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## Special Issues in Juvenile Justice

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# SPECIAL ISSUES IN JUVENILE JUSTICE

Keith R. Cruise

## LSUHSC Juvenile Justice Program

From the original juvenile court founded in Cook County, Illinois, to current juvenile court systems across the United States, the philosophy of juvenile justice has reflected society's predominant views on youth and adolescence. The first juvenile courts developed during the industrial revolution when social reformers were concerned about the dangers children faced in the workplace. In the early 1900s, compulsory education was promoted as a mechanism to improve the status of poor and immigrant children as well as a tool of social control (Steinberg, 2002). G. Stanley Hall had defined the boundaries of adolescence and described the ensuing "storm and stress" as a universal experience of all youth. Under the doctrine of *parens patriae*, juvenile court systems were developed with the primary goal of rehabilitating wayward youth.

The Supreme Court fundamentally changed the nation's juvenile courts in two landmark cases: *Kent v. United States* (1966) and *In re Gault* (1967). The majority opinions in *Kent* and *Gault* questioned the rehabilitative focus of juvenile courts and established children as "persons" under the Constitution by extending a few, yet fundamental, due process rights to youth. During the 1980s and early 1990s, the nation became increasingly alarmed at rising juvenile crime rates (Sheley & Wright, 1998; Snyder & Sickmund, 1999). In response, juvenile courts turned further away from the restorative doctrine of *parens patriae* and rehabilitation, and toward enhancing community safety and punishing chronic and violent juvenile offenders. For example, statutory provisions lowering the maximum age of juvenile court jurisdictions, increasing use of determinate sentences, and codifying procedures to waive juveniles to adult court became common.

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Similar to those in other states, the Texas Juvenile Justice Code is a mixture of rehabilitative goals and punishment. Reflecting the rehabilitative origins, Texas juvenile courts do not hold trials but have adjudication hearings (Tex. Fam. Code § 54.03). Juvenile offenders are not sentenced but receive a disposition (Tex. Fam. Code § 54.04). Adjudication does not culminate in a finding of legal guilt or innocence; instead the juvenile court judge or jury determines whether a child engaged in delinquent conduct indicating a need for supervision (Tex. Fam. Code § 51.03).

Juvenile court proceedings parallel adult criminal court in many ways. At the adjudication hearing, the child receives notice of the allegations and possible consequences of the proceeding; has the right to trial and to confront witnesses; the right to representation by an attorney; and right to trial by jury (Tex. Fam. Code § 54.03). Evidence introduced at the adjudication hearing is governed by the Texas Rules of Evidence and Code of Criminal Procedure. Reflecting the trend toward protecting public safety by establishing punitive consequences, the code also includes provisions to identify violent or habitual offenders (Tex. Fam. Code § 54.045) and to waive exclusive juvenile court jurisdiction allowing for transfer to adult court (Tex. Fam. Code § 54.02).

#### *Statutory Definitions*

It is extremely important for forensic evaluators to have a thorough understanding of relevant statutes found in the Texas Family Code, since they will encounter a set of legal definitions specific to the juvenile justice system.

- *Child* is defined as a person between ages 10 and 17 years of age, or a person currently 17, but not yet 18, alleged or found to have engaged in some type of delinquent conduct before age 17 (Tex. Fam. Code § 51.02(2)).
- *Delinquent conduct* is defined as conduct that violates a penal law or conduct that indicates a need for supervision (Tex. Fam. Code § 51.03).

- *Status offender* means a child who is accused, adjudicated, or determined responsible for conduct that would not be a crime if committed by an adult, including such acts as truancy, running away from home, or curfew violations (Tex. Fam. Code § 51.02(15)).
- *Mental illness* is referenced in Tex. Fam. Code § 55.01 and statutorily defined in Tex. Health and Safety Code § 571.003. In this statute, mental illness refers to an “illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency that: (a) substantially impairs a person’s thought, perception of reality, emotional process, or judgment; or (b) grossly impairs behavior as demonstrated by recent disturbed behavior.”

Although very specific terms are used statutorily to define a juvenile’s status, the juvenile court has broad authority to order mental health examinations. For example, the juvenile court can order a child to be examined by a physician, psychiatrist, or psychologist at any stage of the juvenile court proceeding (Tex. Fam. Code § 51.20), and may consider the results of such an examination at a disposition hearing (Tex. Fam. Code § 54.04). Many statutes specify that a determination of mental illness or mental retardation be conducted.

## **TYPES OF JUVENILE COURT EVALUATIONS**

Evaluators can be called upon to address many different types of questions in juvenile court evaluations (Grisso, 1998; Melton, Petrila, Poythress, & Slobogin, 1997). As with adult forensic evaluations, it is often the case that the relevant statutory authority is used to guide the evaluation process and structure the juvenile forensic report.

### *Evaluations During the Adjudication Process*

There are three different types of juvenile court proceedings prior to or during the adjudication stage when a forensic evaluation can be requested.

*Transfer to adult court*

The first type of proceeding involves discretionary transfer of a juvenile to criminal court (Tex. Fam. Code § 54.02). This statute sets specific rules linked to the age of the child and the seriousness of the alleged conduct (i.e., capital or first-degree felony). Evaluations of the youth can be introduced at a discretionary transfer hearing.

*Unfitness to proceed*

The second type of proceeding is an “unfitness to proceed determination” (Tex. Fam. Code § 55.31). In this type of proceeding, the juvenile court will examine whether the child, as a result of mental illness or mental retardation, lacks the capacity to understand the juvenile court proceedings or the ability to assist in his or her own defense.

*Lack of responsibility*

The third type of adjudication proceeding is a “lack of responsibility for conduct determination” (Tex. Fam. Code § 55.51). In this type of proceeding, the juvenile court must determine if at the time of the alleged act, the youth, as a result of mental illness or mental retardation, lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform conduct to the requirements of the law.

*Evaluations During the Disposition Process*

Evaluations are often requested as part of the disposition hearing. Tex. Fam. Code § 54.04 allows the juvenile court to consider written reports by a variety of court personnel and professional consultants at this hearing, and states that a disposition can only be made when the child “is in need of rehabilitation or the protection of the public or the child requires that the disposition be made.” The disposition alternatives outlined in the statute balance rehabilitation needs with public safety.

The second type of proceeding that can involve an evaluation is a relatively new statutory construction that permits the juvenile court to determine the level of community notification

via registration of a juvenile adjudicated with a sexual offense (Tex. Code Crim. Proc Art. 62.13). This statute is a revision of existing rules and grants the court flexibility in determining the type of registration (i.e., complete waiver, non-public, and public registration). The registration determination is based on two factors: (a) protection of the public via registration, and (b) anticipated substantial harm to the youth and the youth's family that would result from registration. As part of this hearing, the statute allows the court to use the results of an examination by a psychologist, psychiatrist, or counselor.

### **EVALUATING MENTAL ILLNESS OF YOUTH IN THE JUVENILE JUSTICE SYSTEM**

#### *Prevalence of Mental Health Problems*

A critical element of juvenile forensic evaluations at any point is reviewing the emotional and behavioral functioning of the youth to determine whether the child suffers from a mental illness or mental retardation. Prevalence data suggest that approximately 65% of justice-involved youth have a diagnosable mental health disorder. Studies indicate high rates of externalizing problems but also high percentages of mood, anxiety, and substance use disorders. Given these rates and the rehabilitative ideals of the juvenile justice system, any juvenile forensic evaluation should assess the full range of mental health problems, utilize multiple methods or informants for externalizing disorders, and carefully evaluate female offenders as rates of mental health problems are considerably higher among females compared to males (Kazdin, 2000; Otto, Greenstein, Johnson, & Friedman, 1992; Teplin, Abram, McClelland, Dulcan, & Mericle, 2002; Wasserman et al., 2002). Instruments commonly used to evaluate mental health problems among adolescents are reviewed in the Appendix to this article.

It is critical that juvenile court evaluators have a thorough background in and understanding of normative changes that occur during the adolescent developmental period. Steinberg and Schwartz (2000) have described adolescence as a time period of great malleability in that the onset and course of normative

changes (i.e., physical, cognitive, social) are influenced and impacted by the variety of psychosocial influences (i.e., family, peers, school, community) that an adolescent encounters. The developmental malleability of adolescents directly relates to the philosophical underpinnings of *parens patriae* and the rehabilitative ideal of the juvenile court. However, it also requires the forensic evaluator to grapple with the relative impact of these influences on a juvenile's mental health problems and psycholegal issues, such as competency, culpability, and treatment amenability.

Using antisocial behavior as an example, juvenile court evaluators will come into contact with youth who have engaged in varying types of delinquent behavior, ranging from status offenses to serious violent felonies. The minimum diagnostic threshold for Conduct Disorder (3 out of 15 symptoms – APA, 2000) is easily surpassed by many youth in the juvenile justice system making the diagnosis a common rather than a discriminating feature. The diagnosis is more meaningful, however, when linked to the research that has identified different developmental pathways to serious delinquency (*see* Loeber & Farrington, 2000; Loeber et al., 1993) and differences based upon the age of onset of serious delinquent behavior (*see* Aguilar, Sroufe, Egeland, & Carolson, 2000; Moffit, 1993; Moffit & Caspi, 2001).

#### *Relevance of Developmental Maturity*

As a psycholegal construct, maturity continues to defy operationalization (Cauffman & Steinberg, 2000a; Salekin, Rogers, & Ustad, 2001) but is viewed as critical to many decisions during the juvenile court process (*see* Feld, 2000). Recent research has increased awareness of this issue and widened the focus beyond cognitive functioning or decision-making. For example, maturity of judgment is defined by Cauffman and Steinberg as “the complexity and sophistication of the process of individual decision-making as it is affected by a range of cognitive, emotional, and social factors” (2000a p. 743) placing greater emphasis on the process of decision-making than the outcome, and balancing cognitive and psychosocial factors. In a series of articles, Cauffman and Steinberg have further proposed that maturity of judgment involves three psychosocial factors.

- “Responsibility” refers to individual characteristics such as self-reliance, identity, and autonomy.
- “Perspective” refers to the ability to examine both short-term and long-term consequences and place individual decisions into a broader context.
- “Temperance” refers to the ability to modulate impulsive thoughts and behaviors prior to taking action (Cauffman & Steinberg, 1995; Steinberg & Cauffman, 1996).

Recently, the researchers investigated the utility of three psychosocial factors in predicting willingness to engage in antisocial behavior (Cauffman & Steinberg, 2000b) and found that level of psychosocial maturity significantly predicted antisocial decision-making within five different age groups (ranging from 8<sup>th</sup> graders to young adults). Preliminary data on small samples of juvenile offenders indicate that low levels of psychosocial maturity are associated with higher rates of delinquent behavior and higher rates of self-reported psychopathology (Cruise, Hall, Amenta, & Douglas, 2002). Currently, there is no psychological test or best-practice standard to evaluate maturity clinically, however, juvenile court evaluators should stay apprised of research findings in this area as these developmental factors are conceptually related to the psycholegal constructs of sophistication and maturity, as well as treatment amenability. In addition, careful attention to maturity issues (both cognitive and psychosocial) can assist the evaluator in gaining a better understanding of adolescent delinquent behaviors and a youth’s perceived responsibility for such behavior.

## **STRUCTURING THE JUVENILE COURT EVALUATION**

*Be Familiar with Relevant Statutes and the Stage of the Juvenile Court Process*



It is critical that the juvenile court evaluator has a clear understanding of the relevant statute and knows where the case stands in the juvenile court process since different legal rights are implicated at both the adjudication and disposition. For example, if called upon to conduct a fitness to proceed evaluation during the adjudication process, statements that the child makes about the alleged delinquent conduct in a forensic report clearly have Fifth Amendment (i.e., prohibition against self-incrimination) implications. As another example, there are different legal consequences associated with a risk assessment conducted to determine whether a juvenile should remain in detention and one performed as part of a discretionary transfer proceeding. Ethical codes (see AAPL, 1995; APA, 2002; Committee on Ethical Guidelines for Forensic Psychologists', 1991) place the responsibility on the mental health professional to be aware of and protect against potential violations of individual rights. Given the varying levels of cognitive development, emotional maturity, and the frequency and severity of mental health problems in juvenile offenders, the evaluator must be cognizant that juveniles will not always act in their own best interests concerning their legal rights (see Grisso, 2000).

#### *Levels of Competence*

Ethical codes and specialty guidelines require that mental health professionals examine level of training and developed expertise to determine whether the evaluator is competent to conduct the requested evaluation. Having broad training in general psychiatry and psychology, and specialty training in conducting adult forensic evaluations, does not make one competent to conduct juvenile forensic evaluations. For example, Chapter 4 notes that adult risk assessment is now a specialty pursuit with its own evolving research base and changing standards of practice. Juvenile risk assessments parallel recent changes in adult risk assessment but also encompass many unique issues due to the age, development, and legal status of youth (see Borum, 2000).

Grisso (1998) provided minimum guidelines in answering the question of competence to conduct juvenile forensic evaluations. In his text on forensic evaluations of juveniles, Grisso

asserted that the mental health professional must have the following:

- fundamental knowledge of youth that includes both theoretical and empirical information on child development,
- a thorough understanding of the causes and correlates of aggression and delinquency,
- experience in diagnosing child and adolescent psychopathology, and
- experience in assessment of adolescents.

*Define Your Role Carefully and Consider Conflicts of Interest*

It is axiomatic that mental health professionals do not knowingly enter into dual roles and must avoid conflicts of interest. Shuman, Greenberg, Heilbrun, and Foote (1998) offer an excellent discussion of the need to distinguish therapeutic and forensic roles. The juvenile evaluator has an even greater responsibility to make sure that the forensic role is clearly defined because of the unique status of juveniles. Youth in the juvenile justice system can come into contact with many different juvenile justice personnel and professionals, including detention officers, probation officers, attorneys, court-appointed counselors, medical doctors, and psychiatrists. It is important that the role as a juvenile court evaluator is clearly defined in language that is understandable by the youth. It is critical that the youth understands that the forensic evaluator is not “here to help.” In addition, a thorough juvenile court evaluation will involve contact with family members who will have varying reactions to the juvenile court process and juvenile court personnel. It is very important that the frustrated parent and the overwhelmed parent both understand the nature of the forensic evaluator role.

*Identifying an Explicit Referral Question*

It is critical that the evaluators clarify and outline an explicit referral question. Similar to adult forensic work, the referral question is sometimes derived from the controlling state statute (i.e., fitness to proceed). Other types of referrals are more ambiguous. A juvenile court judge or probation officer request for

a “risk assessment” lacks specificity. This type of evaluation could address type and level of placement, risk for failure under community supervision, and risk for future violence. At the disposition stage, referrals are often extremely vague. For example, a juvenile probation officer may request “a court-ordered psychological” on the youth to assist in disposition planning. This could entail a comprehensive diagnostic evaluation, assessment of cognitive functioning, rehabilitation planning, amenability to treatment, and a risk assessment. It is often helpful for evaluators to educate the referral source in making specific referral requests. This allows the evaluator to outline clearly to all parties the purpose of the evaluation and how it will be used as part of the juvenile court proceeding.

*Need for Collateral Documentation and Interviews*

Adequately evaluating the presence of mental health problems will require the forensic evaluator to utilize multiple informants (parents, legal guardians, teachers, probation officers) in addition to the youth. Juvenile forensic evaluations can become even more time intensive given the wide variety of collateral documents that need to be reviewed as part of evaluation. This list can include:

- Pre-disposition reports and comprehensive social histories prepared by the juvenile probation department;
- Documentation regarding response to previous terms of probations;
- Police reports detailing the investigation;
- Juvenile detention logs or documentation of institutional infractions;
- Juvenile court history;
- Previous psychiatric and psychological evaluations;
- Summary of treatment progress;
- Medical history;
- School records such as report cards, number of suspensions and expulsions, special education status, and Individual Education Plans.

*Points to Consider When Starting the Evaluation*

In addition to the standard guidelines contained elsewhere in this issue regarding ecological considerations and consent/disclosure, the following points also should be considered when conducting a juvenile forensic evaluation:

- Having an idea of the youth's estimated cognitive functioning (e.g., IQ) and level of achievement (reading level) prior to the evaluation will allow the evaluator to prepare the needed pre-evaluation information in a way that can be comprehended by the juvenile.
- Extra time must be set aside to explain the forensic role, outline the evaluation process, and inform the youth on the limits of confidentiality.
- Statements a juvenile makes during the course of the evaluation may trigger a mandated report of child abuse (Tex. Fam Code § 261.101). All parties who are interviewed should be reminded of this statutory duty.
- Be prepared for a variety of responses from the juvenile and have patience. As discussed above, it is common for juvenile offenders to meet diagnostic criteria for disruptive behavior disorders. A hostile attitude or perceived indifference on the part of the youth does not preclude the presence of other mental health problems. The presentation of the cool and indifferent teen can actually be a sign of an emotionally immature, anxious youth.

**RISK ASSESSMENT AND RISK MANAGEMENT**

Probably the most common type of evaluation requested by the juvenile court is an evaluation to identify rehabilitation needs as part of the disposition hearing. As previously discussed, the juvenile court disposition is determined based upon the rehabilitation needs of the child and the demands of the public (Tex. Fam. Code § 54.04(c)). A pre-disposition evaluation may therefore involve a referral question to address rehabilitation, appropriate placement, and the risk the child presents to public safety. It is very important that the evaluator clarify with the

referral source the specific questions to be addressed in the evaluation. In addition, evaluators should become familiar with the various disposition options that can be considered as part of the disposition hearing (Tex. Fam. Code § 54.04(d)).

Grisso (1998) has outlined a structure for pre-disposition evaluations geared toward identifying rehabilitation needs which involves answering the following questions:

- What are the important characteristics of the youth that are relevant to understanding the delinquent conduct?
- What needs to change in the youth and/or the youth's environment to reduce the likelihood of future delinquent conduct?
- What interventions are available to address the identified rehabilitation needs?
- What type of setting is needed to meet the rehabilitation needs?
- What is the likelihood of change based upon the characteristics of the youth, rehabilitation needs, and available interventions?

A comprehensive predisposition evaluation will both address treatment needs and include an evaluation of risk for future delinquent conduct (Hoge, 2001). This evaluation will incorporate methods discussed under the mental health section and an assessment of the child's risk/needs including intellectual assessments and aptitude or achievement testing. This can provide useful information concerning the youth's characteristics, academic performance, and any cognitive limitations that could impact the rehabilitation efforts (Hoge, 2001).

Any evaluation of risk must be based on theories of juvenile delinquency and risk factors that the professional literature has identified as demonstrating an association with delinquent behavior (Borum, 2000). While a comprehensive review of this research is beyond the scope of this chapter, many published reviews currently are available summarizing the data on both risk and protective factors (see Farrington, 2002; Grisso, 1998; Hoge,

2001; Reppucci, Fried, & Schmidt 2002). Although it is recommended that this literature be reviewed in more detail, three broad conclusions can be summarized.

- Risk factors exist on different levels (e.g., individual, family, community).
- Risk factors operate in a cumulative manner; the higher the number of risk factors, the higher the level of risk.
- Certain risk factors can place a child at elevated risk depending on the age of the child.

Various risk assessment instruments are now available that may facilitate a structured review of risk and protective factors. The selection of a specific instrument should be based on the type of risk being evaluated (i.e., general delinquency, violence, sexual delinquency). Specific instruments are reviewed in the Appendix to the article on Risk Assessment.

#### *Role of Adolescent Psychopathy*

Psychopathy, as measured by the Psychopathy Checklist – Revised (PCL-R; Hare, 1991) and Psychopathy Checklist: Screening Version (PCL: SV; Hart, Cox, & Hare, 1995), is a robust predictor of general and violent recidivism in adult offenders (Hemphill, Templeman, Wong, & Hare, 1998; Salekin, Rogers, & Sewell, 1996), as a critical variable in adult risk assessment. The applicability of the construct to adolescents has received substantial attention in recent years and engendered debate regarding its applicability to youth (*see* Edens, Skeem, Cruise, & Cauffman, 2000; Frick, 2002; Vincent & Hart, 2002). Both interview and self-report assessment measures have been developed to evaluate the personality and behavioral dimensions associated with psychopathy (Forth, Kosson, & Hare, 1994; Frick & Hare, 2001; Rogers, Vitacco, Cruise, Sewell, & Neumann, 2002).

The identification of psychopathic characteristics in childhood and adolescence can be important given the need for early identification and intervention (Edens et al., 2000; Lynam 1996, 2002). Currently, there are no clear guidelines regarding

when an evaluation of psychopathy is needed in a juvenile forensic assessment. The Psychopathy Checklist: Youth Version (PCL: YV; Forth, Kosson, & Hare, 1994) will likely become the standard for assessing such characteristics in youth. Specialized training should be obtained prior to clinical or forensic use of this measure. It is important that all juvenile forensic evaluators follow this developing literature very closely to examine data on psychometric properties, association with other forms of psychopathology, and predictive validity for juvenile offenders. The following suggestions have been offered regarding current use of adolescent psychopathy measures:

- Inferences about the presence of psychopathic characteristics should not rely exclusively on present behavior but should be drawn from a large developmental time frame with an eye toward the consistency of reports across collateral interviews and available records (Edens et al., 2000; Seagrave & Grisso, 2002);
- Data from existing measures should be described as indicative of personality features that resemble symptoms of psychopathy in adulthood (Vincent & Hart, 2002);
- There are no data that would suggest high psychopathy scores in an adolescent predict the presence of psychopathy in adulthood (Edens et al., 2000; Vincent & Hart, 2002);
- Psychopathic personality features in adolescents do have implications for violence potential and treatment planning (Vincent & Hart, 2002) but one should not automatically conclude that such youth are not amenable to treatment (Salekin, 2002).

#### *Report Writing and Communicating Risk Information*

In order for the forensic evaluation to be most useful to the juvenile court, the conclusions in the report must be relevant to the referral question and clearly outline the decision-making of the evaluator. This is true for pre-disposition evaluations of rehabilitation needs and risk. When identifying rehabilitation

needs, the evaluation and report should be structured to answer the five questions outlined by Grisso (1998). In relation to communicating information about risk, the following elements should also be addressed in the report:

- Statements about risk must be linked to the different environments the youth could reside in following the juvenile court disposition (i.e., home under community supervision, residential placement, secure custody).
- Statements about risk should also be linked to a specified time period and should not be a dichotomous conclusion of “high risk” or “low risk.”
- The report should outline a plan for management and intervention strategies to reduce the present level of risk the youth presents. The case management section of the YLS/CMI (see Appendix) can be helpful to the evaluator wanting to outline a risk management plan. Dynamic factors identified via the general and specialized measures should be linked to specific intervention strategies.
- The evaluator should recommend a specific time period to re-evaluate the presence and absence of risk factors and to determine the effectiveness of the interventions. Given the tremendous amount of change that can occur during the adolescent years, evaluators must always remember that risk will fluctuate as a function of intervention, different contexts, and overall development.

## **EVALUATIONS DURING JUVENILE COURT ADJUDICATION**

### *Waiver to Adult Court*

#### *Statutory Provisions*

The Texas provision for waiver to adult court involves a discretionary review by the juvenile court. A youth may be considered for waiver if (a) the youth is alleged to have committed a felony act and (b) the child is at least 10 years old at the time the



alleged act is committed (Tex. Fam. Code § 54.02). The statute establishes different rules based upon the age of the child and the type of felony act and requires the juvenile court to hold a hearing in making the waiver determination. The following statutory provisions are used by juvenile court judges in making the waiver determination:

- whether the alleged offense was against person or property;
- the sophistication and maturity of the child;
- the record and previous history of the child; and
- the prospect of adequate protection of the public and likelihood of rehabilitation (Tex. Fam. Code § 54.02(f)).

#### *Effects of waiver*

Increasing the rates of waiver of certain youth to adult court was viewed as a “get tough” policy that would increase public safety by removing chronic, violent youth from juvenile court jurisdiction, however, data on waiver generally have not supported these policy rationales (Puzzanchera, 2000; Snyder, Sickmund, Poe-Yamagata, 2000). Bishop, Frazier, Lanza-Kaduce and Winner (1996) found that youth waived to adult court recidivated at a higher rate than youth retained in juvenile court. Transferred youth were more likely to commit a subsequent felony offense compared to non-transferred youth. In addition, data have revealed that youth are more often waived for property offenses and may actually receive lesser sentences in adult criminal court.

#### *Elements to be addressed by mental health professionals*

Three constructs related to a youth’s psychological functioning and the issue of waiver have been identified as key considerations:

- *Potential dangerousness*, characterized by factors reflecting irresponsible or sensation-seeking behavior, violence, evidence of planning and extensive crimes, and psychopathic personality traits.

- *Sophistication-maturity* reflected along two dimensions of emotional/cognitive intelligence and level of criminal sophistication.
- *Amenability to treatment* characterized by four factors reflecting academic success/prosocial behavior, responsibility and motivation, youth being considerate and tolerant, and family cooperation (Salekin et al., 2001).

#### *Structuring the Evaluation and Report Writing*

Similar to the Supreme Court decision in *Kent v. United States* (1966), which outlined criteria for waiver to adult court, the Texas statute allows the juvenile court judge to consider any of the waiver criteria in making the determination. Therefore, it is important that the evaluation address all waiver criteria. Realistically, this means that waiver evaluations can become long and complex depending on the individual characteristics of the juveniles and their previous juvenile court involvement. It will be important to evaluate current mental health functioning, as outlined earlier in this chapter, and review any records documenting a history of mental health problems. In addition, the evaluator must address issues of dangerousness through a risk/need assessment. This should be done using procedures outlined under the risk assessment/risk management section. Similarly, treatment amenability can be discussed in reference to a proposed rehabilitation plan. However, it will also be important to consider the record of previous rehabilitation efforts and the youth's response to such interventions.

Sophistication-maturity is probably the most difficult waiver criteria to address. It can be addressed through an evaluation of the youth's general functioning, including cognitive functioning, and also consideration of the psychosocial aspects of maturity (Caffman & Steinberg, 1995, 2000b). The risk/need assessment can provide relevant information in reviewing the motives, proximal events, and youth's reaction and response to previous criminal events. In addition to addressing the waiver criteria two issues warrant special consideration in conducting a waiver evaluation:

- Wavier proceedings are pre-adjudication and the alleged offense must be reviewed with caution. The evaluator should consider the alleged offense in relation to other criminal history and review all collateral data regarding the alleged offense and not rely on the youth's statements only.
- Likelihood of rehabilitation must be evaluated in light of the age of the juvenile and the amount of time that the juvenile court can maintain jurisdiction over the youth. Because this will vary across individual cases, evaluators must carefully define what is meant by "rehabilitation" and consider what can be accomplished within the remaining time frame for juvenile court jurisdiction.

#### *Unfitness to Proceed*

##### *Statutory Provisions*

The statutory provision regarding unfitness to proceed requires the juvenile court evaluator to address the presence of mental illness or mental retardation (Tex. Fam. Code § 51.20) and establish a functional relationship between the mental illness or mental retardation and the juvenile's capacity to understand the proceedings in juvenile court, or to assist in the child's own defense (Tex. Fam Code § 55.31). Unfitness to proceed is a unique term used in juvenile court that incorporates similar statutory elements as the adult competency to stand trial (CST) statute (Tex. Crim. Code § 46.02). If the juvenile court finds that a child is unfit to proceed, the child cannot be transferred to criminal court and all juvenile court proceedings are halted as long as the incapacity endures (Tex. Fam. Code § 55.32).

##### *Issues to be addressed*

The issue of juvenile competence has been broken down into three functional capacities:

- an understanding of the charges and the basic elements of the adversary system;

- an appreciation that one faces court proceedings and the possible implications of the court proceedings; and
- the ability to relate relevant information to counsel.

The issue is most likely to be raised in cases that involve children 12-years-old and younger, when there is a documented history of mental illness or mental retardation, when “borderline” intellectual functioning or learning disabilities are present, and when observations suggest that the youth may have deficits in memory, attention, or reality testing (Bonnie & Grisso, 2000; Grisso, 1998). Juvenile competency varies with age, with preteens performing poorly on a competence interview compared to older adolescents and adults (McKee, 1998). Evaluations need to be individually tailored to the client due to the fact that no forensic assessment instruments designed to evaluate CST for juveniles exist (see article on Competency to Stand Trial).

#### *Structuring the Evaluation and Report Writing*

Numerous commentators have outlined the necessary elements of a thorough juvenile competence evaluation (Barnum, 2000; Grisso, 1998; Heilbrun, Hawk, & Tate, 1996; Oberlander, Goldstein, & Ho, 2001). The following is a summary of key points derived from these sources that take into account Texas law.

- Establish the referral question specifically separating issues of fitness to proceed from lack of responsibility.
- Thoroughly explain the evaluation process to the youth and include appropriate confidentiality warnings.
- Because the issue of fitness to proceed generally will be raised during the adjudication process, the evaluator must be aware of 5<sup>th</sup> Amendment issues and avoid including statements about the alleged offense that would incriminate the juvenile.
- The report must establish whether the juvenile currently has a mental illness or mental retardation consistent with the statutory definition.
- The report must clearly link the presence of mental illness to the juvenile’s functional capacity to understand the juvenile court proceedings and to the juvenile’s ability to assist in preparation of the defense.

- If the evaluation reveals mental illness or mental retardation that is linked to incapacity, the evaluator should recommend interventions that have a reasonable chance to address the incapacities.

### *Lack of Responsibility for Conduct*

#### *Statutory Provisions*

A juvenile forensic evaluation can also be requested as part of a “lack of responsibility for conduct determination” (Tex. Fam. Code § 55.51). In this type of proceeding, the juvenile court must determine if at the time of the alleged act, the youth, as a result of mental illness or mental retardation, lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform conduct to the requirements of the law. Similar to the unfitness to proceed statute, an evaluation can be court-ordered under Tex. Fam. Code § 51.20. However, Tex. Fam. Code § 55.51 specifically requires the examination to include “expert opinion as to whether the child is not responsible for the child’s conduct as a result of mental illness or mental retardation.” If the juvenile court or jury find the child is not responsible, Tex. Fam. Code § 55.52 allows for proceedings to determine an appropriate placement for treatment. If civil commitment criteria are met, the child can be ordered to a Texas MHMR facility for 90 days. Upon petition, the child can also be placed in an alternative treatment setting or receive outpatient treatment.

#### *Structuring the Evaluation and Report Writing*

As discussed above, the lack of responsibility statute links lack of responsibility to mental illness or mental retardation. The evaluation must first address this issue by establishing the diagnosis and associated impairment. Assessment methods discussed earlier should be employed, particularly instruments that allow the evaluator to gather similar data from multiple informants relative to various levels of impairment. The evaluation must then address the connection between impairment and the juvenile’s ability to appreciate the wrongfulness of the conduct and to control the conduct.

Given the similarity between the juvenile and adult statutes, the evaluation structure addressed in the Sanity article should be utilized as a framework for conducting the lack of responsibility evaluation. Questions that might be pursued during the lack of responsibility interview include:

- What were the juvenile's thoughts, feelings, and perceptions immediately before, during, and after the events?
- What happened in the juvenile's life during the week preceding the offense?
- What planning went into the offense?
- What motivated the conduct?
- Does the person believe s/he was in anyway forced to engage in the criminal behavior?
- Were any attempts made to actively avoid the situation?
- What did the crime accomplish for the perpetrator?
- Was the person being treated for any mental problem at the time?
- Was the person treatment compliant?
- Did substance abuse play a role in the events? (Substance abuse would not constitute an insanity defense, but might provide an alternative explanation for strange or bizarre behavior.)
- The evaluator should explore any discrepancies in various statements the juvenile has made at various times about the events.

In addition, the following points should be considered:

- Establish the referral question specifically separating questions of fitness to proceed and lack of responsibility.
- The report must clearly link the presence of mental illness or mental retardation and address the functional impairment associated with the two standards outlined in the statute. The two standards should be addressed in separate sections of the report.
- If the evaluation reveals mental illness or mental retardation that is related to a lack of responsibility, the

evaluation should also address commitment criteria and recommend interventions that have a reasonable chance of addressing the incapacities.

### CONCLUSION

The process and structure of juvenile court evaluations have changed in response to changes in juvenile court proceedings. Although recent advances have been made, the research and practice guidelines for juvenile forensic work have not paralleled advances in adult forensic work. There are both similarities and differences between adult and juvenile forensic evaluations. This chapter has sought to outline the role of the juvenile court evaluator and provide guidance in conducting different types of evaluations that are requested as part of juvenile court proceedings. In general, the juvenile forensic evaluator must have general knowledge of adolescent development, specific knowledge of research and theory on juvenile delinquency, and competence in evaluating mental health problems in children and adolescence. Different legal issues arise when conducting an evaluation during the adjudication process compared to evaluations conducted during the disposition process. The juvenile forensic evaluator must have a clear understanding of the relevant statutory authority and be prepared to accommodate the evaluation process to the unique characteristics of young offenders in order to produce a report that is relevant for the juvenile court.

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## **APPENDIX JUVENILE SPECIALTY INSTRUMENTS**

### **A. Massachusetts Youth Screening Instrument – Second Version (MAYSI-2)**

The MAYSI-2 is a 52-item inventory that results in “caution” and “warning” scores in six different clinical areas and also screens for traumatic experiences. As a screening measure, MAYSI-2 results are intended to identify problem areas and guide referral decisions.

Reference: Grisso, T., & Barnum, R. (2000). *Massachusetts Youth Screening Instrument 2: User’s manual and technical report*. Worcester MA: University of Massachusetts Medical School.

Website: <http://www.umassmed.edu/nysap>

### **B. Personal Experience Screening Questionnaire (PESQ)**

The PESQ is a 40-item instrument used to identify adolescents needing a substance abuse assessment referral. The instrument screens for alcohol and illicit drug use, response distortion, and psychosocial problems typically experienced by substance-dependent youth.

Reference: Winters, K.C. (1991). *Personal Experience Screening Questionnaire (PESQ): Manual*. Los Angeles: Western Psychological Services.

Source: Western Psychological Services  
12031 Wilshire Blvd.  
Los Angeles, CA 90025-1251

### **C. Minnesota Multiphasic Personality Inventory – Adolescent (MMPI-A)**

This multiscale self-report inventory has standard validity and clinical scales that parallel the adult version, as well as 21 content scales.

Reference: Butcher, J., William, C., Graham, J., Archer, R., Tellegen, A., Ben Porath, V., & Kaemmer, B. (1992). *Manual for administration, scoring, and*

*interpretation: MMPI-A.* Minneapolis: University of Minnesota Press.

Source: University of Minnesota, Test Division  
111 Third Avenue South, Suite 290  
Minneapolis, MN 55401-2520

**D. Millon Adolescent Clinical Inventory (MACI)**

The MACI is a multiscale inventory with validity scales, personality pattern scales (i.e., introversive, egotistic), expressed concerns (i.e., identity diffusion), and clinical syndromes.

Reference: Millon, T. (1993). *Millon Adolescent Clinical Inventory: Manual.* Minneapolis, MN: National Computer Systems.

Source: National Computer Systems Assessments  
5605 Green Circle Drive  
Minnetonka, MN 55343

**E. Manifestation of Symptomatology Scale (MOSS)**

The MOSS is a 124-item true/false self-report inventory utilized to identify personality dynamics, environmental concerns, treatment issues, and placement needs in adolescent offenders.

Reference: Mogge, N.L. (1999). *Manifestation of Symptomatology Scale.* Los Angeles: Western Psychological Services.

Source: Western Psychological Services  
12031 Wilshire Blvd.  
Los Angeles, CA 90025-1251

**F. Behavioral Assessment System for Children (BASC)**

The BASC system provides self-report, parent, and teacher forms that assess behavioral and emotional dimensions in a number of different contexts (i.e., school, family, and peers).

Reference: Reynolds, C.R., & Kamphaus, R.W. (1992).  
*Behavior Assessment system for children (BASC)*.  
Circle Pines, MN: American Guidance Services.

Source: AGS Publishing  
4201 Woodland Road  
Circle Pines, MN 55014-1796

### **G. Diagnostic Interview Schedule for Children (DISC)**

The DISC is available in either parent or youth interview format. Both interviews are highly structured and assess most common child and adolescent mental disorders identified in the DSM.

Reference: Wasserman, G.A., Larkin, S., McReynolds, M., Lucas, C.P., Fisher, P., & Santos, L. (2002). The Voice DISC-IV with incarcerated male youths: Prevalence of disorder. *Journal of the American Academy of Child and Adolescent Psychiatry*, 41, 314-321.

Source: Columbia University DISC Development  
NYS Psychiatric Institute  
Dept. of Child and Adolescent Psychiatry  
1051 Riverside Drive, Unit 78  
New York, NY 10032-1001

### **H. Child and Adolescent Functional Assessment Scale (CAFAS)**

The CAFAS is very useful in rating functional impairment across multiple contexts (i.e., school, community, family). Trained CAFAS raters can make functional impairment ratings for specific problem areas (i.e., mood/emotions, self-harming behavior, substance abuse).

Reference: Hodges, K. (1990, 1994 revision). Child and Adolescent Functional Assessment Scale. Ypsilanti, MI: Eastern Michigan University, Department of Psychology.

Source: Functional Assessment Systems  
2140 Old Earhart Road  
Ann Arbor, MI 48105