. Therefore, we have no way of knowing whether the comparatively poorer performance of juveniles was so poor as to render them legally incompetent to stand trial.

Grisso and colleagues attempted to address this problem. They conducted a similar study with two important variations. Just as in the previous studies, these researchers compared the performance of juveniles to adults and discovered that juveniles younger than sixteen years old performed worse than adults. Importantly, the authors also tried to predict the proportion of juveniles that would be considered legally incompetent based on their performance. They compared juveniles' performance to the performance of adults who had been deemed legally incompetent to stand trial and found that a substantial proportion of juveniles were equally or more impaired. Specifically, about one-third of juveniles, both in the community setting and jailed, were found to fall within the incompetent range.

The fact that such a large proportion of juveniles had significant impairments in their legal abilities supports the idea that developmental status, or young age, can impact legal abilities. However, the question is whether this is a substantial enough proportion of the population to justify allowing courts to deem particular juveniles incom-

98. Redlich et al., supra note 89, at 401.
99. Redlich et al., supra note 89, at 397.
100. Burnett et al., supra note 89, at 454.
101. Grisso et al., supra note 89.
102. Grisso et al., supra note 89.
103. Grisso et al., supra note 89, at 356.
104. Grisso et al., supra note 89, at 348.
105. Grisso et al., supra note 89, at 348.
106. Grisso et al., supra note 89, at 348.
petent to stand trial on the basis of immaturity. On the one hand, this study suggests that a strong majority of juveniles are competent to stand trial. If most juveniles are not so negatively affected by their youth to be rendered incompetent, then one could argue that immaturity should not be considered at all. If the issue was whether to declare, as a policy, that all juveniles are incompetent to stand trial, then the two-thirds majority might be persuasive. However, the issue considered here is whether, in any particular case, a court might consider developmental status in determining whether a juvenile defendant is competent. The fact that one-third of juveniles scored in the incompetent range is, at least, supportive of the argument in favor of allowing immaturity to influence the legal decision.

The second important variation that Grisso and colleagues added to their research is that they investigated juveniles' and adults' decision-making in the legal process. Participants in the study were given vignettes describing various legal situations and asked to explain what they would do if they were in that situation. They found that juveniles were more likely to comply with adult authority figures and demonstrated a failure to recognize inherent risks in certain legal decisions, especially long-term risks. Consistent with the latter finding, Schmidt and colleagues conducted a study in which they also found that juveniles were more likely than adults to recall and consider short-term legal consequences. Unfortunately, these were not studies conducted in a real setting, so the authors did not have the opportunity to explore how juveniles make actual legal decisions. Nonetheless, they offer, at the very least, tentative support for the idea that psychosocial maturity impacts legal abilities, especially those that are related to active participation in legal strategy and decision-making.

So, what does this research really say about juveniles' legal abilities? It seems reasonable to conclude that juveniles, as a group, are less competent than the typical adult. It also seems reasonable to conclude that these impairments are due, at least in part, to juveniles' immaturity. Any arguments beyond this are less persuasive. There is at least tentative support for the idea that a sizeable minority of juveniles are in fact incompetent, but the amount of research that answers this question directly is sparse. There is also tentative support for the proposition that differences in time perspective, risk preferences, and vulnerability to coercion do interfere with juveniles' ability to communicate with counsel. Is the evidence sufficient to justify a

107. Grisso et al., supra note 89, at 357.
108. Grisso et al., supra note 89, at 357.
policy in which courts can find juveniles incompetent purely because of their youth? The next section will begin by reviewing current treatment of immaturity in incompetence determinations and will then analyze whether the law should indeed formally recognize the impact that immaturity has on some youth's legal abilities.

IV. THE IMPACT OF IMMATUREITY IN THE LAW OF COMPETENCY TO STAND TRIAL

A. The Modern Treatment of Maturity in Competency to Stand Trial Law

While the majority of states have extended the right to be competent while standing trial to juveniles, many have not considered the issue of whether immaturity alone is a legitimate source of incompetence. Of those that have considered the issue, states are split. At least three states have considered the argument and, to varying degrees, have rejected it. In *In re Jacob M.W.*, the Court of Appeals of Wisconsin rejected the argument that a juvenile's age alone rendered him incompetent, concluding that any sort of strict rule based on age should come from the legislature and not from the court. However, the court did not consider whether factors relating to immaturity would be legitimate evidence or grounds for a finding of incompetence.

Not surprisingly, the nature of the competency statute plays an important role in determining whether immaturity is considered an acceptable source of incompetence. As discussed earlier, some state statutes impose a requirement that the source of an adult's incompetence be "due to mental disease or defect." Many of these states have applied these same statutes to juveniles. Read literally, these statutes prohibit a finding of incompetence on the basis of either immaturity or age. However, courts have interpreted these statutes with mixed results. For example, the State of Washington has this type of competency statute. In *State v. Swenson-Tucker*, the Court of Appeals considered the case of an eight-year-old defendant charged

110. For a detailed analysis of the treatment of competency to stand trial in juvenile court, generally, see Redding & Frost, *supra* note 3.
111. *See supra* text accompanying notes 34–40.
113. *Id.*
114. *See supra* note 66 and accompanying text.
115. *WASH. REV. CODE ANN.* § 10.77.010(14) (West 2006).
with third degree malicious mischief. The two experts testified that the defendant did not understand the legal proceedings and was not able to adequately communicate with counsel. The trial court, acknowledging the defendant's difficulties, declared him competent because immaturity was not an acceptable source of incompetence. The Court of Appeals affirmed, stating that, "It is the legislature's responsibility to broaden its statutory language."

As in Washington, the Delaware competency statute, which was written to apply to adults, requires a defendant to be incompetent due to "mental illness or mental defect," and it has been extended to cover juveniles. Nonetheless, the relevance of immaturity is less clear there. In State v. Simmons, a trial court in Delaware considered the competency of a seventeen-year-old juvenile defendant to stand trial. The court found the defendant competent to stand trial. However, in discussing the evidence, the trial court acknowledged that the defendant was immature. While the court did not expressly state whether the defendant's immaturity was relevant evidence, one could argue that the implication in bringing it up at all is that immaturity is an acceptable argument to make.

Courts in at least two states have extended the competency right to juveniles, but in so doing, have refused to blindly apply the adult statute. For example, the Indiana Supreme Court held that juveniles, as adults, have a constitutional right to not be tried if incompetent, but reasoned that the adult competency statute was never intended to apply to juveniles. However, the Court did not specifically address the standard by which competency should be decided, nor did it discuss the relationship between immaturity and competency in a general sense. While refusing to apply the adult statute is mildly suggestive of a recognition that immaturity may play a role in competency, Indiana's position is currently unsettled.

In a recent case, the Iowa Court of Appeals considered the same issue and was less vague. As in Indiana, the Iowa court refused to

117. Id. at *4-5.
118. Id.
119. Id. at *5.
120. DEL. CODE ANN. tit. 11, § 404(a) (2006).
122. Id. at *2.
123. Id.
125. In re K.G., 808 N.E.2d at 635.
126. Id. at 637.
blindly apply the adult competency statute to juveniles. However, unlike in Indiana, the court firmly stated its position on immaturity. The appellate court declared that

[limiting incompetency in delinquency proceedings to cases in which the child is incompetent by reason of a "mental disorder" would fail to recognize that a juvenile's inability to appreciate the charge, understand the proceedings, or assist effectively in the defense may be the result of immaturity, lack of intellectual capacity, or both.]

As in Iowa, at least three other states have clearly decided that immaturity is a legitimate source of incompetence for juvenile defendants. In these states, there are generally two ways in which immaturity may influence the competency standard. First, immaturity may be explicitly recognized as a legitimate source of incompetence. This is the case in Iowa, explained above, and also in Florida. In Florida, the juvenile competency statute allows juveniles to be found incompetent for any reason, and expressly acknowledges that a juvenile may be found incompetent on the basis of age or immaturity.

Second, immaturity may also influence the competency standard in a less direct way. In at least two states, courts have recognized that juveniles are less mature than adults and that this immaturity may impact competency. As a result, they have effectively lowered the competency standard for juveniles. In both Michigan and Ohio, a juvenile is only incompetent if his legal abilities are sufficiently impaired relative to "juvenile rather than adult norms." This policy is consistent with the recommendations of some legal commentators and psychologists who argue that the level of abilities required should correspond with the severity of the potential conse-

128. Id. at *3 ("We believe that [the adult competency statute] can and should be applied to delinquency proceedings. . . . However, we agree that the provisions . . . should not be applied to the exclusion of other relevant and applicable principles . . . "). Id.
129. Id.
130. Id.
131. FLA. STAT. ANN. § 985.19(2) (West 2001 & West Supp. 2007); People v. Carey, 615 N.W.2d 742, 748 (Mich. Ct. App. 2000) ("[W]e further note that it is possible that a juvenile, merely because of youthfulness, would be unable to understand the proceedings with the same degree of comprehension as an adult would."); In re Williams, 687 N.E.2d 507, 511 (Ohio Ct. App. 1997) ("This court . . . has determined that the [adult] standard . . . governs competency evaluations of juveniles, so long as it is applied in light of juvenile rather than adult norms.").
132. FLA. STAT. ANN. § 985.19(2); In re A.B., 2006 WL 469945.
133. FLA. STAT. ANN. § 985.19(2).
135. Carey, 615 N.W.2d at 748 ("A juvenile need not be found incompetent just because, under adult standards, the juvenile would be found incompetent to stand trial in a criminal proceeding.").
136. Williams, 687 N.E.2d at 510; Carey, 615 N.W.2d at 748.
quences of disposition. For example, Richard Bonnie and Thomas Grisso have argued that if disposition is limited to the time before juveniles reach the age of majority, then they should be held to a lower standard. In those cases, competency "should be limited to baseline cognitive abilities to understand the proceedings and communicate with counsel." Proponents argue that applying a lower standard in juvenile proceedings avoids the potential problem of being forced to either drop the charges or confine the juvenile until competency develops. In addition, it avoids the potential administrative problem of disrupting a large number of juvenile proceedings, especially where particularly young juveniles are involved. Arguably, this disruption would inevitably result both from a potential increase in competency hearings and an increase in the number of youths found incompetent.

While these administrative arguments may be true, one is forced to consider whether lowering the threshold adequately protects the rights of juveniles, which is especially concerning when a constitutional liberty may be at stake. Of course, commentators in favor of this policy conclude that juveniles' rights would be adequately protected by imposing dual standards for competency. But, isn't the implication of lowering the standard in juvenile court that competency to stand trial is not as important for juveniles? And isn't that another way of saying that juveniles do not have the same right as adults?

In the end, commentators may have a strong argument that lowering the threshold would not unconstitutionally infringe on juveniles' due process rights. As was discussed earlier, if the Supreme Court were to consider whether juveniles have a competency right, it would be highly unlikely that they would divorce the question from its context—the special nature of juvenile proceedings. The Court would be forced to consider how "essential" the competency right is and whether or how a lack of competency would interfere with the purposes of the relaxed proceedings in juvenile court. In balancing these two interests, a dual standard might be a reasonable compromise.

138. Bonnie & Grisso, supra note 137, at 97.
139. Bonnie & Grisso, supra note 137, at 97.
140. Scott & Grisso, Developmental Incompetence, supra note 18, at 832.
141. Scott & Grisso, Developmental Incompetence, supra note 18, at 832.
142. Scott & Grisso, Developmental Incompetence, supra note 18, at 832.
143. Scott & Grisso, Developmental Incompetence, supra note 18, at 832-39.
144. See supra text accompanying notes 30-33.
B. How Should the Law Treat Immaturity in the Law of Competency to Stand Trial?

The review in the previous section demonstrates inconsistency among jurisdictions. The only clear conclusion to draw from this review is that many states have not considered the issue and those that have considered it react in a variety of ways. The purpose of this section is to consider whether immaturity really should be considered a legitimate influence in incompetency decisions.

The primary argument in favor of formalizing a legal standard that recognizes developmental immaturity is that youth, as a group, do have impaired legal abilities. As admitted earlier in this paper, social science research does not prove that juveniles are incompetent to stand trial, nor does most of it even test that question. However, the research does consistently find that juveniles have impaired legal abilities as compared to adults. Moreover, the findings in some of these studies can be fairly easily attributed to juveniles' immaturity, rather than intellect or mental illness. If immaturity causes impairments in juveniles' legal abilities, then it is hard to see why its impact should not be formally recognized.

The question becomes why immaturity should be perceived as a less legitimate source of incompetence than the traditionally-recognized sources of mental illness and mental retardation. A concern offered by some is the practical effect of declaring a juvenile incompetent by reason of his youth. If a juvenile defendant is accused of committing a violent offense, but is incompetent because she is only ten years old, then what should the court do with her? The answer is that there are several options. First, efforts could be made to restore competency. With the help of the juvenile's attorney and someone trained in educating juveniles about the legal standard, the juvenile might be able to improve her skills enough to become competent. If that does not work, then courts still have the same options that are available in other cases of incompetence. The court might consider commitment or confinement. Courts might also consider alternative options, like home confinement or strict supervision/partici-

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145. See supra section III.C.
146. See supra text accompanying notes 100-01.
147. E.g., Grisso et al., supra note 89. In this study, the researchers statistically controlled for psychological diagnoses and IQ.
148. See Scott & Grisso, Developmental Incompetence, supra note 18, at 831–32 (recognizing this concern and arguing that their proposal to lower the standard for competency in juvenile court is a promising solution).
149. This "dispositional quandary" is the sole reason that some proponents suggest lowering the standard for competency in juvenile courts. Scott & Grisso, Developmental Incompetence, supra note 18, at 832. By lowering the standard, the dilemma would be present in fewer cases, because more juveniles would have sufficient capabilities.
pation in community programs. Finally, courts have the option of dropping the charges. Admittedly, some of these options seems unsatisfying, especially in the case of a juvenile who is actually normal by developmental standards. In addition, some of them, like indefinite confinement, would be unconstitutional in most cases.

Does the lack of alternatives justify disregarding or disallowing immaturity to influence competency decisions? No. The fact that courts are unsure what to do with the few juveniles who are incompetent to stand trial and whose competency cannot be restored within a reasonable time does not justify refusing to recognize that these juveniles have impaired abilities. It is important not to minimize the importance of solving the problem of dispositional alternatives, but the issue of whether immaturity is a legitimate source of incompetence should be separate from the issue of what to do with juveniles once they are found incompetent.

If a defendant, juvenile or adult, is incapable of actively participating in the criminal proceeding, then that defendant should be protected from participating in it, at least in states where the constitutional right has been explicitly extended to juveniles. This is true regardless of why the defendant is incompetent. Furthermore, nothing in the Supreme Court’s interpretation of the constitution limits incompetence to particular sources. The legal standard states only that defendants must have a sufficient understanding of the legal proceedings and be able to communicate with their attorneys.\textsuperscript{150}

As a final point, it is important to recognize that, historically, the law has not been reluctant to acknowledge the impact of immaturity on adolescents’ judgment. In fact, the law has fashioned a variety of mechanisms to protect juveniles from their own developmental status. In the criminal arena, at common law, the infancy doctrine served, in some cases, as a bar to prosecution, and in other cases, as a defense of incapacity.\textsuperscript{151} In essence, the infancy doctrine held that minors below a certain age were incapable of committing a crime merely because their young age had not afforded them the opportunity to develop a full understanding of their actions.\textsuperscript{152} At common law, minors below age seven were protected from prosecution by the infancy doctrine, and even older children sometimes had the opportunity to argue a defense of infancy during prosecution.\textsuperscript{153}

In addition to the infancy doctrine, acknowledgement of a juvenile’s lower level of judgment was also an important influence on the

\textsuperscript{150} Dusky v. United States, 362 U.S. 402 (1960) (per curiam).
\textsuperscript{152} Id.
\textsuperscript{153} Id. at 1137–38.
creation of the juvenile justice system. The juvenile justice system was founded, in part, on the notion that minors, purely because of their developmental status, were not as culpable for their crimes as full-grown adults. The idea was that juveniles were less culpable both because they had impaired judgment and because they had not fully developed into the people they would become. In adolescence, it was argued, their characters were still forming, and as a result, they were more amenable to treatment. Consequently, the juvenile justice system was created in order to focus efforts towards rehabilitation rather than punishment.

Even in recent years, the lowered culpability argument has been persuasive. In 2005, the U.S. Supreme Court declared the death penalty unconstitutional for juveniles. In reaching its decision, the Court cited three reasons that make it difficult to classify juvenile offenders as deserving of the death penalty: psychosocial immaturity, vulnerability to negative influences, and underdeveloped character. The Court declared that "[r]etribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity" and ruled the death penalty unconstitutional for juveniles.

All of these examples demonstrate a willingness on the part of the legal system to treat juveniles as less culpable and less capable precisely because of their immaturity. How much of a stretch is it to extend this recognition to the issue of competency to stand trial? Generally speaking, the same types of abilities are involved when assessing all three domains—capacity, culpability, and competency. Immaturity might affect each in the same ways. Underdeveloped cognitive abilities and psychosocial immaturity impair reasoning, judgment, autonomy, and communication skills. These skills are required for committing crimes just as they are for participating in the legal system.

Perhaps the biggest difference is the modern reforms in the juvenile justice system. When the system was created, rehabilitation was the primary goal. Today, most states have undergone a range of reforms designed to make juveniles more accountable for their crimes. Minimum ages of criminal responsibility have increased,

157. Id. at 569–70.
158. Id. at 571.
159. Id. at 575.
161. See generally Thomas Grisso, Juvenile Competency to Stand Trial: Questions in an Era of Punitive Reform, CRIMINAL JUSTICE MAGAZINE, Fall 1997, at 4.
eligibility criteria for waiver into criminal court have broadened, and even the "purpose clauses" embedded in state juvenile codes have been reformed to reflect dual purposes of rehabilitation and punishment.

In light of the recent trend to view juveniles as more responsible for their actions, it is not surprising that the influence of immaturity might be easily dismissed. But, that doesn't mean that it should be, especially in the area of competency to stand trial. Competency has nothing to do with criminal responsibility. It has to do with a juvenile getting a fair trial. And any modern trends towards harsher consequences for juveniles who commit crimes should only apply to those juveniles who were fairly convicted or adjudicated of those crimes.

V. CONCLUSION

Competency to stand trial in juvenile court is a complex issue. Only in the past twenty years have most courts started considering the issue of whether juveniles have the right to not be tried while incompetent. Today, the majority of states have extended the right to juveniles, but the question of what legal standard to apply is an open debate. One undecided question is what role developmental immaturity should play in the competency determination. In this Note, I have argued that immaturity is a relevant factor in determining juvenile competency. First, social science research has demonstrated that immaturity does render juveniles vulnerable to impairments in competence-related abilities. Second, the Supreme Court's interpretation of the due process requirement does not impose any restrictions on the source of incompetence. The legal standard defines the abilities necessary for one to be considered competent; it does not speak to the source of those abilities. Third, the juvenile justice system has historically acknowledged that youth can be a liability in terms of capacity and culpability. While the modern trend is in the opposite direction with regard to culpability, that should not extend to competency to stand trial, where the entire purpose is to assure a fair adjudication. The harsher consequences common today can only be justified after a fair adjudication.

As with most areas in the law, answering one question usually raises several more. In the law of competency to stand trial, at least two important questions are raised by legitimizing immaturity as a source of incompetence. The first question is how to handle immaturity. Should immaturity be considered a ground for incompetence, analogous to the "mental disease or defect" requirement in many states? Or, should the fact of immaturity cause a broader reforming of the legal standard, as is the case with the dual competency standard proposed by some commentators? The second question is how to handle incompetent defendants. If the only way to restore competency is to wait for the juvenile to age, then what alternatives does the system
have in achieving its goals of accountability and public safety? Clearly, legitimizing immaturity as a source of incompetence raises complex issues, but that should not detract from the fact that it is a legitimate source.

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