Developmental Disabilities in California Juvenile Justice Proceedings

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This is a short primer on legal issues that may come up in California juvenile delinquency cases[1] involving a young person with developmental disabilities. Some are so fundamental that the case may not go forward unless threshold findings are made. Others affect the evidence that may come in during the proceedings; the path the case will take in court proceedings; or important dispositional considerations for the court.

While the legal standards authorities presented here are primarily directed at developmental disabilities, practitioners should also consider the potential impact of additional factors, including developmental immaturity, in evaluating these issues. Case law almost invariably addresses age and maturity in conjunction with mental capacity in applying the legal standards.[2]

Competence "to stand trial."

In *Dusky v. United States* (1960) 372 U.S. 402, the U.S. Supreme Court stated that the constitutionally required test for competence to stand trial is 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. In *Drope v. Missouri* (1975) 420 U.S. 162, 171, the Court expanded that test to include a requirement that the defendant be able to "assist in preparing his defense." The presence of developmental disabilities may seriously impact the ability of some youth to meet one or both of the prongs of the competence standard.

While California Penal Code section 1368 codifies the standard for adults with a mental disorder or developmental disability, there is no corresponding juvenile statute. Nonetheless, a series of cases, beginning with *James H. v. Superior Court* (1978) 77 Cal.App.3d 169, has recognized that incompetent juveniles may not be subjected to juvenile court proceedings for alleged criminal behavior, and that the court has the inherent power suspend the proceedings to consider the issue of competence. The opinion stated that while section 1368 does not apply to juveniles, it may be used as a reference, along with the *Dusky* standard, in fashioning juvenile competence proceedings. In *James H.,* the minor had mental retardation and had

[1] California Welfare and Institutions Code section 602 *et seq*.

[2] Although capital punishment for juveniles is no longer an issue, it is worth noting that the U.S. Supreme Court decision abolishing that penalty discussed at length the close relationship of standards for judging the criminal responsibility of people with mental retardation, and standards of responsibility for juveniles. (*Roper v. Simmons* (2004) 543 U.S. 551.)

experienced long-term substance abuse. The case was remanded so the court could weigh conflicting evidence on whether these conditions rendered him incompetent. (*Id*., at p. 177.)

While the absence of statutory procedures governing juvenile competence has caused confusion and protracted detention for some youth, thoughtful California professionals have used the constitutional standards on competence, and created appropriate paths through the system for incompetent youth.

Fitness to be handled in juvenile court.

Developmental disabilities may also affect the threshold issue whether a young person should be handled in juvenile court or found "unfit" and tried in the adult criminal system. (Cal. Welf. & Inst. Code § 707 et seq.) *In re Rene C.* (2006) 138 Cal.App.4th 1, specifically addressed a minor's mental disabilities in evaluating whether the "gravity and circumstances" of the alleged offense required a finding of unfitness criteria on the young person's "fitness" to be handled in the juvenile court system. The appellate court noted that this was a 14-year-old with the mental capacity of an 8-year-old; that he was developmentally disabled, mentally retarded and suffered from organic brain dysfunction. The opinion quoted from an evaluation finding that, "'[m]inors who suffer from mental retardation are frequently assigned the role of ⋯ holding the gun in crimes that they would otherwise lack the ability or inclination to plan and execute.'" The court concluded that these were extenuating and mitigating factors compelling a conclusion that this mentally retarded and immature 14-year-old boy with no prior juvenile or criminal history should be tried as a juvenile, not an adult. (*Id*., at p. 75 fn. 7, 80.)

Capacity to commit a crime.

Longstanding principles of jurisprudence hold that people should not be punished if they lack the mental capacity to be held responsible for their acts. Accordingly, California Penal Code section 26 provides that all persons are capable of committing crimes except for specified classes of people, including "idiots."[3] The term "idiot" is

[3] Penal Code section 26 provides:

All persons are capable of committing crimes except those belonging to the following classes:

One--Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.

Two--Idiots.

Three--Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent.

Four--Persons who committed the act charged without being conscious thereof.

Five--Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence.

Six--Persons (unless the crime be punishable with death) who committed the act or made the

not defined in the statute, and there is surprisingly little case law on the subject.[4] One of the few cases, *People v. Phillips* (2000) 83 Cal.App.4th 170, 173, holds that the definition of insanity is also the definition of idiocy. Under current law (since Proposition 8 brought back the M'Naghten rule for insanity in 1982), that means that the person "was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense." (Penal Code § 25, subd, (b), *Id*., at p. 173.) While this is a difficult standard to meet, youth with severe developmental disabilities may qualify.

Penal Code section 26 also provides that children under the age of 14 are incapable of committing crimes "in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness." In evaluating whether this standard is met, courts often rely on circumstantial evidence, including the minor's age, experience and understanding, as well as the circumstances of the offense, its method of commission and concealment. (*In re James B*. (2003) 109 Cal.App.4th 862, 872.) In the leading case on this issue, the California Supreme Court considered the fact that the girl involved was only 12 years-old, with the mental age of a 7-year-old. (*In re Gladys R.* (1970) 1 Cal.3d 855, 867.) Thus, for younger children, even if the test of "idiocy" is not met, the presence of developmental disabilities, in combination with age, may require a finding that the child did not know the wrongfulness of his or her act for purposes of section 26.

Specific intent to commit a crime.

California Penal Code section 28 permits the introduction of evidence of "mental disease, mental defect, or mental disorder" on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged. Thus, for example, a defendant may show that because of his mental disorder, he did not *in fact* form the intent unlawfully to kill, that is, that he did not have malice aforethought. (*People v. Saille* (1991) 54 Cal.3d 1103, 1116.)

Thus, even when youth with developmental disabilities are competent and have the capacity to commit a crime under section 26, they may still lack the specific intent to commit the alleged offense under section 28.

Ability to make a confession or admission.

California Welfare and Institutions Code section 701, gives minors the right to move to suppress confessions or admissions. The effect of this is to keep the suppressed statements or evidence obtained as a result of the statements from being introduced into the proceedings. The two primary grounds for suppression are that the

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omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.

[4] This terminology merits legislative attention. The statute was originally enacted in 1872 and derived from an even earlier one, but the term "idiot" has persisted through a series of statutory amendments.

statements were made in violation of *Miranda v. Arizona (1966) 384 U.S. 436*, or that they were involuntarily made.

Waiver of the rights in *Miranda* (right to remain silent, notice that statements may be used against you, right to counsel during questioning, right to appointed counsel if you are indigent) must be "knowing, voluntary and intelligent." In measuring whether this standard is met, courts consider the "totality of the circumstances," which includes the presence of developmental disabilities. So for example, the California Supreme Court found in *In re Roderick P. (1972) 7 Cal. 3d 801*, that a minor with mental retardation and immaturity did not understand the rights he was waiving. The following passages demonstrate how evidence of mental capacity and related behavior may be useful in assessing the validity of the *Miranda* waivers:

> …The officer did not read the rights from a form, but recited them from memory. However, Roderick's father testified that because they were given in such a rapid manner he was unable to follow what was said. Roderick was then asked if he understood his rights, to which he responded affirmatively by nodding his head. He gave the same response to the officer's request that they talk. During the entire exchange Roderick rocked back and forth with his fingers in his mouth. (*Id*., at p. 805.)
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> Roderick's nonverbal and unresponsive behavior may be explained by the fact that he is mentally retarded. This fact was established at the hearing and remains undisputed. He attends special classes for the mentally retarded, and his infirmity was confirmed by a psychiatrist who examined him at juvenile hall. (*Id*.)
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> A psychiatrist who examined Roderick for approximately three hours at juvenile hall testified that he was retarded, became confused easily, was passive, susceptible to suggestion and that it was very unlikely that he would ever initiate any aggressive or destructive act against anyone. It was also pointed out that Roderick did not know the months of the year, what his father did for a living, how to spell either his parents' or his sisters' names or their ages. Moreover, this witness testified that in order to minimize confusion and avoid confrontation when he did not comprehend what he was being asked, Roderick would passively accept what was told him and answer in a way that appeared more approbatory of his interrogator's wishes. (*Id*., at p. 807.)

With respect to whether a confession is "voluntary," *People v. Lara* (1967) 67 Cal.2d 365, 385, held that the capacity of a minor to make a voluntary statement to the police depends not only upon his age but on a combination of factors such as intelligence, education, experience, and his ability to comprehend the meaning and effect of his statement. The court also stated that, "if the minor is mentally retarded or of subnormal intelligence for his age ... that is a factor weighing heavily against a finding of capacity." (*Id*., at p. 385; *In re Roderick P*. *supra*, 7 Cal. 3d at p. 811.)

Clearly, youth with developmental disabilities are at greater risk of not understanding or misunderstanding what is happening in interrogation settings, and they are at serious risk of being misunderstood by law enforcement officers. In any case involving admissions or confessions, this is an area requiring close scrutiny.

Dispositional considerations.

When the case proceeds to disposition, the presence of developmental disabilities must play a role in the level of disposition and the specific character of the services or placement. All youth are entitled to be held in the least restrictive appropriate setting (Cal. Welf. & Inst. Code § 202.) This is an important safeguard for youth with disabilities because their special needs and the absence of readily available services sometimes results in placement in a more secure setting than they actually need. Thus, the Supreme Court held in *In re Aline D*. (1975) 14 Cal.3d 557, 562), that a young woman with a 67 I.Q. could not be committed to the California Youth Authority simply because there appeared to be no other suitable placement for her. Moreover, the Court was concerned that placing a borderline mentally retarded young woman in a setting with much more seriously delinquent girls could actually be harmful. (*Id*., at p. 565.)

Youth with developmental disabilities enjoy additional protection against being placed inappropriately in high level confinement through the Americans with Disabilities Act ("ADA," 42 U.S. Code § 12101 et seq.), and the U.S. Supreme Court decision in *Olmstead v. L.C., by. Zimring* (1999) 527 U.S. 581. *Olmstead* clarifies that, under the ADA, community-based treatment must be provided for persons with mental disabilities when treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and placement can be reasonably accommodated, taking into account the resources available and the needs of others with mental disabilities. (*Id.*, at p. 587.)

Beyond these legal protections, it is essential that dispositional plans for youth with developmental disabilities realistically take into account their capacities and needs. While this means developing plans that will provide them with appropriate structure and support, it also requires attention to their educational, social and skill-building needs. Finally, dispositional planning for youth with developmental disabilities calls for family involvement and family support to the greatest possible extent, and the development of "family" for youth who need it.

Final Note

A great deal has been written about each of these areas, and there are many more cases involving youth with developmental disabilities. The message to be taken away is that the presence of developmental disabilities affects every aspect of the case. Practitioners and court personnel need to know what to look for, what legal issues may be presented, and how to get expert help. For cases that result in a disposition, they also need to understand service and treatment needs, how to access those services, and how to assure adequate long term support to ensure success in the community.