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Is a Minimum Age of Juvenile Court Jurisdiction a Necessary Protection? A Case Study in the State of California

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Abstract

Several U.S. states are considering setting or raising a minimum age of juvenile court jurisdiction. However, there is scant evidence to suggest if a state minimum age law would protect children from developmentally inappropriate proceedings beyond existing capacity and competency statutes. To address this central question, this case study focuses on the state of California and considers (a) existing state laws, (b) state juvenile crime data, and (c) opinions of diverse juvenile justice stakeholders. Triangulated analysis found that a low number of California children below the age of 12 years are petitioned in juvenile court and most are referred for misdemeanor or status offenses. Existing legal protections are present yet inconsistently implemented. A minimum age law would address some of these policy gaps.

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> I've seen children as young as eight in juvenile delinquency court. . . . Believe it or not one kid put a "kick me" sign on the back of a boy. Our client kicked the kid who was wearing the "kick me" sign, but that's typical third-grade conduct. They charged him with battery on school grounds.
>
> —California Public Defender

The minimum age of juvenile court jurisdiction refers to the youngest age that a child can be referred to a juvenile court for a delinquent act. The United States lacks a national minimum age standard. As of 2017, 21 states have an established minimum age law: one state at age 6 years, five states at 7 years, three states at 8 years, 11 states at 10 years, and one state at 11 (National Juvenile Defender Center, 2016; Nebraska Juvenile Court, 2017). As such, the majority of state laws permit the possibility of prosecuting a child, such as the third grader described above, in a juvenile court. There are several reasons that involving children in the juvenile justice system can be problematic, including that court proceedings are developmentally inappropriate for children (Grisso et al., 2003), formal systems involvement can increase the likelihood of poor health and future criminal justice involvement (Barnert et al., 2017), and children with disruptive behavior may be more effectively handled outside the formal justice system (Loeber & Farrington, 2000).

California state legislators are currently considering a bill (SB 439) to establish a minimum age of 12 years for juvenile court jurisdiction. This would be the oldest minimum age threshold in the nation and the only one to be aligned with the minimum age recommendation of the United Nations Convention on the Rights of the Child (Committee on the Rights of the Child, 2007). However, there is a dearth of existing empirical information on minimum age laws and related statutes surrounding capacity and competency. Nearly all of the literature and policy analysis related to "raising the age" have been focused on the transfer or waiver of minors (i.e., those below the age of 18 years) to adult criminal court (Monahan, Steinberg, & Piquero, 2015). It is important to note that this article is *not* about the waiver or transfer of minors to adult court; rather, we are investigating state law and policy related to the minimum age of juvenile court jurisdiction.

Centered on the state of California, our driving question is whether the proposed bill, which would set a minimum age of juvenile court jurisdiction at age 12 years, is a necessary protection for children given the status of existing capacity and competency statutes. Using multiple data sources and case study

methodology, we explore the following questions: (a) What demographic characteristics and offenses are associated with children below age of 12 years in California referred to the juvenile court? (b) What is the scope of existing legal protections for children in California in regard to juvenile court jurisdiction? (c) To what extent do juvenile justice stakeholders converge on the perceived strengths and/or weaknesses of existing protections? (d) Would a minimum age policy address key policy gaps?

Background and Significance

The Jurisdiction of the Juvenile Court

The federal government sets minimal parameters on state juvenile court jurisdiction, and state law determines age boundaries surrounding the juvenile court (National Juvenile Defender Center, 2016). As mentioned, the "basement," or the minimum age of juvenile court jurisdiction in the United States ranges from 0 to 11 years. The 21 states with minimum age laws exclude children below a predetermined age threshold from juvenile court prosecution. In those states, the child is simply considered ineligible for prosecution based on chronological age.

In states with and without a minimum age law, legal standards of capacity and competency may also exclude children from juvenile court jurisdiction. *Capacity* refers to the cognitive ability that a person must possess to be held accountable for a crime, including the ability to understand right from wrong (Gardner, 2009). In the legal context, *competency* is the ability to understand the charges and the legal proceedings, to consult meaningfully with counsel, and to assist in one's own defense (Ryba, Cooper, & Zapf, 2003). Policies rooted in capacity or competency are intended to provide prosecutors, defense attorneys, and judges with guidelines to inform their discretion in decisions about suitability for prosecution. These two key factors are reviewed below as they relate to protecting children from unnecessary or developmentally inappropriate legal proceedings.

The Infancy Defense and Capacity

Under English common law, the infancy defense was expressed as a set of presumptions in a doctrine known as *doli incapax*, such that a child below the age of 7 years was presumed incapable of possessing criminal responsibility. The presumption was conclusive, prohibiting the prosecution from offering evidence that a child had the capacity to appreciate the nature and wrongfulness of what he or she had done. Prior to the establishment of the juvenile

court, the United States imported this standard into broader criminal justice system and considered children below the age of 7 years to be incapable of committing any crime based on their developmental stage and expected immaturity (Walkover, 1983). Youth aged 7 to 14 years were also presumed *doli incapax* under the common law (i.e., to lack criminal responsibility), but at varying degrees and with fewer legal protections for those nearing age 14 years. As the American legal system evolved, children's rights advocates disagreed with youth in this age group being prosecuted alongside adults and strived to create a separate justice system that eventually became the juvenile courts (Bazelon, 2000). As the American juvenile justice system was based on separation from adult criminal proceedings, the concept of infancy defense became less relevant in juvenile court. However, as the U.S. juvenile justice system has become increasingly punitive in treatment and more akin to adult court, the issue of capacity has re-emerged (Feld, 1998).

In determining capacity, the legal construct of *mens rea* (the intention or knowledge of wrongdoing) is concerned with cognitive ability and the faculty to make choices; it disregards other factors (e.g., values) that may influence decision making. Any person who has the ability to decide how to act is deemed to possess criminal responsibility, provided insanity is not established (Walkover, 1983). Thus, even very young children may be deemed to have acted purposefully and with knowledge of the wrongfulness of their actions. The defense can raise the issue of capacity based on low chronological age, cognitive ability, and/or developmental immaturity (Feld, 1998). Capacity as a protection for young children is highly relevant in states without an established minimum age law and in states with low minimum age thresholds. However, there is a stark absence of research in the scope and implementation of capacity laws in the juvenile justice system, particularly relative to the more robust literature on competency.

Competency to Stand Trial

Protections established by the U.S. Supreme Court and the Sixth Amendment of the U.S constitution guarantee children a meaningful right to a fair trial (*In re Gault*, 1967). Specifically, federal and state laws require that children subject to juvenile court proceedings must be competent to stand trial. To meet this standard, the child must satisfy factors in three areas: mental wellness, intellectual ability, and developmental maturity (Bath & Gerring, 2014). Within intellectual ability exist specific legal functional abilities, known as the "Dusky criteria" (*Dusky v. United States*, 362 U.S. 402, 1960). The Dusky criteria apply to all criminal defendants but have special relevance to children. These criteria for legal competency include basic comprehension of the purpose and nature of the trial process, capability to provide relevant

information to counsel, ability to reason about this information in a logical fashion, and ability to apply information to one's own situation in a manner that is neither distorted nor irrational (Grisso, 2006). As of 2015, 21 states had competency laws specific to juveniles (National Conference of State Legislatures, 2015; Woolard, Fried, & Reppucci, 2013). States vary in their implementation of the standards for juvenile competency set forth by *Dusky v. United States*. This means that states and often local court jurisdictions use a variety of techniques when determining competency, often employing an outside expert to provide testimony to the juvenile court judge.

On measures of abilities relevant to competency, research has found that youth aged 15 years and younger are more likely to display a level of impairment consistent with adults who are found incompetent to stand trial (Grisso et al., 2003). In addition, compared to youth found to be competent to stand trial, youth determined to be incompetent are younger, have severe special education needs, and have extensive mental health treatment histories (Baerger, Griffin, Lyons, & Simmons, 2003; Bath, Reba-Harrelson, Peace, Shen, & Liu, 2015; Warren, Aaron, Ryan, Chauhan, & DuVal, 2003). That said, children without a cognitive disability can still be found incompetent to stand trial due to developmental immaturity that is often consistent with a young chronological age. Existing literature also suggests that many youth who lack competency do not receive quality competency evaluations, a problem that also disproportionately affects youth of color (Cross, Bazron, Dennis, & Isaacs, 1989; Ryba et al., 2003).

Research Gaps

Several U.S. states are currently considering setting or raising the minimum age of juvenile court jurisdiction (National Juvenile Defender Center, 2016). However, scant empirical evidence exists to inform these policy decisions, and existing diversity in state laws make this issue a particularly complex topic. Presently, the California legislature is debating SB 439, a bill that would make California the only state in the United States to set a minimum age of juvenile court jurisdiction at 12. As California is the most populous state in the nation and often on the cutting edge of criminal justice changes, this case study can be used as a model to inform research and policy occurring in other states.

Method

An interdisciplinary team including professors and graduate students of social work, law, public policy, and medicine, as well as two juvenile justice legal experts conducted an in-depth case study of California law and policy.

To address the research questions, the team selected the following research methods and data sources: (a) textual analysis of California statutes and relevant case law to understand current capacity and competency statutes, (b) quantitative analysis of state juvenile crime data to illustrate the scope of who might be affected by a minimum age statute, and (3) semistructured interviews with diverse juvenile justice stakeholders in three California counties to understand the implementation of existing laws. Together, these formed elements for a triangulated case study (Yin, 2013) and are detailed below.

Legal Analysis

The legal analysis identified relevant legal history related to competency and capacity statutes for minors in the state of California. California's juvenile court code was initially identified in the legal database Westlaw using a Boolean Terms and Connectors query involving a combination of the following search terms: juvenile, delinquent, child, juvenile court, and/or juvenile delinquent. The relevant juvenile court acts were then identified; in this case, it was Welfare and Institutions Code 601/602. Relevant provisions were collected from the juvenile code, and relevant cases (i.e., those discussing the issues of juvenile justice jurisdiction, capacity, competency, diversionary methods, or synonymous terms) were identified using Westlaw's "Notes of Decisions" section.

After reviewing the relevant cases, we also engaged in a broad Boolean Terms and Connectors query. For example, when focusing on the issue of capacity for the state of California, we entered the following search terms, limited only to cases emanating from California state courts: juvenile delinquent/capacity, odds ratio (OR), juvenile delinquent and capacity. As the search method generated a large number of cases, we then filtered the results using West's Key Numbers System. To identify Key Numbers, we went through the list of Key Numbers identified in the initial search results and first filtered by the "Infants" key number. We further filtered our results by selecting additional key number filters from the "Infants" filter and selected those that involved capacity, competency, diversionary methods, and synonymous terms. Finally, to ensure that we had found all relevant cases relating to our research questions, we conducted additional specific and general Boolean Terms and Connectors queries. We then reviewed the search results from the general and specific Boolean Terms searches and identified the most relevant case law.

Analysis of State Juvenile Justice Data

The California Department of Justice (DOJ) supplied data on cases involving children below the age of 12 years who referred for delinquency from 2010

to 2015. The California DOJ Criminal Justice Statistics Center collects information on the juvenile court and probation systems from 54 of 58 California counties. County probation offices report data monthly to DOJ to track referrals to juvenile probation through disposition (e.g., case dismissal). These data do not include information about point of arrest. The research team examined probation referrals and dispositions for children below the age of 12 years for the year 2015 (the most recent year that data were available) and a descriptive review of the 5 prior years. Although many cases had duplicate charges with unique identifiers, the researchers counted separately only referrals that took place on different dates within the data set. In addition, if a minor was referred on the same day for multiple charges, we analyzed the "highest level" charge. This method is consistent with state DOJ analysis (Criminal Justice Statistics Center, 2015).

In regard to demographics, the California DOJ coded cases into 19 *race/ethnicity* categories and then collapsed those into the following six categories: American Indian, Asian/Pacific Islander, Black, Hispanic, White, and Unknown. *Age* refers to the age of the youth at referral. *Referral* means a minor was brought to the attention of the probation department for alleged behavior under Welfare and Institutions Code Sections 601 and 602. A *referral offense* is the specific charge of a referral. Multiple referral offenses can be made at one time for a single child's referral. A petition is the legal document filed by the district attorney (DA) for a case to proceed for formal processing with the juvenile court. *Disposition* refers to a decision or action taken by a probation officer or juvenile court as the result of a referral.

Semistructured Stakeholder Interviews

We purposively sampled key informants from three large California counties (one southern, one central, and one northern) to participate in semistructured telephone interviews. The counties were selected to provide a mix of geographic locations and variation in demographics, poverty rate, and population density (see Table 1). Although they had similar percentages of White residents, they varied widely in their populations of Latinos and Asian Americans and moderately with African Americans. The varying rates of education, poverty, and population density also indicate that the three counties provided diverse perspectives.

For each county, we sought to interview at least one key informant from the following five groups: a juvenile court judge, a juvenile public defender (PD), a probation chief or juvenile division director, a police chief, and a district attorney (DA). Our response rate for queries about the research via email was 70%, and in some cases the initial invitation was passed along to someone working under the original invitee. We completed a total of

Table 1. County Demographics, 2016.

Demographic	Southern	Northern	Central
Race			
African American	9.1%	2.8%	5.8%
Asian American	15.1%	36.5%	10.8%
Latino	48.5%	25.9%	52.8%
Multiracial	3.0%	4.1%	3.1%
White	26.5%	32.3%	30.0%
Education			
High school graduate or higher	77.7%	87.1%	73.8%
Bachelor's degree or higher	30.8%	49.1%	19.7%
Persons in poverty	16.3%	9.3%	25.5%
Population per square mile	2,419.6	1,381.0	156.2

Source. U.S. Census Quick Facts, 2016.

14 distinct interviews with 15 juvenile justice stakeholders, including five juvenile probation chiefs/division directors, two PDs, two police chiefs, four DAs, and two juvenile court judges.

A member of the research team conducted the interviews via telephone and recorded them using a digital recording device. The interview guide included questions about minimum age policy, implementation of the law, and alternatives to juvenile justice involvement and lasted between 30 and 50 min. We sought examples of how counties understand and implement laws related to children's capacity and competency, with "children" defined by the researchers as minors under age 12. These interviews took place prior to the introduction of California SB 439, so stakeholders discussed the idea of a minimum age law without a concrete proposal to draw from. Interviews were professionally transcribed verbatim and analyzed by three members of the researcher team for salient content across stakeholder types and counties. We developed coding rubrics and matrices to drill down to the main themes, including areas of convergence and divergence. We also sought to identify specific policy implementation issues and gaps. The interview data were then triangulated with the legal analysis and the quantitative data to produce a rich case study of California law and policy. The UCLA Office for the Protection of Human Subjects approved all aspects of the study protocol.

Results

In this section, we begin by presenting an overview of existing California juvenile law and then report the California DOJ data on children below the age of 12

years referred to juvenile court. We then present the legal and interview data together on the topics of competency and then capacity, examining the basis of existing law as well as perceptions of implementation and effectiveness. We conclude by presenting stakeholder opinions on the relative importance of a minimum age law in relation to capacity and competency statutes and procedures.

Children Below the Age of 12 Years in California Juvenile Courts

Section 602 of the California Welfare and Institutions Code (W & I Code) states that the juvenile courts have jurisdiction over "any person" below the age of 18 years who is alleged to have violated a law with the potential to be declared a "ward of the court." The major exception to this policy refers to a set of circumstances in which minors aged 14 years and above may be referred to adult criminal court under W & I Code 707. As mentioned previously, no minimum age of juvenile justice jurisdiction is included in W & I Code 602.

The DOJ data provide a picture of the number of children below the age of 12 years referred to juvenile probation under W & I Code 602. It is important to note that in California, a referral does not necessarily mean that the child's case is petitioned or moved to court; rather, following a referral to juvenile probation (often by an officer, but could also be a parent or other authority), the county DA office assesses and decides which cases to pursue. In 2015, 590 children aged 11 years and younger received a total of 687 referrals to probation from law enforcement, school, or other sources. These 687 referrals represented just 0.8% of the total number of referrals in California in 2015 ($N = 86{,}539$). Of these 590 children, 25% were White, 24% were African American, and 45% were Latino/a. Of note, African Americans were over-represented in these figures relative to the statewide child population in which 28% of children aged 5 to 11 years (the same age range as our sample) were White, 6% were African American, and 53% were Latino/a (National Center for Health Statistics, 2016).

Table 2 indicates the number of referrals by age. As shown, the youngest child to receive a referral was 5 years old; the referral offense was "curfew violation." The youngest child with a sustained petition, meaning that the referral was found to be true in juvenile court, was 7 years old and officially recorded as "other misdemeanor." Regarding charge type, of the 687 referrals, 411 were for a misdemeanor, 40 were for a status offense, and 236 were for a felony. These lower level offenses are consistent with longitudinal data showing that most referrals for those who are 11 years and below are for minor and nonviolent offenses; from 2010 to 2015, no young child had a sustained petition for homicide, manslaughter, or rape.

Referrals to juvenile probation that were subsequently petitioned in juvenile court or later sustained by the court were rare. Among the 687 referrals, only

Table 2. Number of Referrals of Children Below Age of 12 Years in California, 2015.

Age of child (years)	5	6	7	8	9	10	11	Total
Number of total referrals	1	0	12	22	64	136	452	687
Total Percentage	0.1	0	2	3	9	20	66	100

100 of 687 (15%) resulted in a petition being filed, and 59 of the 687 (9%) ended in a sustained court petition. Of the 59 petitions that were sustained, 37 were for a misdemeanor, one was for a status offense, and 21 were for a felony. Last, of the 687 referrals, only 30 (4%) ultimately resulted in the disposition for a child to be a ward of court—the most severe outcome and results in an out-of-home placement. As case flows progressed, African American children had increasingly higher rates of petitions filed, petitions sustained, and wardship compared with children from all other racial/ethnic groups.

Capacity: Law and Implementation

Legal analysis. Although W & I Code 602 states that the juvenile courts have original jurisdiction over youth below the age of 18 years charged with a delinquent act, the California Supreme Court has held that jurisdiction is inappropriate when the child "lacks capacity" to willfully understand or participate in a criminal act. The California Supreme Court case *In re Gladys R.* (1970) held that children below the age of 14 years presumptively lack the capacity to commit crimes. However, the Court also held that although it is presumed that children below the age of 14 years lack the requisite capacity, it may be rebutted. Hence the burden is on the state to demonstrate by clear proof at the initiation of a juvenile proceeding that a child below the age of 14 years has the requisite capacity to have committed the alleged crime (*In re Gladys R.*, 1970). If the state is unable to demonstrate that the child has capacity, then the juvenile court no longer has jurisdiction over the case. For example, in *In re Michael B.* (1983), a 9-year-old boy accidentally shot his playmate with his father's gun, and the court ruled that the case should be dismissed because the young boy lacked criminal capacity. As a result of *In re Michael B.*, California law codified the age threshold of 14 years for a presumption of capacity in Section 26 of the California Penal Code with children below 14 years presumed to lack capacity (CA Pen. Code §26, n.d.).

When the issue of capacity is raised, California case law dictates that several factors should be examined to determine if the minor appreciates the wrongfulness of his or her conduct. These factors should include the child's age, experience, and general understanding; parent testimony may also be taken into account (*In re Gladys R.*, 1970). The California courts have held that the closer the youth is to age 14 years, the more likely that she or he appreciates the wrongfulness of her or his conduct (*In re Paul C.*, 1990). In later decisions, California courts have also decided that circumstances of the crime's commission or concealment can also be considered when determining whether the child appreciates the wrongfulness of her or his conduct (*In re Joseph H.*, 2015; *In re Paul C.*, 1990).

Interview findings. Stakeholders across types and counties were generally aware of "Gladys R." law stipulating that a capacity assessment is required before charges can be formally filed for children below age 14. Interviewees conveyed that capacity is most often established through the completion of a "Gladys R." questionnaire that is administered to the child by the arresting police officer when the child is taken into custody. The Gladys R. questionnaire is intended to assess if the child knows right from wrong. However, interviewees explained that prior to this process, law enforcement officials often have the discretion over whether to cite children below age 14 who are alleged to have committed low-level delinquent acts. As one police chief explained: "It all just depends on the crime, and the officer does have a lot of discretion."

Analysis of the interview data also indicated that county capacity policies and procedures may conform to the Gladys R. standard "on paper," yet there are many questions and unknowns regarding implementation of the law. For example, counties use different types of officials to administer the capacity assessment, which may include law enforcement (at time of arrest), probation department officials, and prosecutors. They often will examine multiple factors in determining capacity beyond the assessment. As one probation officer stated, severity of the crime and the victim's wishes might be taken into account when determining capacity:

> Well, it's [whether the Gladys R. is used is] kind of the discretion of the officers, and the victim's wishes weigh heavy. If the victim of a crime contacted the district attorney's office, for an example, and says, 'hey, my house was broken into. I feel violated. They tossed my house. My drawers are all out. . . . We don't feel safe. We want somethin' to be done about this.' Now the DA might say, 'wow, everybody's up in arms about this. This is kind of a big deal that these people feel victimized.' They might contact law enforcement like, "hey, what did the kid say when they were questioned regarding this burglary?"

Multiple stakeholders, including law enforcement officials, were unable to specify any trainings required or offered to police offers on how to administer of the capacity assessment. Moreover, no stakeholders reported having access to reliable data on how often the Gladys R. assessment prevents a child from receiving a referral or what officers do when they find that a child lacks capacity. Probation chiefs, DAs, and police chiefs across the three counties reported that they do not receive any notification if a Gladys R. is administered and substantiated in the process of an arrest. In that case, one DA suggested, their office "wouldn't hear of it."

Stakeholders also identified several ways that DAs circumvent the law to substantiate capacity. For example, during the administration of a Gladys R. questionnaire, law enforcement assesses a youth's ability to appreciate the wrongfulness of his or her conduct. If the interview yields conflicting evidence, an interview with a parent can also prove capacity, which some interviewees reported may raise ethical concerns. Interviewees explained that parents are often unaware that their responses could be used in the capacity assessment of their child. As one DA stated,

> Most parents, even if they're trying to protect their kids, are never going to say that they didn't teach their kids the difference between right and wrong. I believe parents don't want to say that because it makes them look like not good parents.

If a parent asserts to a judge that he or she did indeed teach a child right from wrong, this can be viewed as sufficient evidence to prove that a child had the capacity to commit a crime, placing the parent in a "no-win" situation. One PD stated: "They put the parent of the child into this just really awful situation where they're actually testifying against their child." In addition, in the absence of all forms of primary testimony, circumstantial evidence can be used to assert a minor's capacity. For example, one DA explained that hiding a stolen device, such as an iPod, in one's backpack to be sufficient evidence to establish that a child understood the wrongfulness of the act and thus had criminal capacity.

Last, stakeholders across the board concurred that the Gladys R. standard is rarely, if ever, challenged in court, partly because capacity proof is supposed to be settled prior to charges moving forward. One DA said, "It's extremely rare to bring it up at trial. I've seen it seriously litigated maybe three times in the last six years." Thus, while stakeholders agreed that the Gladys R. capacity protection is an important state law for minors, it may not protect children from prosecution, particularly when the DA sees a compelling reason to pursue the case.

Competency: Law and Implementation

Legal analysis. The state of California has statutorily enacted a juvenile competency standard in Section 709 of the California Welfare and Institutions Code. A child is incompetent to stand trial in juvenile court if

> [S]he/he lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, *or* lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her. (CA Welf. & Inst. Code §709)

If the child is unable to effectively assist his or her attorney or is unable to understand the nature of the criminal charges against him or her, then the child is determined to lack competency and deemed unfit to stand trial. Any party in the court proceedings—including the judge, prosecutor, or defense—may raise the issue of the child's competence. In the case of *In re RV* (2015), a California appellate court held that the issue of the child's competence to stand trial should only be raised after the child's capacity has first been established. Furthermore, the party that raises the issue of incompetence then has the burden of proving by a "preponderance of the evidence" that the child is incompetent. This means that the party raising the challenge must provide the evidence that the child is unfit to stand trial.

If the issue of competency is raised, Section 709 of the California Welfare and Institution Code requires that the juvenile court judge suspend the proceedings until a special competency hearing can take place (CA Welf. & Inst. Code §709). Section 709 requires that the judge must then appoint an expert in childhood and adolescent development to evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or another condition that could make the child unfit to stand trial (CA Welf. & Inst. Code §709). Importantly, California courts have held that a developmental disorder or mental disability is not required to establish incompetence. Instead, the determination of a child's competency is dependent on a variety of factors, including the child's developmental immaturity and age. It follows that the younger the child, the more likely it is that he or she is unfit to stand trial (*In re Timothy J.*, 2007). Ultimately, the judge must consider the unique facts of the case along with the expert's testimony to determine whether the child is competent to stand trial (*In re RV*, 2015; *In re Timothy J.*, 2007). If a child is deemed incompetent, a judge may order "restoration" services to prepare that child for competency or to allow him or her to mature before standing trial. These services may be rendered in secure detention or at home, depending on the seriousness of the crime.

Interview findings. Stakeholders in all three counties were aware of county-specific mechanisms to implement the provisions of California Welfare and Institutions Code 709. For example, some county protocols mandate a team meeting of experts around competency, whereas others mandate an independent, expert evaluation to be submitted to a judge within a given number of days. Across the different roles, stakeholders felt that competency laws were an important protection for youth. That said, they also noted several barriers to raising the competency standard in juvenile court. For example, the intensiveness and cost associated with the competency process can result in avoiding the assessment and potential restoration processes by dismissing the case or taking a plea deal. One stakeholder described that the level of complexity and expense pushes court actors to resolve cases dealing with competency more quickly (with a sentence of diversion, community service, or probation) rather than moving to a lengthy and expensive coordinated process. As one judge stated, "My court and many other courts will bend over backwards when competency starts to rear its head to try to figure a way to resolve the case without raising that issue." PDs and DAs also stated that they were more inclined to look for a plea deal to avoid a potentially lengthy competency restoration process.

Time limits to achieve competency are varied and often contested by stakeholders. Most agreed that competency cases take too long to be resolved, and by the time they are, the child has matured beyond the person he or she was at the time of the crime. Several interviewees expressed that this is a potential violation of due process. One probation chief stated:

> They just didn't have the ability to understand right from wrong at that moment in time, and then somehow that goes away. It's like, they're competent now, and so they're competent to stand trial on what occurred two years ago. It just baffles me.

The prosecution/law enforcement participants expressed that they often have to challenge the time limits to follow through on a case, confirming that it can be several years after the crime.

Although most youth are sent home to receive competency restoration services, they can also be detained in a juvenile hall or another out-of-home placement. According to the PDs, some children are unjustly detained while receiving costly competency restoration services, and whereas some counties have time limits for detention around competency restoration, others do not. As one probation chief described, the juvenile hall becomes a "holding place" for youth with developmental delays and mental health challenges as well as those of very young age. That same probation chief believed that the juvenile hall is inappropriate for competency cases.

In sum, a broad agreement was found across counties and stakeholders that competency protections are of the utmost importance but remain a "gray area" in definition and implementation. For example, one judge was satisfied if a child learns to memorize "what a prosecutor is and what a misdemeanor is and things like that, even if they [the children] don't really have the capacity to meaningfully apply those concepts to their own situation." As a result of these gray areas, several stakeholders questioned the legitimacy of current county competency policies, particularly with regard to younger children and those with developmental disabilities.

Merits and Risks of a State Minimum Age Law

Stakeholders were not uniform in their opinions about the benefits or drawbacks of a potential California minimum age law. There were three categories of responses: those in strong favor of such a law, those opposed, and those who saw the need for such a law but not at the expense of existing protections.

Those in favor of establishing a state minimum age law spanned stakeholder roles with the exception of the DAs, who were uniformly opposed. Supporters viewed a minimum age as a necessary protection against unclear and inconsistently applied capacity and competency statutes. A minimum age law might also eliminate expensive and unnecessary competency proceedings for younger children. One probation chief stated, "I think it's insane that we don't have an age limit, that we could book—that you could book an eight year old. I think that is absurd." Others argued that a minimum age law could reduce racial disparities among young children referred to court and that it represented a more rational response to children in need. One PD talked about a case of a 12-year-old child who lived in a transient motel and who was prosecuted for stealing a peanut butter cup: "If they needed to do something with him, it seems that it was a situation where the family—where they needed to focus on more than just him and what was going on with him."

Those opposed to a minimum age law argued that current statutes in California work well to protect children from unnecessary court intervention and believed that California should make decisions about which children belonged under the jurisdiction of the juvenile court on an individual basis. One DA said, "I think you always have an eye towards age, but setting some sort of standard or minimum or maximum or whatever it may be—that doesn't sit well with me." Another DA expressed that this is not a problem that should be addressed through legislation:

> This isn't an epidemic that you're studying here. I think to set strict rules, to have legislators, which is what it would be, setting strict rules and they're not experts in the system is a dangerous thing. I don't think that's a good idea.

Those opposed to a minimum age law also believed that prosecution should always be an option, particularly in the case of a violent crime.

Last, some stakeholders expressed reservations that a minimum age law, while well meaning, might have the unintended effect of compromising existing capacity and competency protections. For example, a law could potentially contradict the current Gladys R. capacity standard of age 14 years, resulting in broadening the scope of cases that are petitioned in the juvenile justice system. Another point of uncertainty was whether or not a minimum age would be able to provide flexibility in accounting for key developmental differences among children. One judge stated when weighing these options,

> Many times I see kids come to court and they're just obviously too small to be here. Sometimes I'll see a 6-foot-tall 12-year-old who's committed serious crimes. I'm not sure an arbitrary age is going to address that kid or those crimes.

Discussion

This exploratory case study provides much needed empirical insight into questions concerning the potential for a state minimum age law to protect children below the age of 12 years beyond existing statutes. The minimum age of juvenile justice jurisdiction is uncharted research territory, despite current legislative proposals to establish or raise existing minimum age boundaries. Based on our analysis, here we appraise existing protections for young children in California and consider if a minimum age would address identified policy gaps.

Juvenile Court Jurisdiction and Young Children

Although California is one of the many U.S. states lacking a minimum age law, the legal analysis found that key state capacity and competency statutes are designed to protect children from developmentally inappropriate or harmful proceedings. Yet the question remains, are these existing protections adequate to meet the intended goal or protecting children? Relative to the juvenile court population as a whole, only a small proportion of probation referrals involve children below 12 years and even fewer are petitioned in court. Thus, the question remains whether the capacity and competency laws successfully protect those few children who remain vulnerable to more long-standing exposure to the juvenile court system through adjudication, detention, and/or wardship. This is particularly relevant for African American children, a population we found to have disproportionate overrepresentation in the justice system at young ages.

Stakeholders generally agreed that important capacity and competency laws exist to protect children from developmentally inappropriate prosecution, but

counties struggle to achieve fair and consistent implementation of these laws. With regard to capacity, most stakeholders, even those in different positions (e.g., PDs and DAs), were aware of the Gladys R. law and felt favorably about its intent. Yet, it appears that there is little consistency in who administers or reviews the assessment and the extent to which capacity can be raised in the case of a more severe crime or with pressure to proceed from the victim. More concerning, the ease with which the capacity threshold can be met and the unstandardized administration and documentation of the Gladys R. questionnaire calls into question the efficacy of Gladys R. to mitigate developmental inappropriate legal proceedings.

Competency is likewise protected for minors according to California law, yet questions surround how to determine competency and what resources should be expended in competency restoration. Stakeholders generally agreed that competency proceedings, especially with regard to children, often put the court and families in an awkward position. Once the question is raised, it is more convenient for parties to settle rather than to engage in a time-consuming and expensive process of competency evaluation and/or restoration. Moreover, counties implement state law differently through various competency protocols that rely on the availability of an expert or set of experts to provide testimony. Last, stakeholders agreed that the competency process can drag on for several years, potentially detaining children in the process and then adjudicating them for crimes that they may not even remember. As with capacity, there is little data or careful study to fully understand how these competency standards are operating.

Directions for California and Beyond

Although few children below the age of 12 years are subject to juvenile court prosecution in California relative to the group as a whole, key policy gaps remain in protecting young children from unnecessary or developmentally inappropriate treatment. If enacted, a state minimum age law would increase uniformity across diverse counties, thereby eliminating capacity and competency assessments that are currently unevenly applied and that, as respondents reported, are often unnecessarily burdensome for families. Specific to the case of California, it appears there is no clear-cut way to legislate a better capacity law to improve the problems with implementation specified in Penal Code 26. Thus, a benefit of a minimum age law would be to uniformly protect children below the age of 12 years from faulty implementation of the state's intended capacity protections.

Moreover, a minimum age law might benefit the state of California by curtailing hefty delays and costs associated with competency restoration. Importantly, chronological age is not always a direct proxy for developmental maturity, and defenses related to competency would still be applicable for any

child, including those above a minimum age threshold should it be established, particularly those with intellectual disabilities. Last, although a minimum age law might not remedy all levels of systemic racial disparities, it might protect African American youth from early, disproportionate tracking into the justice system. In all, a minimum age law is by no means a panacea, but it would address some of the identified inconsistencies in current policy.

Limitations

Several limitations warrant mention. Although we obtained the best available juvenile justice data, it still did not contain details about case flow through the system. Likewise, a lack of clarity exists about what happens to the majority of children below the age of 12 years who are arrested or referred to juvenile probation but not formally petitioned. This is important information to obtain for a follow-up study. Moreover, we purposively sampled three large counties in the northern, southern, and central regions of California, but we did not ascertain perspectives from smaller California counties, which may be an important gap to address in future research. In addition, the DOJ data contain critical information pertaining to juvenile court referrals, yet important information gaps remain. These data do not relay data on arrests that were dropped due to Gladys R. or the number of cases delayed by competency proceedings. When asked, county stakeholders indicated that this information was not routinely kept. Future research needs to more closely monitor case flow from the time of arrest through the capacity assessment and subsequent referral.

Conclusion

In conclusion, children below age 12 are a small group in relation to the larger pool of minors under juvenile court supervision, but young children are indeed particularly vulnerable, especially when deeper system involvement occurs (Barnert et al., 2017). One of the most interesting facets of this study was discovering the absence of data or discussion about juvenile minimum age laws and capacity and competency laws and proceedings. This study begins to unravel this "black box" of law and policy. Through an innovative case study, we find that existing laws are complex and unevenly implemented in California. Using similar methodology, similar studies could be replicated in other states and jurisdictions. In doing so, research can begin to amass more knowledge on the implementation of effective and fair policies for vulnerable children.

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