Clinical Evaluation for Juveniles’ Competence
A Guide for Judges and Lawyers

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Bringing Research to Policy and Practice
Improving Practice for Evaluations of Juveniles’ Adjudicative Competence

- National Juvenile Court Clinician Survey of Practice (2001-02)
- Guidelines for Juvenile Competence to Stand Trial Evaluations (2002-04)
- Teaching the Guidelines: Nationwide Regional Workshops for Juvenile Court Clinicians (2005)
The National Juvenile Court Clinician Survey

Lead clinicians in 87 of the largest juvenile courts

Interviewed to learn about:
- How services were provided, by whom
- Current juvenile CST evaluation practices
- What needs they had for doing these evaluations
Types of Service Arrangements

- Court Clinics
- Community Mental Health Clinics
- Private Practitioners
Percent of Cities Using Models By Region of U.S.
Frequency of raising the question

Frequency of referrals for JCST evaluations in 2003, in 87 of 100 largest juvenile courts

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Percent</th>
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<tbody>
<tr>
<td>0</td>
<td>5</td>
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<tr>
<td>1 to 10</td>
<td>40</td>
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<td>11 to 25</td>
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<td>26 to 99</td>
<td>18</td>
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<td>100+</td>
<td>12</td>
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Survey of clinical services, 2003, 87 of 100 largest juvenile jurisdictions in U.S. J-CST referral trend compared to previous year

(percent of JCC services)

- **Increasing**: 50%
- **Stable**: 38%
- **Decreasing**: 12%
The JCC Survey: Hours Spent on Average J-CST Evaluation

(percent of courts surveyed)

- Collect Data (med = 3.5)
- Total Time (med = 6.3)
Developing a Guide for Juvenile Competency Evaluations

Developing consensus on recommended practices and
Producing tools to promote them
Teaching them to juvenile court clinicians nationwide
Consensus Process

- Expert juvenile court clinician panel
  - Developed the prototype concepts and methods
- National panels of clinicians and legal professionals (judges, prosecutors, defenders)
  - Developed consensus on practical application of the concepts and methods
- Piloting, feedback to the panels, refinement
The Guides

Evaluating Juveniles' Adjudicative Competence
A Guide for Clinical Practice
Thomas Grisso
CD-ROM Included

Clinical Evaluations for Juveniles' Competence to Stand Trial
A Guide for Legal Professionals
Thomas Grisso
Contents of the Guide

- Legal, Forensic, and Developmental Concepts for J-CST Evaluations
- Preparation for the Evaluation
  - Referral—Determining, scope and methods
  - The Defense Attorney—Making contact
  - The Caretakers—Making contact and invitations
  - Records, interviews and testing
The Guide (cont’d)

• The Data Collection Process
  ▪ Preparing the youth and caretakers
  ▪ Obtaining a developmental and clinical history
  ▪ Evaluating developmental and clinical status
  ▪ Assessing competency abilities
  ▪ Exploring caretakers’ perceptions of youth’s adjudication
The Guide (cont’d)

• Interpretation of Data
  - Formulating opinions related to competency
  - Formulating remediation
  - Writing the report

• Appendices (reproduced in the guide’s CD)
  - The Clinicians’ Records Form
  - The Interview Guides
  - The “Juvenile Adjudicative Competence Interview” (JACI)
  - The “Attorney CST Questionnaire”
Recommended Content of Juvenile Competence Evaluations
What Juvenile Competence Evaluations Ought to Provide Courts When Describing Youths

- The youth’s psychological status
  - Clinical and developmental characteristics
- What the youth can and cannot do
  - Legal competency abilities and deficits
- Why the youth has deficits in abilities
  - Causes of deficits in legal competency abilities
- What can be done
  - Potentials to remediate incompetence
The Youth’s Psychological Characteristics

• Clinical conditions
  – Mental illness
  – Mental retardation

• Developmental conditions
  – Degree of maturity of cognitive abilities
  – Degree of maturity of social-emotional capacities relevant for CST
What The Youth Can and Cannot Do

- Legally relevant abilities for trial participation
- The legal standard for CST
  A defendant must have:
  …sufficient present ability to consult with his attorney with a reasonable degree of rational understanding…
  …and a rational as well as factual understanding of the proceedings against him (Dusky v. U.S, 1960)
- The relevance of decision making capacities
Capacity for factual and rational understanding of...

- Nature of the Trial Process
- Accused of a crime
- Court will decide guilt
- Could be punished
- What possible sentences are
- Meaning of possible pleas
- Roles and functions of trial participants
- What trial process involves ("trial process" is pretrial preparation and events through trial)
Ability to assist counsel....

- Capable of comprehending counsel’s inquiries
- Capable of responding to counsel inquiry and providing relevant information
- Can handle the demands of trial process (won’t decompensate under stress, demeanor won’t jeopardize fairness, can testify relevantly)
Decisional ability…

- Able to make decisions based on rational beliefs and perceptions
- Able to process/weigh information
Why Youth Has Deficits in Legally-relevant Abilities (if deficits exist)

- Is there a connection between their clinical/developmental status and their deficits in legal competency abilities?
- Or are they due to other factors... e.g.
  - lack of exposure to what they need to know
  - malingering
Potential for Remediation

• Can the deficits be remediated?
• If so, in the time allowed?
• With what methods?
Guidelines for Performing Juvenile Competence Evaluations

10 ways in which doing competence evaluations with juveniles require different methods than with adults
#1 - Developmental child expertise of the examiner

- Examiners of J-CST evaluations should be specialized in:
  - The diagnosis of children’s mental disorders
  - The assessment of youths’ developmental capacities
#2 - Developmental concepts to guide the logic

- **Defining “immaturity”**
  - Immaturity is a relative term
    - “Immature compared to whom?”
      - Adults? Average adolescent? Own age peers?
  - **Age is not synonymous with developmental level**
    - Do not presume level of maturity based on age
  - **Maturation is not all-or-none**
    - Always identify the specific developmental ability or characteristics in question
#2 - Developmental concepts to guide the logic (cont’d)

- Biological Development
- Intellectual Development
- Psychosocial Development
  - Autonomy
  - Risk Perception
  - Time Perspective
  - Abstract Thinking
#3 - Both clinical and developmental information

- CST evaluations require defining reasons for deficits in CST abilities
- Traditionally those have been clinical disorders, requiring information about symptoms
- With youths, potential deficits due to immaturity require additional inquiry into cognitive and social development
#4 - Special importance of historical records of development

- Examiners should obtain and review, whenever possible, past records from:
  - School
  - Pediatrician/physician
  - Child Mental Health services provider
#5 - Involvement of defense attorney

- Involvement of defense attorneys are important for
  - Testing specific hypotheses
  - Improving ability to address specific reasons for referral
  - Understanding the attorney’s observations that led to the referral
  - Protection of the youth’s rights
#6 - Involvement of caretakers

- **Caretaker involvement recommended**
  - To obtain youth’s developmental history
  - Assess caretakers’ abilities to assist youth in understanding and decision making

- **Controversy about caretakers**
  - About presuming parents can compensate (legally they cannot waive youth’s constitutional rights)
  - About parents’ conflicts of interest
  - About parents’ emotional capacities
#7 - Multiple interviews

• Recommend more than one interview with youths (a few days apart)
  – Youths’ appearance day to day is less stable than adults—”one look” on one day is more likely to be misleading
  – If youths are assisted to understand trials on first interview, second interview allows one to see if they retained it
#8 – Assessing Capacity to Learn

- Some youths do not understand trial information simply because they have not been exposed to it (rather than being incapable)
- Clinicians should “teach” them some of the things they do not know to see if
  - They have the capacity to learn, or
  - They have developmental problems that interfere with learning
#9 – Assessing Appreciation

- With youths, factual understanding is less often the problem than is the ability to use information in making judgments about decisions.
- Does the youth grasp the significance of what he/she understands for own situation?
- Example:
  - Accurate factual understanding: “Attorney helps the defendant”
  - Inaccurate appreciation: “My attorney can’t help me because I did the offense” or “My attorney will have to tell the judge if I did the offense.” (Defense is only for the innocent.)
#10 – Assessing Judgment in Decision-making

• Many youths may understand “what” a plea agreement is, but have developmental difficulties when making plea “decisions”

• Examples:
  – Immature time perspective: Focusing only on short-term rather than long-term consequences
  – Immature peer influences: Focusing only on what peers would say rather than deciding what might be best for oneself
The Juvenile Adjudicative Competence Interview (JACI)

- An interview guide for clinicians
- Provides standardized questions covering trial process, participants, roles, decisions of defendants
- For each question, examines both factual understanding and appreciation

For example....
Example: Juvenile Adjudicative Competence Interview (JACI)

- **Understanding:**
  Before a juvenile court trial, defendants are asked whether they plead “guilty” or “not guilty” to the offense. What does “pleading guilty” mean?

- **Appreciation**
  What will happen at court if you plead “guilty”?
  What will happen if you plead “not guilty”?
In Closing

- Juvenile CST evaluations are relatively new
- These evaluations must be performed differently than with adults
- The ‘guides’ produced by the MacArthur foundation may be seen as a set of emerging principles for J-CST evaluations
- It is important for clinicians to provide judges and lawyers information about youths CST abilities that are developmentally sensitive