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Rachel Tait

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ILLINOIS' FITNESS STATUTE: IS IT A GOOD FIT FOR JUVENILE COURT?

by RACHEL TAIT, PSY.D.

Holding juveniles to an adult fitness standard can be problematic first, because children and adolescents are different from adults; second, because of the failure to explicitly recognize deficits due to developmental immaturity; and third, because the current statutory provisions regarding contents of the fitness report are unclear regarding what knowledge and understanding a juvenile would be expected to have about the proceedings, and in what ways juveniles are expected to assist in their defense. In order to address these problems, it is proposed that Illinois should develop provisions for juvenile fitness within the Juvenile Court Act by a) including developmental immaturity as an additional basis for a determination of unfit, b) providing greater

specificity about the fitness abilities required in juvenile proceedings, and c) identifying the least restrictive setting as the default placement for juvenile fitness restoration services.

THE IMPORTANCE OF FITNESS

It is a longstanding and well accepted principle in the United States that adult defendants must be fit when tried. The Supreme Court has declared this a constitutional right for adults¹ but has not recognized the same right for juveniles in juvenile court proceedings. However, all states with the exception of Oklahoma acknowledge that fitness is required in juvenile delinquency proceedings.²

Fitness is important in juvenile justice proceedings, particularly as these proceedings become increasingly adversarial. When the first American juvenile court was established in Illinois, the court's *parens patriae*³ approach to juvenile justice was rehabilitative and consistent with the best interests of the child. Juvenile fitness was not of great import because the goal of juvenile proceedings was rehabilitation. Although rehabilitation remains a goal of the juvenile justice system in Illinois according to Article V of the Juvenile Court Act,⁴ juvenile proceedings seem to have become more adversarial in recent history. Criminal proceedings are adversarial but adult defendants are protected by their constitutional right to be fit. Therefore, given that juvenile proceedings seem to have become increasingly adversarial, juveniles should be fit if proceedings are to remain fair and just. Secondly, there is a high prevalence of mental health disorders in the juvenile justice population⁵ and mental health issues can negatively impact juvenile fitness.

THE STANDARDS AGAINST WHICH JUVENILE FITNESS IS MEASURED

States vary widely in terms of the standards against which juvenile fitness is measured. At least 20 states have fitness statutes specific to juveniles.⁶ Many other states, including Illinois, refer to the adult standard to measure juvenile fitness. The adult fitness standard in most states is based on two seminal cases: *Dusky v. United States* and *Drope v. Missouri*.⁷ The *Dusky* standard requires a defendant to have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational, as well as factual

understanding of the proceedings against him.”⁸ The *Drope* standard indicates that a defendant must have the capacity to assist counsel in preparing his defense. In addition, *Drope* identified a “mental condition” as a source of unfitness.⁹

In Illinois, the Juvenile Court Act simply refers to the adult criminal code, according to which, “A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense.”¹⁰

REASONS WHY AN ADULT FITNESS STANDARD MAY NOT BE A GOOD FIT FOR JUVENILES

Applying an adult statutory scheme to juvenile court proceedings is not a good fit for juveniles. For example, in Illinois, juveniles tend to be placed in the least restrictive setting necessary to help them attain fitness, and yet the current default placement for individuals with mental conditions to receive fitness restoration services is a secure setting.¹¹ However, more importantly, the adult statutory scheme is not a good fit for juveniles because the adult standard does not explicitly account for important differences in juvenile and adult functioning. First, unlike the average adult, children and younger adolescents typically have deficiencies in decision-making capacity, especially because they tend to weigh short-term consequences more heavily than long-term consequences when making choices.¹² Second, ‘normal’ children and adolescents tend to have reduced perception of risk, a more time-limited perspective, a fore-shortened sense of the future, and heightened susceptibility to peer influence.¹³ Third, they are often more impulsive than adults and generally have a relatively reduced capacity for self-management. Fourth, they tend to be more emotionally reactive and vulnerable to stress than adults.¹⁴ Fifth, children and younger adolescents typically have difficulty grasping relatively complex concepts.

The aforementioned functional issues are the result of developmental immaturity, meaning that children and adolescents are typically not as mature as adults. General research supports the above conclusions and has established that brain development typically continues into early adulthood.¹⁵ Similarly, the brief of the Amici on behalf of Christopher Simmons acknowledged that brain studies had established an anatomical basis for adolescent behavior, and

that adolescent brains are not yet fully developed in areas associated with reasoning, risk-taking and impulse control.¹⁶

The functional consequences of developmental immaturity mentioned above can have a detrimental impact on juvenile fitness. The Illinois statute, as mentioned before, specifies that the source of unfitness must be a mental or physical condition. However, even when mental health issues are absent, developmental immaturity can cause some children to lack the abilities required of competent individuals.¹⁷ It is important to understand that not all juveniles with developmental immaturity and/or mental health issues are unfit. It is important to consider that factors such as an individual's age, experience and rate of maturation will determine the extent to which developmental immaturity impacts fitness abilities.

A recent study found that judges and lawyers acknowledge the potential significance of developmental immaturity on a minor's fitness. Judges and defense attorneys surveyed in 2007 across seven states considered developmental immaturity as moderately important in fitness determinations.¹⁸ Twenty-four percent of the judges thought that juveniles in juvenile proceedings could be found unfit on the basis of developmental immaturity alone.¹⁹

Florida is the only state with a statute that explicitly recognizes "age or immaturity" as a sufficient basis for a finding of incompetence.²⁰ However, the Arkansas juvenile fitness statute requires consideration of whether juveniles have the "developmental" abilities to understand the charges and the trial process, and to adequately trust and work collaboratively with their attorneys.²¹

As mentioned previously, the fitness standard in Illinois requires that the source of unfitness be a "mental or physical condition."²² Arguably, developmental immaturity could be considered a mental condition and as discussed below, juvenile court judges in Illinois acknowledge that they consider developmental immaturity when making fitness determinations. However, under the requirements of the current statute, a fitness report must contain a diagnosis in addition to a description of the mental disability.²³ Developmental immaturity is normal for children and adolescents. It does not require a diagnosis, nor is it considered a disability. By explicitly acknowledging developmental immaturity as a potential source of unfitness, the statute would be more applicable to juvenile fitness determinations. As noted by Menninger and McMa-

hon, Illinois' statute should "address unfitness arising from mental disability as well as that arising from developmental immaturity."²⁴

Clarification of the requirements for juvenile fitness is particularly important when evaluators are asked to render opinions on the ultimate legal issue. Unlike adults who can be expected to have a certain level of understanding and ability to assist counsel, juveniles require a closer examination because of developmental immaturity. Section 104-16 of the Illinois adult statute lists a number of factors admissible on the issue of fitness, but these factors are not identified as elements that must be included in a fitness report.²⁵ Section 104-15 of the statute simply requires the report to include an opinion as to whether and to what extent the mental or physical condition impairs understanding of the nature and purpose of the proceedings or to assist in one's defense.²⁶

Section 104-15 does not specify what juveniles are expected to understand about the nature and purpose of the proceedings. For example, the plea bargaining process is a relatively complex concept for children and younger adolescents to grasp, as is the right to go to trial. Is an understanding of both necessary? Similarly, is it sufficient that a juvenile understands what it means to testify, or should he also understand that testifying involves relinquishing the right to avoid self-incrimination, another relatively complex concept to understand? Furthermore, the report requirements do not specify ways in which a juvenile must be able to assist in his defense. For instance, sufficient decision making ability is required in order to make informed legal decisions. Shouldn't decision making be one of the factors that evaluators are required to assess and report on, as is the case in Arkansas?²⁷

Evaluators have insufficient statutory guidance on the issues mentioned above. Although they do not have any clinical basis for offering opinions on the ultimate legal issue,²⁸ they are required to do just that. Without sufficient guidance, evaluators question which abilities and areas of understanding to consider when offering clinical opinions on whether juveniles are fit.

SUGGESTED STATUTORY CHANGES

Although most juveniles are developmentally immature, this does not mean that all are unfit, just as not all juveniles are unfit because of mental illness. Rather, if fitness deficits are present and developmental immaturity is responsi-

ble for those deficits, then this immaturity should be considered an acceptable basis for a determination of unfit if the fitness deficits rise to that level. As a psychologist evaluating juvenile fitness in Illinois, the following suggestions are offered to address the issues raised above, to provide greater guidance for evaluators of fitness and the courts, and to better serve youth involved in juvenile justice proceedings.

Article V of the Juvenile Court Act should contain provisions governing fitness determinations of juveniles in juvenile proceedings. This would bring Illinois in line with over 20 states that already have statutory schemes for juvenile fitness. Legislators should consider adding developmental immaturity to the two existing predicate conditions (mental and physical) for a finding of unfitness.

Identifying developmental immaturity as an acceptable source of unfitness is consistent with research recognized by the Supreme Court in *Roper v Simmons* regarding the significance of adolescent brain development.²⁹ Multiple commentators have suggested that fitness statutes should reflect the impact that developmental immaturity can have on juvenile fitness. For instance, it has been suggested that juvenile competency statutes need to “come in line with developmental theory” in order to provide juveniles with “appropriate protections.”³⁰ Similarly, a proposed model for state legislation recommended that juvenile statutes include “chronological immaturity” as an acceptable source of juvenile unfitness,³¹ which was defined as a condition based on “chronological age or significant lack of developmental skills.”³² Although some adolescents are more or less developmentally immature in relation to adults than same aged peers, concerns raised by some³³ about the need to avoid over-generalizations are addressed when evaluators of fitness take an individualized approach to assessment.

In modifying the adult standard for juveniles, legislators should also provide greater statutory guidance on the specific areas of knowledge and understanding that one would expect a juvenile in juvenile proceedings to possess. Similarly, clarification on the abilities expected of a juvenile in order to assist in his defense would provide evaluators with further guidance on the factors to include in a report and consider when offering requisite opinions on fitness.

Finally, if or when juvenile fitness statutory provisions are developed, legislators should consider the least restrictive setting as the default placement for

fitness services, meaning that services should occur on an outpatient basis unless there are reasons warranting inpatient treatment. This would be consistent with the Juvenile Court Act's goal to keep juveniles in the home when possible.³⁴

JUDICIAL SUPPORT OF STATUTORY CHANGE

In preparing for this article, I engaged in discussions with judges presiding over delinquency proceedings in Cook County's Juvenile Court. A number of judges were in favor of a separate fitness statute for juveniles and as a practical matter, some stated that developmental immaturity is already being considered when making fitness determinations. One judge³⁵ thought it would be a great idea to have a different standard for juvenile fitness in Illinois, explaining that it did not make sense not to have a different standard for juveniles versus adults. The same judge opined that developmental immaturity is a key difference between juveniles and adults which ends up working its way in to juvenile fitness proceedings, but that the way in which it is worked in should not be haphazard. Another judge³⁶ was in favor of an Illinois juvenile fitness statute that recognizes developmental immaturity as a factor that may impact juvenile fitness, although this judge did not think that developmental immaturity alone should be sufficient to render a juvenile unfit. One judge³⁷ opined that juveniles do not need to have as good an understanding of proceedings as adults, and was in favor of a lower fitness standard in juvenile proceedings. Another judge³⁸ thought that the adult fitness standard was appropriate for use in juvenile proceedings but that there should be a lower fitness threshold for juveniles in juvenile proceedings than for adults in adult proceedings. This judge opined that developmental immaturity is covered by the term 'mental condition,' which is one of the two predicate adult statutory conditions needed for a finding of unfitness.

CONCLUSION

A juvenile fitness statute addressing the issues identified in this article is consistent with Illinois' position at the forefront of juvenile justice. As home to the nation's first juvenile court, Illinois should have fitness provisions appropriate to juvenile court proceedings and consistent with the rehabilitative mission of the juvenile court. Accurate appraisal of juvenile functioning and needs will

provide children and adolescents with the services and protections they deserve.

NOTES

- 1 *Pate v. Robinson*, 383 U.S. 375, 385 (1966). (“We believe that the evidence introduced on Robinson’s behalf entitled him to a hearing on this issue [of his fitness for trial]. The court’s failure to make such inquiry thus deprived Robinson of his constitutional right to a fair trial.”).
- 2 Richard E. Redding & Lynda E. Frost, *Adjudicative Competence in the Modern Juvenile Court*, 9 VA. J. SOC. POL’Y & L. 353, 368 (2001).
- 3 The *parens patriae* doctrine grants the state authority to act as the supreme guardian of children, and power to protect the best interests of children.
- 4 705 ILL. COMP. STAT. 405/5-101 (2008).
- 5 Jennie L. Shufelt & Joseph J. Cocozza, *Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study*, RES. AND PROGRAM BRIEFS (Nat’l Center for Mental Health and Juv. Just., Delmar, N.Y.), June 2006, at 2.
- 6 Redding & Frost, *supra* note 2, at 368.
- 7 See *Dusky v. United States*, 362 U.S. 402 (1960); *Drope v. Missouri*, 420 U.S. 162 (1975).
- 8 *Dusky*, *supra* note 7, at 402.
- 9 *Drope*, *supra* note 7, at 171.
- 10 725 ILL. COMP. STAT. 5/104-10 (2008).
- 11 725 ILL. COMP. STAT. 5/104-17(b) (2008).
- 12 Elizabeth S. Scott & Laurence Steinberg, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOL. 1009, 1012 (2003).
- 13 *Id.*
- 14 *Id.* at 1012-13.
- 15 Sarah-Jane Blakemore & Suparna Choudhury, *Development of the Adolescent Brain: Implications for Executive Function and Social Cognition*, 47 J OF CHILD. PSYCHOL. AND PSYCHIATRY 325 (2006).
- 16 Brief of American Medical Association, et al. as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No.03-633).
- 17 IVAN KRUH & THOMAS GRISSO, EVALUATION OF JUVENILES’ COMPETENCE TO STAND TRIAL46 (2009).
- 18 Jodi L. Viljoen & Twila Wingrove, *Adjudicative Competence in Adolescent Defendants: Judges’ and Defense Attorneys’ Views of Legal Standards for Adolescents in Juvenile and Criminal Court*, 13 PSYCHOL. PUB. POL’Y & L. 204, 217 (2007).
- 19 *Id.* at 219.
- 20 FLA. STAT. § 985.19 (2008).
- 21 ARK. CODE ANN. § 9-27-502 (2009).
- 22 725 ILL. COMP. STAT. 5/104-10 (2008).
- 23 725 ILL. COMP. STAT. 5/104-15 (2008).
- 24 Karl Menninger & Thomas R. McMahon, *Fitness to Stand Trial in Juvenile Court: The Worst of Both Worlds?*, 95 ILL. B.J. 316 (2007).
- 25 See 725 ILL. COMP. STAT. 5/104-16 (2008).
- 26 See 725 ILL. COMP. STAT. 5/104-15 (2008).

- 27 Kellie M. Johnson, *Juvenile Competency Statutes: A Model for State Legislation*, 81 IND. L.J. 1067, 1084 (2006).
- 28 Thomas Grisso, Denise Mumley & Chad Tillbrook, *Avoiding Expert Opinions on the Ultimate Legal Question: The Case for Integrity*, 3(3) J. OF FORENSIC PSYCHOL. PRAC. 77 (2003).
- 29 See *Roper v. Simmons*, 543 U.S. 551 (2005).
- 30 Madelon Baranoski, *Commentary: Children's Minds and Adult Statutes*, 31(3) J. OF THE AM. ACAD. OF PSYCHIATRY AND L. 314, 325 (2003).
- 31 Johnson, *supra* note 27, at 1094.
- 32 *Id.* at 1091.
- 33 See Emily Buss, *Rethinking the Connection between Developmental Science and Juvenile Justice*, 76 U. CHI. L. REV. 493 (2009) (reviewing ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* (2008)); See also Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89 (2009).
- 34 705 ILL. COMP. STAT.405/1 (2008).
- 35 Interview with Anonymous Judge (Jan. 27, 2010).
- 36 Interview with Anonymous Judge (Jan. 27, 2010).
- 37 Interview with Anonymous Judge (Feb. 10, 2010).
- 38 Interview with Anonymous Judge (Jan. 27, 2010).