

Clinical Issues in Juvenile Fitness and Responsibility Evaluations

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Ethical Guidelines

- ◉ American Academy of Psychiatry and the Law
Ethical Guidelines for the Practice of Forensic Psychiatry
- ◉ Specialty Guidelines for Forensic Psychologists

**The guidelines set forth in these documents are aspirational.*

Clinician Competency in Juvenile Assessments

“Capable forensic examiners who work with adults should be cautious about evaluating a juvenile without adequate training or supervision. It is possible to conduct a seemingly competent evaluation but fail to obtain the data necessary to construct a complete picture of the developmental and familial context for the youth’s clinical presentation and delinquent behavior.”

(Heilbrun, Marczyk, and DeMatteo, 2002)

Requirements for Competence Evaluations/Evaluators

1. Is the examiner qualified to evaluate children and adolescents?
2. Does the examiner understand the legal issue?
3. Were the psychological tests administered and their interpretation appropriate for children?
4. Has the examiner received a developmental and mental health history on the youth?
5. Does the examiner describe legally relevant functional abilities?
6. Does the examiner have appropriate methods for assessing the relevant capacities?
7. Does the examiner address more than the youth's "mere understanding"?

American Bar Association Juvenile Justice Center

Fitness to Proceed Section 55.31, Texas Family Code

A child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision who as a result of mental illness or an intellectual disability lacks capacity to understand the proceedings in juvenile court or to assist in the child's own defense is **unfit to proceed** and shall not be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

THIS IS NOT THE SAME AS THE ADULT COMPETENCY STATUTE.

From 46 B: Fitness-Related Capacities

1. Rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings.
2. Disclose to counsel pertinent facts, events, and states of mind.
3. Engage in a reasoned choice of legal strategies and options.
4. Understand the adversarial nature of the legal proceedings.
5. Exhibit appropriate courtroom behavior.
6. Testify.

Lack of Responsibility for Conduct: Section 55.51, Texas Family Code

A child alleged by petition to have engaged in delinquent conduct or conduct indicating a need for supervision is not responsible for the conduct if at the time of the conduct, as a result of mental illness or an intellectual disability, the child lacks substantial capacity either to appreciate the wrongfulness of the child's conduct or to conform the child's conduct to the requirements of law.

THIS IS NOT THE SAME AS THE ADULT INSANITY STATUTE.

46B and Juveniles

- Most aspects of 46B, including those relating to expert qualifications, factors to consider during examination, and report guidelines do pertain to Fitness to Proceed evaluations.
- While the Competency statute for adults does not require an actual diagnosis, the Fitness to Proceed language does specify “as a result of mental illness or an intellectual disability.”
- 46B.007 does not, however, apply to juveniles. 46B.007 states the following:
 - A statement made by a defendant during an examination or hearing on the defendant’s incompetency, the testimony of an expert based on that statement, and evidence obtained as a result of that statement may not be admitted in evidence against the defendant in any criminal proceeding, other than at:
 - 1) a hearing on the defendant’s incompetency; or
 - 2) any proceeding at which the defendant first introduces into evidence a statement, testimony, or evidence described by this section.

A Few Minutes on Report Writing

Data Collection

1. Interview.
2. Possible use of assessment measures
3. COLLATERAL DATA

General Interview Considerations

- Forensic interviews with adolescents are oftentimes longer due to difficulties establishing rapport.
- You must be aware of the level and fluency of your speech. You should also be aware of the impact your wardrobe may have on the adolescent you are interviewing.
- Adolescents may frequently appear cold, callous, and as lacking any type of empathy due to their own immature (and frequently changing) defenses, mistrust of adults and/or authority figures, and difficulties processing/tolerating their own feelings.
- Due to shame, guilt, or overall adolescent egocentrism, juveniles may be reluctant to acknowledge important aspects of their own history (i.e., abuse)
- As with adults, reviewing collateral information ahead of time helps in overcoming deception or detecting possible malingering.

Fundamental Areas of Juvenile Assessment

1. Adolescent Development
2. Adolescent Offenders
3. Adolescent Psychopathology
4. Assessment of Adolescents

Grisso, 1998

Adolescent Development

- There is significant intra-age variability among adolescents. Development is not linear, as all adolescents develop at different rates, and oftentimes in spurts.
- Their social and/or emotional functioning is often situational. Personality traits are often experimented with and are frequently not permanent. While this may be conducive to work/change in psychotherapy, it can make a forensic evaluation quite challenging.
- Social and emotional stressors significantly impact an adolescent's ability to take advantage of their capacities/strengths (particularly newly acquired strengths), as unlike adults, they have not had the opportunity to display and develop such capacities under a variety of circumstances.
- Adolescents are still developing their overall cognitive abilities, particularly those relating to impulse control and executive functioning.

Adolescent Offenders

Keep in mind that delinquent behaviors are fairly common in the general adolescent population, as the majority of adolescents engage in behavior which, if caught, could lead to their arrest. As such, those adolescents we refer to as delinquents “are not necessarily a psychological or social subset of adolescents; they are adolescents whose delinquent acts have been detected and who have been arrested and found delinquent.”

Most individuals arrested as an adolescent do not continue offending as adults (this also holds true for violent offenders and for juvenile sex offenders).

Individuals with higher rates of criminal/violent recidivism are more likely to have initiated their illegal, aggressive, or antisocial behaviors prior to the age of 12.

Significant risk factors for delinquency include family conflict, financial limitations, social/neighborhood difficulties.

Adolescent Psychopathology

- ◉ Thought Disorders (1-5% among delinquents)
 - ◉ Mood Disorders
 - ◉ Substance Abuse Disorders (2nd most common among delinquents)
 - ◉ ADHD
 - ◉ Disruptive Behavior Disorders (most common among delinquents; frequent comorbidity)
 - ◉ Learning Disorders
 - ◉ Anxiety Disorders, PTSD
 - ◉ ID and Developmental Disorders
- ◉ According to the *DSM-IV*, in a majority of adolescents meeting criteria for CD, “the disorder remits by adulthood”, with “many” of the individuals going on to “achieve adequate social and occupational functioning”.

Clinical research and experience suggest it is harder to accurately diagnosis (or not diagnosis) children/adolescents than adults. Mental health professionals may also over pathologize “normal” adolescents (be aware of base rates and developmental issues).

IMPORTANT - Where Does Immaturity Fit?

The Texas Fitness to Proceed and Responsibility for Conduct statutes indicate that a juvenile can be found Unfit to Proceed, or not Responsible for Conduct, if, as a result of mental illness or an intellectual disability, he/she lacks the relevant capacities.

These statutes do not take into account the very real possibility that a juvenile may be Unfit to Proceed or not Responsible for Conduct for reasons relating primarily to immaturity in psychosocial development.

Immaturity/Inexperience Continued

- ⊗ Immaturity can significantly impact an adolescent's decision-making and judgment as they relate to Fitness to Proceed. In general, adolescents are less likely to identify risks (or the probability and/or consequences of those risks), though they are more likely to engage in risky choices/behaviors. Adolescents are also more likely to focus on short-term consequences (as opposed to long-term consequences) and are more susceptible to peer influence (Woolard & Harvell, 2005).
- ⊗ "No fact of adolescent criminality is more important than what sociologists call its 'group context,' and this fact is important to a reality-based theory of adolescent moral and legal responsibility for criminal acts." (Zimring)
- ⊗ A recent study by the MacArthur Foundation showed that one's psychosocial capabilities continue developing into adulthood. Similar differences (between adolescents and adults) with respect to foresight, immediate vs. delayed gratification, impulsivity, self-control, thrill-seeking behavior, and sensitivity to risk/reward, were also found. An earlier study by the MacArthur Foundation also showed that the mere presence of peers increases risk-taking in adolescents (but not adults).

Interesting MacArthur Foundation Quote

“Findings from the Network’s competence study, which included measures of future orientation, susceptibility to peer pressure, and risk perception, provide additional impetus for a new initiative on culpability. Analyses ... indicate that there are significant, age -related changes in individuals’ likelihood of considering the future consequences of their actions and in their susceptibility to peer influence, but not in their risk perception, over the course of adolescence. Even these preliminary findings illustrate just how complicated the assessment of blameworthiness is likely to be. For example, the findings suggest that adolescents and adults may perceive situations in similar ways (i.e., their assessments of risk may be comparable) but that adolescents may lack the ability to act on these perceptions in ways that align their behavior with their perceptions of risk. If this is the case, asking whether a juvenile recognized if a behavior was dangerous or morally wrong—asking whether he “knew what he was doing”—may not be the correct best way to frame the discussion, since it is possible that an immature person may perceive a behavior as risky or wrong but be influenced to engage in it regardless of that perception for other reasons (e.g., pressure from his friends, immaturity in the ability to regulate his behavior).”

“Conform the Child’s Conduct to the Requirements of Law”

“Less Guilty by Reason of
Adolescence”

When to Raise the Issue of Fitness to Proceed

1. The individual is 12 years old or younger.
2. There is a history of mental illness diagnosis/treatment.
3. Borderline IQ (70 to 85) or established learning disability.
4. Evidence/observations suggesting deficits related to attention/concentration, memory, and/or reality testing.

Grisso, 1998

Keep in Mind

Clinicians' judgments about CST among ID defendants are, on average, less reliable than for defendants with mental illness (Grisso, 2003).

Adolescents with ID have learned to adapt by being cooperative. They are more likely to acquiesce to an examiner's questioning than acknowledge that they do not know the information.

They may similarly pretend to understand their lawyer's when they in fact do not – "cloak of competence" (Edgerton, 1967)

Some (Appelbaum, 1994) have suggested using confrontational questioning to assess individual's capacity to appropriately engage in cross-examination.

Use of Testing Instruments with Adolescents

Most measures lack the appropriate adolescent norms, as most such measures were normed on an adult population.

FYI – If you decide to “tool” when performing a Fitness to Proceed Evaluation, Grisso recommends administering the Competency Assessment to Stand Trial – Mental Retardation (CAST-MR) due to its relatively simple/concrete format (particularly in relation to its basic vocabulary and sentence structure).

General Findings Related to Fitness to Proceed

- Most children under the age of 13 have difficulty understanding trial proceedings.
- Most children ages 13-15 are able to understand roles of various court actors and have a basic grasp of trial proceedings.
- Adolescents with MI and/or ID frequently experience a variety of developmental delays, including in areas related to self-image and self-control, relationships with adults and/or authority figures, delayed gratification, and the perspective of time in decision making (Grisso, 1998).
- 15-17 year olds (with Average IQ's) perform nearly as well as adults, and notably better than younger children, on standardized CST measures.
- Juveniles with prior court experience score somewhat better than those without experience.

MacArthur Study Findings

- Clients in their early teens are much less likely to understand court proceedings and to reason appropriately in their own defense. This notion is strongly supported in *The MacArthur Juvenile Adjudicative Competence Study* (Grisso and Steinberg, 2003) Findings from this study include the following:
 - Juveniles age 11 to 13 were "more than three times as likely as young adults (individuals age 18 to 24) to be seriously impaired on the evaluation of competence-relevant abilities".
 - Juveniles age 14 to 15 "were twice as likely as young adults to be seriously impaired.
 - Juveniles with below-average intelligence (FS IQ < 85) "were more likely to be significantly impaired in abilities relevant for competence to stand trial than juveniles of average intelligence" (FS IQ > 85). In fact, over 1/2 of all "below-average" 11- to 13 year-olds, and "more than 40% of all below-average 14- and 15 year-olds fell in the significantly impaired range on abilities related to competence".