

**PERSPECTIVE ON MILWAUKEE MOB-BEATING CASE AND  
CALL FOR JUVENILE REFORM**

# ***Commission Needed to Reform Juvenile Law***

By: Craig Mastantuono  
*Mastantuono Law Office, S.C.*

*Author's Note: This article appeared in the Crossroads Section of the Milwaukee Journal Sentinel on May 18<sup>th</sup>, 2003.*

"You scared?" Nods – yes. "Of what?" "I don't know." These are notes from a client visit I made last October at the Milwaukee County Juvenile Detention Center. I was the lawyer for the 10-year-old child accused of participating in the beating death of Charles Young, Jr. *That* 10-year-old child. The one who made a splash on the national media scene last fall by potentially becoming the youngest child ever charged with homicide in an adult criminal court in the U.S. I didn't do the research on that statistic – I read it in the paper.

The Milwaukee County District Attorney ended that possibility early on and decided to pursue a delinquency charge in juvenile court. In December, a Milwaukee County Children's Court Judge ruled that the child was not competent to stand trial in the juvenile delinquency proceeding. The Court followed the joint findings of three psychologists who examined the child for competency. That ruling effectively ended the criminal prosecution, and resulted in the filing of a protection and services petition in the child's case. In late February, the Judge entered disposition findings on that petition, and sent the child to a residential treatment center in the city. It was a modest hearing compared to earlier hearings in the case – no witness testimony, no cross-examinations, no media reporters. Just the Judge talking to the child, telling him and his family what needs to happen to eventually return the boy home. After the hearing he cried. He cried like a child – upset, confused, and unable to express himself. Not sure what he was scared of, but still scared.

The criminal prosecutions of the many youths accused in Mr. Young's death present so many questions. Early on, the questions centered on community shock and frustration. How could something so awful happen? How could so many young people be involved? Where were the families? Who is to blame? As these cases proceed through the court system, the questions should not end. What can we learn from this? And when a youth – especially one as young as 10 years old – is accused of a crime, how should the police, lawyers, and courts address it? Two areas ripe for

local discussion and study emerge from these cases: juvenile competency to proceed in a criminal prosecution, and police interrogation of juvenile suspects.

In March 2003 the Milwaukee Journal Sentinel published the findings of a psychological study conducted on juvenile competency (*Some young don't understand trial, team finds*, Milwaukee Journal Sentinel, March 3, 2003). The study, conducted in several national locations by a team of psychologists, found that juveniles 15 years old and younger are at a much higher risk of lacking the mental competence to stand trial in a criminal proceeding than older juveniles and adults (The MacArthur Juvenile Adjudicative Competence Study, [www.mac-adoldev-juvjustice.org](http://www.mac-adoldev-juvjustice.org)). Competency in the legal sense relates to a person's mental abilities to understand a criminal prosecution, to make decisions about the proceedings, and to assist an attorney in his own defense. In adult cases, lack of basic competency most often is the result of mental illness. In juvenile cases, cognitive developmental factors relating to age are much more prevalent in impairing an accused's competency. In other words, children under 15 likely have not yet developed the intellectual, emotional, and decision-making abilities necessary to allow them to understand and participate meaningfully in a criminal prosecution. Since the United States Supreme Court's interpretation of our Constitution requires that those accused of a crime have a basic ability to understand the proceedings, competency is a big deal. Each State must ensure that this fundamental fairness is honored in its own criminal prosecutions.

In 1996, Wisconsin changed its Children's Code in response to a perceived need to more aggressively prosecute accused youths. Among the changes was a lowering of the age when delinquency prosecutions could be filed from 12 years to 10 years old, and allowing original adult court jurisdiction for children as young as 10 years old accused of certain homicide offenses. These changes were set against a centuries-old history in American and English jurisprudence of treating children accused of crime differently, to reflect their age. As the studies emerge warning that criminally accused youth are at high risk of being incompetent, one must now ask: is Wisconsin behind the learning curve? Two Milwaukee judges have now ruled that two of the boys accused in the Young case are incompetent to stand trial, even with the assistance of a lawyer. This begs the question: how were they deemed competent to be interrogated by police detectives following arrest, scared, alone and without the counsel of a lawyer or parent?

In Chicago, recent cases resulting in wrongful prosecutions of youth who gave false confessions to police led to a study and report by a cross-disciplinary Juvenile Competency Commission (Juvenile Competency Commission, Final Report, 8/9/01, Michael J. Howlett, Jr., Chairman.). That commission of community members, psychologists, judges, lawyers, prosecutors, and police, recommended reform in how accused juveniles are interrogated as suspects, and prosecuted in courts. The recommendations attempt to balance the community's need to investigate and solve crime with the community's interest in safeguarding children's rights. Among the recommended reforms are: required parental notification when a juvenile is taken into

custody, videotaping of interrogations, suppression of juvenile confessions given without counsel, and civil prosecution of children deemed incompetent and of children under 12. A similar commission should be formed here.

There are no easy answers to these questions, only more questions. But the criminal law and courts are our greatest attempt as a society to intervene when something goes wrong, when something so bad happens that a formal and forceful intervention is required. We should act when these bad things happen, and try to right the wrong. We should also explore further what to do when children are accused of crime, and to try and get it right.

[Mastantuono Law Office, S.C.](#)

817 North Marshall Street  
Milwaukee, Wisconsin 53202  
414.276.8662

[cmast@Mastantuono-Law.com](mailto:cmast@Mastantuono-Law.com)

*criminal & civil trial litigation.*