



## JUVENILE COMPETENCY, JUVENILE SEXUAL OFFENDER EVALUATIONS, RECIDIVISM, AND BENEFITS OF A COMPREHENSIVE OUTPATIENT PSYCHOLOGICAL EVALUATION

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## THE FORENSIC EVALUATION IN GENERAL

Who should be there? Should you as an attorney be present during the evaluation?

What are the advantages?:

- Juvenile may be more comfortable/cooperative with your presence
- Examiner can observe your interaction with the client
- Enhance protection of juvenile's rights
- It may help you understand areas in which your client needs additional support

What are the disadvantages?:

- Juvenile may feel uncomfortable with multiple adults present
- Juvenile may be overly dependent on you for answers
- Juvenile's presentation may be distorted by your presence, in a positive or negative way
- Unnecessary distractions

## COMMONLY USED ASSESSMENT PROCEDURES:

Intake  
Mental Status Examination  
Intelligence  
Academic/Achievement  
Personality  
Behavioral  
Neurological  
Trauma  
Malingering/Validity

## RECORDS AND INTERVIEWS

Records are essential in forensic evaluations

### Clinical Interviews with Client

- Basic background
- Defendant's account of the alleged crime
- Referral-question focused interview

### Collateral Interviews with...

- Parent or caregiver
- Treating source
- Defense, Guardian ad Litem, Prosecutor

## FORENSIC REPORTS SHOULD:

Be well-organized and presented in a clear and concise manner

Address the referral question based on research-supported procedures

Provide data that supports all opinions - clinical and legal

Avoid self-incrimination and other unnecessary detail

Describe a clear connection between psychological impairment and the specific legal question(s)

## TOPIC 1

### JUVENILE COMPETENCY TO STAND TRIAL EVALUATIONS:

## Prevalence

In 2010, there were over 1.3 million cases processed through the juvenile court system according to the National Center for Juvenile Justice's juvenile court statistics.

## JUVENILES VS. ADULTS

Juveniles are not just miniature adults. The adolescent brain is less developed than previously thought. Change continues into the early 20s. Normal juveniles may look like pathological adults. There are factors that explain how and why adolescents make poor choices compared to adults.

Factors to consider in juveniles:

- Risk perception/impulse control
- Temporal perspective and planning
- Peer influence
- Development is idiosyncratic and non-linear
- The potential for problem-solving ability to be compromised by stress

## COMPETENCY AND THE DUSKY STANDARD:

Many states have adopted a standard identical to the Supreme Court in *Dusky v. United States*, or many states have indicated that the *Dusky* standard should be modified in juvenile proceedings.

According to *Dusky*, in order to be competent, the defendant must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and have a “rational as well as factual understanding of the proceedings against him.”

## WHEN SHOULD A JUVENILE’S COMPETENCY TO STAND TRIAL BE RAISED ACCORDING TO JUVENILE PROCEDURE RULES?

Rule 26. Pre-Adjudicatory Competency Evaluations.

Whenever the circuit court has reasonable cause to believe that a juvenile who is the subject of a pending petition may be incompetent to stand trial, or that the juvenile’s diminished mental capacity will be a significant factor in his or her defense, sua sponte or upon a motion filed by the State or on behalf of the juvenile, the court shall order a forensic evaluation of the juvenile in accordance with the procedures set forth in West Virginia Code, Chapter 27, Article 6A, Sections 2 and 4.

## WHEN SHOULD A JUVENILE'S COMPETENCY TO STAND TRIAL BE RAISED?

According to the Handbook of Forensic Assessment, 2011:

- 12 years or younger
- Prior diagnosis/treatment of a mental illness or mental retardation
- Borderline level of intellectual functioning
- Any history of learning disability
- Pretrial observations that suggest deficits in memory, attention, or interpretation of reality

## RESEARCH

According to an article published in Law and Human Behavior, August 2003, youths age 15 and younger performed more poorly than young adults, with a greater proportion manifesting a level of impairment consistent with that of persons found incompetent to stand trial.

Adolescents also tended more often than young adults to make questionable choices (e.g., about plea agreements) that reflected compliance with authority, as well as influences of psychosocial immaturity.

## FORMULATION OF THE JUVENILE'S UNDERSTANDING OF THE:

- Charges
- Trial process
- Potential consequences
- Ability to cooperate with the attorney
- Ability to participate appropriately in court proceedings

## CONSULTING AND ASSISTING COUNSEL:

The deficits must be considered in light of the specific demands of the criminal or juvenile court proceedings. According to Thomas Grisso, younger and/or cognitively-limited defendants may be vulnerable to errors when assisting defense due to general cognitive underdevelopment. Other skills such as **Memory, Attention, Tracking, Processing, Verbal Reception and Expression, Rapport Development with Strangers, and Time Perception** may also affect the client's ability.

A clear connection must be demonstrated between any identified deficits and impairment of competence abilities.

The likelihood of any fluctuation in level of competence-related ability during court proceedings.

## FACTUAL UNDERSTANDING

- Is the defendant aware he or she is accused of a crime and does the defendant comprehend the specific charges?
- Understanding that the court will decide guilty or not guilty
- Comprehend that the trial could result in punishment
- Knowledge regarding the plea process
- Awareness that various sentencing options are possible
- Understanding the roles of the participants in the trial process

## RATIONAL UNDERSTANDING

- Beliefs about the trial are not distorted by delusional ideas
- Reasoning ability is sufficient to process relevant information
- Appropriately motivated to further their defense
- Ability/willingness to work with counsel

## COMPETENCY ASSESSMENTS

Specific assessment tools:

- Juvenile Adjudicative Competence Interview (JACI)
- MacArthur Competence Assessment Tool – Criminal Adjudication (MacCAT-CA)
- Fitness Interview Test – Revised (FIT-R)
- Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)
- Evaluation of Competency to Stand Trial – Revised (ECST-R)

## TOPIC 2 JUVENILE SEX OFFENDER EVALUATIONS:

## Utility of Sexual Offender Evaluations

- Risk assessment is considered to be a key element in the prevention of recidivism among juvenile sex offenders. Juvenile sex offenders, like adults, are a diverse population and not all juvenile sex offenders are alike.
- The prognosis or likelihood a specific offender will benefit from treatment.
- What are the specific targets of treatment and supervision that will have the greatest impact on reducing recidivism potential among sex offenders?
- How should treatment and supervision services be delivered in order to ensure maximum benefit from interventions?

## CHARACTERISTICS

While there is diversity, juvenile sex offenders can be divided into two primary areas:

- Those who target younger/physically weaker children
- Those who target peers or adults

## OFFENDERS WHO TARGET YOUNGER/PHYSICALLY WEAKER CHILDREN

There are higher numbers of male victims and related victims. Approximate 40% of victims are siblings or other relatives. In some cases, the offending may be acts of opportunity and guile rather than force.

These offenders may use bribes to coerce the victim. Threats to end the friendship are also common.

These individuals tend to present with deficits in self-esteem and social competency.

Offenders often have a history of depression and victimization.

## OFFENDERS WHO TARGET PEERS OR ADULTS

This group of offenders predominantly assaults females, strangers, or casual acquaintances.

Sexual assaults tend to occur in association with other types of criminal activity.

These offenders have a greater history of nonsexual criminal offenses in general than the other group of offenders.

The offense is likely to be committed in a more public area.

Higher levels of aggression and violence in the commission of the act. The use of a weapon and physical injury to the victim are more likely in this group of offenders.

## COMMONALITY BETWEEN GROUPS

- High rates of learning disability and academic dysfunction (30-60%)
- Up to 80% with some form of diagnosable mental health disorder
- Impairment in judgment and impulse control

## TYPES OF ASSESSMENT PROCEDURES:

Unstructured clinical judgment – The “old-fashioned way” – determination relies on the evaluator’s instincts or intuition. This type of evaluation is not advised.

Empirically-guided – The use of a structured scale or checklist, rating the presence or absence of specific risk factors associated with recidivism, and then making an informed determination about the presumed level of risk. Examples include RSVP, ERASOR, and J-SOAP-II. These tend to be more reliable than the previous method but there are still concerns as there is typically no specific indicator and how much weight should be given to each factor; thus, it is left up to the evaluator.

Actuarial – Utilization of an empirically-validated instrument with a fixed, relatively small, number of researched-supported items. Each are assigned a specific weight, and a total score is associated with a broad risk category, such as low, moderate, high. These are then linked to the known recidivism rate of a group of sex offenders who were followed at routine intervals such as 5, 10, and 15 years. These tend to be highly researched and tend to yield a more accurate estimate of the risk. In addition, it is more likely that two different evaluators reach the same opinion. Examples include STATIC-99R, SORAG and JSORRAT-II.

## RECIDIVISM FOR YOUTH SEX OFFENDERS

Juvenile sexual offenders are statistically less likely than both adult sexual offenders and youths who committed non-sexual offenses to re-offend

Many juveniles offenders represent a one-time event with recidivism ranging from 3% to 4%

The National Center of Sexual Behavior of Youths report that only 5% to 14% of juvenile sex offenders re-offend (compared to approximately 40% of abused (BOJ))

### **TOPIC 3 COMPREHENSIVE OUTPATIENT EVALUATION**

## BACKGROUND

- Juvenile Justice Reform
- Reducing out of the home/community placement
- Increasing Community Resources
- Determining risk

## JUVENILE DELINQUENTS

- According to an article titled *Development and risk factors of juvenile antisocial behavior and delinquency*, the prevalence of antisocial and delinquent behavior in juveniles has increased dramatically over the past decades, along with the prevalence of other health-endangering behaviors, such as substance use and suicide. These trends have been accompanied by increased levels of psychiatric admissions and special classroom placements in schools.
- Delinquency prevalence peaks in mid-to-late adolescence. Risk factors include: impulsiveness, low academic achievement, poor parental supervision, punitive or erratic parental discipline, parental conflict, disrupted families, antisocial parents, large family size, low family income, and antisocial peers.

## STATUS OFFENDERS “THE LOST BOYS”

The book Psychological Evaluations for the Courts notes “a significant decrease in articles related to status offenders as much of the attention is now focused on the more serious offenders. This is disturbing as there is a significant link between status offense education and child maltreatment.”

In 1991, a quote by Gary Melton, noted author in the field of psychology in the law, stated, “It is only slightly overstating to say that, however noble public officials’ intent may be, status offense jurisdiction often is de facto punishment for being maltreated.” The reality is status offenders, based on research, look different than juvenile delinquents. In addition, most of the time status offending is not a stepping stone to delinquency. This is especially true with females status offenders many of whom have been subjected to sexual abuse. They also tend to be subjected to harsher discipline than male status offenders. Many of these female runaways are really “throwaways” and need protection not incarceration.

One of the most common factors in status offense cases is serious family dysfunction, thus interventions may need to include not only the child but also concerns within the family unit.

## BENEFITS OF JUVENILE DELINQUENT AND STATUS OFFENDER EVALUATIONS

A forensic evaluation can be used to assist the Court in determining risk of re-offending and to determine the appropriate placement of the juvenile.

An outpatient evaluation is more **timely** and much more **cost-effective** than inpatient placement.

Performing an outpatient evaluation may keep the child in the community, which reduces the disruption in living conditions and school. By electing to undergo an outpatient evaluation, the child can receive services without being removed from the home, which may aid in future adjustment.

The child will also have the benefit of utilizing community resources, which may better serve the needs of the child.

An outpatient forensic evaluation can be more comprehensive as it not only addresses the child’s symptoms in isolation, but also addresses how academic, peer, and family factors play a role in the child’s functioning.

## WHAT IS INVOLVED IN THESE EVALUATIONS?

Previously-noted assessment procedures

Extensive clinical interview

Third-party behavioral assessment

Often, multiple collateral interviews are required, which may include interviews with the child's parents, foster parents, educators, extended family members, current and previous mental health treating sources, medical practitioners, and other adults in the community such as coaches, religious figures, etc.

Record review, which may include school, legal, mental health, and medical treatment records

## THE REPORT AND RECOMMENDATIONS

The report should offer a current clinical picture of the juvenile, possible contributing factors such as family, peers, community and school, and a comprehensive treatment plan that may include either inpatient or out-patient programs

Diagnostic impressions and rationale

Treatment recommendations should be tailored to the individual juvenile and indicate services that are actually available to the youth and his/her family

**QUESTIONS**

**THANK YOU FOR YOUR TIME AND  
ATTENTION**