

Practice Parameter for Child and Adolescent Forensic Evaluations

This Parameter addresses the key concepts that differentiate the forensic evaluation of children and adolescents from a clinical assessment. There are ethical issues unique to the forensic evaluation, because the forensic evaluator's duty is to the person, court, or agency requesting the evaluation, rather than to the patient. The forensic evaluator clarifies the legal questions to be answered and structures the evaluation to address those issues. The forensic examination may include a review of collateral information, interviews and other assessments of the child or adolescent, and interviews with other relevant informants. The principles in this Parameter suggest the general approach to the forensic evaluation of children and adolescents and are relevant to delinquency, child custody, child maltreatment, personal injury, and other court-ordered and noncourt-ordered evaluations. *J. Am. Acad. Child Adolesc. Psychiatry*, 2011;50(12):1299–1312. **Key Words:** Practice Parameter, child and adolescent psychiatry, custody, abuse and neglect, juvenile justice

Forensic evaluations of children and adolescents may be requested for a wide variety of legal settings, including the family, juvenile, civil, and criminal courts. There are more than 1 million divorces per year and courts may request assistance on custody issues. There are millions of abuse and neglect reports annually in which a mental health professional may have a role as a forensic evaluator or treating clinician. Each year, more than 2.7 million youth younger than 18 years are arrested and more than 1 million will have formal contact with the juvenile justice system. In 2008, 81,000 youth were held in juvenile detention and residential facilities.¹ There are clinical and forensic roles for child and adolescent psychiatrists in juvenile detention facilities. Expert psychiatric evaluation may be requested in tort litigation in the assessment of possible injury and psychiatric sequelae of trauma.

The role of the child and adolescent forensic evaluator is distinct and separate from that of a mental health treatment provider.² The principal duty of a child psychiatrist serving as therapist is to his or her patient. In contrast, the forensic evaluator's duty is that of an expert, with the responsibility of objective reporting of psychiatric findings to the person or agency requesting

the evaluation. There are two critical characteristics of a forensic evaluation: there is no therapeutic relationship with the individual being evaluated and there are clear limits to confidentiality. Despite the different roles, a child and adolescent psychiatrist conducting a forensic assessment must still be aware of indicated and available treatments.

This Practice Parameter was written to provide guidance for child and adolescent psychiatrists conducting forensic evaluations, but it has broad applicability to other child mental health professionals. Thus, the term "forensic evaluator" will be used to indicate a child and adolescent psychiatrist or any other child mental health professional conducting an evaluation for the purpose of resolving a legal dispute, rather than for treatment. Psychiatrists who provide treatment in forensic settings, such as juvenile detention centers, are sometimes referred to as "forensic psychiatrists," but their evaluations are conducted for treatment purposes and will not be discussed here.

The principles stated herein are applicable to the evaluation of youth younger than 18 years. In this Parameter, the term "child" refers to adolescents and younger children unless explicitly noted. Unless otherwise noted, "parents" refers to the child's primary caretakers, regardless of

whether they are the biological or adoptive parents or legal guardians. This document presumes familiarity with normal child development and the principles of child psychiatric diagnosis and treatment.

METHODOLOGY

The list of references for this Parameter was developed by searching PsycINFO, Medline, Psychological Abstracts, PubMed, Ovid, Lexus-Nexus, and Legal Abstracts; by reviewing the bibliographies of book chapters and review articles; and by asking colleagues from the American Academy of Child and Adolescent Psychiatry (AACAP) Rights and Legal Matters Committee and the AACAP Juvenile Justice Reform Committee for suggested source materials. Search terms included forensic, juvenile, justice, psychiatry, psychology, legal, ethics, competency, custody, divorce, foster care, adoption, abuse, neglect, violence, trial, hearing, adjudication, litigation, waiver, evaluation, and expert witness. The searches covered the period from 1990 through 2009 and yielded about 500 articles. Each of these references was reviewed and only the most relevant (i.e., focusing in whole or in part on the issues and techniques specific to forensic evaluations by child and adolescent psychiatrists) were included in this document. Articles and chapters were evaluated on their basis in research findings and if these findings or reports were replicated, if the recommendations were supported by professional groups or a consensus of experts, and consistency with policy positions in other practice standards such as the Guidelines for Child Custody Evaluations in Family Law Proceedings by the American Psychological Association.³

DEFINITIONS

These are general definitions and the reader should be aware of local differences by jurisdiction.

Adjudication: A court proceeding in which a case involving a delinquent is reviewed and settled. As used in this guideline, it is the judicial process for determining delinquency in juvenile/family courts.

Best Interests of the Child: The rendering of decisions to fulfill the basic and developmental needs of the child.

Confidentiality: The right of an individual to have information that was disclosed in confidence

not revealed to a third party. The duty to maintain confidentiality belongs to the psychiatrist.

Disposition: Placement decision after a finding of delinquency, whether incarceration, residential placement, or placement at home with treatment services.

Dusky Formulation: *Dusky v. US* 362 US 402 (1960) was a landmark U.S. Supreme Court ruling that established a defendant's right to a competency evaluation before a criminal trial and defined the standards for adult competency: that a defendant must understand the charges against him and be able to assist counsel in his defense.

Expert Witness: A witness determined by the court as having specialized knowledge from training or experience and therefore having opinions that may be useful to the court in making a decision on a case.

Fact Witness: A witness who has personal knowledge about a case before the court. The testimony includes only those things the witness has directly experienced. It cannot include information told by others (hearsay) or opinions (expert testimony).

Fiduciary Responsibility: The expectation that someone acts in confidence or trust for the benefit of another within a defined relationship.

Miranda Warnings: The rights of a suspect to be informed that he or she has the right to refuse to give any self-incriminating information and that he or she is entitled to have legal counsel present at any interrogation. These rights were established by the U.S. Supreme Court in *Miranda v. Arizona* 384 US 436 (1966).

Parens Patriae: The legal principle for the state to act as the authority to care for those citizens unable to protect themselves, such as minor children.

Police Power: The general power of the state to protect its citizens.

Privilege: The legal rule that protects certain information from disclosure in court. Privilege belongs to the individual.

COMMON TYPES OF CHILD FORENSIC EVALUATIONS

Juvenile Justice

The juvenile court is focused on rehabilitation and helping the children and adolescents who

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