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A First Look at the Plea Deal Experiences of Juveniles Tried in Adult Court

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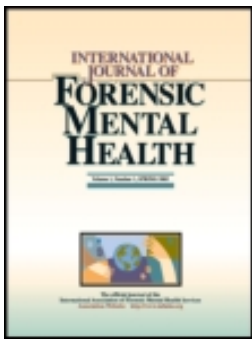


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Daftary-Kapur, Tarika and Zottoli, Tina, "A First Look at the Plea Deal Experiences of Juveniles Tried in Adult Court" (2014). *Department of Justice Studies Faculty Scholarship and Creative Works*. 170.
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To cite this article: Tarika Daftary-Kapur & Tina M. Zottoli (2014) A First Look at the Plea Deal Experiences of Juveniles Tried in Adult Court, *International Journal of Forensic Mental Health*, 13:4, 323-336, DOI: [10.1080/14999013.2014.960983](https://doi.org/10.1080/14999013.2014.960983)

To link to this article: <https://doi.org/10.1080/14999013.2014.960983>



Published online: 30 Oct 2014.



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A First Look at the Plea Deal Experiences of Juveniles Tried in Adult Court

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While there is a large body of research on the legal capacities of adolescents, this research largely has neglected the plea-deal context. To learn about adolescents' understanding of the plea process and their appreciation of the short- and long-term consequences of accepting a plea deal, we conducted interviews with 40 juveniles who were offered plea deals in adult criminal court. Participants displayed limited understanding of the plea process, were not fully aware of their legal options and appeared to be overly influenced by the short-term benefits associated with accepting their plea deals. Limited contact with attorneys may have contributed to poor understanding. Although preliminary, our results suggest that these youth might be at increased risk for due-process rights violations. We use these data to point to several open research questions on the plea-deal process for youth charged as adults.

Keywords: juvenile offenders, plea bargaining, plea deals, juvenile competency, legal decisions, adolescent decision making

Each year, approximately 250,000 juveniles are adjudicated in criminal court (Daglis, Lanza-Kaduce, Odgers, & Wollard, 2005), and the vast majority of these cases are disposed of via plea deals (Rosenmerkel, Durose, & Farole, 2010). Pleading guilty to a felony in adult court may result in the loss of a number of rights and privileges and is associated with several negative long-term consequences (Redding, 2003). While there is a large body of research on the adjudicative competence of adolescents (e.g., on the capacity of youth to stand trial or waive Miranda; Cooper, 1997; Grisso, 1981; Grisso et al., 2003; Redlich, Silverman, & Steiner, 2003; Viljoen, Odgers, Grisso, & Tillbrook, 2007; Viljoen & Roesch, 2005) and on the experiences and outcomes of youth in criminal court (e.g., Redding, 2003 for a review; Schubert et al., 2010), the plea-bargain context largely has been neglected (see Redlich, 2010, for similar comment).

This gap in the research must be addressed, as most juveniles charged in adult court accept plea deals¹ and the decisions faced in the context of a plea negotiation may differ considerably from those of a trial. This article provides a 'first look' at the plea deal experiences of juveniles who have been charged and processed in adult criminal court. Our study had three primary objectives:

1. To understand the experiences and perceptions these juveniles have of the plea bargain process, including their perceptions of voluntariness and their relationships and interactions with their attorneys.
2. To identify possible deficits in legal knowledge (both general knowledge about plea deals and knowledge specific to the juveniles' own situations), and in appreciation of legal outcomes for the juveniles' own lives.

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Color versions of one or more of the figures in the article can be found online at <http://www.tandfonline.com/ufmh>.

¹While the exact number of cases that are resolved through plea bargaining is unknown, scholars estimate that 90 to 95 percent of both federal and state court cases involving juveniles are resolved through plea deals (Bureau of Justice Statistics, 2005).

3. To identify the factors considered by these juveniles in their decision making (although decision-making capacities were not directly assessed).

To accomplish these aims, we interviewed 40 juveniles who were offered, or had taken, a plea deal for a felony offense in adult criminal court. To our knowledge, this is the first time a sample of juveniles charged as adults have been interviewed about their plea deal experiences. As such, this study was exploratory in nature, and designed to help generate hypotheses for future research.

Constitutional Protections

When a court accepts a guilty plea it is presumed that the defendant has the ability to make a knowing and voluntary decision (that is, the defendant meets the constitutional minimum for adjudicative competence) *and* that the defendant's actual decision to enter a plea is both knowing and voluntary (typically established by the judge during the plea colloquy). These conditions are meant to protect the defendant against both dispositional and situational factors that could potentially render the plea process unfair or coercive. Thus, with respect to juveniles who accept plea deals, there are two questions that might be considered: (1) Are youth legally competent to make plea decisions? *and, if so*, (2) Are the actual decisions made by youth knowing and voluntary? These two prongs are discussed below.

Competency

In *Godinez v. Moran* (1993) the U.S. Supreme Court held that the threshold for competency to plead guilty is the same as that for trial competency established by *Dusky v. US*, 1960: whether 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." Competent individuals can understand the nature of the proceedings brought against them, can reason among options presented and explained to them by counsel and have an appreciation (that is, a realistic understanding) of the potential consequences of the proceedings for their own circumstances (Bonnie, 1992).

Knowing and Voluntary

While competency is a necessary prerequisite for whether or not a defendant's plea is knowing and voluntary, the courts have long recognized that the will of an otherwise competent defendant can be overpowered by either intentional or unintentional coercive practices on the part of the state. In fact, until 1970, U.S. courts, including the Supreme Court, differentiated only slightly, if at all, between a confession made in police custody and a guilty plea entered in court; both confessions and guilty pleas entered in court must be, as guaranteed by the 14th

amendment, voluntary and knowing, and offers of leniency to induce either were broadly condemned by the courts (see Dervan, 2012 for review). In *Brady v. United States* (1970) the plea-bargain was deemed constitutional and the case law regarding confessions and guilty pleas began to diverge; nonetheless, in *Brady* and related cases that followed (e.g., *Bordenkircher v. Hayes*, 1978; *North Carolina V. Alford*, 1970) the Court emphasized that the incentives that are made in the context of a plea deal not be such that they overpower the will of a defendant; furthermore, "waivers of constitutional rights [e.g., the right to a trial] not only must be voluntary, but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." A knowing and voluntary waiver is one for which an individual understands his or her available options and the likely consequences associated with the options, and is free from undue external influence in making his or her choice.

Adolescents in Criminal Court

Several lines of research suggest that adolescents, as a group, may have deficits in the capacities needed to competently enter into plea agreements and that they may be more vulnerable to suggestion and more easily coerced than adults. Adolescent decision making may be compromised by a tendency to focus on short- rather than long-term, or positive rather than negative, consequences (e.g., Crone & van der Molen, 2004; Hooper, Luciana, Conklin, & Yarger, 2004; Miller & Byrnes, 2001a, 2001b) and by a failure to attend to risk (e.g., Lewis, 1981). Adolescents may be less likely to recognize the full range of options available to them or the full range of outcomes associated with a given option, and they may value the possible outcomes associated with decisions differently from adults (Miller & Byrnes, 2001a, 2001b). Adolescents also have particular difficulty countering dysregulating influences in situations that are emotionally laden or that exert high cognitive demand (Crone, 2009; van Duijvenvoorde, Jansen, Visser, & Huizenga, 2010). It is well established that the neural networks important for value laden decision-making are undergoing substantial maturational change during adolescence (e.g., Ernst, Romeo, & Andersen, 2009), and the protracted development of the pre-frontal cortex relative to the earlier maturation of the limbic system may explain, in part, the increased vulnerability of adolescents to poor judgment in emotionally charged contexts (e.g., Galvan et al., 2006).

Arguably, few situations are as fraught with emotion as the pre-adjudicative and adjudicative processes. Thus, it is not surprising that developmental differences have surfaced in the psycho-legal literature. Most of the research on the legal capacities of adolescents has focused on competency to stand trial and competency to waive *Miranda* rights. The general consensus of the competency research is that

adolescents as a group, but especially those who are younger than 16, are more likely than adults to have deficits in the capacities necessary to participate competently in criminal trials (Cooper, 1997; Grisso et al., 2003; McKee, 1995; Redlich et al., 2003; Savitsky & Karras, 1984; Viljoen & Grisso, 2007), and adolescents with below average IQs may be at greatest risk (e.g., Grisso et al., 2003). Furthermore, teaching to enhance competency related abilities may benefit only the oldest adolescents (Viljoen & Grisso, 2007).

Adolescents are also less likely than adults to comprehend and appreciate *Miranda* warnings, putting them at increased risk to waive their rights unknowingly (Grisso, 1981; Redlich et al., 2003; Viljoen & Roesch, 2005); those who are 14 years of age or younger may be at the greatest risk (Grisso, 1981). The impact of deficits in *Miranda* comprehension is highlighted by the false-confessions literature, which suggests that the prevalence of false confessions is disproportionately higher among youth (Drizin & Leo, 2004). It appears that juveniles are more susceptible than adults to suggestive questioning, pressure from authority figures, and the use of deception (Gudjonsson, 2003; Redlich & Goodman, 2003; Scott-Hayward, 2007). They are also more likely than adults to waive their rights during police questioning (Abramovitch, Peterson-Badali, & Rohan, 1995).

Adolescents in the Plea Negotiation Context

Taken together, these data give us reason to believe that adolescents' understanding and appreciation of the plea negotiation process will be similarly compromised. To our knowledge, only two published studies have examined this question directly. Grisso et al. (2003) explored judgment and decision-making in three hypothetical legal scenarios (an interrogation, an attorney consult, and a plea deal) in detained delinquents and adult offenders, and in matched community samples. Juveniles were more likely to accept a plea deal than were adults, and across scenarios, juveniles younger than 15 years old were more likely than older juveniles and adults to make choices that signified compliance with authority. Also, adolescents under the age of 14 were less likely than older adolescents and adults to recognize the long-term consequences of their decisions. These results are limited by the use of hypothetical vignettes that lack the real-world consequences of a plea negotiation, and may underestimate age-related differences.

Viljoen, Klaver, and Roesch (2005) interviewed a sample of detained juvenile delinquents about their actual and anticipated plea decisions. More than half of the sample reported that their attorneys advised them how to plea. Among older adolescents (>15 years), peer advice and subjective ratings of the strength of the evidence against them was associated with whether or not they planned to take a plea. Legal understanding of plea deals and appreciation for long-term outcomes of accepting a plea were not specifically assessed in this study.

Importantly, neither of these studies included juveniles who were adjudicated in the adult system. While it is tempting to extrapolate data from juvenile court samples to the population of youth adjudicated as adults, youth in adult court are, on average, older than juvenile court samples, may differ in demographic composition (Males & Macallair, 2000), and are usually charged with more serious crimes. Also, the juvenile justice system functions differently from the adult system, in terms of both processes and penalties.

We sought to address this critical gap in the research by directly interviewing juveniles in the adult system about their plea deal experiences. Our goals were to understand their experiences and their perceptions of the plea process and to identify possible deficits in legal understanding and appreciation of consequences that might be the subject of future research. To our knowledge, this is the first study on the plea deal experiences of youth who have been adjudicated as adults. We did not set out to test specific hypotheses, but on the basis of existing research we expected that our participants would show some deficits in basic legal knowledge and that our participants would be influenced more strongly by short- rather than long- term consequences.

METHOD

Participants

Participants were 40 juvenile offenders, charged as adults in New York City. The participants were between the ages of 13 and 18 at the time of interview ($M = 15.86$, $SD = 1.25$) and their average age at the time of offense was 15 years, ($SD = .74$).² The majority of participants (80%, $n = 32$) were male and 62.5% of the participants identified as Black/African-American ($n = 25$). The remainder identified as Hispanic (15%, $n = 6$), mixed race (20%, $n = 8$) or White (2.5%, $n = 1$). Education level ranged from ninth grade to twelfth grade (mode: tenth grade). On average youth had .80 prior arrests ($SD = 1.39$, ranging from 0–5, mode = 0). Only four participants had a prior adjudication in juvenile court, and two had prior adult convictions.

All participants in our sample had either accepted a guilty plea for a felony offense in adult criminal court in New York State ($n = 32$; 80%), or were in the pre-trial process and had been offered plea deals ($n = 8$; 20%). Of the eight youth who were offered but had not accepted deals, seven said they were going to accept their deals and one planned to go to trial.

²All participants in our study were charged, in criminal court, before age 16. In New York State, the upper limit of the juvenile court is 16 years; juveniles between the ages of 13 and 16 are waived to adult court automatically if they are charged with one of 17 designated offenses that mandate adult adjudication.

Participants were sampled from community-based alternative-to-incarceration (ATI) programs in New York City. In New York City the majority of youth sentenced in criminal court are sentenced to probation (61% in 2012; Gewirtz, 2014); this includes 59% of those with Class B felonies and 58% of those with Class C or D felonies. While on probation, youth are normally mandated to attend ATIs that provide counseling, job training and other services. Additionally, 98% of juveniles charged as adults are mandated to attend ATIs during the pendency of their cases (Gewirtz, 2014). All youth at the facilities were invited to participate in the study and the final sample was representative of the population of juvenile offenders in New York City in terms of age and gender (race/ethnicity data are unavailable; Gewirtz, 2014).

Measures

Demographic Information

Information was collected on age, sex, race/ethnicity, education level, mental health history, and prior juvenile and criminal justice involvement for all participants.

Interview Protocol

Our structured interview addressed four areas³ relevant to plea decision making: (1) basic legal understanding, (2) appreciation, (3) voluntariness, and (4) attorney relationship/communications.

- **Basic Legal Understanding:** These questions assessed knowledge of the plea process, the nature of guilty pleas, rights attached to the defendant during the plea bargaining process, and the consequences of accepting a guilty plea.
- **Appreciation:** This section addressed the recognition of the impact of events on the participant's own circumstances. Questions assessed understanding of the terms of the plea that has been or will be accepted and of the consequences (both short-term and long-term) of accepting the plea. We also asked open ended questions about the factors that contributed to the offender's plea decision.
- **Voluntariness:** These items assessed the offender's perception of the fairness of the process, his/her autonomy to make decisions and the role of counsel, peers, and parents or other adults in the decision-making process.
- **Attorney Relationship:** These questions addressed likeability and trust of attorneys, information received from attorneys about the process, and the number of

times the offenders met/had contact with their attorneys and under what circumstances.

Our goal was to collect information on participants' spontaneous responses, thus the majority of our interview questions were open-ended. Basic probes (e.g., "is there anything else you can think of?") were used when necessary. Research assistants were trained to ask follow-up questions for definitional items and when they did not understand a participant's response. Follow-up questions were recorded in the interview notes.

Procedure

All procedures were approved by the Institutional Review Boards at the authors' institutions and were carried out in accordance with the ethical guidelines for human subject research outlined by the American Psychological Association. Permission was granted by the ATI sites to recruit participants and conduct interviews onsite. No identifying information was collected and participants were instructed not to disclose the charge for which they had been sentenced. We did not query youth on the offense(s) for which they had been sentenced—this was part of our agreement with the interview sites, as some of the participants' cases were still in progress—but we did ask each participant about the terms of the deal that had been accepted/offered and about the alternatives with which he/she had been presented.

Participants were recruited at four ATI programs for youth in New York City. Information regarding the study was presented to the prospective participants in group settings and they were asked to complete a sign-up sheet if interested, providing the contact information for their parents/guardians. They also had the option of contacting the principal investigators or program staff at a later date if they decided they were interested in participating. Parents/legal guardians were contacted via phone and verbal consent was obtained; contact information for parents and guardians was cross-referenced with ATI site records. Confidentiality was assured except for reports of abuse or threats of harm to self or others. After obtaining verbal consent, a time and date was arranged with ATI program staff to conduct the interview with the participant. At the time of the interview, verbal assent was obtained from the participant and a written form was also provided.

Interviews were conducted in private rooms at the ATI facilities and lasted approximately 30 minutes. The interviews were conducted by the principal investigators and two trained research assistants. Of the 40 interviews, 15 were conducted by the PIs, and the remaining interviews were conducted by the research assistants. To maintain consistency across interviews, all interviewers followed a script and all questions were asked in the same order for each participant. At the conclusion of the interviews, participants were given \$25 American Express gift cards.

³Sections one and two of our interview protocol were influenced by Bonnie's (1993) conceptualization of competency to stand trial in that these sections address basic legal knowledge and appreciation of the outcomes for one's own situation.

Data Analysis

Interviews were transcribed and the transcribed statements were subjected to a content analysis. Given that this study was exploratory in nature, coding categories were developed using both deductive (i.e., derived from prior research) and inductive (i.e., derived from the raw data collected) methods (Glaser & Strauss, 1967). Deductive codes were established *a priori*, based on prior research on adolescent decision making (e.g., coding responses for short-versus long-term orientation). For codes developed inductively, the two PIs independently read all the interviews and developed a list of initial categories and a general coding framework for analyzing the interviews based on emergent themes. After each PI developed her set of themes and categories, the two PIs discussed these categories, reconciled differences, and developed formal codes by which to categorize interview responses. Final coding categories were then established using the constant-comparative method, which entails the systematic comparison of each new text to be assigned to a category with each of those texts that has already been assigned to the category (Glaser & Strauss, 1967). The unit of analysis was the sentence and each sentence, considered a "text chunk," was coded for each of these categories. Although one text-chunk could be coded under more than one category, categories were defined in such a way that they were internally as homogeneous as possible and externally as heterogeneous as possible.

The final set of categories measured the following content domains: basic legal understanding of the plea process, the identified reason for accepting a plea, identified consequences of accepting (and not accepting) a felony plea, whether an identified consequence reflected a long- or short-term orientation, and the amount and quality of attorney communication. For ease of interpretation, specific coding schemes are presented before each set of respective results.

Once the coding schemes were finalized, we randomly selected 10 interviews that would be coded by both PIs to establish interrater reliability. Interrater reliability was acceptable at kappa = .84 (Altman, 1991; Landis & Koch, 1977), with individual kappa ranging from .78 to .90. Once interrater reliability was established we reconciled differences, and then randomly divided the remaining 30 interviews, which were coded independently. Once all the data were content coded, we tabulated results and analyzed data using descriptive statistics.

RESULTS

We present our findings in four broad categories—general legal understanding, appreciation of consequences, voluntariness, and attorney relationship and communication. All information we report here was obtained through direct interviews with participants and responses were not

corroborated by collateral sources. Self-report data is, of course, the only way to glean a realistic understanding of the perspective of the juvenile offender, but, as is true for all types of self-report research, interpretation of our data is limited by the possibility of inaccurate reporting (unintentional or intentional) and forgetting. To minimize forgetting, data were collected as close in time to the plea decision as possible (between a few weeks and a few months, and rarely longer). Although we could not eliminate any possibility of a participant intentionally providing a false report, there was no incentive to lie on this interview. We did not ask participants about the nature of their alleged crimes or about their guilt or innocence, and the questions about their personal legal situations were restricted exclusively to their decision-making processes.

GENERAL LEGAL UNDERSTANDING OF PLEA DEALS

The first section of our interview asked general questions about legal process and about factors that might affect a person's decision to accept a plea deal. These items were unrelated to the participants' personal situations.

Understanding of Plea Deals

Variables and Coding

General understanding of plea deals was assessed with an open-ended question: "Can you tell me, in your own words, what a plea deal is?" After a participant provided an initial response, we queried (query: "anything else") to determine whether they would provide additional information. Participants' spontaneous responses were scored against a set of five definitional criteria. Using the definition of a plea bargain given by *West's Encyclopedia of American Law* (Lehman & Phelps, 2004), we developed a "basic legal understanding" variable that was scored from 1 to 5, with one point given for each of the following five aspects of a plea deal the youth mentioned in their spontaneous responses: (1) a plea is an admission of guilt, (2) a plea deal includes an offer of reduced charges/time, (3) the offer is made by the prosecutor, (4), a plea implies waiver of right to trial, and (5) a plea implies waiver of right to appeal (see Table 1).⁴ This open-ended question was followed by a number of specific follow-up questions (e.g., does a person admit that he did something wrong when he accepts a plea deal?), with one point scored for each correct answer.

⁴The broad definition of a guilty plea also includes waivers of other rights granted by the fifth and sixth amendment, such as the right against self-incrimination and the right to confront witnesses. We limited our legal understanding variable to these basic elements because we did not want to bias legal understanding scores in the direction of our initial expectations.

TABLE 1
Coding for Elements of Plea Deal: Coding Categories, Definition of Qualifying Responses and Example Responses

Category	Definition	Examples
Guilt	Mentioned that taking a plea includes an admission of guilt	“You have to admit what you did” “You have to say you did what they are charging you with”
Reduced time/charges	Mentioned that a plea deal includes an offer of reduced time and/or charges	“The judge offers you lower charges if you say you did it.” “It’s when you say you did something wrong and they give you less time, or no time.”
Offer	Mentioned that the plea offer is made by the prosecutor	“Offered by the judge and D.A.” “The prosecutor give you the plea”
Trial waiver	Mentioned that accepting a plea implies a waiver of the right to a trial	“If you take a plea, then you can’t go to trial” “With my plea I can’t go to trial anymore”
Appeal waiver	Mentioned that accepting a plea implies a waiver of the right to appeal	No participants mentioned this element

Results

None of the participants spontaneously mentioned (or recognized after follow-up questions), all five aspects of a plea deal. Approximately 16% mentioned three aspects, 38% mentioned two, 35% mentioned one, and 11% did not mention any. Table 2 shows the total number of participants who identified each element, as well as whether the element was identified spontaneously or only after follow-up questioning. The most frequently identified elements were admission of guilt (87.5%, *n* = 35), offered by the prosecutor (82.5%, *n* = 33) and reduced charges/time, 45% (*n* = 18). These responses were followed by the recognition that the right to trial would be waived (12.5%, *n* = 5). No participants mentioned that entering plea included a waiver of the right to appeal; however, we did not ask this question directly on follow-up.

Factors that Influence Plea Decisions

Variables and Coding

Participants were asked to describe the kinds of things a person might think about when deciding to accept a plea deal. Based on the responses the question elicited, we created a variable that coded for the identified reason a plea deal might be accepted (e.g., to end the legal process; to get a lower sentence) and variables that coded for identified outcomes/consequences of accepting and not accepting a

plea deal (e.g., having a criminal record; difficulties with employment; See Table 3 for codes, definitions, and example responses). Then, based on existing research, which suggests that youth attend more to the short- rather than long-term consequences of a decision (e.g., Crone & van der Molen, 2004; Hooper et al., 2004; Huizenga, Crone, & Jansen 2007; Steinberg et al., 2009), we coded each response—whether the response was a “reason for taking a plea deal” or a “consequence associated with accepting a plea deal”—as reflecting a long- (e.g., difficulty finding employment with a criminal record) or short-term orientation (e.g., getting out of jail that night). Throughout the Results section, the sum of the percentages of youth providing responses may be greater than 100 on items for which some youth provided more than one response.

Results

The most commonly cited reason for why someone might accept a plea deal was “to give up fighting the system” (35%, *n* = 14); 25% (*n* = 10) stated that it was to get a lower sentence; 25% (*n* = 10) stated that the reason to take a plea was to get out of jail as soon as possible, and 12.5% (*n* = 5) stated that it was to avoid a sentence of jail/prison time. Finally, 5% (*n* = 2) stated that a person will accept a plea deal to get a second chance. The majority (60%) of the identified reasons reflected a short-term orientation.

TABLE 2
Elements of a Plea Deal Mentioned by Participants Spontaneously and After Direct Probe

Elements of a Plea Deal	Number Who Mentioned Element Spontaneously	Number Who Correctly Answered Follow-Up Question	Total
Admission of Guilt	75% (<i>n</i> = 30)	12.5% (<i>n</i> = 5)	87.5% (<i>n</i> = 35)
Reduced time/charges	45% (<i>n</i> = 18)	0% (<i>n</i> = 0)	45% (<i>n</i> = 18)
Offered by prosecutor	10% (<i>n</i> = 4)	72.5% (<i>n</i> = 29)	82.5% (<i>n</i> = 33)
Waiver of right to trial	5% (<i>n</i> = 2)	7.5% (<i>n</i> = 3)	12.5% (<i>n</i> = 5)
Waiver of right to appeal	0% (<i>n</i> = 0)	NA*	0% (<i>n</i> = 0)

Note. *We did not ask a direct follow-up question regarding the right to appeal which is a limitation of the current study.

TABLE 3
Coding for General Factors That Influence Plea Decisions: Coding Categories, Definition of Qualifying Responses and Example Responses

Category	Definition	Examples
Reason For Taking Plea Deal		
End the legal process*	Mentioned that a person takes a plea to end the legal process	“You’ll stop going to court. Be done with it.” “[you take the deal] To give up to get out of court”
Get a lower sentence**	Mentioned that a person takes a plea to get a lower sentence than what he/she would get if found guilty at trial	“How much time they would have to do, get less time if they take a plea” “less jail [prison] time”
Give up fighting the system*	Mentioned that a person takes a plea to give up fighting the system	“To get out, to give up. They make you plead guilty before investigation” “When you’re tired of fighting the case”
Get out of jail*	Mentioned that a person takes a plea to get out of jail and go home	“Long time [waiting] in jail if you don’t take it” “Not wanting jail anymore”
Get a second chance**	Mentioned that a person takes a plea to get a second chance through programs etc.	“Chance to start over” “I wanted to learn something from experience”
Consequences of accepting		
Employment difficulties**	Mentioned that taking a plea leads to difficulties with getting a job	“Getting a job, maybe some other stuff” “Getting a job, trying to work somewhere”
Criminal record**	Mentioned that taking a plea leads to a felony record	N/A; closed ended question
Not being able to attend college**	Mentioned that taking a plea (and due to that having a record) makes it harder to attend college	“[Can’t] go to school or college” “[it would be harder] to go to college”
Access to public housing**	Mentioned that taking a plea (and due to that having a record) makes it harder to get public housing	“Can’t get housing” “...govt. housing”
Consequences of Rejecting		
Prison Time**	Mentioned that rejecting a plea would lead to a longer prison sentence associated with the original charge	“If you don’t plead the judge will give you more time.” “They might get sentenced, time might be longer.”
Jail/Remand*	Mentioned that rejecting a plea would lead to going back to jail or remanded to detention	“He’ll go back to jail” “Long time [waiting] in jail if you don’t take it, or get found guilty anyway.”
Trial*	Mentioned that rejecting a plea would lead to a trial	“He’d stay in Court. Jury would have said he’s guilty and he would have gone to prison” “Probably would have gone to trial and offered probation”
New deal*	Mentioned that rejecting a plea would lead to a new offer later in the process	“Go back to jail and will have to wait till the next deal is given” “Remanded and sent to jail to wait a new deal”

Note. *Response coded as reflecting short-term orientation; **Response coded as reflecting long-term orientation.

Participants mentioned few collateral consequences (e.g., eligibility for certain entitlement programs) associated with accepting a plea for a felony offense. The majority of youth (57.5%, *n* = 23) mentioned one consequence, 17.5% (*n* = 7) mentioned two, 20% (*n* = 8) mentioned three, and 5% (*n* = 2) did not mention any collateral consequences of taking a plea. The most common consequences mentioned by participants were difficulty with employment (82.5%, *n* = 33), having a criminal record (40%, *n* = 16), and not being able to go to college (27.5%, *n* = 11; presumably these responses referred to restrictions in obtaining financial aid, but we did not query this further). A handful of participants mentioned being denied access to public housing (10%, *n* = 4). One hundred percent of consequences mentioned reflected a long-term orientation.

Participants mentioned very few potential consequences associated with rejecting a plea offer (mode = 2). The majority of participants (70%, *n* = 28) believed that if a person rejects a plea deal they would receive a higher

penalty—most mentioned the prison time associated with the original charge. Other consequences mentioned included being sent back to jail or remanded if one rejected a plea offer (55%, *n* = 22), the possibility of a trial (30%, *n* = 12) and being offered a new deal at a later stage in the process (25%, *n* = 10). Overall, 31% of responses reflected a short-term orientation, and 69% reflected a long-term one.

Appreciation of Personal Consequences

The second section of the interview addressed the recognition of the impact of events on the participants’ own circumstances. Participants were queried on understanding of the terms of the plea that has been, or will be, accepted (including consequences of violations) and of the consequences (both short-term and long-term) of accepting the plea. We also asked about the factors that contributed to their own decisions.

TABLE 4
Coding for Consequences of Accepting or Rejecting Own Plea Deal: Coding Categories, Definition of Qualifying Responses and Example Responses

Category	Definition	Examples
Acceptance of plea deal		
Criminal record**	Mentioned that they would have a criminal record by accepting a plea deal	N/A; Closed ended question
Employment**	Mentioned that they would face employment difficulties by accepting a plea deal	"Hard to get a job, because of the background check"
Financial aid**	Mentioned they would face issues securing financial aid in college by accepting a plea deal	"Getting money for school, college"
Rejection of plea deal		
Higher penalty**	Mentioned that they would receive a higher penalty if they rejected a plea deal	"I took the plea because I didn't want to go to jail for 7 years."
Trial*	Mentioned that they would go to trial if they rejected a plea deal	"If I didn't plead guilty I would have to go on with all the other charges and go to trial"
Jail/remand*	Mentioned that they would go back to jail if they rejected a plea deal	"Didn't want to [wait in] jail. Needed my freedom"
New deal*	Mentioned that they would get a new deal at a later stage if they rejected a plea deal	"I'll go to jail until they give me a new deal"

Note. *Reflected short-term orientation **Reflected long-term orientation.

Awareness of Terms

Variables and Coding

Participants were asked what would happen if they did not fulfill the terms of their plea deals. This question was scored according to whether the youth's response indicated that he/she understood the consequences associated with violations (e.g., remand to jail; dismissal of plea deal).

Results

The majority of the participants (80%; $n = 32$) were aware of the consequences they would face if they did not fulfill the terms of their plea deals.

Consequences of Accepting or Rejecting a Plea

Variables and Coding

We asked participants what would happen if they accepted (or rejected) their plea offers. We coded these responses on two variables: whether participants had an accurate knowledge of legal process (knowledge of process) and whether they were able to identify outcomes related to accepting or rejecting a plea deal (outcomes). For knowledge of process, responses were scored against three *a priori* criteria—whether participants knew who had made the plea offer to them, whether they knew they had a right to trial, and whether they knew that a trial was the next step in the process if they chose not to accept a plea offer. As before, outcome responses were further coded as to whether they reflected long- versus short-term consequence. See Table 4 for codes, definitions, and example responses.

Results

All youth (100%, $n = 40$) knew that the offer was made to them by the prosecutor. In contrast, while 60% ($n = 24$) of youth knew that they had a right to trial generally, but when asked directly about their case, only 10% ($n = 4$) identified a trial as the next step in the process if they chose not to accept a plea deal.

Only a minority of participants (25%, $n = 10$) articulated any outcomes associated with accepting their plea deals. Of those who mentioned any outcomes, 80% ($n = 8$) mentioned that by taking a plea they would now have a criminal record; 70% ($n = 7$) mentioned difficulties with securing employment; and 30% ($n = 3$) mentioned that they would have difficulties going to school/college. All the outcomes identified reflected a long-term orientation. Sixty-five percent ($n = 26$) of the youth were able to identify outcomes associated with rejecting their plea deals. Among youth who mentioned any outcomes, 100% ($n = 26$) mentioned receiving a higher penalty than that being offered in the plea deal, 15% ($n = 4$) mentioned going to trial, 11.5% ($n = 3$) mentioned being sent back to jail/remanded, and 7.5% ($n = 2$) mentioned that a new deal would be offered to them at a later stage. Of the outcomes associated with rejecting a plea, 77% reflected a long-term orientation.

Factors that Influenced Offenders' Plea Decisions

Variables and Coding

Participants were asked about the factors that influenced *their own decisions* to take a plea (e.g., what things did you think about when you were deciding to take your plea-deal?). Based on the responses the question elicited, we

TABLE 5
Coding for Factors That Influenced Participants' Own Decisions to Take a Plea: Coding Categories, Definition of Qualifying Responses and Example Responses

Category	Definition	Examples
Going home*	Mentioned wanting to go home as soon as possible; being released after accepting a plea	"Cause I wanted to go home" "...going home"
Jail*	Mentioned not wanting to stay in jail during the court process	"To get out of jail" "I didn't want to stay in jail"
Losing friends*	Mentioned not wanting to lose friends because of time spent in court or because of court requirements	"I didn't want to be a snitch on my friends" "Can't spend time with my friends."
Tired of legal process/court*	Mentioned being tired of the legal process/wanting the legal process to end/tired of going to court	"I just wanted to be done with [the legal process]" "Didn't want to go to court. If I didn't take it they would set another court date and I would have to prove I didn't do it" "I was happy to stop going to Court, so [my attorney] said I could stop doing that [if I took the plea]"
Employment**	Mentioned having problems getting a job	"... get a job" "job cause no one wants to hire a felon"
School**	Mentioned being able to go back to school	"...going to college"
Relationships**	Mentioned not being able to form long-term relationships if sent to prison	"...getting in a good school" "Not have friends. Be hard later [to make friends]" "Won't be able to have a family"

Note. *Reflected short-term orientation; **Reflected long-term orientation.

created a variable that coded for factors that influenced a participant's decision for accepting a plea deal. As before, we then coded each response as to whether it reflected a long- or short-term orientation. See Table 5 for definitions and participant examples.

Results

Only 50% of the participants described the factors that influenced their decision. Most of these responses reflected concern about short-term outcomes such as being able to go home after accepting a plea as opposed to being remanded (70%, *n* = 14), not wanting to stay in jail for the remainder of the process (50%, *n* = 10), losing friends (40%, *n* = 8), and being tired of the legal/court process and wanting it to end (60%, *n* = 12). Only seven youth (17%) mentioned any long-term consequences. These included problems getting a job (57%, *n* = 4) or finishing school (28.5%, *n* = 2), and not being able to form long-term relationships (28.5%, *n* = 2). Overall, 85% of responses reflected a short-term orientation and of the participants who responded, 30% (*n* = 6) mentioned both short- and long-term consequences, 60% (*n* = 12) mentioned only short-term consequences, and 10% (*n* = 2) mentioned only long-term consequences. See Figure 1 for visual display of factors that influenced the youths' plea decisions.

Voluntariness of the Plea Decision Process

The third section of our interview assessed the participant's perception of the fairness of the process, his/her autonomy

to make decisions, and the role of peers, parents or other adults in the decision-making process.

Variables and Coding

We asked participants a series of closed ended questions aimed at their decision-making autonomy (e.g., did you take the plea because you wanted to or someone else wanted you to? Did you know how your parents wanted you to plead?), followed by an open-ended question asking how they made their final decisions to accept their pleas. Based on participants' responses to the closed- and open-ended questions, we coded their plea decisions as being completely autonomous, made in conjunction with parents/guardians, or being highly influenced by others (i.e., choosing a plea because others strongly encouraged them to accept it, when they may not have wanted to or may not have had a strong preference). See Table 6 for codes, definitions, and participant examples.

Results

Overall, 50% (*n* = 20) of the participants said that they knew how their attorneys wanted them to plead, and 80% (*n* = 32) said that they knew how their parents/guardians wanted them to plead. For the 10 youth reporting that their peers were involved in their alleged offense, 40% (*n* = 4) said that they knew how their peers wanted them to plead. Of those who were aware of the opinions of others, the overwhelming majority said that they had been advised to plead guilty (95%). Nonetheless, when asked who made the ultimate decision to plead guilty, the majority of participants (93.5%, *n* = 39) reported that they decided for

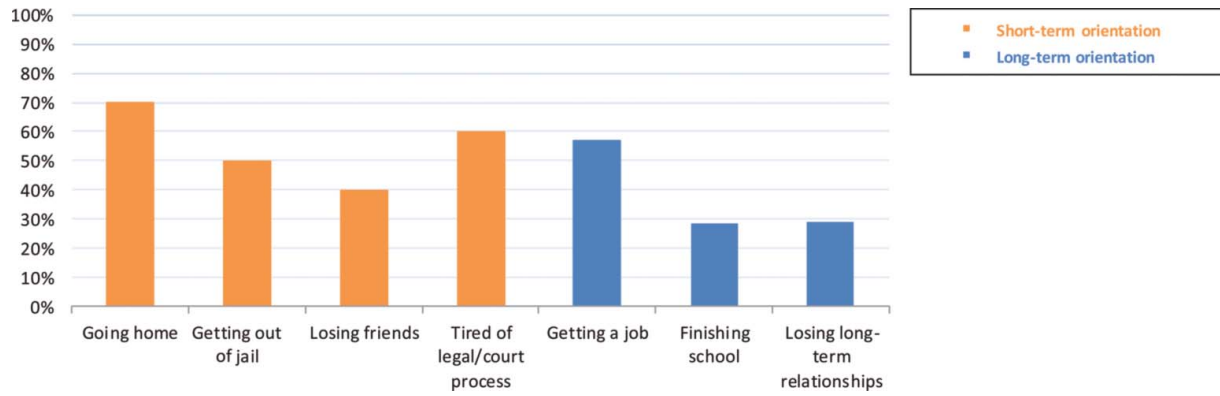


Figure 1. Percentage of responses reflecting short- and long-term orientation.

themselves whether or not they would take the plea. Although the majority of participants reported making the decision for themselves, responses to the open-ended question suggested that many of the participants made their decisions together with their parents or guardians (51.6%, $n = 16$) and a small percentage of participant decisions were highly influenced by parents and/or attorneys (12.9%; $n = 4$). A small percentage of participants in the sample (15%, $n = 6$) reported that they accepted a plea completely voluntarily because they believed it would give them a second chance and that the terms of the plea (e.g., going to a treatment program) would be beneficial to them.

Relationship and Communication with Attorneys

The final section of our interview addressed likeability and trust of attorneys, information received from attorneys about the process, and the number of times participants met/had contact with their attorneys and under what circumstances.

Relationship

Participants were asked to rate how much they trusted their attorneys on a scale of 1 (not at all) to 4 (completely).

TABLE 6
Coding for Autonomy of Decision: Coding Category, Definition of Qualifying Responses and Example Responses

Category	Definition	Examples
Autonomy	Coding was based on a combination of responses from the following questions: “Who decided you should take the plea deal”; “What did your parents want you to do? Take the plea or not?”; (If friends were involved) “did your friends want you to take the plea?”; “Did your lawyer tell you what you what would happen if you didn’t take the plea?”; “Did you have to take the plea or did you have a choice?”; “In the end, why did you decide to take/reject the plea?”	
Autonomous	Decision to take plea was completely autonomous	“I decided [to take the plea]. . .my dad wanted me to take the 1 year in jail. . .he [attorney] said if I didn’t [take the deal] I would spend 8 months in prison. . .[I decided to take the plea] Cause I wanted to be free. Thinking about giving up freedom for something you didn’t do. Hell no. I wasn’t going to do that.”
Combined	Decision to take plea was a combined one between youth and parents/attorney	“Everyone played a role. . .[parents wanted me to] take the plea. . .attorney said [if I didn’t take the plea] I would go to jail and then probation. . .had a choice [to accept or reject plea]. . .[took the plea to spend] less time in jail.
Highly influenced	Decision to take plea was highly influenced by the opinion of others	“my lawyer [decided]. . .[my parents] left it up to me. . . [my attorney said] that a trial would be a waste of time. . .[I decided to take the plea] because my lawyer said to”

The average score was 2.88 ($SD = .93$). Participants were also asked their level of agreement with the statement, "I got along with my attorney" on a scale of 1 (completely disagree) to 5 (completely agree). The average rating was 3.91 ($SD 1.09$).

Contact and Communication

On average youth met/talked with their attorneys 2.74 times ($SD = 1.36$, mode = 3, range = 0–6 times). This average does not include one participant who met with his private attorney 20 times. Youth were asked when they first met their attorneys. The most frequent response was "central booking" (32.5%; $n = 15$), followed by "at arrest" (20%, $n = 8$), at first court appearance (17.5%, $n = 7$), or other (12.5%, $n = 5$). Data were missing for seven (17.5%) participants.

Finally, we asked participants whether their attorneys had offered them a choice other than accepting the plea and whether their attorneys had told them what would happen if they didn't take the plea deal. Forty percent ($n = 16$) of the participants said that they did not receive any information about a choice other than the plea they were offered and half of the participants ($n = 20$) said that were told they would go to jail/prison if they rejected the deal. Only 15% ($n = 6$) explicitly stated that they were told by their attorneys that the case could go to trial if they did not accept a plea deal, and 12.5% ($n = 5$) said they were told that the district attorney would offer them a new deal if they rejected the one on the table.

DISCUSSION

Overall, our data reveal a mixed picture of the plea deal process for juvenile offenders in New York City. On the one hand, the majority of the offenders in our sample reported that their plea decisions were autonomous and most had favorable impressions of their attorneys. On the other hand, many of our participants displayed basic deficits in their understanding of plea deals and had incomplete knowledge of the options available to them (e.g., most youth did not know they could have a trial), and their decisions to accept their plea deals appear to have been overly influenced by short-term outcomes. We address each of these in turn.

Knowledge of Plea Deals

Less than half of our participants mentioned more than one of our five target items (i.e., offered by prosecutor; reduction in time/charges; admission of guilt; waiver of right to trial; waiver of appeal) when asked to describe a plea deal in general. Similarly, less than a quarter of participants could articulate more than one collateral consequence of

accepting a plea deal and, although most knew they had a choice in taking the deal or not, few were clear as to their legal options.

Limited attorney contact may have contributed to the lack of understanding. Most youth in our sample met with their attorneys on only a handful of occasions. Presumably, given the responses provided by the participants, these meetings were almost always held in conjunction with another procedural matter (e.g., court hearing). It is unclear how much information the youth were given by their attorneys at these meetings. Participant responses suggest either that the attorneys gave the youth very limited information regarding their legal options or that the youth understood and retained only a very limited amount of the information they received. For example, many of the youth we interviewed said that they were told that if they didn't take their pleas they would serve their original sentences. Although *in practice* this might be the result (i.e., it is possible that many of these youth might have lost at trial), *legally* every defendant has a right to due process. Whether or not this was explained to the youth cannot be determined, as we did not interview the youths' attorneys; but this is clearly what our participants retained.

Factors that Contributed to Plea Decisions

Over the course of our interview, we asked participants two kinds of questions related to outcomes associated with plea deals. We asked them about outcomes or consequences associated with plea deals in general and with their own plea deals; and we asked them what kinds of things people, in general, might think about when deciding to take a plea deal and what they, themselves, thought about when making their own decisions. In general, our participants focused on short-term consequences both when asked, in general, why a person might take a plea and when asked why they accepted their own plea. For example, one of our participants relayed that "going to court was too hard because I had to go to school in the morning" and so he took the plea to avoid having to go back to court; likewise, a common response from many participants reflected ending the judicial process. In contrast, when asked to specify the consequences associated with taking/rejecting a plea-deal—their own deals or plea deals in general—most of the responses we received reflected long-term outcomes (although less than a quarter of youth provided responses pertaining to consequences associated with accepting their own deals and only half articulated the factors that contributed to their decisions). While acknowledging that many youth did not respond to all of our questions, it is not surprising that a juvenile offender in our study could be quite capable of identifying long-term consequences (positive or negative) associated with accepting a plea deal and yet, not consider these outcomes when making his or her own decision. By middle adolescence, in laboratory settings and on surveys,

adolescents are able to identify, consider and analyze risks attached to given options (Fischhoff et al., 2000); nonetheless, in the real world the decisions made by adolescents often do not reflect this ability. Relative to adults, adolescent decision making is compromised by a greater tendency to focus on short- rather than long-term consequences (e.g., Crone & van der Molen, 2004; Hooper et al., 2004; Steinberg et al., 2009) and this is magnified in contexts that exert high cognitive demand and/or that entail emotionally charged and personally salient outcomes (e.g., van Duijvenvoorde et al., 2010).

However, whether or not this tendency to focus on short-term, positive outcomes is disproportionate to what might be seen in similarly situated adult offenders remains an important question for future research. A competing, or complimentary, hypothesis that must be considered is that attorney communication plays a role in what factors are given most weight by these youth in their decision making, or—more likely—that there is an interaction between developmental stage and the quality/quantity of attorney communication. It seems reasonable that youth, assuming similar intellectual function, will require more time and greater simplification and repetition of complex information than adults facing the same choices.

Implications and Directions for Future Research

There is nothing in our data that suggests that our participants felt coerced into accepting a plea agreement; in fact, most of our participants perceived their decisions to accept their pleas as autonomous and the majority had favorable views of their attorneys. Nonetheless, our data do suggest that our participants showed deficits in both legal understanding and appreciation of the consequences of accepting a felony plea. Impaired understanding and appreciation raises the question of competence, and competence, as discussed earlier, is a necessary prerequisite for voluntariness. Furthermore, the youth in our study appear to have been strongly influenced by short-term factors that were mostly related to escaping what was experienced as an aversive process. Thus, our data provide a first look at the plea deal experiences of youth charged as adults and point to several potential areas for future research.

First, while it is tempting to assume that any or all of the deficits we report arise from developmental immaturity, these deficits might be present in all offenders regardless of age. While a concerning finding either way, an important question is whether or not, as a group, youth charged as adults are at increased risk for having their due process rights violated during the plea deal process, and if so, whether or not these vulnerabilities manifest differently, or are more or less pronounced, at different points of development (i.e., early, middle, and late adolescence).

The non-mentally diseased adult is the generally accepted benchmark for legal competence, and issues of

competence are typically raised about adult defendants only when symptoms of mental illness or cognitive impairment are present. Mental illness and cognitive impairment surely raise similar questions in adolescent defendants, but developmental immaturity is rarely considered with respect to the competency of juvenile offenders to enter into plea deals. Furthermore, situations and circumstances (e.g., the immediate appeal of ending an arduous process) that are non-coercive for an adult may be coercive for an adolescent by virtue of developmental differences in the valuations of outcomes (e.g., Miller & Byrnes, 2001a, 2001b), weighing of long-term risks against short-term benefits (e.g., Crone & van der Molen, 2004), tendencies to comply to authority (e.g., Grisso et al., 2003), suggestibility (Gudjonsson, 2003; Redlich & Goodman, 2003; Scott-Hayward, 2007) and susceptibility to emotion (e.g., Prencipe et al., 2011). However, it is not unreasonable to assume that many (if not most) adult offenders exhibit the decision-making vulnerabilities of typically developing adolescents. Most of the existing research on age-related changes in cognitive and psychosocial functioning has been conducted in non-offending samples. Furthermore, with some notable exceptions (e.g., Grisso et al., 2003) much of the research on the vulnerability of adolescents in specific legal contexts has compared normally developing adolescents to normally developing adults, or, like this paper, has examined offending juveniles but not included adult offender comparison samples. Research comparing adult and juvenile offenders in the plea-deal context is necessary to establish this matter, especially in light of data from a recent study that reported low plea comprehension in adult offenders who were nonetheless competent to stand trial (Redlich & Summers, 2012) and in light of recent criticisms (e.g., Caldwell, 2011; Dervan, 2012) that the plea-bargaining system as it is in operation today may be inherently coercive, even for adult offenders. Along these lines, future developmental studies should expand on our current interview protocol to include questions that directly assess plea-deal decision making (e.g., identifying and weighing pros and cons) and that tap both individual and age-related differences in impulsivity and perspective taking.

Second, while studies using adult comparison samples will certainly help elucidate whether the deficits displayed by the youth in our study are a result of developmental immaturity, limited attorney contact/communication, or an interaction between the two, it remains that the youth in our study show deficits that may have compromised the integrity of their decision making in the plea context. At present, attorneys are in the best position to assess for deficiencies in their client's legal knowledge and appreciation of consequences, and to mitigate potential threats to competent decision making by their clients. To work with youth effectively, complex information must be broken down into small chunks and gone over slowly, giving the youth time to process the information. While the heavy

caseloads of most public defenders present an obstacle to such an investment of time and resources, among the likely contributing factors to deficits in understanding and appreciation, communication is the main variable over which attorneys have control. Thus, future research should address ways to help attorneys identify deficits and communicate information to clients effectively and efficiently (see Buss, 2000 for suggestions on the ways in which attorneys can promote the decision-making competency of their juvenile clients). Such research will likely be well received by attorneys in light the recent Supreme Court rulings in *Missouri v. Frye* (2012) and *Lafler v. Cooper* (2012) that defendants have a constitutional right to effective counsel during the plea bargaining process. Our research team is presently working on a short checklist designed to help attorneys efficiently assess for deficits in their clients understanding and decision-making capacities to allow them to more efficiently allocate their limited resources and to screen for clients who may need formal competency evaluations.

Third, adjudicative competence is a broad construct and the content of competency assessments may differ based on the tasks a defendant is required to perform in a given context (Roesch, Zapf, Golding, & Skeem, 1999). Few forensic assessment instruments for adjudicative competency include more than a handful of general questions related to plea-deal decision making. Given that most youth charged as adults take plea deals, future research should look at whether existing instruments are adequate guides for examiners who assess adjudicative competency of youth and/or whether new instruments are necessary to address this gap.

Finally, while we were restricted from asking about initial charges and plea discounts in this study, future research should seek to document the discrepancies between initial charges (and attendant punishments) and the plea discounts offered to youth. Researchers should also experimentally manipulate initial charges and discounts to determine if youth are more or less likely to be influenced by wider disparities than are adults.

Conclusion

This is the first study, to our knowledge, that examined the plea-deal experiences of a sample of adolescents who were charged and processed in an adult system, and interpretation of our data are necessarily limited by a relatively small sample size and lack of adult comparison data. However, while more research on plea deals in this population is urgently needed, our data suggest that juveniles charged as adults might have deficits in legal understanding and in the appreciation of consequences that could render the plea-deal process for these youth fundamentally unfair. As such, attorneys and courts should consider, and take steps to

mitigate, potential risks to due process rights violations of youth adjudicated in the adult system.

ACKNOWLEDGMENTS

Author order determined by coin toss. We would like to acknowledge our student research assistants Rose Aime and Brian Logan for their assistance with data collection.

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