

Raising the Lower Age of Delinquency to the 12th Birthday: Better Options of Juvenile Court Jurisdiction for Very Young Children



Criminalizing elementary school children

- In 2016, 154 children under the age of 12 had open delinquency cases in Massachusetts. Of those who were arraigned, most were arraigned on low-level charges, simple assault (fights) or destruction of property:
 - ♦ Age 11: 111 children
 - ♦ Age 10: 30 children
 - ♦ Age 9: 14 children
 - ♦ Age 8: 5 children
 - ♦ Age 7: 4 children
- 10 and 11 year-olds bear the largest burden of the under 12 population with open delinquency cases.
- **NO child** under the age of 12 has been committed to DYS in the last 6 years.
- Introducing a child at such a young age to the juvenile justice system will actually increase their future offending.

Constitutional Problems – Competency to Stand Trial

- Children under age 12 have limited capacity to stand trial (they have a poor understanding of the process, what's at stake, even the difference between their attorney, prosecutor and judge) and have limited capacity to exercise their legal rights in a meaningful way.¹
- Children who are deemed not competent to stand trial either:
 - Have their cases dismissed
 - Return to court every six months – over the next two to three years – until they are found competent

Delinquency cases limit supervision and delay programming for young children

- Delinquency proceedings actually delay a child accessing the programming needed.
- A child found not competent cannot be placed under probation supervision; cannot access any programming in detention; cannot be referred to a program.
- Young children are left without necessary services for what can be *years* of their lives while they await to achieve competency.

¹ Thomas Grisso, et al., "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," Law and Human Behavior 27, no. 4 (2003): 333–63.

The Juvenile Court has more immediate tools outside of delinquency proceedings

- In some cases a child's behavior indicates an underlying child welfare or Child Requiring Assistance (CRA) concern. The Juvenile Court's jurisdiction starts at birth for child welfare cases, and age 6 for CRA cases.
- Child welfare concerns can be addressed in Care and Protection cases (C&P), where the Department of Children and Families can identify and offer services.
- Underlying behavioral concerns can be addressed in CRA cases, where a child is referred to the court and can be supervised by probation and offered services.
- CRA and child welfare cases **do not** require competency for access to services and supervision.
- Non-delinquency, community-based interventions are far more effective and timely in holding a young child accountable for their actions.

Several States exclude elementary age children in policy and practice

- **California:** There is a presumption that a child under age 14 lacks understanding of wrongfulness and the state "needs clear proof" to rebut the presumption
- **Ohio:** Case law suggests that courts rarely find competence for a child under age 14.
- **Florida:** Despite having no lower age of jurisdiction, age 12 is "universally accepted" as the lower age, and in the past 30 years, no child under age 12 has been processed in juvenile court
- **Massachusetts:** No child under age 12 has been committed to the Department of Youth Services in the past 6 years.
- **New Jersey:** There is a rebuttable presumption of incapacity for criminal intent for children between age 7 and 14.
- **New York:** The Governor's Commission on Youth, Public Safety and Justice recommends raising the lower age of juvenile jurisdiction to age 12, except for homicide offenses, which should be raised to 10.

What are kids capable of understanding at each age?

Typical Development of Children 7-11

Age	Grade	Most popular book in Massachusetts
7	1st-2nd	
8	2nd-3rd	
9	3rd-4th	
10	4th-5th	
11	5th-6th	