New Zealand Youth Fitness to Stand Trial: The Impact of Age, Immaturity and Diagnosis on Evaluator Opinions and Court Determinations

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International research suggests that a proportion of youth facing legal charges are at risk of being unfit (or incompetent) to stand trial. In New Zealand, only a fraction of youth coming before Youth Court are referred for fitness to stand trial evaluations. Amid debate surrounding notions that youth offending could be deterred by providing harsher penalties, it is important to consider fitness to stand trial in youth facing criminal proceedings. This study sought to capture a cross-sectional view of how fitness (competency) to stand trial is addressed in the Youth Court, and how evaluator opinions relate to ultimate court findings. A retrospective review of reports for fitness to stand trial in 79 youth consecutively referred to the Regional Youth Forensic Service from 2010 to 2015 was conducted. Data were combined with Youth Court outcomes obtained from the Ministry of Justice. The mean age is 15.6 years. Intellectual disability is associated with unfit opinions and legal findings ($p = .002$ and $p = .03$, respectively), and cases disposed through the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. Immaturity itself does not appear to have a significant effect on evaluator opinions or court findings of fitness to stand trial. The majority of the referred youth were both opined and found fit.

Key words: competency to stand trial; developmental immaturity; fitness to stand trial; forensic services; juvenile; youth.

Introduction

Fitness to stand trial or adjudicative competence is a fundamental principle involving procedural fairness in court proceedings against criminal defendants. The right of a young person to be competent in his or her own defence was recognised by the United States Supreme Court in *In re Gault et al.* (1967) and is similarly set out in the New Zealand Bill of Rights. It would be fundamentally unfair to allow unfit youth to face criminal proceedings. However, concerns

raised internationally have emphasised that youth (under 14 years of age in particular), due to immaturity, are at increased risk of being unfit to stand trial and could face punitive criminal proceedings in the context of societal attitudes that support harsher penalties for youth offending (Bath, Sidhu, & Stepanyan, 2013; Grisso, 2003; Steinberg, 2009; Steinberg, Cauffman, Wollard, Sandra, & Marie, 2009)

In New Zealand the adjudication of youth facing criminal charges proceeds by way of

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the Children, Young Persons and their Families Act (1989) or CYPF Act, which stipulates that the age of criminal responsibility is 10 years, and that children aged 10 through to 14 years cannot be prosecuted except for the charge of murder or manslaughter, and could face imprisonment in a youth justice facility if found guilty. Those aged between 14 and 17 years can be charged and prosecuted for any offence in the Youth Court. Changes to legislation in the Children, Young Persons and their Families Amendment Act (2010) (NZ) means that children aged 12 and 13 years can now be charged and brought before the Youth Court for certain serious offences (such as aggravated robbery) or repeat offences, whereas their matters had previously been brought before the Family Court, thus accentuating the importance of procedural fairness for such young defendants. The concerns emphasised by New Zealand's international counterparts however could be less apparent than in New Zealand itself, given the ameliorative nature of its Youth Court. The CYPF Act governs both youth justice procedures and child protective services, and to some extent 'care and protection' issues are addressed during the Youth Court's involvement. Youth Court may also return a child offender's case back to Family Court if their 'care and protection' needs are more effectively addressed in that jurisdiction, and if the public interest is better served by doing so. Additionally, the police have a degree of discretionary power and divert the majority of youth, unless their offences are serious or repetitive enough to require Youth Court.

In terms of prevalence, according to Grisso et al. (2003), in a United States study, 30% of 11- to 13-year-olds and 19% of 14- to 15-year-olds could be considered incompetent to stand trial due to comprehension difficulties, but those 16 years and older performed similarly to adults using a structured interview instrument (the MacArthur Competence Assessment – Criminal Adjudication). Some caution needs to be applied when considering international research, which is predominantly

from United States jurisdictions where youth fitness to stand trial across jurisdictions is not treated uniformly; for instance, the state of Massachusetts has not addressed developmental issues in state or case law, while Florida has a juvenile competency standard (Rapisarda and Kaplan, 2016).

In the United States, the threshold for adjudicative competence is laid out in *Dusky v. United States* (1960) as whether or not the defendant has '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'. This bears some resemblance to the New Zealand threshold for fitness to stand trial set out in the Criminal Procedures (Mentally Impaired Persons) Act (2003) or CPMIP Act: a defendant's *mental impairment* can render him or her unable to plead, unable to understand proceedings, or unable to instruct counsel meaningfully for the purpose of mounting a defence. 'Mental impairment' under the CPMIP Act is not defined. Usually, mental disorder, intellectual disability (ID) or a cognitive deficit that impacts upon aforementioned trial-related competencies can be argued as constituting 'mental impairment'. Some authors have argued that developmental immaturity should also be afforded salience when evaluating youth competency (Bath, Reba-Harrelson, Peace, Shen, & Liu, 2015; Grisso, 2003), given their concerns about young people's underdeveloped social and emotional competencies potentially having a bearing on decision-making capabilities. In the context of New Zealand, normative underdevelopment has not been considered a mental impairment.

In a New Zealand pilot study, Armstrong and Friedman (2016) found that less than one third of youth referrals for forensic evaluations were for fitness to stand trial evaluations, with 12% of youth referred for fitness to stand trial evaluations over one year being opined unfit to stand trial. The study found no association between age and the likelihood of

being opined unfit, but the study sample is small and does not include ultimate court findings.

Once a finding of unfitness to stand trial has been made, disposition under the CPMIP Act proceeds via the Mental Health Act, or the Intellectual Disability (Compulsory Care and Rehabilitation) Act (2003) or IDCCR Act, neither of which are appropriate for dealing with 'immature' youth without a mental disorder or intellectual disability.

This study seeks to better understand how juvenile fitness to stand trial is approached in New Zealand, particularly with respect to the notion of immaturity and its effect on fitness to stand trial determinations in light of international research. Data for a five-year time period were obtained from the Auckland Regional Youth Forensic Service, along with ultimate court findings and outcomes for youth referred for fitness evaluations. It was expected that a relatively higher number of under 14-year-olds compared to over 14-year-olds would be referred for fitness to stand trial evaluations, given the concerns highlighted in the extant literature about the competence of younger adolescents. A high level of agreement between evaluator opinions and court findings was anticipated, in line with international literature (Zapf, Hubbard, Cooper, Wheelles, & Ronan, 2004) suggesting that courts rely heavily upon the reports of evaluators to inform determinations; while local research has indicated a correlation between assessor opinion and court findings of fitness (Sakdalan & Egan, 2014), these results are based on adult populations.

In the New Zealand legal context, there is no present case law recognising immaturity as a distinct determinant of juvenile incompetence – therefore, it was anticipated that few youth would be found unfit to stand trial on the basis of immaturity alone. It was hypothesised that any youth who was found to be unfit on the basis of immaturity would be discharged, as there is no specific legal pathway for his or her disposition currently; however, the courts may have reservations for the

release of unfit youth who allegedly commit serious crimes. It may not be unusual for these youth to be released under the CPMIP Act under the auspices of healthcare-related services, particularly if they already have a formal care and protection status under the CYPF Act. It was hypothesised that the majority of those youth found unfit to stand trial would have an intellectual disability, in accordance with international and local research (Sanborn, 2009).

Method

Ethics approval was obtained from the Health and Disability Ethics Committee, the Ministry of Health, and the Ministry of Justice to conduct a cross-sectional observational study involving the review of fitness to stand trial reports prepared by the Auckland Regional Youth Forensic Services (RYFS) for the Youth Court over a five-year period (January 2010 to January 2015). The data comprises 149 reports of youth defendants. The following variables were collected from a review of each individual RYFS report: age, gender, ethnicity, IQ, living situation, educational status, psychiatric history, substance use history, diagnoses, previous charges, opinion regarding mental impairment as per CPMIP, concerns about immaturity, unfitness opinions and criteria (per CPMIP) by which youth were opined unfit. The charges are categorised into violent, property, sexual, traffic and drug offences.

Data from the Ministry of Justice were matched with the RYFS cases and include court determinations of unfitness and dispositional data. Corresponding data were only available for 79 individuals, thus reducing the sample size. With reference to the Ministry of Justice data supplied, fitness to stand trial is not explicitly noted against defendants whose recorded outcomes are *conviction*, *proved (guilty)*, or *not proved (not guilty)*, and it is reasoned that in order for these outcomes to have occurred, these defendants were ultimately found fit to stand trial.

Data were analysed in SPSS (v24) (2016) and using Pearson chi-square and Fisher's exact tests where appropriate. A logistic regression model was performed for the dependent variable of the examiner finding of fitness or unfitness.

Results

Demographics

The mean age of the youth in the sample is 15.6 years (range = 13–17). There was 1 youth in the 10–13 age range who was opined and found fit to stand trial. Table 1 presents the ages of youth in the sample and of those youth facing charges on a national level. Consistent with national court data, there are more males (89%) than females (11%) in the sample, but gender is not associated with evaluator opinions or court determinations.

The referral sample comprises 69% Maori, 25% Pacific Island, 13% New Zealand European and 1% Asian; the national court statistics show a similar representation of 62% Maori but 23% New Zealand European, 11% Pacific Island and 1% other. No difference with respect to unfitness findings across these ethnic groups was found.

Living Situation and School

Of the youth in the sample, 41% ($n = 32$) were living out of home (residential placements, group home situations) and 46% ($n = 36$) were not engaged in education, although

this has no significant relationship with the ultimate findings of unfitness. Youth attending special education classes (5%) compared to youth in mainstream (16%) or alternative (32%) education were more likely to be opined unfit ($p = .04$), but not ultimately found to be unfit by the court.

Charges

Of the youth from the RYFS sample, 48% ($n = 38$) were charged with violent offences (mainly aggravated robbery and assault, with one murder charge zero manslaughter charges). Being charged with a violent offence was not associated with being more likely to be found unfit. Of the violent offences charged, 59% ($n = 47$) are property offences, 11% ($n = 9$) are sexual offences, and 13% ($n = 10$) are traffic offences, with zero drug-related offences charged to the sample. Charges across multiple were charged. Just over one fifth (22%, $n = 17$) of the sample faced multiple categories of charges.

Diagnoses and Fitness Findings

Table 2 presents the mental health diagnoses of defendants in the sample, along with evaluator opinions about fitness, and court findings. Almost one third (30%) of the sample had a diagnosis of conduct disorder, the second-most common diagnosis after intellectual disability, and none were diagnosed with oppositional defiant disorder. Only

Table 1. Proportion of youth by age, evaluator opinion and court findings (2010–2015).

Age (years)	Youth before court (national)*	Regional Youth Forensic Service sample	Opined unfit	Court found unfit
10–13	0.6%	1.3% (1)	0% (0/1)	0% (0/1)
14	20.5%	27.8% (22)	31% (7/22)	14% (3/22)
15	30.9%	29.1% (23)	30% (7/23)	4% (1/23)
16	48.0%	41.8% (33)	27% (9/33)	9% (3/33)

Note: *Based on New Zealand government statistics (<http://nzdotstat.stats.govt.nz/>).

Table 2. Diagnoses and proportion of youth opined unfit and found unfit.

Diagnosis	% (n)	RYFS opined unfit	Court found unfit
Intellectual disability	32% (25)	52% (13/25)*	24% (6/25)**
Conduct disorder	30% (24)	17% (4/24)	8% (2/24)
No diagnosis provided	30% (24)	25% (6/24)	4% (1/24)
Substance use disorder	22% (17)	24% (4/17)	6% (1/17)
Attention deficit hyperactivity disorder	13% (10)	50% (5/10)	20% (2/10)
Psychotic disorder	10% (8)	13% (1/8)	13% (1/8)
Autistic spectrum disorder	5% (4)	50% (2/4)	0% (0/4)
Foetal alcohol spectrum disorder	4% (3)	33% (1/3)	0% (0/3)
Post-traumatic stress disorder	4% (3)	33% (1/3)	0% (0/3)
Depression	3% (2)	0% (0/2)	0% (0/2)

Note: * $p = .002$; ** $p = .03$.

intellectual disability was found to have a statistically significant association with opinions and court findings of youth being unfit to stand trial. Around two thirds (69%) of the sample had co-morbid disorders. Of the youth, 22% ($n = 17$) were diagnosed with substance use disorder, while 82% of the sample endorsed a history of substance use (73% with alcohol, 69% with cannabis, 8% with solvents, 5% with methamphetamine, and 4% with hallucinogens). Treatment for psychotic symptoms was given to 10% ($n = 8$) of the youth, and 8% ($n = 6$) of the total sample was diagnosed with schizophrenia. None of the youth were diagnosed with bipolar disorder, but 3% ($n = 2$) had a diagnosis of major depressive disorder, and 3% ($n = 2$) were described as having a history of suicide attempts.

Almost half (45%, $n = 35$) of the sample had previously received a mental health intervention (counselling, psychological or psychiatric), and just over half (53%, $n = 42$) of the sample subsequently received mental

health treatment following court, but 31% ($n = 13/42$) of these were subsequently discharged from services because they had disengaged or were lost to follow-up.

Mental Impairment and Immaturity

More than half (58%, $n = 46$) of youth in the sample were opined to be mentally impaired, with intellectual disability being the most common diagnosis provided by evaluators to support their opinion. Other diagnoses used by evaluators to demonstrate mental impairment included attention deficit hyperactivity disorder (ADHD, 17%), psychosis (4%), autistic spectrum disorder (ASD, 4%) and foetal alcohol syndrome disorder (FASD, 4%), but no statistically significant association was found between these diagnoses and court findings of youth being unfit to stand trial. In 10% of the RYFS reports reviewed, no definitive opinion about mental impairment is offered and no rationale is recorded, with the exception of one case (a

Table 3. Evaluator opinions and court findings regarding fitness.

	Unfit	Fit	
Evaluator opinion unfit	5 True positive (TP)	18 False positive (FP)	23 (29%)
Evaluator opinion fit	2 False negative (FN)	54 True negative (TN)	56 (71%)
	7 (9%)	72 (91%)	79

14-year-old) where an evaluator opined that ‘immaturity’ was a contributing factor amounting to mental impairment and unfitness to stand trial, in combination with the other factors of ADHD, poor expressive and receptive language and poor social skills. In the second and only other case (a 15-year-old) in which ‘immaturity’ was raised as a vulnerability factor for unfitness, it was raised along with a ‘negative attitude’, ‘poor motivation’ and ‘decisional incompetence’ – but the youth was described as having ‘foundational competence’; no opinion about mental impairment was offered by the report writer. In neither of these cases were the defendants found unfit to stand trial.

CPMIP Act Criteria for Fitness (Ability to Plead, Understand Proceedings, and Communicate)

In terms of the statutory criteria for fitness to stand trial contained in part 4 of the CPMIP Act, young defendants in the sample who were described as being unable to plead (17%), unable to understand proceedings (32%), or unable to communicate adequately (32%) were each significantly more likely to be opined unfit ($p = .0001$) than youth who did not have these difficulties. Not being able to understand proceedings or communicate adequately is also associated with a finding of being unfit to stand trial ($p = .03$), but an inability to plead alone was not.

Evaluator–Court Agreement

In this sample 29% (23) were opined unfit, yet only 9% (7) were found unfit to stand trial.

In Table 3, we can see that the court agreed with the evaluators’ opinion in 59 cases out of the total 79, yielding an agreement rate of 75%. There were 18 false positives in this sample, yielding a false positive rate of 78% – that is, if an opinion of a youth being unfit to stand trial was offered by an evaluator, in approximately three quarters of

those cases the court would find the youth fit to stand trial instead. There were 54 true negatives in the sample, producing a specificity of 75% – that is, in those cases in which the court ultimately found the youth fit to stand trial, evaluators had also opined him or her to be fit in about three quarters of cases. Another way of viewing these results involves the positive predictive value (PPV, derived from $TP/(TP+FP)$), which shows the likelihood that a young defendant will be found unfit to stand trial if he or she has been opined as being unfit by evaluators; in this sample, the PPV is only 22% – that is, the court agreed with the evaluator’s opinion of unfitness in less than one quarter of the cases where the youth was opined unfit. The negative predictive value (NPV, derived from $TN/(TN+FN)$) in this case informs on how likely a youth is to be found fit if evaluators opine that he or she is fit; it is 96% for this sample – that is, the court agreed with the evaluator’s opinion about fitness in most cases where the youth was opined fit.

A logistic regression was performed to ascertain the effects of age, intellectual disability diagnosis, psychiatric treatment history, substance use, past charges, living situation, and educational status on the likelihood that a youth would be opined unfit to stand trial. The logistic regression model is statistically significant, $\chi^2(7) = 23.881$, $p < .001$. The model explains 21.3% (Nagelkerke R^2) of the variance in opinion, and correctly classifies 73.6% of cases. Those diagnosed with intellectual disability are 5.07 times more likely to be opined unfit than those without intellectual disability.

Court Outcomes and Disposition

Of those found fit to stand trial, 47% (34/72) of charges were *not proved* (not guilty verdict), 35% (25/72) received community work and supervised activity after charges had been *proved* (guilty verdict), and 6% (4/72) were sentenced to youth residence facilities. Five youth had their matters discharged. Two youth received adult prison sentences for

serious violent offences (a 15-year-old male convicted of aggravated robbery with a fire-arm, and a 17-year-old male convicted of assault with intent to commit rape); in those cases, both the evaluators and the court agreed on fitness to stand trial.

Four of the seven (57%) youth found unfit to stand trial were disposed by way of the IDCCR Act, and placed in residential care facilities for intellectual disability. One 16-year-old was found unfit to stand trial on the basis of psychotic disorder and remanded in a youth justice facility after stabilisation at an adolescent psychiatric unit. One youth initially found unfit to stand trial was later found fit, and received a non-custodial sentence (community service hours). Disposition data were unavailable for one defendant.

Discussion

Youth under the age of 14 years are infrequently charged and referred to youth forensic services for fitness to stand trial evaluations. Almost half of the youth (46%) from the sample were not engaged in education, and the majority endorsed illicit substance use. Intellectual disability and the associated functional impairments are associated with being found unfit to stand trial. Evaluators opined 29% of young defendants from the sample as unfit to stand trial, yet the courts found only 9% ultimately unfit to stand trial. There is an evaluator–court agreement rate of 75%, lower than in other international findings (Zapf et al., 2004). It is possible that New-Zealand-based evaluators may have a higher competency threshold than New Zealand's Youth Court, reflecting tensions where clinical decision-making processes are applied to legal criteria.

Socio-demographics and Schooling

As with New Zealand court statistics, there is a preponderance of males, with Maori and Pacific Island youth over-represented compared with whites in the sample. Fitness

determinations do not vary with gender or ethnicity, consistent with international youth studies (Grisso et al., 2003; Steinberg, 2003).

Of note, almost half the sample was not engaged in education. Youth enrolled in special classes were significantly more likely to be opined unfit than youth in alternative or mainstream education, reflecting intellectual difficulties for those in special classes – but this does not correlate with the ultimate court decisions. According to McKee and Shea (1999), nearly all juveniles in their sample were at educational risk (with histories of truancy, suspension, and/or early school failure), and they reported that differentiating factors in juvenile competence to stand trial may be subnormal intelligence and a lack of familiarity or information about procedures rather than alternative educational placements *per se*.

According to New Zealand's Ministry of Justice, only 0.5% of youth before the Youth Court between 2010 and 2015 were aged 12 to 13 years, with a skew towards older youth. The present sample shows a similar distribution, despite the potential expectation for younger defendants to be referred for fitness evaluations. The hypothesis that there would be relatively more under 14-year-olds referred for fitness evaluations is not supported. Farrington et al. (2006) show that the prevalence of offending increases from late childhood and peaks in the adolescent years (15 to 19 years of age). Most New Zealand youth offenders are diverted from criminal proceedings, and only the more serious or repeat offenders are presented in Youth Court. These tend to be older youth, thereby obviating referrals to RYFS for younger adolescents.

Type of Charge

In the present study, violent offences were not found to be significantly associated with evaluator opinion or court fitness findings of being unfit to stand trial. Similarly, McKee and Shea (1999) did not find a relationship

between violent crime and competency. No one in the present study was charged with drug-related offences; this is surprising given that substance use is a risk factor for offending behaviour (McLaren, 2000), especially among youth, and given that the majority in this sample had acknowledged substance use (commonly alcohol and cannabis). It is possible that young defendants who are potentially liable for drug-related charges are being diverted through alternative police action, which might obviate the need to consider fitness in those cases.

Mental Health, Intellectual Disability, Mental Impairment and Immaturity

In adults, psychosis (Pirelli, Gottdiener, & Zapf, 2011) is associated with findings of unfitness; surprisingly, only one youth diagnosed with psychosis was opined unfit to stand trial, and was remanded into custody after being stabilised on an adolescent psychiatric unit. Fitness to stand trial in youth may not be impaired during the early stages of psychotic disorder. In New Zealand, estimates of prevalence of psychotic disorders has been challenging to determine because of limitations in time frames and consistency in detection wherein psychotic disorders in youth might only be diagnosed in retrospect. The prevalence of psychotic disorders in adolescents overseas has been estimated to be less than 1% according to Gillberg, Hellgren, and Gillberg (1993). The relatively high proportion of youth with psychosis in this sample, however, highlights the importance of Youth Court liaison services in identifying mental health needs in this population.

Grisso (2003) found that United States adolescents under 13 years of age are at relatively higher risk of being incompetent to stand trial than older adolescents, with a cognitive impairment increasing that risk. Consistent with local and international research (Armstrong & Friedman, 2016;

Bath et al., 2015), the current study shows that a diagnosis of intellectual disability increases the likelihood of being unfit to stand trial. In order to diagnose intellectual disability, there needs to be evidence of sufficient impairment of functional ability, in addition to having an IQ of less than 70, so that requisite criteria are met. However, a low IQ does not necessarily mean that a young defendant's trial-related competence is likely to be diminished. It is possible that general impairments of functional abilities could increase the likelihood of impairment in fitness to stand trial also.

The CPMIP Act stipulates that the test for fitness to stand trial requires a link to be established between the legal construct of *mental impairment* and trial-related incompetence. A finding of mental impairment does not automatically equate to being unfit to stand trial, and it is also not defined in legislation, thus allowing courts discretionary scope (Klinger, 2007). Potentially, various mental health issues that do not meet criteria under standard psychiatric nomenclature could be offered in this context, if these issues come to bear on trial-related competencies – for example, a young person may have cognitive deficits that do not amount to intellectual disability. Grisso et al. (2003) and Bath et al. (2015) argue that developmental immaturity could impair court-related competence in a similar way to mental illness or cognitive deficits. Grisso (2003) found that approximately one third of 11- to 13-year-olds and one fifth of 14- to 15-year-olds had impairments in court-related competencies, but 16- to 17-year-olds did not differ significantly from adults in terms of cognitive ability applied to court competency. The study sample does not include a large number of under 13-year-olds to compare with the older adolescents, but 14- to 15-year-olds were not found to be more likely to have impairments in the current study.

If the test for fitness to stand trial was adapted to account for immaturity, fewer adolescents aged 14 years and under may be found fit to stand trial. Disposition would be challenging, especially if the charges are serious. It also seems inappropriate to conflate normative underdevelopment (developmental immaturity) with mental impairment.

Disposition

It was anticipated that a proportion of youth would have their matters discharged after being found unfit to stand trial on the basis of immaturity; this hypothesis is not supported. None of the young defendants in the sample were found unfit to stand trial on the basis of immaturity alone. The current study appears to indicate that in New Zealand there is not yet a substantive legal precedent for developmental immaturity to stand as a salient factor with respect to youth fitness to stand trial alongside mental illness and intellectual disability. Immaturity has not been raised as either the sole or primary basis for a possible finding of being unfit to stand trial. Report writers may hesitate to opine mental impairment for defendants where immaturity is observed, as seen in at least two of the cases where a definitive opinion about mental impairment is not offered.

Most young people in this sample who were found unfit to stand trial had their cases disposed by way of the IDCCR Act, and would then have received disability support services either in the community or in secure residential care facilities if their charges were serious. There is a lack of secure inpatient services for youth with intellectual disabilities, and the findings from the current study indicate that appropriate services and facilities for youth who are unfit to stand trial on the basis of intellectual disability need ongoing resourcing and funding in the jurisdiction under study.

Evaluator–Court Agreement and Navigating the Legislation

An evaluator–court agreement rate of over 90% was anticipated in accordance with

international literature; however, an agreement rate of 75% was found. The PPV is low, in contrast to the NPV, which is high. In a low-prevalence setting, as is the case here, the PPV tends to be lower compared to high prevalence settings. In plain terms, the courts and evaluators agree more often on determinations of being fit to stand trial than determinations of being unfit. Debate continues about where the threshold lies for being fit to stand trial, as it depends on how narrowly or broadly the current legal standard (the CPMIP) is interpreted (Brookbanks & MacKay, 2010). As noted in the decision of the Court of Appeal in *Solicitor General v. Dougherty* (2012), the threshold for fitness is ‘low’ (Brookbanks & Mackay, 2010).

Under New Zealand legislation, there is no variation in the definition of fitness to stand trial on the basis of age; thus evaluators delineate the boundaries of fitness in each case. A survey of United States judges (Cox, Goldstein, Dolores, Zelechowski, & Messenheimer, 2012) suggested that the courts’ view of competence is influenced by a defendant’s age, where older youth may be deemed more competent than younger youth. Viljoen and Wingrove (2007) surveyed defence attorneys and judges, finding that developmental immaturity is regarded as being moderately important to juveniles’ competence but less important than mental disorders and cognitive impairments. Also, according to Viljoen and Wingrove (2007), relatively few judges appear to agree that adolescents should be found incompetent on the basis of developmental immaturity alone. Caution is advised, however, when comparisons are made between international jurisdictions and New Zealand, as there are different sentencing implications for youth offending.

In the current context in which youth are before the Youth Court and face potentially serious consequences, defendants ought to be able to appreciate the seriousness of their predicament and the implications of the decisions they make before being considered fit to stand trial. Such a view however, is

negated by the Court of Appeal in *Solicitor General v. Dougherty* (2012), which held that the current legislation does not introduce or include the concept of ‘decisional competence’ and that ‘there was no discernible statutory intention to move away from the settled principle that the fitness enquiry does not include whether the person can or will make decisions in his/her best interests’. The need for rational understanding over and above merely factual understanding, however, is a key issue in United States jurisprudence that evolved out of *Dusky v United States* (1960), and therefore this may be a higher standard than that outlined in the CPMIP. But in New Zealand a person still needs to *adequately* understand the possible consequences of proceedings, implying that a basic degree of understanding may not be enough. In respect to the present findings, the two most commonly referred criteria pointing to unfitness to stand trial as laid out in the CPMIP Act are *inability to adequately understand the nature or purpose or possible consequences of proceedings* and *inability to communicate adequately with counsel for the purpose of conducting a defence*.

Typically, youth defendants have not yet entered pleas at the point of evaluation. An evaluator might opine a youth unfit to stand trial if that youth cannot comprehend the ramifications of entering a not-guilty plea, although that same youth might understand what it means to enter a guilty plea. Based on current experience, the majority of youth defendants admit to their charges (plead guilty) by the time they reach their court hearing, thus obviating a complicated defended hearing. In the case of youth who admit their charges, they are required to be fit to plead. This was clarified in the decision of Asher J in *R v. Komene* (2013) wherein a person may be fit to plead and could stand trial having pleaded guilty, but not so necessarily if a trial involved conducting a defence against complicated facts.

Methodological Issues

Data were captured from only one youth forensic service in New Zealand, perhaps limiting the generalisability of the findings. Private reports were also not available; obtaining these may have increased the sample size and provided a broader view of how fitness to stand trial is evaluated by report writers. It is possible that individual report writers across services countrywide could differ in their approach to evaluating fitness to stand trial from those in Auckland. RYFS however, being a large regional and publicly funded service, receives referrals from the largest youth courts in New Zealand, thus it is suggested that the study sample reflects typical youth defendants entering Youth Court across the country.

This is a retrospective study, so standardisation of interviews did not occur. However, the reports prepared by RYFS are rigorously peer reviewed. Corresponding Ministry of Justice information is limited, thus reducing the sample size to half. It is not known whether the limited Ministry of Justice data biased the included sample in one way or another. The sample size may not be large enough to detect the influence of immaturity on existing difficulties that might amount to mental impairment and unfitness to stand trial. Future research that involves a longitudinal prospective design would benefit from addressing how information is shared across health and justice departments.

In practice, defendants are psychometrically tested if evaluators suspect the presence of intellectual disability, but the IQ scores of 32 defendants were not recorded in the reports reviewed; this is a limitation given the sample size. Adolescent development is fluid, and some youth will present with uneven developmental profiles. Conceivably, some might appear to be ‘more fit’ than they actually are because of relatively better verbal performance abilities, but may still have subtle undetected cognitive problems that nonetheless impact on fitness.

Conclusions

The right to be fit to stand trial is a fundamental legal principle, and its operation in the New Zealand Youth Court context has received limited attention from mental health researchers until recently. Interest in the impact of age on trial-related competence appears to have come about in the context of shifting attitudes that support harsher penalties for youth offending, and the concerns of international authors that incompetent youth could be facing criminal proceedings unfairly.

The current study seeks to investigate the impact of immaturity on evaluators' opinions about youth defendants' fitness to stand trial, and the courts' findings of fitness. The study also reviewed sociodemographic data, educational status, mental health diagnoses and the types of charges that bring youth defendants before the court. Intellectual disability was found to be associated with court findings of unfitness to stand trial, and most commonly the disposition of the youth found unfit to stand trial in this study was by way of the IDCCR Act. Unfitness due to a psychotic illness is uncommon in the Youth Court based on the present sample.

In the study sample, immaturity was only raised as a concern by report writers in two cases, alongside coexisting cognitive difficulties, and no youth in the study was found unfit to stand trial on the basis of immaturity alone. Overall, the majority of youth referred for fitness evaluations were found fit by the Youth Court. These findings suggest that immaturity has not yet been raised as a discrete determinant of unfitness to stand trial in the New Zealand Youth Court. The evaluator-court agreement rate of 75%, with a low PPV and high NPV, suggests that evaluators may have a tendency to view the legislative definition of fitness to stand trial with a higher threshold than the courts. Given the ameliorative nature of the Youth Court, holding a lower threshold of fitness is not considered fundamentally unfair – especially when there are no

appropriate dispositional options for youth found unfit to stand trial on account of age.

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No potential conflict of interest was reported by the authors.

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